ITEM Th 3a

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

RECORD PACKET COPY

August 29, 2002

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Chuck Damm, Deputy Director
Gary Timm, District Manager
Barbara Carey, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program (Land Use Plan and Local Implementation Program)

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, after public hearing, the Commission adopt the City of Malibu Local Coastal Program, including the Land Use Plan and the Local Implementation Plan. The motions and resolutions for these actions begin on page 6.

STAFF NOTE

On August 31, 2000, the State Legislature passed Assembly Bill 988 which added Section 30166.5 to the Coastal Act. Subsection (a) requires the Coastal Commission to prepare an initial draft of the Land Use Plan for the City of Malibu and submit it to the City on or before January 15, 2002. Subsection (b) requires the Commission, after public hearing and consultation with the City of Malibu, to certify a Local Coastal Program for the City by September 15, 2002. Section 30166.5 also requires the City to immediately assume coastal development permitting authority subsequent to certification of the LCP by the Commission and provides that, notwithstanding specified requirements for the review and approval of development projects, no application for a coastal development permit shall be deemed approved if the City fails to take timely action to approve or deny the application.

The Draft LCP Land Use Plan for the City of Malibu was prepared pursuant to the requirements of AB 988 and Public Resources Code Section 30166.5. The Draft LUP was released for public review and comment in mid-September, 2001. A public meeting was held in Malibu on October 30, 2001 to receive public comment on the draft Land Use Plan. The Commission considered the Draft Land Use Plan at public hearings on November 15, 2001 and January 10, 2002. The Initial Draft Land Use Plan was submitted to the City of Malibu on January 14, 2002.

After the Initial Draft LUP was completed, Commission staff and City staff developed the Draft Local Implementation Program to implement the policies of the Land Use Plan.

several chapters. The chapters were then integrated into the Draft Local Implementation Plan.

At the June 2002 hearing, the Commission held a public workshop on the subject of environmentally sensitive habitat areas in the Santa Monica Mountains.

The Commission considered the Revised Draft Land Use Plan and the Draft Local Implementation Plan at the July 10, 2002 hearing. Based on Commission direction, the revised draft LUP and Draft LIP, both dated June 2002, have been revised. The Final Draft LUP and Final Draft LIP were released for public review on August 23, 2002. Each document has been annotated to show changes, additions with underlining and deletions with strikethrough.

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STAFF RECOMMENDATION

A. Land Use Plan

1. Motion #1 – Land Use Plan

I move that the Commission adopt the attached Land Use Plan for the City of Malibu, in accordance with the requirements of Public Resources Code section 30166.5.

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the Land Use Plan and the following resolution and findings. The motion passes only upon an affirmative vote of a majority of the appointed Commissioners.

2. Resolution

The Commission hereby adopts the attached Land Use Plan for the City of Malibu, and adopts the findings set forth below on the grounds that the Land Use Plan will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Adoption of the Land Use Plan 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 Land Use 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 adoption of the Land Use Plan.

B. Local Implementation Plan

1. Motion #2 – Local Implementation Plan

I move that the Commission adopt the attached Local Implementation Plan for the City of Malibu, in accordance with the requirements of Public Resources Code section 30166.5.

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

2. Resolution

The Commission hereby adopts the attached Local Implementation Plan for the City of Malibu, and adopts the findings set forth below on the grounds that the Local Implementation Plan conforms with, and is adequate to carry out, the provisions of the adopted Land Use Plan. Adoption of the Local Implementation Plan complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Local Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from adoption of the Local Implementation Plan. Adoption of the Local Implementation Plan results in Commission adoption of the complete Local Coastal Program for the City of Malibu, in accordance with the requirements of Public Resources Code section 30166.5.

FINDINGS

The Commission hereby finds and declares:

A. Description of the City of Malibu

The City of Malibu, which incorporated on March 28, 1991, lies entirely within the State designated Coastal Zone and extends approximately 25 miles from the Ventura County Line on the west to Topanga Canyon Boulevard on the east. Inland, the City's Coastal Zone boundary extends approximately 1 to 1 & 1/2 miles and includes portions of the coastal terrace and slopes of the Santa Monica Mountains.

The shoreline along the City of Malibu contains sandy beaches, bluff backed crescent coves, and rocky headlands. The inland portion generally contains the major canyons and watersheds of the mountain range. The canyons constitute the natural drainages that run down toward the Pacific from the mountain peaks, located both within and outside of the unincorporated Los Angeles County Santa Monica Mountains Coastal Zone and the interior valleys.

The marine, canyon, and watershed environment westward of Malibu Canyon Road to the Ventura County line is in a relatively undisturbed state. The slopes and hillsides are dominated by coastal sage scrub and chaparral vegetation and large areas of riparian habitat in the canyons. Along the coast, kelp beds are found, providing habitat for many species of sea life. The natural environment from the Civic Center eastward has suffered some biological degradation. Grading and development have eliminated native hillside vegetation in some areas, portions of creeks have been channelized, and kelp

beds have largely diminished or disappeared but reef and rock zones still provide habitat for many species of fish.

Broad sandy beaches at Leo Carrillo, Nicholas Canyon, Zuma, Westward, Point Dume, Surfrider and other beaches provide sunbathing, swimming, surfing, board sailing and other recreational opportunities to the public. Small, public pocket beaches backed by high bluffs provide more secluded and natural beach environments in the City's western portion. The more urbanized eastern portion of Malibu contains several vertical access points to beaches located behind residential communities. Access to many beaches throughout the City, however, is restricted due to blockage by development including gated communities or private compounds, unopened accessways, and lack of parking. Access to all beaches along the Malibu coast is provided by Pacific Coast Highway and a limited number of cross-mountain roads. The capacity of Pacific Coast Highway is exceeded regularly on summer weekends as coastal visitors and residents attempt to reach the beach or enjoy a drive along the coast.

Land use patterns vary considerably throughout the City. Commercial and residential development flanks the Pacific Coast Highway from Topanga to Point Dume. The Malibu Civic Center, located at the base of Malibu Canyon, and Point Dume Plaza contain the major commercial areas. The balance of the City generally consists of residentially zoned lots in small clusters of approximately 10,000 square feet to an acre in size, mid-sized parcels of 2, 5 and 10 acres and large parcels exceeding 20 acres on the coastal slopes throughout the City up to 300 acres in the extreme western portion of the City.

B. Local Coastal Planning History

An LCP is defined as "a local government's land use plans, zoning ordinances, zoning district maps, and, within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of [the Coastal Act] at the local level" (PRC Section 30108.6). The Land Use Plan is defined as " the relevant portion of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions (PRC Section 30108.5).

Efforts to complete a Local Coastal Plan in conformance with the California Coastal Act for the Malibu and Santa Monica Mountains area have been ongoing since shortly after the Coastal Act became effective on January 1, 1977. Prior to the City's incorporation, the initial planning, public hearings, and submittals were the responsibility of Los Angeles County. Initial studies and planning documents addressed the larger coastal zone for Malibu and the Santa Monica Mountains, which extends approximately 5 miles inland.

The first phase of the Local Coastal Plan prepared and submitted by the County consisted of the "Issue Identification/Work Program for the Malibu Area." The work program, which was approved by the Coastal Commission in December 1978, identified the specific issues to be addressed in the LCP Land Use Plan (LUP). The second phase consisted of preparation and submittal of the Land Use Plan. In December 1982, the Los Angeles County Board of Supervisors approved a Land Use Plan and subsequently submitted it to the Coastal Commission. After numerous public hearings and revisions the LUP was certified by the Coastal Commission on December 11, 1986. Since certification in 1986, the policies of the certified Land Use Plan have been used for guidance by the Coastal Commission in its permit decisions.

On August 31, 2000, the State Legislature passed Assembly Bill 988, which added Section 30166.5 to the Coastal Act. Subsection (a) requires the Coastal Commission to prepare an initial draft of the Land Use Plan for the City of Malibu and submit it to the City on or before January 15, 2002. Subsection (b) requires the Commission, after public hearing and consultation with the City of Malibu, to certify a Local Coastal Program for the City by September 15, 2002. Section 30166.5 also requires the City to immediately assume coastal development permitting authority subsequent to certification of the LCP by the Commission and provides that, notwithstanding specified requirements for the review and approval of development projects, no application for a coastal development permit shall be deemed approved if the City fails to take timely action to approve or deny the application.

In completing the Malibu Local Coastal Program (Land Use Plan and Local Implementation Plan), staff relied on several prior planning documents to varying extent. In particular, the 1986 Commission Certified Land Use Plan for Malibu and the Santa Monica Mountains was used as the base document for developing policies for the Land Use Plan. Numerous revisions and additions were required, however, to reflect circumstances that have changed and new issues that have arisen since the 1986 certification as well as the geographic boundary change resulting from the City's incorporation in 1991. Staff also relied on the City's existing General Plan Land Use Map designations along with the 1986 LUP designations. The LUP Land Use Map and the LIP Zoning Map largely reflect the City's existing General Plan land uses although the designation of some properties has been changed to reflect their acquisition by local, state, or federal park agencies for public open space purposes. Additionally, there have been some modifications in the Civic Center area relative to the Coastal Act priority for visitor-serving commercial use above general commercial use. Further, some residentially zoned parcels have been recommended for reduced density designations due to steep slopes, the presence of environmentally sensitive habitat areas, or geological restraints.

C. Public Access and Recreation

1. Coastal Act Provisions

A broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are herein incorporated into the Land Use Plan, work to meet this objective. The Coastal Act requires that development not interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); encourages the provision of lower cost visitor and recreational facilities (Section 30213); addresses the need to regulate the time, place, and manner of public access (30214); specifies the need to protect ocean front land suitable for recreational use (Section 30221); gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses (Section 30222); requires the protection of upland areas to support coastal recreation, where feasible (Section 30223); and encourages recreational boating use of coastal waters (Section 30224).

2. Coastal Act Policies

Section **30210** of the Coastal Act states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The Coastal Act also requires that development not interfere with the public right of access to the sea in Section 30211:

Section 30211

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

Section 30212 of the Coastal Act provides for public access in new development projects with limited exceptions and provides for the distribution of parking over a wide area in Section 30212.5:

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than l0 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

In addition, the Coastal Act encourages the provision of lower cost visitor and recreational facilities in Section 30213:

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214 of the Coastal Act addresses the need to regulate the time, place, and manner of public access:

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The Coastal Act specifies the need to protect ocean front land suitable for recreational use in Sections 30220 and 30221:

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The Coastal Act also gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses in Section 30222:

Section 30222

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

Section 30223 requires the protection of upland areas to support coastal recreation, where feasible:

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The Coastal Act encourages recreational boating use of coastal waters in Section 30224:

Section 30224

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Finally, the Coastal Act also facilitates public access by providing for public transit, alternative means of circulation and adequate parking in new development in Section 30252:

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile 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.

3. Introduction

The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as for residents of cities and towns located throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands, and a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area including hiking, biking, horseback riding, camping, fishing, picnicking,

nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails, and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels and motels has historically been a critical and controversial issue in Malibu. Continuing conflicts in providing maximum public access to and along the shoreline and trails, as mandated by the Coastal Act, is evidenced in the Coastal Commission's permit regulatory reviews and public hearings concerning proposed projects in Malibu since 1976.

The loss of coastal recreation opportunities resulting from development occurring over the past 25 years represents a significant adverse impact to the availability of public access and recreation in Malibu. Defined broadly, these opportunities include not only the physical availability of access and recreation areas, but also the ability of the public to reach and utilize these sites. Coastal access is generally viewed as an issue of physical supply, and includes lateral access (access along a beach), vertical access (access from an upland street, parking area, bluff or public park to the beach), coastal blufftop trails, and upland trails that lead to the shore or traverse inland parklands within the coastal zone. These inland parks provide significant access and recreation opportunities in the City and Santa Monica Mountains coastal zone, and are as important to coastal access as shoreline accessways.

While the physical supply of access is a primary factor in assuring access opportunities, the Local Coastal Plan cannot view the issue of supply in isolation of a number of other factors. These variables include the availability of transit to beaches, parking availability, provision of other support facilities such as restrooms and picnic areas, addressing user demands and conflicts, and maintenance of a diversity of coastal recreation experiences. Impacts to any one of these variables may ultimately affect the availability and use of the physical supply of access. For example, without adequate parking or alternate transportation, users will have difficulty reaching the shoreline or trailhead. Therefore, managing and increasing coastal access and ensuring that growth and development does not cumulatively impact the ability of the public to access the shoreline and trails, involves improving not only the physical supply of access, but all of the other variables that contribute to ensuring maximum coastal access.

To understand the importance of protecting and maximizing public access, it is critical to know that the public already possesses ownership interests in tidelands or those lands below the mean high tide line. Because the mean high tide line varies, the extent of lands in public ownership also varies with the location of the mean high tide line. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The use of these lands is limited to public trust uses, such as navigation, fisheries, commerce, public access, water-oriented recreation, open space, and environmental protection. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring both the implementation of a public access program and the minimization of impacts to access through the regulation of development.

The recommended policies contained in the Land Use Plan carry out the provisions of the Access and Recreation policies of Chapter 3 of the Coastal Act in several ways. Some recommended policies reflect the intent of several relative Coastal Act policies. This policy section begins with several broad overriding policies which carry out the combined mandate of several, if not all, of the Coastal Act policies cited above regarding Access and Recreation. Other recommended policies are more specific to the intent of a single Coastal Act policy or certain inter-related policies. In other words, it is necessary to consider all of these policies as a unified whole as well as individually to be found consistent with the Coastal Act. These recommended policies can be grouped into a few distinct issue categories, however. These include:

- Provisions for lateral access along and vertical access to the coast (30210, 30211, 30212, 30214);
- Provisions for trails and bikeways, inland and along the coast, including the recently designated California Coastal Trail (30210, 30211, 30212, 30214);
- Provision and protection of parking, transit modes and other necessary infrastructure that facilitate public access and recreation (30212.5, 30214, 30252);
- Provision and protection of visitor and recreation serving uses on a priority basis (30213, 30220, 30221, 30222, 30223);
- Provisions for acquiring new and protecting existing parklands for open space and public recreation (30210, 30213, 30221, 30223, 30252).

The LUP initially establishes a number of policies which broadly provide for the overriding objectives of the Access and Recreation policies of Chapter 3 of the Coastal Act - to protect, enhance and expand coastal access and recreation opportunities as a resource of regional, state and national importance in Malibu (P2.1). Several policies provide for the protection and/ or provision of access and recreation including existing prescriptive rights in new development projects and provides for public access or trail improvements as a permitted use in all land use and zoning designations, including Environmentally Sensitive Habitat Areas (2.2 – 2.8, 2.11). Other broad policies provide for communication and coordination with other public and park agencies, private organizations and volunteer organizations to accept and assume responsibility for acquiring, maintaining and operating public accessways and trails, recreational areas or public open space (2.9 – 2.16). In addition , several policies provide for certain limited uses under limited circumstances on public beaches and recreation areas such as roads, parking, transit and other support facilities, signs, temporary events, and limited low-intensity visitor-serving commercial and recreational facilities on non-sand areas (2.17 – 2.26). These policies are implemented by the Public Access and Recreation Ordinance (Chapter 12) in the Implementation Plan or Zoning and Development Standards sections (Chapter 3) relative to Parking and Signs which are discussed in greater detail in the following sections.

4. Lateral Access, Vertical Access, and Trails

As previously stated, the public already possesses ownership interests in tidelands or those lands below the mean high tide line. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring both the implementation of a public access program and the minimization of impacts to access and the provision of access, where applicable, through the regulation of development. To carry out the requirement of Section 4 of Article X of the California Constitution, PRC Section 30210 provides that maximum access and recreational opportunities be provided consistent with public safety, public rights, private property rights, and natural resource protection. PRC Section 30211 requires that development not interfere with the public's right of access to the sea with certain exceptions. Furthermore, PRC Section 30212 requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects with certain exceptions such as public safety, military security, resource protection, and where adequate access exists nearby. Certain minor types of development would also not require the provision of access. Finally, PRC Section 30214 provides that the implementation of the public access policies take into account the need to regulate the time, place, and manner of public access depending of such circumstances as topographic and geologic characteristics, the need to protect natural resources, proximity to adjacent residential uses etc.

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act and, where applicable, with the access and recreation policies of a certified Local Coastal Program. Based on the access, recreation, and development policies contained in Chapter 3 of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects along the coast in Malibu and elsewhere to reduce interference with or eliminate impacts on public access. Impacts to access can occur from physical blockage of existing access, direct occupation of sandy beach by structures as well as from impacts on shoreline sand supply and profile caused by seawalls and other shoreline protective structures.

Development on the beach, particularly the placement of shoreline protective devices, has been found to cause a number of effects on the dynamic shoreline and the availability of public land. As a result, development can often lead to significant impacts on public access. Development on a beach often leads to a change in the beach profile. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and the mean high water lines. This reduces the actual area in which the public can pass on its own property. This steepening of a beach can also lead to a progressive loss of sand on the beach. This material is not then available to nourish the offshore bar which usually provides the sand to replenish beaches after winter storms. The lack

of an effective bar can allow such high wave energy on the shoreline that material may be lost far offshore where it is no longer available to nourish the beach resulting in a smaller beach. In addition, shoreline protective devices cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches and by their direct occupation of sandy beach area.

The permitting agency must also consider whether a project affects any public right to use the shoreline that exists independent of the public's ownership of tidelands and of public rights protected by the common law public trust doctrine. Generally, there are three additional types of public use: (1) recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law; (2) any rights that the public may have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public may have acquired through public purchase or offers to dedicate access.

As stated above, the beaches, trails, and parklands in the City of Malibu are extensively used by both local residents, visitors from other communities throughout the Los Angeles metropolitan area and across the state as well as by visitors from throughout the nation and other countries. Most planning and demographic studies indicate that attendance at recreational sites in southern California will continue to increase significantly over the coming years. The public has the right to access and use the shoreline under the public trust doctrine, the California Constitution, and California common law. Therefore, it is necessary that the Local Coastal Program must protect public access rights by assuring that any proposed shoreline development does not interfere with those rights.

To eliminate or reduce potential impacts from development on public access and recreation, the Commission, in numerous permit actions, has often required that new shoreline development be located as far landward as possible in order to reduce adverse impacts to the sand supply and public access resulting from the proposed development. In addition, the Commission has also required that public access to or along the shoreline be provided in new development projects as mitigation for adverse impacts to beach sand supply and/or public access. This form of required mitigation is usually accomplished through an offer-to-dedicate (OTD) an easement for public use.

The requirement for the recordation of an OTD, however, does not ensure public access; the offers must be accepted by a managing entity, and, for vertical easements which often require some form of physical improvement, be opened for public use. Data and information assembled by Commission staff have shown that, over the years, while development has been allowed to proceed, the mitigation has, in many cases, not been fully satisfied (ReCap, 1999). Furthermore, an OTD is valid for a limited time period. OTDs, in many cases, are not required to be made available for public use until the easement is accepted for management by a public agency or non-profit organization. Therefore, it is important that the LUP contain provisions to ensure that OTDs required

as a condition of development are not only accepted prior to their expiration date, but that they are opened, improved, where necessary, and managed for public use.

The Coastal Act policies discussed above relative to the protection and provision of public access to and along the shoreline are also applicable to the protection and provision of public trails as well. In addition to the policies previously cited, PRC Section 30221 protects oceanfront land suitable for recreation for such uses unless all demand for public, or commercial, recreational use has been provided. Furthermore, PRC Section 30223 provides that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The Santa Monica Mountains area provides an extensive network of public hiking and equestrian trails that traverse and connect Federal, State, and County parklands, and a system of heavily used historic trails on private lands. These trails also serve as alternative means of access to beach and mountain parklands. In order to preserve and formalize the public's right to use these trails, Los Angeles County adopted the Malibu/Santa Monica Mountains Trails Plan in 1982. The plan identified 23 proposed trail routes including the Backbone Trail, the Coastal Slope Trail, and numerous cross-mountain lateral trails linking the San Fernando Valley with numerous mountain and beach parks. The public parklands, beaches, and other areas made accessible by the hiking and equestrian trails identified in the Trails Plan, and the spectacular coastal and mountain views from these trails, are among the coastal resources protected by the public access and recreation policies of the Coastal Act. However, the existing, interconnected system of public and historic trails, widely used by the public to access and enjoy the beaches and parklands of the Santa Monica Mountains, is at risk today by the ongoing development of privately owned lands.

In permitting residential development in Malibu and the Santa Monica Mountains the Commission has found that in order to ensure that the public would continue to be able to use existing hiking and equestrian trails, adverse effects to those trails arising from such development would need to be minimized and, if necessary, mitigated. In its permit actions, the Commission has frequently required an offer-to-dedicate (OTD) an easement for public trail use when proposed development would adversely affect the public's ability to use one of the trails identified in the Trails Plan or a trail known to have been historically used by the public. The Los Angeles County Land Use Plan, certified by the Commission in 1986, incorporated the 1982 Trails Plan and included policies which called for mapped trails to be dedicated as a condition of property development. The LUP also contained numerous other policies supporting the development of a regional system of trails to provide access to and between the beach and mountain parks. In a more recent action to approve the previously mentioned ReCap Project in 1999, the Commission found that projected population increases in and near Malibu and the Santa Monica Mountains will also increase demand for coastal recreational opportunities, including trails in the mountains.

One of the major concerns identified in the ReCap study is that recordation of an offer to dedicate (OTD) a public trail easement, similar to an OTD for vertical or lateral beach access, does not ensure the availability of public access. As with beach access, a recorded offer must be accepted, opened, and managed by a public agency or acceptable non-government entity before the land becomes available for public use. Until trail OTDs are actually opened for public use, however, the impacts to the public from private development are not fully mitigated. Between 1978 and 1997 the Commission required an OTD for a public trail easement as a special condition of approval on 172 coastal development permits. Of the 172 permits approved by the Commission with a trail easement OTD condition, however, only 8 permits (encompassing 23 parcels) have had the OTD recorded and accepted (by the Santa Monica Mountains Conservancy) and none are yet open for public use (ReCap, 1999). An additional 80 permits (encompassing 107 parcels) have resulted in recorded OTDs but none have been accepted (ReCap, 1999). The 21-year period for recordation established by the permit were due to start expiring in 1999 as well. Those that were at the deadline were accepted prior to their expiration, however.

Barriers to accepting and opening recorded OTDs typically include liability concerns, costs of managing and maintaining the easements, and the geographic distribution and physical characteristics of the individual easements. Adding to these limitations, the use of a trail easement OTD requirement in permit actions has been severely restricted by court decisions over the last decade. Therefore, it is even more important that the Commission, and the City through it's LCP, implement a policy approach requiring a more pro-active role in ensuring that recorded OTDs are accepted and opened for public use.

a. Land Use Plan Policies

The LUP contains several policies to insure 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. These policies also provide the physical standards for locating such easements (2.67 – 2.69). 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 (2.41 – 2.42, 2.70 – 2.72, 2.86 – 2.88). 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 (2.74 – 2.76). Policy 4.25 in the Shoreline Development Chapter requires all applicants for new development along the shoreline to obtain a determination from the State Lands

Commission relative to the proposed project's location or impact upon the boundary between public tidelands and private property.

To provide maximum access opportunities and to minimize overburdening any particular area, vertical access locations need to be distributed throughout the City's shoreline. In certifying the Malibu/Santa Monica Mountains Land Use Plan in 1986, the Commission approved standards and objectives to be used for the provision of vertical access for individual beach segments. In approving the LUP, the Commission recognized that different spacing objectives was appropriate for different beaches in Malibu. Closer spacing standards (one accessway per 1000 feet) was required where population density was higher and the distance from the first public road to the beach was relatively short (eastern Malibu). A greater separation distance (one accessway per 2,500 feet) was allowed where population density was lower and where constraints like steep bluffs make the development of accessways more difficult and costly (western Malibu). In certifying the LUP, the Commission found that:

> Applying the standards of separation for each beach as described above will result in the creation of approximately 50 vertical accessways, in addition to public parks and beaches. The Commission finds that this number of vertical accessways in Malibu, if and only if implementation is assured by the LCP, will provide reasonable access to the public tidelands. Furthermore, the standards will distribute that access in such a way as to avoid overuse of any one area, while recognizing the different characteristics of the beaches in Malibu (CCC, 1987).

The Land Use Plan certified for the County of Los Angeles is not legally binding on the City of Malibu. In the Regional Cumulative Assessment Project (ReCap) for Malibu and the Santa Monica Mountains completed and approved in 1999, however, the Commission recommended that, to maximize public access, the City should incorporate, at a minimum, the same standards provided in the 1986 LUP to be sufficient to comply with the access policies of the Coastal Act

The LUP contains specific accessway standards or objectives for specific beaches in the City which largely reflect those contained in the 1986 LUP. These standards are objectives for public acquisition or dedication requirements in new development requirements where a nexus is found between the proposed development and it's impact on public access. Vertical access standards generally recommend at least one accessway to the shoreline for each 1000 linear feet.

The Land Use Plan contains several proposed policies to protect existing trails and to provide for the requirement, acceptance and opening of trail OTDs where applicable. Policy 2.46 in particular provides that a public trail system be maintained throughout the mountains and along the shoreline that achieves several objectives. Objectives include providing links between trails, parks and major recreational facilities; allowing for flexible design and routing to minimize impacts on adjacent development and fragile habitat;

designing trails to accommodate multiple uses, where appropriate, such as hiking, biking and equestrian use; providing public parking at trailheads; providing for safe maintenance; and protecting private property rights.

Policies are included in the Land Use Plan to provide not only for a trail OTD requirement in new development projects, where applicable (2.50 & 2.51), but several policies are provided to ensure that the objective of the OTD requirement is fully realized – that trail OTDs are accepted, opened and managed for public use. Policies 2.47 & 2.48 provide for coordination by the City with federal, state, and County park agencies and with non-profit land trusts and organizations in developing a strategic plan for the acceptance, construction, and operation of recorded trail easements and policy 2.54 provides for City support of efforts to obtain public and/or private funding to purchase parcels and/or easements to complete gaps in the public trail system throughout the City and the Santa Monica Mountains. In addition, several policies previously referenced above in the discussion of shoreline access are applicable to trail access as well relative to realizing the objective of opening trails for public use (2.70-2.72, 2.86-2.88). The LUP also includes policies which provide for safe bikeways and support facilities (2.43 – 2.45), trail campsites (2.49), and for the maintenance, restoration and, in limited circumstances, controlled access within trail areas in order to protect sensitive habitat resources.

Based on the findings provided above including all of the recommended policies contained in the Land Use Plan, the Commission finds that the Public Access and Recreation policies contained in the Land Use Plan for the City of Malibu meets the requirements of and conforms to all of the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The Public Access and Recreation policies of the City of Malibu Land Use Plan (LUP) are carried out, largely, by the Public Access Ordinance, Chapter 12, in the LCP Local Implementation Plan (LIP). The overall purpose of the Ordinance is to implement the public access and recreation policies of Chapter 3 of the Coastal Act and the adopted LUP of the City's LCP which set forth requirements, standards, and other means to maximize public access and recreational opportunities to and along the coast and inland trails located in the City as required by Section 30500(a) of the Coastal Act (12.1).

The Public Access Ordinance identifies 5 major types of access: (1) lateral access along or parallel to the sea or shoreline; (2) bluff top access; (3) vertical access between the first public road, trail or public use area and the shoreline, tidelands, or established lateral accessway; (4) trail access along a coastal or inland mountain recreational hiking or equestrian path; (5) recreational access to recreational resources other than those listed above, e.g. parking, viewing areas, and public parks (12.3).

The Public Access Ordinance provides for requiring an offer to dedicate (OTD) an easement or a grant of easement as a condition of approval for new development where the required analysis establishes that the development will adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands, trails, or public recreation areas (12.5). The Access Ordinance also provides exceptions where the standards and requirements do not apply (12.6).

The Public Access Ordinance provides standards for the application of access conditions (12.7), which includes minimum requirements for the types of access such as limitations or restrictions on time and manner of use when justified by site characteristics such as documented evidence of environmentally sensitive habitat, or the need to limit access to pass and repass, or limit hours of use for vertical accessways to the shoreline to protect the privacy of residential development. Physical standards for siting and locating required access OTDs or grants of easement and legal standards for requiring, describing, and recording accessways are also provided for all types of access.

Standards for the protection of historic public use are also provided subject to a substantial evidence determination that the area used by the public has been impliedly dedicated based on legally established criteria. Standards are also provided for accepting and opening dedicated accessways for public use by an approved public agency or private association that agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction. The standards state that "any government agency may accept an offer to dedicate or grant of an easement if the agency is willing to operate and maintain the easement" and that the "City shall approve any private association that submits a plan that indicates that the association will open, operate, and maintain the easement in accordance with the terms of the recorded offer or grant of easement." OTDs or grants of public access "shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use."

The standards also provide for the permitting of facilities to complement public access to and along the shoreline and trails, where feasible and appropriate. Such facilities may include parking areas, restrooms, picnic tables, or other improvements. The Ordinance standards state, however, that no facilities or amenities "shall be required as a prerequisite to the approval of any lateral or vertical accessway or trail OTD or grant of easement or as a precondition to the opening or construction of the accessway or trail." Existing, but unaccepted and/or unopened access OTDs, easements, or deed restrictions "shall be permitted to be constructed, opened and operated for the intended public use."

The Public Access Ordinance requires that written findings, analysis, and conclusions addressing public access must be included for all approvals, conditional approvals or denials of development projects located between the first public road and the sea (12.8). Such findings are required in any situation involving any type of access where

an access dedication is included in the project proposal or required as a condition of approval. Specific legal criteria or standards which must be addressed in the findings are included in the Ordinance. Written findings are also required to support any determination that one of the exceptions provided for in Section 12.6 of the Ordinance applies to any development.

The Public Access Ordinance also provides that any signs posted on a beachfront or public beach requires a CDP and that any signs which purport to identify the boundary between state tidelands and private property or imply or indicate that public access to state tidelands or public lateral or vertical access easement areas is restricted shall not be permitted. All applications for new development on or fronting a beach or the shoreline is required to include a written review and/or determination from the State Lands Commission that addresses the proposed project relative to the boundary between public tidelands and private property. Finally, the Ordinance requires that improvements and/or opening of accessways already in public ownership or accepted OTDs shall be permitted regardless of the distance from the nearest available vertical accessway.

Based on the findings above, the Commission finds that the Public Access and Recreation policies contained in the LCP Implementation Plan for the City of Malibu conforms with, and is adequate to carry out, the policies and provisions of the adopted City of Malibu Land Use Plan relative to public access and recreation.

5. California Coastal Trail

The California Coastal Trail (CCT) which has been designated a Millennium Trail by the Governor of California has been officially established by Senate Bill 908. This bill provides for the construction of the CCT along the state's coastline from the Oregon Border to the border with Mexico, to the extent feasible. This bill requires the State Coastal Conservancy, in consultation with the Coastal Commission and the Department of Parks and Recreation, to coordinate in the planning and development of the CCT. SB 908 also requires other agencies, boards, departments etc. with property interests or regulatory authority in coastal areas to cooperate with the Conservancy, to the extent feasible, in planning and making land available for the trail. This bill also requires the CCT to be developed in a manner that respects property rights, privacy of adjacent property owners and the protection of coastal resources.

a. Land Use Plan Policies

The Land Use Plan includes several policies which provide for the ultimate completion of the CCT link through the City. These policies provide for consultation and coordination with Federal, State, and County Park agencies, the Coastal Conservancy, the Santa Monica Mountains Conservancy, Los Angeles and Ventura Counties and other appropriate public and private entities and interested parties in implementing all

essential components of the trail (2.55, 2.56). The LUP also provides for specific design and siting standards and objectives (2.57, 2.58), acquisition and management (2.59), signage program standards (2.60), support facilities (2.61), mapping (2.62), and the LCPs eventual incorporation of the final CCT plan by future amendment (2.63).

Based on the findings above, the Commission finds that the policies contained in the City of Malibu Land Use Plan relative to the California Coastal Trail meet the requirements of and are in conformity with the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The California Coastal Trail is still in the planning process and no specific implementation policies are included in the LCP other than those policies previously discussed in the Access and Recreation Ordinance which provide for obtaining trail Offers to Dedicate and protecting existing trails. As provided in LUP policy 2.63 eventual incorporation of the final plans for the CCT will be implemented by a future amendment to the LCP.

6. <u>Parking / Transit Facilities / Signage</u>

While the physical supply of access is a primary factor in assuring access to and along the shoreline and coastal trails, there are a number of other factors which are important components of any access program. These factors include the availability of transit to beaches, the availability of public parking facilities, adequate support facilities such as restrooms, and adequate signage. Impacts to any one of these variables may affect the availability or use of the physical supply of access. For example, without adequate parking or alternative transportation, beach and trail users will experience difficulty getting to the access site. Similarly, a lack of adequate support facilities or a site that is perceived as overcrowded may make a particular beach or trail less desirable for use. In other situations, it may be necessary to balance the provision of support facilities with the need to protect sensitive resources. Therefore, managing coastal access involves managing not only the physical supply of access, but all of the other factors that contribute to ensuring maximum access.

The Commission has found, in past actions, that the availability of parking is a critical component of public access in Malibu and other coastal areas. In Malibu, beach and trail access parking may be located in public parking lots or along public roadways. In particular, in areas where there are no public parking lots, on-street parking may be the only parking alternative. This is particularly true of Pacific Coast Highway in some areas of Malibu. In other areas, PCH supplements existing public parking lots. On-street parking provides low-cost access to public beach and trail areas where parking fees can be as high as several dollars per day. Often, on-street parking is the only alternative at inland trailheads. Frequently, increased development along the shoreline

and public roads leads to increased competition for spaces and the proliferation of "No Parking" signs and zones. It is often difficult to identify and quantify new "No Parking" or other signs that restrict parking. However, such barriers to public parking have occurred in Malibu in the past, some of which have been resolved through Commission permit actions.

In order to minimize impacts to public parking the Commission has required that new development provide adequate off-street parking. If commercial and other uses do not provide adequate off-street parking, people will utilize on-street public parking which reduces the potential on-street parking normally available for trail and beach users. In Malibu, the availability of on-street parking along PCH and other public streets is limited. The Commission has also required, in permit actions, that non-visitor serving commercial and office development provide for the use of their parking lots by the public for beach access during the off hours of operation, including weekends and holidays. Provisions to ensure sufficient off-street parking and protect existing on-street parking were included in the Malibu/Santa Monica Mountains LUP certified in 1986.

A comprehensive signage program to identify available access points from public roads would also improve access opportunities in Malibu. Although some accessways are currently signed, many accessways are more difficult to locate and may only be recognized by the presence of a gated entrance and trash receptacle. Uncertainty about the existence of an accessway and proximity to existing development inhibit the public from using an accessway that is not adequately signed.

Public access to beaches and trails in Malibu would also be facilitated by the removal of unpermitted physical development, like signs and fences on the beach which inhibit public use of state tidelands as well as dedicated public lateral and vertical easements. Many beaches in Malibu contain numerous signs stating "Private Beach" or "Private Property". Such signs mislead and intimidate the public from legal beach access. In particular, signs portraying the boundary between public and private property as a fixed line are inaccurate since the line where the mean high tide intersects the beach is an ambulatory boundary that constantly moves to correspond to changes in the beach profile and daily tide flows. In some cases, these signs may be placed on public land. In recent permit decisions for beachfront development, the Commission has imposed a special condition which forbids the placement of any sign containing language which can be interpreted as limiting access to the public beach. In addition, existing signs, fences or other obstacles which have been illegally placed on a beach or on state tidelands need to be identified and removed, where necessary to protect public access.

a. Land Use Plan Policies

The proposed Land Use Plan contains several policies which address parking, transit and signage issues. Policy 2.16 provides for designing and siting parking and support facilities to minimize adverse impacts to sensitive environmental and visual resources. Policy 2.17 requires public beaches and parks to maintain lower-cost user fees and

parking fees, and maximize hours of use to the extent feasible. Policies are included to provide transit facilities, including shuttle programs (2.24), to require sufficient off-street parking in new development (2.25), protect existing parking (2.26), and prohibit parking restrictions such as "No Parking" signs, preferential parking programs, landscaping in road easements or physical barriers unless necessary to protect public safety (2.27, 2.32). Gates, guardhouses and other barriers which restrict access are not permitted within private street easements (2.28). Any restriction of public parking is subject to a coastal development permit. Other policies provide for public parking availability on weekends and holidays to be a component of certain types of commercial or office development (2.29, 2.30). The LUP also recommends that the City complete an inventory of existing public parking and identify all unpermitted signs and physical barriers and requires that all unpermitted signs and barriers which prevent public parking near the shoreline be removed (2.31).

Based on the findings above, the Commission finds that the policies contained in the City of Malibu Land Use Plan relative to parking, signs, and transit, meet the requirements of and are in conformity with the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

In addition to the standards for providing and limitations on restricting public parking to facilitate public access to the shoreline, trails, and recreation areas contained in the Public Access Ordinance discussed elsewhere in the section, Chapter 3, Zoning Designations and Development Standards of the LCP Implementation Plan contains additional parking regulations (3.12). This chapter provides standards for adequate off-street parking in conjunction with any residential, commercial or other use or development and requires that new development provide off-street parking in order to minimize impacts to public street parking available for coastal access and recreation. Specific parking requirements and development standards are provided for all types of uses. The Ordinance also prohibits the displacement of existing parking areas serving recreational uses unless a comparable replacement area is provided. All restrictions on public parking, which would impede or restrict public access to beaches, trails, or parklands such as "no parking" signs, physical barriers, or preferential parking programs are prohibited by the Ordinance except where necessary to protect public safety.

Chapter 3 of the LCP Implementation Plan, Zoning Designations and Development Standards, contains additional standards for permitting signs in the City (3.13). A stated purpose of the Sign Ordinance is the enhancement of "public access to the shoreline, inland trails and public parks." Stated goals in the Sign Ordinance include "to protect and provide for public access to and along the shoreline, inland trails, and public parklands"; and, "to develop a uniform signage program to assist the public in locating and recognizing shoreline and trail access points." Standards to accomplish this purpose as well as protect the visual quality of scenic areas and safeguard health and public welfare are provided in the ordinance. Prohibited signs include signs which

restrict public access to State tidelands, public vertical or lateral access easement areas, trails or parkland, or which purport to identify the boundary between State tidelands, and private property. Signs which are expressly permitted without the requirement for a permit in all use zones include "signs indicating the location of or directions to public access to the shoreline, trails or parklands."

Based on the findings above, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan relative to signs, parking and transit, conform with and are adequate to carry out, the policies of the adopted Land Use Plan.

7. Parklands

Several public beach parks operated by the County of Los Angeles and the Department of Parks and Recreation are located along the shoreline in Malibu. These parks include Nicholas Canyon County Beach, El Sol Beach, La Piedra, El Pescador and El Matador State Beaches (Robert H. Meyer pocket beaches), Zuma Beach County Park, Westward Beach/Point Dume State Beach, Point Dume Headlands State Preserve, Corral State Beach, Dan Blocker Memorial Beach, Malibu Bluffs State Park, Malibu Creek & Lagoon State Park, Malibu Pier/ Surfrider Beach, and Las Tunas State Beach. In addition, the City is flanked on its northern and southern boundaries by Leo Carrillo State Beach and Topanga Beach.

Many of these beach and/or bluff parks are heavily used by the public, particularly on summer weekends and holidays. Other public beaches and bluffs have been underutilized due primarily to limited public access. Among these are El Sol Beach and Dan Blocker Beach which are both owned by the Los Angeles County Department of Beaches and Harbors. The El Sol property consists of a blufftop area leading down to a large cove beach area west of the existing Robert H. Meyer pocket beaches. Dan Blocker Beach consists of a 1500-foot long blufftop and narrow sandy beach east of Latigo Point and includes an eastern unit known as Corral Beach. While the Corral unit is open to public use, the remainder is fenced. Improvements necessary to make El Sol and Dan Blocker available to the public include stairs, parking and support facilities such as restrooms.

Staff of the Commission and Coastal Conservancy have worked with County staff to facilitate opening these beaches to public use. The Conservancy has indicated to Los Angeles County that funding is available for the development of the El Sol property. The County has indicated its desire to construct a parking lot and restroom and Dan Blocker Beach.

Another park property where public access opportunities are limited is Malibu Bluffs State Park. The California Department of Parks and Recreation acquired the 93-acre bluff property in 1979 utilizing $6.8 million of State Bonds made available by a 1976 bond measure. In 1982, the Commission approved the construction of two temporary ballfields to replace two ballfields located nearer to Malibu Lagoon in order to facilitate a

lagoon restoration project (5-82-780 L.A. County). The temporary ballfields with parking and restrooms were permitted for a maximum of 5 years. In 1985 the Commission denied a proposed amendment to the permit to develop a community park on all 93 acres on the basis that the Malibu area lacked adequate regional public park and camping facilities. Subsequently, the Commission approved an amendment to the permit in 1986 which allowed the development of a 30-acre park which included the addition of an interpretive center, picnic areas, walking paths, portable bleachers and a concession stand. The amendment also revised the special condition requirement that the ballfields be removed within 5 years to permit the ballfields to remain as a temporary interim use with the added requirement that the County, which had jurisdiction over the site at the time, "seek alternative local recreation facilities, including ballfields, within the Malibu-Calabasas area."

The State Department of Parks and Recreation has indicated its desire to operate the park in the manner for which it was originally intended when purchased by the State in 1979 as a visitor and recreation serving destination for a larger segment of the public. The State has informed the City that the current lease which allows the ballfields on a temporary basis will not be renewed and that alternative locations for the ballfields and other local facilities should be found. The ballfields are largely used by local residents and an interpretive center constructed in the park is primarily used as a community center. These local uses conflict with, and limit, the use of the State Park as a regional resource and the public access and recreation policies of the Coastal Act. To date, no alternative sites have been obtained by the City although a number of potential sites have been identified either by the City or State Parks and Recreation. One potential site is a privately owned blufftop property immediately east of the park. The City is currently involved in negotiations with the property owner to allow 8 residential units on the site if the owner will also allow the relocation of the ballfields to the site as well. The Commission has indicated tentative support for this proposal, in concept, if the ballfields are largely relocated out of the park's primary viewshed and if the site plan can be revised to eliminate or mitigate some potential view impacts from the park.

Another underutilized public park site has been Point Dume State Preserve although recent improvements have enhanced public access opportunities. This 31-acre preserve includes Westward Beach, Dume Beach, Pirate's Cove, and an upland terrace/bluff preserve that provides spectacular views of the coast to the east and west. The upper blufftop portion of the park is designated a State Preserve in recognition of the resources on the site. In order to protect these resources, while also encouraging and facilitating public access to the bluff and Dume Beach, the Commission approved Permit No. 4-97-048 in 1997 for the development of a boardwalk and trails, along with the revegetation and restoration of approximately two acres. These improvements allow public use to be directed along a boardwalk and established trails rather than through a haphazard web of unplanned dirt paths. To further facilitate public access to the blufftop, the Commission approved Permit No. 4-00-126 in 2000, in a negotiated settlement agreement with the City to resolve an enforcement action, which resulted in

the construction of 10 public parking spaces, a temporary drop-off space and a shuttle bus stop along Cliffside Drive which borders the Preserve.

a. Land Use Plan Policies

The Land Use Plan contains policies which provide for the protection of existing access to regional parks along the City's shoreline and for the improvement of access where needed. Policy 2.77 provides for coordinating with and supporting efforts by Los Angeles County Department of Beaches and Harbors to open and provide increased public access to El Sol and Dan Blocker Beaches. Policy 2.79 provides for the development of a Public Works Plan for Malibu Bluffs State Park by the Department of Parks and Recreation that provides for uses which meet State and regional park objectives of expanding public access and visitor opportunities. Policy 2.80 prohibits any expansion, reconstruction or improvements to the existing athletic fields and policy 2.81 provides for the completion of a Development Agreement between the City, State Parks and Recreation and the Crummer Trust which provides for the permanent relocation of the ballfields out of prime viewshed of the park . In addition, the LUP provides for the City's support and coordination with the Department of Parks and Recreation in protecting and improving access to Point Dume State Preserve (2.82). Further, the Beach and Blufftop Accessway Standards also contained in the LUP also provide for the development of an accessway at El Sol; improved access to and along the blufftop at Point Dume along with the provision and protection of public parking; the improvement of vertical access, public parking and restroom facilities at Dan Blocker Beach; and replacement of local City park uses (ballfields and community center) with public blufftop trails and viewpoints and passive recreation at Malibu Bluffs State Park.

Based on the findings above, the Commission finds that policies contained in the City of Malibu LCP Land Use Plan relative to the protection and provision of public parks and beaches meet the requirements of and are in conformity with the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The policies provided in the Public Access Ordinance and the Parking Ordinance discussed above carry out the policies to the Land Use Plan concerning the protection and enhancement of public parks and beaches in the City to a large extent. Provisions for the completion of a Development Agreement are included in Chapter 13.28 of the Coastal Development Permit Ordinance discussed elsewhere in the findings.

Based on the findings above, the Commission finds that policies contained in the LCP Implementation Plan for the City of Malibu relative to the protection and enhance of public beaches and parks in the City conform with and are adequate to carry out the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

8. Visitor and Recreation Serving Uses

As stated previously, the beaches of Malibu are world-famous tourist destinations for visitors from nearby areas, other areas within California, the nation and many foreign countries. Overall, a wide variety of recreational opportunities exist within the City and the Santa Monica Mountains such as swimming, surfing, diving, boating, hiking and equestrian use. Historically, however, the provision of adequate visitor-serving facilities has been a controversial issue in Malibu particularly relative to the provision of overnight accommodations. Visitor-serving facilities also include various commercial enterprises such as restaurants, surfing and diving shops, visitor-centers, piers, parks and other uses.

Regarding overnight accommodations, there are currently six existing motels or hotels within the City containing a total of 151 rooms. In addition, the Adamson Hotel, which was approved by the Commission prior to the City's incorporation with approximately 300 rooms, has been approved by the City with a total of 146 rooms. This hotel is not yet under construction.

The 1986 certified LUP for Malibu and the Santa Monica Mountains designated approximately 180 acres as visitor-serving recreation or commercial including approximately 51 acres in the Civic Center area which contains several large undeveloped parcels. (The 1986 LUP recommended that a Specific Plan be prepared for the Civic Center as does the current proposed LUP.) The City's General Plan designates approximately 81 acres for visitor-serving uses, including the approximately 30-acre Adamson Hotel site. The City's General Plan does not designate any property in the Civic Center as visitor serving aside from the Adamson Hotel site.

a. Land Use Plan Policies

Permitted uses and land use designations are contained in the New Development Chapter of the draft LUP and are discussed in greater detail in that section.

The Access and Recreation Chapter of the LUP does contain policies which address the provision of visitor-serving facilities, however. Policies 2.33 and 2.37 give priority to the development of visitor-serving commercial recreational facilities which enhance public opportunities for coastal recreation over private residential or general commercial development. Policy 2.34 and 2.36 protect existing, lower cost visitor serving facilities and encourages the development of new lower cost facilities. Policy 2.35 requires that new development of overnight visitor-serving accommodations include a component of lower cost facilities or provide mitigation in the form of an in-lieu fee to help subsidize the construction of lower cost facilities.

Based on the findings above, the Commission finds that the policies contained in the adopted Land Use Plan for the City of Malibu relative to the provision and protection of visitor-serving commercial and recreational uses meet the requirements of and are in

conformity with the Public Access and Recreation policies of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

Visitor-serving uses are provided for in Chapter 3, relative to Zoning Designations. In particular, visitor-serving uses are allowed on several undeveloped parcels in the Civic Center. In addition the Public Access and Recreation Ordinance provides for the requirement to provide lower cost overnight accommodations in any approval of luxury overnight accommodations (12.11). This LIP ordinance policy requires that lower cost facilities be provided on-site, off-site, or through the payment of an in-lieu fee to the City for deposit into a fund to subsidize the construction of lower cost facilities in the Malibu-Santa Monica Mountains Coastal Zone area.

Based on the findings above, the Commission finds that the Public Access and Recreation Policies contained in the City of Malibu LCP Implementation Plan conforms with, and is adequate to carry out, the policies and provisions of the adopted Land Use Plan relative to Public Access and Recreation.

D. Marine and Land Resources

1. Coastal Act Provisions

One of the chief objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. The rare and most ecologically important habitats are protected from development. Section 30240 requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development, with the exception of uses dependent on the resources, is allowed within any ESHA. This policy further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. Finally, development adjacent to parks and recreation areas must be sited and designed to prevent impacts.

In addition to protection as ESHA, streams and associated riparian habitat are also protected in order to maintain the biological productivity and quality of coastal waters. Section 30231 requires that natural vegetation buffer areas that protect riparian habitats be maintained, and that the alteration of natural streams be minimized. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat.

Marine resources are protected to sustain the biological productivity of coastal waters and to maintain healthy populations of all species of marine organisms. Section 30230 requires that marine resources be maintained, enhanced, and where feasible restored. Uses of the marine environment must provide for the biological productivity of coastal waters and that will maintain healthy populations of marine organisms. Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative and restricted to a limited number of allowable uses.

Finally, the Coastal Act requires that the biological productivity and quality of coastal waters be protected. Section 30231 requires the use of means, including managing waste water discharges, controlling runoff, protecting groundwater and surface water, encouraging waste water reclamation, and protecting streams, in order to maintain and enhance water quality.

2. Coastal Act Policies

Section **30107.5** of the Coastal Act states that:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section **30230** of the Coastal Act states that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section **30231** of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section **30233** of the Coastal Act states that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(I) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the l9 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section **30236** of the Coastal Act states that:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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

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

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

Section **30241** of the Coastal Act states that:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section **30241.5** of the Coastal Act states that:

(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:

(1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

(2) An analysis of the operational expenses, excluding the cost of land, associated with the production of the agricultural products grown in the area for

the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.

(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.

Section **30242** of the Coastal Act states that:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (I) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

3. Introduction

The Santa Monica Mountains region, including the City of Malibu, is a unique habitat area. On a global scale, the area is part of the Mediterranean Scrub biome. This biome type is found in only five areas worldwide: around the Mediterranean Sea, Chile, South Africa, Australia, and Southern California. All of these areas occur on the west coast of the respective continents where there are cold ocean currents offshore. The Mediterranean climate includes wet winters and dry summers with precipitation ranging from 15 to 40 inches per year. Temperatures are moderated by the maritime influence and fog associated with the cold ocean currents. Worldwide, this biome occupies a small area and a very small percentage of the historical extent remains undisturbed.

The Santa Monica Mountains are part of the Transverse Ranges, the only mountain range in California that is oriented in an east to west direction. The Transverse Ranges extend from the Santa Barbara Coast to the Mojave Desert, creating a natural barrier between Central and Southern California. There are several habitat types and individual plant species within the City that are considered sensitive. The Department of Fish and Game has identified habitats that are considered sensitive because of their scarcity and because they support a number of endangered, threatened, and rare plants, as well as sensitive bird and animal species. These vegetation communities found within the City

include coastal sage scrub, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, salt marsh, and freshwater marsh. Within these habitat areas are several plant species that are considered endangered, threatened, rare, or of special concern under state or federal law or by designation of the California Native Plant Society. Such plants include Santa Susana tarplant, Coulter's saltbush, Blochman's dudleya, Santa Monica Mountains dudleya, and Plummer's mariposa lily. The Santa Monica Mountains, including the City, still include large areas of intact habitat, an extraordinary fact given the dense urban development that surrounds the area.

4. Environmentally Sensitive Habitat Designation

The Coastal Act provides a definition of "environmentally sensitive area" as: "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Section 30107.5).

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the City of Malibu, rare species and habitats generally fall within one of two common categories. Most rare species or habitats within the City are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, some areas within the City of Malibu may meet this test because they provide habitat for endangered species, protect water quality, provide

essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." Within the City of Malibu, this test is met for those areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below. Other areas within the City of Malibu may meet this test for other reasons, for example for especially valuable roles in marine systems.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the City of Malibu, as in most of urban southern California, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

a. Geography of the City of Malibu

The City of Malibu averages only one mile of inland extent but 27 miles along the coast, forming a long and significant connecting link between the coast and the large, undisturbed habitat areas of the rest of the Santa Monica Mountains. The city itself contains substantial areas of undeveloped native habitat. Most development has occurred within the general vicinity of Point Dume and in those areas closest to the ocean, including several canyon bottoms (e.g., Las Flores Canyon, Malibu Creek, Ramirez Canyon and Trancas Canyon). In general, native habitats are more intact as one moves away from the shore.

The most widespread vegetation type within the City of Malibu is coastal sage scrub. However, as one moves inland, there is a rapid increase in elevation and a concomitant transition from coastal sage scrub to chaparral as the primary vegetation type. Ecological transition areas such as this are known for their high biodiversity and abundance of opportunistic species that move between habitats.

An extraordinary feature of this section of coast is the large number of watersheds (Exhibit 1). Over 30 streams discharge into the ocean within the city limits. The riparian corridors along many of these streams connect the habitats within the city to the large inland watersheds, which is of particular significance to endangered steelhead trout. Although there has been substantial degradation of many of the coastal reaches of these streams, the quality of the habitat improves rapidly as one moves inland and soon approaches a relatively undisturbed environment consisting of steep canyons containing riparian oak-sycamore bottoms, with coastal sage scrub and chaparral ascending the canyon walls. These streams are somewhat unique along the California coast because of their topographic setting. The Santa Monica Mountains are a "transverse" range that is oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the

coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region.

b. Ecosystem Context of the Habitats of the City of Malibu

The Santa Monica Mountains, including the City of Malibu, comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California. California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed[1]. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains including the City of Malibu, was estimated to be 90 percent free of development in 2000[2]. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology[3]. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists[4].

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent inland

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[1] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

[2] Ibid.

[3] Harris, L. D. 1988. Edge effects and conservation of biotic diversity. Conserv. Biol. 330-332. Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92. Yahner, R. H. 1988. Changes in wildlife communities near edges. Conserv. Biol. 2:333-339. Murphy, D. D. 1989. Conservation and confusion: Wrong species, wrong scale, wrong conclusions. Conservation Biol. 3:82-84.

[4] Crooks, K. 2000. Mammalian carnivores as target species for conservation in Southern California. p. 105-112 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. and R. F. Noss. 1998. Do habitat corridors provide connectivity? Conserv. Biol. 12:1241-1252. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. *In*: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

ecosystems[5]. Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency[6] identified wildlife corridors and habitat connectivity as the top conservation priority. In a letter to governor Gray Davis, sixty leading environmental scientists have endorsed the conclusions of that report[7]. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important[8].

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer[9]. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem[10]. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat[11]. Sightings of cougars in the City of Malibu and surrounding areas[12] demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains and the City of Malibu is extremely important to maintain, because both

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[5] The SMM area is linked to larger natural inland areas to the north through two narrow corridors: 1) the Conejo Grade connection at the west end of the Mountains and 2) the Simi Hills connection in the central region of the SMM (from Malibu Creek State Park to the Santa Susanna Mountains).

[6] California Resources Agency. 2001. Missing Linkages: Restoring Connectivity to the California Landscape. California Wilderness Coalition, Calif. Dept of Parks & Recreation, USGS, San Diego Zoo and The Nature Conservancy. Available at: http://www.calwild.org/pubs/reports/linkages/index.htm

[7] Letters Received.

[8] Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

[9] Martin, G. 2001. Linking habitat areas called vital for survival of state's wildlife Scientists map main migration corridors. San Francisco Chronicle, August 7, 2001.

[10] Noss, R. F., H. B. Quigley, M. G. Hornocker, T. Merrill and P. C. Paquet. 1996. Conservation biology and carnivore conservation in the Rocky Mountains. Conerv. Biol. 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

[11] Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

[12] Recent sightings of mountain lions in the Malibu area: Temescal Canyon (pers. com., Peter Brown, Facilities Manager, Calvary Church), Topanga Canyon (pers. com., Marti Witter, NPS), Encinal and Trancas Canyons (pers. com., Pat Healy), Stump Ranch Research Center (pers. com., Dr. Robert Wayne, Dept. of Biology, UCLA). In May of 2002, the NPS *photographed* a mountain lion at a trip camera on the Back Bone Trail near Castro Crest – Seth Riley, Eric York and Dr. Ray Sauvajot, National Park Service, SMMNRA.

theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure[13]. Beyond simply destabilizing the ecosystem, fragmentation and disturbance can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)[14].

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets[15]. The south-facing riparian habitats have a variable sun exposure that creates an unusually diverse moisture environment. The many different physical habitats support at least 17 native vegetation types[16] including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection[17].

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[13] Gause, G. F. 1934. The struggle for existence. Balitmore, William and Wlikins 163 p. (also reprinted by Hafner, N.Y. 1964). Gause, G. F., N. P. Smaragdova and A. A. Witt. 1936. Further studies of interaction between predators and their prey. J. Anim. Ecol. 5:1-18. Huffaker, C. B. 1958. Experimental studies on predation: dispersion factors and predator-prey oscillations. Hilgardia 27:343-383. Luckinbill, L. S. 1973. Coexistence in laboratory populations of *Paramecium aurelia* and its predator *Didinium nasutum*. Ecology 54:1320-1327. Allen, J. C., C. C. Brewster and D. H. Slone. 2001. Spatially explicit ecological models: A spatial convolution approach. Chaos, Solitons and Fractals. 12:333-347.

[14] Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. Nature 413:591-596.

[15] NPS. 2000. op.cit.

[16] From the NPS report (2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct "alliances" or vegetation types.

[17] Myers, N. 1990. The biodiversity challenge: Expanded hot-spots analysis. Environmentalist 10:243-256. Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. A. Kent. 2000.

Therefore, the Commission finds that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

c. Habitats within the City of Malibu

The most recent vegetation map that is available for the Santa Monica Mountains, including the City of Malibu, is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review[18]. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland[19]. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Out of necessity, staff has used the designations of vegetation types in the National Park Service maps, recognizing that some vegetation types were mapped at a generic level. Staff also notes that the more recent system of classification developed by the California Native Plant Society[20] would identify additional plant communities. Dr. Todd Keeler-Wolf of the California Department of Fish and Game is currently conducting a vegetation survey of the Santa Monica Mountains, including Malibu. His preliminary list of vegetation types within the City of Malibu based on three reconnaissance surveys includes 40 native vegetation types or "alliances," 14 of which are rare throughout the state or considered to be relatively restricted to the Santa Monica Mountains (Exhibit 2).

The National Park Service map was used to characterize broadly the types of plant communities present, but were not used to construct the maps of Environmentally Sensitive Habitat Areas. That process is described below. The main generic plant

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Biodiversity hot-spots for conservation priorities. Nature 403:853-858. Dobson, A. P., J. P. Rodriguez, W. M. Roberts and D. S. Wilcove. 1997. Geographic distribution of endangered species in the United States. Science 275:550-553.

[18] Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.

[19] Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.

[20] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, Sacramento, CA

communities present in the City of Malibu[21] are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, grasslands, and coastal strand coastal dunes.

Although all of these habitats are present in the City of Malibu according to the NPS vegetation maps[22], coast live oak woodland only occurs only in a small area at the west end of the city, if it occurs at all. Of the remaining terrestrial upland habitats, coastal sage scrub is the largest with about 34% of the land area. The area classified as "northern mixed chaparral" comprises about 10% of the land area.

i. Riparian Woodland

Within the City of Malibu, over 30 "blueline" streams connect inland areas with the coast, and there are many smaller drainages as well. Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area[23]. Four types of riparian communities are discernable in the Malibu area: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Malibu area. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[24]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form a central connecting link between all the habitats in the Malibu area. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

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[21] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)
[22] Ibid
[23] Ibid.
[24] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

The streams themselves provide refuge for four sensitive species within the City of Malibu: the coast range newt, the Pacific pond turtle, the tidewater goby and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing[25], and both the tidewater goby and steelhead trout are federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work[26] has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat[27]. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed[28]. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost[29]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that*

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[25] USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

[26] Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. Southwestern Naturalist. (*in Press*).

[27] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

[28] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

[29] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

riparian habitat in southern California is endangered."[30] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances[31]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[32] In addition impacts from non-native species of crayfish and mosquitofish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquitofish and crayfish[33]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, including the City of Malibu, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the Commission finds that native riparian habitats in the City of Malibu are ESHA under the Coastal Act.

ii. Coastal Sage Scrub and Chaparral

Coastal sage scrub and chaparral are often lumped together as "shrublands" because of their roughly similar appearance and occurrence in similar and often adjacent physical habitats. In earlier literature, these vegetation associations were often called soft chaparral and hard chaparral, respectively. "Soft" and "hard" refers to differences in their foliage associated with different adaptations to summer drought. Coastal sage scrub is dominated by soft-leaved, generally low-growing aromatic shrubs that die back and drop their leaves in response to drought. Chaparral is dominated by taller, deeper-rooted evergreen shrubs with hard, waxy leaves that minimize water loss during drought.

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning

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[30] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.
[31] Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. Conservation Biology 11(3):793-796.
[32] Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. Ecology 79(2):740-745.
[33] Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. Conservation Biology 10(4):1155-1162.

that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.[34] Within the City of Malibu, coastal sage scrub is the predominant vegetation type (Exhibit 3 and Exhibit 4). Only about 10% of the area within the city limits is chaparral. However, the chaparral within the city is an integral part of the very large blocks of chaparral of various types continuing north of the city boundary in the Santa Monica Mountains.

Thus, the portion of the Santa Monica Mountains that encompasses the City of Malibu is a transition zone between habitat types along a steep elevation gradient. In this zone, the existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process[35]. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

In low elevation areas with high fire frequency like Malibu, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."[36] Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.[37] In the transitional setting in Malibu the occasional patches of chaparral intermingled with coastal sage scrub add significantly to the biodiversity of this large-scale ecotone enriching the seasonal plant resource base and providing additional habitat variability and seasonality for the many species that inhabit the area. Increased biodiversity is typical of ecotones, and in this setting the patches of chaparral intermingled with coastal sage scrub may significantly contribute to the value of the coastal sage scrub habitat and to the enrichment of local biodiversity.

iii. Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities

Although the constituent communities of the Santa Monica Mountains Mediterranean ecosystem can be defined and distinguished based on species composition, growth habits, and the physical habitats they characteristically occupy, they are not independent entities ecologically. Many species of plants, such as black sage, and laurel sumac, occur in more than one plant community and many animals rely on the

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[34] Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

[35] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

[36] Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. Ecological Monographs 41:27-52.

[37] Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. Madrono 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. Ecology 64(4): 809-818.

predictable mix of communities found in undisturbed Mediterranean ecosystems to sustain them through the seasons and during different portions of their life histories.

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit as a required part of their life cycles. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated[38]. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer[39]. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November[40]. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April.

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy season to chaparral in the spring[41]. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher[42], bushtit, cactus wren, Bewick's wren and California towhee. At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in the Santa Monica Mountains[43]. Five species of hummingbirds also follow the flowering cycle[44].

Many species of 'opportunistic foragers' which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a

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[38] DeSimone, S. 2000. California's coastal sage scrub. Fremontia 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 *in* Barbour, M.G. and J. Majors; Eds. 1988. Terrestrial vegetation of California, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.
[39] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.
[40] Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.
[41] Ballmer, G. R. 1995. What's bugging coastal sage scrub. Fremontia 23(4):17-26.
[42] Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. Ecol. Monog.37:317-350.
[43] Letter from Dr. Marti Witter, NPS, dated Sept. 13, 2001, in Letters Received.
[44] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type[45].

Like the scrub jay, most of the species of birds that inhabit the Mediterranean ecosystem in the City of Malibu require more than one community type in order to flourish. Many species include several community types in their daily activities. Other species tend to move from one community to another seasonally. The importance of maintaining the integrity of the multi-community ecosystem is clear in the following observations of Dr. Hartmut Walter of the University of California at Los Angeles:

> "Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students[46]."

Thus, the Mediterranean ecosystem of the City of Malibu and the greater Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes[47].

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg[48] found that the ash-throated

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[45] Borchert, M. I., F. W. Davis, J. Michaelsen and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. Ecology 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. Behavior 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

[46] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[47] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701. *and* Letter from Dr. Marti Witter, NPS Dated Sept. 13, 2001, in Letters Received.

[48] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule[49] observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

In summary, all of the vegetation types in this ecosystem are strongly linked by animal movement and foraging. Whereas classification and mapping of vegetation types may suggest a snapshot view of the system, the seasonal movements and foraging of animals across these habitats illustrates the dynamic nature and vital connections that are crucial to the survival of this ecosystem.

iv. Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes[50]. In the City of Malibu, coastal sage scrub includes the broad categories Venturan coastal sage scrub and coastal bluff scrub. However, in his preliminary list of the vegetation of the Malibu coastal region, Dr. Keeler-Wolf identifies some 15 vegetation types or "alliances" of coastal scrub vegetation. The mix of species making up the typical CSS on the Malibu coast, which is dominated by purple sage and California sagebrush, is categorized as rare or relatively restricted to the Santa Monica Mountains.

In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonadeberry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and

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[49] Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92.

[50] Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. Vegetatio 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

coast horned lizards[51], but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

Of the many important ecosystem roles performed by the coastal sage scrub community, five are particularly important in the City of Malibu. Coastal sage scrub provides critical linkages between riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for local endemics, supports rare species that are in danger of extinction, and reduces erosion, thereby protecting the water quality of coastal streams.

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the City of Malibu, coastal sage scrub provides that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects[52], reduced diversity, and lower productivity.

Most wildlife species and many species of plants utilize several types of habitat. Many species of animals endemic to Mediterranean habitats move among several plant communities during their daily activities and many are reliant on different communities either seasonally or during different stages of the their life cycle. Without an intact mosaic of coastal sage scrub, chaparral, and riparian community types, many species will not thrive. Specific examples of the importance of interconnected communities, or habitats, were provided in the discussion above. This is an essential ecosystem role of coastal sage scrub in the City of Malibu.

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were distributed from the San Francisco Bay area to Mexico[53]. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

> "While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in

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[51] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

[52] Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.

[53] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology 62:170-184.

California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."[54]

Coastal sage scrub in southern California provides habitat for about 100 rare species[55], many of which are also endemic to limited geographic regions[56]. In the Santa Monica Mountains, rare animals that inhabit coastal sage scrub[57] include the Santa Monica shieldback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and San Diego horned lizard. Some of these species are also found in chaparral[58]. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily[59]. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.[60]

One of the most important ecological functions of coastal sage scrub in the City of Malibu is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after fire. Several CSS species (e.g., *Eriogonum cinereum*) in the City of Malibu and adjacent areas resprout vigorously and other species growing near the coast demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.[61] These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the

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[54] Ibid.
[55] Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In*: Interface Between Ecology and Land Development in California. Ed. J. E. Keeley, So. Calif. Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9th St., Sacramento, CA 95814.
[56] Westman, W.E. 1981. op. cit.
[57] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[58] O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1–51.
[59] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[60] NPS, 2000, op cit.
[61] Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002

original extent of coastal sage scrub in California had already been destroyed.[62] Losses since that time have been significant and particularly severe in the coastal zone. Roughly 40 – 50 percent of coastal sage scrub in the City of Malibu and adjacent coastal slopes has been displaced by development[63].

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, the Commission finds that coastal sage scrub within the City of Malibu, as described in Policy 3.1 of the Land Use Plan, is ESHA under the Coastal Act.

v. Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic category of vegetation. Chaparral species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants[64]. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral[65]. On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes. At very roughly 1000 ft. elevation in and adjacent to the City of Malibu, the vegetation shifts from mostly coastal sage scrub to a predominance of chaparral. Coincidentally, this occurs near the City boundary so that little chaparral exists within the city itself (Exhibit 4). On the National Park Service map, northern mixed chaparral occurs in a few small patches within the Malibu City boundary constituting about 10% of the area[66].

Northern mixed chaparral can be dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush[67]. The rare red shank chaparral plant community occurs in the Santa Monica Mountains, but based on current information, it is not known to occur in the City of Malibu. Although included within the category "northern mixed chaparral" in the

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[62] Westman, W.E. 1981. op. cit.
[63] Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, June 26, 2002
[64] Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[65] Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.
[66] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11) and Exhibit 2: NPS Vegetation map in this document.
[67] Ibid.

vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush[68].

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom[69]. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.[70]

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Like coastal sage scrub, chaparral within the City of Malibu provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral habitat is necessary for the coast horned lizard, an ant specialist[71]. Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion of coastal sage scrub above. This is an extremely important ecosystem role of chaparral in the City of Malibu.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and

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[68] Ibid.
[69] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[70] Ibid.
[71] A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

penetrating the bedrock below[72], so chaparral literally holds the hillsides together and prevents slippage.[73] In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time[74]. Thus, the erosion from a 2-inch rain-day event drops from 5 yd^3/acre of soil one year after a fire to 1 yd^3/acre after 4 years.[75] The following table illustrates the strong protective effect of chaparral in preventing erosion.

Soil erosion as a function of 24-hour precipitation and chaparral age.

Years Since Fire	Erosion (yd^3/acre) at Maximum 24-hr Precipitation of:		
	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

Therefore, because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, the Commission finds that chaparral within the City of Malibu, as described in Policy 3.1 of the Land Use Plan, is ESHA under the Coastal Act.

vi. Coastal Live Oak Woodland

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeberry, and poison oak. Coast live oak woodland is more

[72] Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. Ecology 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. Oecologia 29:163-177.
[73] Radtke, K. 1983. *Living more safely in the chaparral-urban interface*. General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.
[74] Kittredge, J. 1973. Forest influences — the effects of woody vegetation on climate, water, and soil. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.
[75] Ibid.

tolerant of salt-laden fog than other oaks and is generally found nearer the coast[76]. According to the existing vegetation maps of the City of Malibu[77], coast live oak woodland only occurs in a small upland area at the extreme western extent. However, coast live oak also occurs as a riparian corridor species within the City of Malibu.

The important ecosystem functions of oak woodlands are widely recognized[78]. Oak woodlands support a high diversity of birds[79], and provide refuge for many species of sensitive bats[80]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Therefore, because of its important ecosystem functions, the Commission finds that Oak woodlands within the City of Malibu are ESHA under the Coastal Act.

vii. Grasslands

Grasslands consist of low herbaceous vegetation that is dominated by grass species but may also harbor native or non-native forbs.

California Perennial Grasslands

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (Nassella pulchra), foothills needlegrass, (Nassella lepida) and nodding needlegrass (Nassella cernua). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope and substrate factors[81]. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland[82]. Native perennial grasslands are now exceedingly rare[83]. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent[84]. The

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[76] NPS 2000. op. cit.
[77].NPS 2000. op. cit. (Fig. 11), and Exhibit 2: NPS Vegetation map in this document.
[78] Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California.* Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.
[79] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas.* US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701
[80] Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.
[81] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.
[82] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[83] Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.
[84] NPS 2000. op. cit.

California Natural Diversity Database (CNDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains, and in the City of Malibu where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon[85].

Therefore, because of their extreme rarity and their important ecosystem functions, the Commission finds that California native perennial grasslands within the City of Malibu are ESHA under the Coastal Act.

<u>California Annual Grassland</u>

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. The dominant species in this community include common wild oats (Avena fatua), slender oat (Avena barbata), red brome (Bromus madritensis ssp. Rubens), ripgut brome, (Bromus diandrus), and herbs such as black mustard (Brassica nigra), wild radish (Raphanus sativus) and sweet fennel (Foeniculum vulgare). Annual grasslands are located in patches throughout the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs also may be present in these habitats[86], and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

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[85] NPS 2000. op. cit.
[86] Holstein, G. 2001. Pre-agricultural grassland in Central California. Madrono 48(4):253-264. Stromberg, M.R., P. Kephart and V. Yadon. 2001. Composition, invaisibility and diversity of coastal California grasslands. Madrono 48(4):236-252.

The Commission finds that on-site inspection of California annual grasslands should be done prior to any impacts to determine if any rare native species are present or if any rare wildlife rely on the habitat and to determine if the site meets the Coastal Act ESHA criteria.

viii. Coastal Strand / Coastal Dunes

Malibu includes twenty-seven miles of coastline, some of which is coastal dune habitat that is home to many sensitive species of plants and animals. Typical native species of plants are sand verbena, silver beachweed, saltbush (including the rare *Atriplex coulteri* and *A. parishii*), and beach morning glory. This harsh habitat is characterized by salt spray, slow nutrient cycling and desiccating winds that contribute to a desert-like environment. Relatively few plant species are adapted to such an environment and most tend to grow slowly. The slow growth rates and shifting substrate make this habitat slow to recover from disturbance. Because of their unique nature, dune habitats are known to harbor many endemic and rare insect species that have adapted to this environment[87].

Therefore, because of their rarity, restriction to particular coastal environments, their important ecosystem functions, and vulnerability to disturbance, the Commission finds that coastal dunes within the City of Malibu are ESHA under the Coastal Act.

d. Effects of Human Activities and Development on Habitats within the City of Malibu

The natural habitats of the Santa Monica Mountains and the City of Malibu are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis. The developed part of Malibu represents the coastal extension of this urbanization. About 54% of the undeveloped Santa Monica Mountains are in private ownership[88], and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation[89]. This is particularly true where development is concentrated on the coast, much of which is already badly fragmented (e.g. Point Dume and the eastern end of Malibu). Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

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[87] Powell, J.A. 1981. Endangered habitats for insects: California coastal sand dunes. Atala 6(1-2):41-55.
[88] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.
[89] Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. Landscape Ecol. 15:713-730.

i. Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities[90]. Increased fire frequency in the City of Malibu and the rest of the Santa Monica Mountains alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Resprouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for the Coastal Commission Workshop stated[91] "*We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic grasses and forbes that further exacerbate fire frequency.*" Thus, simply increasing fire frequency from about once every 22 years (the historical frequency) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

ii. Fuel Clearance

The removal of vegetation for fire protection in the Malibu area is required by law in "Very High Fire Hazard Severity Zones"[92]. Fuel removal is reinforced by insurance carriers[93]. Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. In such high fire hazard areas, homeowners must often resort to the California FAIR Plan to obtain insurance. Because of the high risk, all homes in "brush areas" are assessed an insurance surcharge if they have less than the recommended 200-foot fuel modification zone[94] around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally[95]. While it is not required that all of this zone be cleared of vegetation, the common practice is simply to disk this zone, essentially removing or highly modifying all native vegetation. For a new structure not adjacent to existing structures, this results in the removal or modification of a minimum of three acres of

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[90] NPS, 2000, op. cit.

[91] Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[92] 1996 Los Angeles County Fire Code Section 1117.2.1

[93] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

[94] Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.

[95] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

vegetation[96]. While the directly impacted area is large, the effects of fuel modification extend beyond the 200-foot clearance area.

iii. Effects of Fuel Clearance on Bird Communities

The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)[97]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[98].

iv. Effects of Fuel Clearance on Arthropod Communities

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[99]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[100]. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[101]. In addition to

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[96] Ibid..

[97] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 *in* Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

[98] Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. Conserv. Biol. 11:406-421.

[99] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056.

[100] Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. Conservation Biology 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. Oecologia 105:405-412.

[101] Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. Conservation Biology 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10(3):711-725.

specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms[102]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[103].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[104] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[105].

iv. Artificial Night Lighting

One of the more recently recognized human impacts on ecosystem function is that of artificial night lighting as it effects the behavior and function of many different types of organisms[106]. For literally billions of years the only nighttime sources of light were the moon and stars, and living things have adapted to this previously immutable standard and often depend upon it for their survival. A review of lighting impacts suggests that whereas some species are unaffected by artificial night lighting, many others are severely impacted. Overall, most impacts are negative ones or ones whose outcome is unknown. Research to date has found negative impacts to plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals, and a detailed literature review can be found in the report by Longcore and Rich[107].

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[102] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. Ecology 65(4):1031-1037.
[103] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.
[104] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.
[105] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.
[106] . Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.
[107] Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.

e. Summary of Findings

The Commission finds that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the City of Malibu, is rare and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the City of Malibu that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters.

The importance of Malibu's native habitats was emphasized nearly 20 years ago by the California Department of Fish and Game[108]. Commenting on a Draft Land Use Plan, the Regional Manager wrote that, "It is essential that large areas of land be reclassified to reflect their true status as ESHAs. One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just stream bottoms." These conclusions were supported by the following observations:

> "It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.
>
> Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chapparal (sic) or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

The importance of the Santa Monica Mountains Mediterranean Ecosystem is also recognized in a recent Significant Ecological Area (SEA) update study[109]. Significant Ecological Areas are designated by the County of Los Angeles in order to preserve biotic diversity. In the 2000 study, this objective was expanded, "...to include the future sustainability of this diversity through the application of more current practices in conservation planning, primarily by consolidation into larger interconnected SEAs." The following table presents the SEA criteria and summarizes the ecological characteristics that meet those criteria in the Santa Monica Mountains.

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[108] Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.

[109] PCR Services Corp. 2000. Los Angeles County Significant Ecological Area Update Study 2000 Background Report. A report to the L.A. County Department of Regional Planning dated November 2000.

Each of the SEA criteria directly correspond to one or more of the ESHA criteria contained in the Coastal Act definition (Rarity of species or habitat – SEA criteria A, B, C; Special nature of species or habitat – SEA criteria B, C, E, F; Habitat that performs an especially valuable role in the ecosystem – SEA criterion D). It is therefore not surprising that the SEA boundary generally corresponds to the large blocks of relatively undisturbed coastal sage scrub, chaparral and riparian habitat mapped as ESHA (Exhibit 5).

Both the early analysis by the Department of Fish and Game and the more recent SEA analysis are consonant with the ESHA findings of the commission. Additional support is provided by the letters from agency and academic biologists contained in the Letters Received section.

Criteria Analysis of the proposed Santa Monica Mountains SEA[110]

Criterion	Status	Justification
A) The habitat of core populations of endangered or threatened plant or animal species.	Criterion Met	The proposed SEA includes: core habitat of the federally endangered Braunton's milk-vetch, Lyon's pentachaeta, Southern California steelhead, and tidewater goby and federally threatened Santa Monica Mountains dudleya and marcescent dudleya.
B) On a regional basis, biotic communities, vegetative associations, and habitat of plant or animal species that are either unique or are restricted in distribution.	Criterion Met	Upper La Sierra Canyon contains an unusually rich and diverse stand of canyon flora including marcescent dudleya, creek dogwood, and many unusually large specimens of other rare plant species; Malibu Lagoon is the only natural lagoon between Point Mugu in Ventura County and Anaheim Bay in Orange County; Malibu Canyon contains a unique mix of floral species uncommon in the region such as black cottonwood and leather leaf ash as well as a regionally unique mixture of inland and coastal species; regionally rare volcanic rock formations create unique communities where they occur.
C) Within Los Angeles County, biotic communities, vegetative associations, and habitat of plant or animal species that are either unique or are restricted in distribution.	Criterion Met	Malibu Lagoon is the only natural lagoon in Los Angeles County; upper La Sierra Canyon contains an unusually rich and diverse stand of canyon flora including marcescent dudleya, creek dogwood, and many unusually large specimens of other rare plant species; and Malibu Canyon contains a regionally unique mix of floral species uncommon in the County such as black cottonwood and leather leaf ash, as well as a unique mix of inland and coastal species.
D) Habitat that at some point in the life cycle of a species or group of species, serves as concentrated breeding, feeding, resting, or migrating grounds and is limited in availability either regionally or in Los Angeles County.	Criterion Met	The Malibu Lagoon and the upstream riparian woodland in Malibu Creek is an important migrating bird refuge with over 200 species recorded. Tuna and Pena Canyons are an important area to migratory birds due to their combined qualities of healthy vegetation, riparian woodland, surface moisture, undeveloped land, and an unobstructed opening to the coast. The SEA also contains habitat linkages between large open space areas within the SEA as well between areas outside the SEA, such as the Simi Hills and the western extent of the Santa Monica Mountains in Ventura County, which are crucial in maintaining regional plant and animal population health and viability.
E) Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent unusual variation in a population or community.	Criterion Met	The proposed SEA includes: a myriad of unique and pristine natural areas important for nature study and scientific research; the range extremes of many species such as the California juniper, linear leaved goldenbush, Calochortus venustus, and valley oak; and disjunct and unique populations of island mountain-mahogany, lyre snake, mountain quail, hirsute rain-beetle, and the Jerusalem cricket.

[110] PCR Services Corp., Frank Hovore & Assoc. and FORMA Systems. 2000. Biological resources assessment of the Proposed Santa Monica Mountains Significant Ecological Area. A report to the Los Angeles County Department of Regional Planning dated November 2000. Pages viii & ix.

Criterion	Status	Justification
F) Areas that would provide for the preservation of relatively undisturbed examples of the original natural biotic communities in Los Angeles County.	Criterion Met	Zuma Canyon is one of the last major drainages in the Santa Monica Mountains with a year-round stream that supports a rich riparian community, it remains in an undeveloped state; Cold Creek includes an excellent example of an undisturbed natural sandstone basin with springs and a perennial stream; Tuna and Pena Canyons are the last drainages in the central and eastern Santa Monica Mountains that have not sustained development either in the watershed, or between the canyon mouth and the coast; Palo Coma and Chesebro Canyons support one of the last examples of an oak woodland savannah of any significant size in Los Angeles County; Temescal, Rustic, and Sullivan Canyons represent contiguous, self-contained watersheds that are large enough to support representative samples of native flora and fauna; the area surrounding Encino Reservoir supports the best undisturbed stand of an inland chaparral, coastal sage scrub, and streamside vegetation remaining on the inland slope of the Santa Monica Mountains.

5. Environmentally Sensitive Habitat Mapping

a. Mapping ESHA

In order to facilitate planning, maps were created which depict the approximate location and boundaries of ESHA. The maps are not intended to definitively assign the ESHA designation to individual parcels. Conversely, there may be areas that are not mapped that are ESHA. These maps will always be subject to revision, refinement and small-scale adjustments, and site-specific ESHA determinations may be required in particular cases. However, as a result of input from the public and the City of Malibu and repeated field checks by staff, the maps are accurate for planning purposes. The following discussion summarizes the methods and protocols used in the mapping process.

Within the City of Malibu, most of the ESHA areas are coastal sage scrub and riparian woodland interspersed with small patches of ceanothus and chamise chaparral at higher elevations. Existing legal development, graded or disked areas, isolated areas that have been converted to non-native vegetation, and those portions of riparian corridors that have been so altered and degraded as to lose most habitat value were not considered ESHA.

The ESHA areas were mapped by analyzing aerial photographs and conducting field surveys. The mapping was an iterative process entailing identification of habitats on aerial photographs and verifying identifications with site visits. Aerial photographs from 1997 were enlarged to a scale of approximately 1 inch to 480 feet. At this scale individual shrubs in coastal sage scrub were clearly visible and vegetated and cleared

areas could be easily identified. The original photographs were USGS digital orthophoto quarter quadrangles.

Most riparian areas were mapped as ESHA unless they were known to be severely degraded and to have low habitat value. Heavily degraded habitats dominated by non-native grassland and invasive plants were generally not mapped as ESHA. There were some exceptions to the latter rule in riparian corridors that were considered sensitive because of their important role in ecological processes and the connectivity that they provide.

Based on the aerial photographs and field data, the boundaries of ESHA were drawn on large-scale maps. Most of the ESHA areas included coastal sage scrub and unaltered riparian corridors. A staff ecologist and a botanical consultant with extensive experience in the Santa Monica Mountains conducted this work and were assisted by two coastal analysts with over ten years experience in Malibu. The mapping was confined to the City of Malibu boundary. Particular problem sites and questions were noted on the first review of the maps. These areas were subsequently visited to answer questions and make final determinations. From May through August of 2001, 7 days were spent in the field by four commission staff and the botanical consultant, and 59 spatially referenced sites were examined plus some others that were not georeferenced (Exhibit 6).

After the maps designating ESHA areas were completed, they were sent to the Commission's GIS/Mapping section to be digitized. Following this, the mapped ESHA areas on similar sized printouts were checked for obvious errors and returned again to the mapping section for final revision and completion of the ESHA map. The resultant map was compared to the 1993 National Park Service (NPS) Vegetation Map. Areas excluded from ESHA designation matched closely with areas designated "developed" by NPS. With allowance for additional development since the NPS maps were drawn in 1993, this provided an independent check on the map accuracy. These maps were presented at the January 2002 Coastal Commission Hearing.

After the preliminary maps were drawn, 2001 aerial photography for Malibu became available. The earlier maps were then revised, using the recent photography. This resulted in the removal of some 23 small habitat fragments either that had been developed in the interim, or that were very isolated and surrounded by development.

At and after the January hearing, members of the public and City staff indicated that there were errors in the maps, generally in the form of developed or disked areas being included in areas designated ESHA. In addition, Commission staff noted some degraded stream corridors in the Point Dume area that appeared to be misclassified as ESHA. The City staff spent several days in the field identifying areas that they felt were incorrectly mapped and provided that information to Commission staff. These and other areas were visited by Commission staff ecologists with City staff on July 23 and 25, 2002. Thirty-nine sites were examined. The City's recommendations for these sites

were communicated in a letter dated July 26, 2002. A map of the sites visited, the City's recommendations, and Commission staff's determinations are presented in Exhibit 7. The final ESHA maps are presented as Exhibit 8.

The ESHA map contains many areas that are unlikely ever to be developed because of the nature of ownership or because of the mountainous topography. In order to show those ESHA areas that are most likely to be subject to development, open space areas in public ownership and areas with slopes greater than 40% were removed. These maps are compared to the unaltered ESHA maps in Exhibit 9. It should be noted that while about half (49.2%) of the land area in Malibu is sensitive habitat, most is already in protected status as public open space (federal, state, county and city parkland, designated open space, conservation areas and beaches), or it is not developable because of slopes greater than 40%. After protected land and steep slope areas have been removed, only about 14% of the remaining developable land would be considered ESHA as indicated in the Table below. The reason that most of the designated ESHA resides in protected land or on steep slopes is simply because these are the areas that have not been developed, and so their habitat values have been preserved. Of the total area in Malibu, a relatively small amount of coastal sage scrub (12.0%) and chaparral (2.7%) is on land that could potentially be developed as the following table illustrates.

Areas in acres and percent within Malibu in various categories of habitats and their designations. Figures are based on a total area in Malibu of 12,679 acres.

	Public Open Space or Slopes >40%	NOT Public Open Space or Slopes >40%	TOTAL
ESHA	4256 33.5%	1771 14.0%	6027 47.5%
Coastal Sage Scrub	2808 22.2%	1525 12.0%	4333 34.2%
Chaparral	919 7.2%	340 2.7%	1259 9.9%

b. LUP ESHA and Marine Resources Map and Policies

The Coastal Act requires that areas meeting the definition of ESHA be protected, as provided by Section 30240. One way that the LUP provides for the protection of ESHA is by generally depicting the location of known resources on the LUP ESHA and Marine Resources Map. However, if the LUP policies protecting ESHA were applied only to the areas shown on the map, there would not be complete assurance that all areas meeting the definition of ESHA would be protected as required by the Coastal Act. The LUP ESHA Map is a valuable source of information on the presence of sensitive resources

The map is a useful tool for identifying many of the habitat areas that meet the definition of ESHA. However, the map is not the end of the story.

The LUP ESHA Map, as described above, was developed using available information, including field visits. The map accurately depicts the location of ESHA areas according to the method used. However, it would be necessary to conduct in-depth site-specific biological surveys of the entire City in order to map ESHA down to a site by site level. Conducting such surveys would not only be time and cost prohibitive, but also an inefficient method to determine location of ESHA. Site-specific biological surveys of the entire City would still only provide an accurate depiction of ESHA at one point in time. As described below, circumstances change over time. It is more efficient to carry out a site-specific biological analysis of each site at the time that development is proposed.

Additionally, the resource areas that are considered ESHA are not static over time. Development across the state results in the loss of natural areas and fragmentation of habitat such that, in the future, certain habitats and/or plant and animal species may become more rare and their protection more critical. Additionally, scientific study may reveal new information and understanding of the existence, rarity, or importance of certain habitats and species.

Therefore, it is clear that the LUP ESHA Map, while a valuable tool in assessing the location of ESHA subject to protection under the policies of the LUP, must be used in conjunction with site specific information provided through a detailed biological study conducted at the time that development is proposed to determine the presence of ESHA on the ground. Policy 3.4 provides that any area not previously designated on the ESHA Map that meets the definition of ESHA shall be protected as ESHA. Policy 3.4 provides that the following areas will be considered ESHA, unless there is compelling site-specific evidence to the contrary:

- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis
- Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law
- Areas that contribute to the viability of plant or animal species designated as Fully Protected or Species of Special Concern under State law or regulations
- Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, such as those designated "1b" (Rare or endangered in California and elsewhere) or "2" (rare, threatened, or endangered in California but more common elsewhere) by the California Native Plant Society.

It is also clear that the LUP ESHA Map must be updated periodically to reflect current information. Policy 3.5 requires that the map be reviewed every five years in cooperation with the ERB and the resource agencies (including but not limited to the California Department of Fish and Game, Resource Conservation District of the Santa Monica Mountains, California Department of Parks and Recreation, U. S. Fish and

Wildlife Service, and National Marine Fisheries Service) to determine if modifications are necessary. The map will be updated to reflect any applicable new facts, including information on rare, threatened or endangered species. Areas subject to habitat restoration projects will also be considered for designation as ESHA. Revisions to the ESHA Map will be treated as an LCP amendment.

Policies 3.6-3.7 address the circumstance where an area previously mapped as ESHA is found to not contain habitat that meets the definition of ESHA, based on a site-specific biological study. Any area mapped as ESHA cannot be deprived of protection as ESHA on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated. In such a case, the ESHA policies would still apply, including a requirement to restore habitat. Policy 3.7 provides that if the decision-making body of the City (Planning Director, Planning Commission, or City Council), in consultation with the City ERB, finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification will be made to the LUP ESHA Map as part of a map update. The area determined to not be ESHA will not be subject to the ESHA protection provisions of the LCP and development may be allowed on the property (consistent with all other LCP requirements), even if the map has not yet been amended.

The Commission finds that the depiction of known resources meeting the definition of ESHA on the LUP ESHA Map, in conjunction with the requirements for site-specific study, and map updates, as required by the ESHA designation policies of the LUP (Policies 3.1, 3.3-3.7) meets the requirements of and is in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

c. LIP ESHA Overlay Map and other Provisions

The Malibu Local Implementation Plan includes an Environmentally Sensitive Habitat Area Overlay Ordinance (Chapter 4) that implements the ESHA policies of the Land Use Plan. The provisions (described below) of the ESHA Overlay apply to those areas that are designated as ESHA on the LIP ESHA Overlay Map. The designations shown on the LIP ESHA Overlay Map match those shown on the LUP ESHA Map. In addition to the map, there are provisions (Section 4.3) that state that any areas not designated on the ESHA Overlay Map that meets the definition of ESHA (Chapter 2 of the LIP) is ESHA and subject to all the protection provided for ESHA in the LCP, including the provisions of Chapter 4 of the LIP.

The LIP requires the City to determine the extent of ESHA on the ground in its consideration of permit applications, based on the ESHA Overlay Map as well as site-specific information. As described below, the LIP requires a site-specific biological study for sites that are designated as ESHA, as well as those where an initial inventory of plant and animal species indicate the presence or potential for sensitive species or habitat. Section 4.3 of the LIP details the habitat areas that should be considered to be

ESHA whether or not they are designated on the map. These areas include: any habitat area that is rare or especially valuable from a local, regional, or statewide basis; areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law, or are designated as Fully Protected or Species of Special Concern under State law or regulations; and areas that contribute to the viability of plant species for which there is compelling evidence of rarity. Further, Section 4.3 details the process for the City to consider areas designated as ESHA that do not contain habitat that meets the definition of ESHA. Finally, the LIP requires the City to make findings in coastal development permit actions regarding the physical extent of habitat meeting the definition of ESHA on the site, based on policies and provisions of the LCP, the applicant's site-specific biological study, any other studies or independent evidence, and review by the City biologist and the environmental review board.

The Commission finds that the Malibu LIP, including the ESHA Overlay Map conforms with and is and adequate to carry out the LUP ESHA Map and the ESHA designation policies of the Land Use Plan.

6. Protection of Environmentally Sensitive Habitat Areas

The Coastal Act requires the protection of environmentally sensitive habitat areas against any significant disruption of habitat values. No development may be permitted within ESHA, except for uses that are dependent on the resource. Section 30240 of the Coastal Act further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. Section 30240 of the Coastal Act also requires that development adjacent to parks and recreation areas must be sited and designed to prevent impacts.

Siting and designing new development such that an adequate buffer is provided between the outer edge of the ESHA and development will minimize adverse impacts to these habitats. Providing a significant distance between new development and ESHA will ensure that removal or thinning of native vegetation for fuel modification will not be required to provide fire protection. Additionally, the transitional "ecotones" between different habitat types are particularly valuable areas with a higher diversity of plants and animals. The provision of adequate buffers around ESHA protects ecotones. Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, minimizing erosion and sedimentation. Finally, natural vegetation buffers minimize the spread of invasive exotic vegetation that tends to supplant native species, from developed areas into sensitive resource areas

a. Land Use Plan Policies

The LUP policies establish that areas determined to meet the definition of ESHA, as described above, will be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA. Residential, commercial, or institutional uses do not require a location within or adjacent to ESHA in order to function and are therefore not considered resource dependent uses. Thus, these uses may not be developed within ESHA, except in very limited circumstances where there is no other feasible alternative that can avoid a taking of property, as discussed below (Section 7).

New development must be sited and designed to avoid impacts to ESHA. In the design and review of new development, alternative projects must be identified and analyzed. If there is no feasible alternative that can avoid or eliminate all significant impacts to resources, then the alternative that results in the fewest or least significant impacts should be selected. Any impacts that cannot be avoided through the implementation of siting or design alternatives must be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to mitigate impacts on the project site or where off-site mitigation is found to be more protective of resources in the context of a Natural Community Conservation Plan (NCCP) developed for Malibu/Santa Monica Mountains area that is certified by the Commission as an amendment to the LCP. The development of an NCCP is discussed in greater detail in Section 8 of this report. In no case can mitigation measures be substituted for implementation of the project alternative that would avoid impacts to ESHA.

Mitigation measures, including habitat restoration, and habitat enhancement need to be monitored for at least five years, pursuant to Policy 3.15. The biologist or resource specialist must design specific mitigation objectives and performance standards so that the success of the restoration or enhancement can be measured over time and mid-course changes can be made to ensure that the mitigation will work.

The LUP policies establish the protection of areas adjacent to ESHA and adjacent to parklands through the provision of buffers. Natural vegetation buffer areas must be provided around ESHA or parkland that are of sufficient size to prevent impacts that would significantly degrade these areas, as required by Section 30240 of the Coastal Act. All buffers will be a minimum of 100 feet in width and no development, including fuel modification, is permitted within required buffer areas, except for the canyon ESHAs on Point Dume, coastal sage scrub ESHA, and chaparral ESHA, as described below. The required buffer areas will extend from the outer edge of the ESHA. In the case of streams and riparian ESHA, the buffer will extend from the outer edge of the canopy of riparian vegetation, and from the outer edge of the tree canopy for oak or other native

tree woodland ESHA. Similarly, the buffer for bluff ESHA will extend from the edge of the blufftop.

In the case of canyons on Point Dume, the LUP requires (Policy 3.26a) that all new structures are set back a minimum of 25 feet from the top of slope. Patios, swimming pools, and other similar accessory structures may be constructed within the area that is 25 feet from the top of slope as long as such structures do not result in any expansion to the required fuel modification area. In these cases, the canyon slope will function as a buffer to development, minimizing human intrusion, and protecting stream and riparian habitats by providing area for infiltration of runoff, and minimizing erosion and sedimentation. However, it is recognized that given the existing pattern of development and lot configurations, it is not, in most cases, possible to provide a buffer where no fuel modification will occur. Even with development located 25 feet from the top of slope, it is likely that at least some fuel modification measures will be required on canyon slopes. However, requiring development to be located at least 25 feet from the top of slope will ensure that the complete vegetation clearance required in the fuel modification zone nearest structures will be located above the top of the canyon slope. Additionally, some distance will be provided for runoff infiltration and separation of human intrusions such as noise and night lighting. In this way, impacts to the stream and riparian habitat will be minimized. With regard to coastal sage scrub and chaparral ESHA, the LUP (Policy 3.26b) requires a buffer of sufficient width to ensure that no required fuel modification will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the applicable habitat type.

Variances or modifications to buffer, or other sensitive resource protection standards may not be granted for new development, except where there is no other feasible alternative for siting the development and the approved development is consistent with the limits permitted pursuant to Policies 3.10-3.12. Modifications to other required development standards that are unrelated to resource protection, such as street setbacks, shall be permitted where it is necessary in order to avoid or minimize impacts to ESHA. The LUP policies establish that the protection of ESHA and public access takes priority over other development policies or standards. Where there is any conflict between ESHA protection standards and other development standards, the conflict will be resolved by applying those that are most protective of ESHA resources or public access.

Applications for development within or adjacent to ESHA, or other areas containing ESHA, identified through a biological study, will be subject to the review of the City Biologist and the Environmental Review Board (ERB). The ERB is an existing review body established under the City's General Plan that reviews development proposals and provides recommendations to the City's decision-making bodies. City staff has suggested language regarding the required expertise of the appointed members of the ERB. This language has been incorporated into LUP Policy 3.36. This policy states that the ERB will be comprised of qualified professionals with expertise in biological resources, geology, architecture or civil engineering, and landscape architecture. The

LUP policies provide for the ERB, in consultation with the City Biologist, to review development proposed within or adjacent to ESHA and consider the potential impacts of the project on ESHA, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The ERB shall report its recommendations to the applicable decision making body (Planning Director, Planning Commission, or City Council). The decision making body will make findings regarding the final project's conformity with the recommendations of the ERB.

In order to assess sensitive resources present on a project site, siting and design alternatives to avoid and minimize environmental impacts, and potential mitigation measures to mitigate unavoidable impacts, Policy 3.35 requires that development applications on sites containing or adjacent to ESHA include a detailed biological study of the project site. Applications for new development that is not located within or adjacent to identified ESHA need to include an inventory of the plant and animal species known or expected to occur on the project site. If the City determines that the initial biological inventory indicates the presence or potential for sensitive species or habitat, a full, detailed biological survey, will be required. The detailed study will provide site-specific information to the City Biologist and the Environmental Review Board for the determination of the presence of ESHA on the proposed project site.

The Commission finds that the ESHA protection policies of the LUP (Policies 3.8, 3.14-3.22, 3.23-3.30, and 3.36-3.39), by requiring new development to avoid and/or minimize impacts to ESHA, provide adequate buffers, mitigate impacts that cannot be avoided through the implementation of siting and design alternatives, and by requiring review of projects within or adjacent to ESHA by the environmental review board, will ensure that ESHA is protected against any significant disruption of habitat values. Therefore, the Commission finds that the ESHA protection policies of the LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Environmentally Sensitive Habitat Overlay Ordinance (Chapter 4) of the Malibu LIP implements the ESHA protection policies of the LUP. Section 4.4 details the information to be included in the biological study required for coastal development permit applications for development within or adjacent to ESHA, including additional information for sites containing wetland habitat. Section 4.6 of the LIP sets forth development standards, including buffer requirements. This section also addresses variances for ESHA protection standards. Section 4.8 of the LIP addresses mitigation measures for impacts to ESHA, including monitoring requirements. Section 13.26 of the Coastal Development Permit Ordinance establishes the process for variance requests. Chapter 13 also requires an inventory of plant and animal species present on the project site, or those known or expected to be present on the project site at other times of the year, prepared by a biologist or resource expert. This inventory is required as an

application submittal item on all coastal development permit applications. Finally, Chapter 13 also requires ERB review of development within or adjacent to ESHA [Section 13.7(C)].

The Commission finds that the provisions of the Malibu LIP conform with and are adequate to carry out the LUP ESHA Protection Policies (Policies 3.8, 3.14-3.22, 3.23-3.30, and 3.36-3.39).

7. Economically Viable Use

There may be cases where the majority or the entirety of a legal parcel contains habitat that is environmentally sensitive habitat area. Under Section 30240 of the Coastal act, no development, with the exception of a resource-dependent use, could be permitted on such a site. However, Section 30240 must be applied in concert with other Coastal Act requirements, particularly Section 30010. This section states that:

> The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Thus if strict application of the ESHA protection requirements of Section 30240 would cause a taking of property, then the policy must be applied in a manner that would avoid this result. The U.S. Supreme Court has held that, in some situations, a permit decision may constitute a categorical or "per se" taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it "valueless", the decision constitutes a taking unless the denial of all economic use was permitted by a "background principle" of state real property law. Background principles are those state law rules that inhere in the title to the property sold to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under Lucas, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U. S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations, as well as any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

a. Land Use Plan Policies

If the application of the ESHA policies and provisions would result in taking private property, then a use that is not consistent with the ESHA policies will be permitted, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking. LUP Policies 3.10 through 3.12 sets forth the process and parameters for approval of such a use. An application for development of a use that is not resource-dependent within ESHA, or that is not consistent with all ESHA provisions, must first demonstrate the extent of ESHA on the project site (Policy 3.11).

Policy 3.12 establishes the allowable development area on parcels where all feasible building sites are ESHA or ESHA buffer. The development area in such cases may not exceed 10,000 square feet or 25 percent of the parcel size, whichever is less. In the few potential instances where development would be proposed on a parcel larger than 40-acres, the development area may be increased by 500 sq. ft. for each additional acre over 40-acres to a maximum of 1-acre of development area (43,560 sq. ft.). Development must be sited and designed to avoid destruction of riparian habitat. No development is allowed in wetlands unless it is a use allowed under Section 30233 of the Coastal Act and the provisions of the LCP. The maximum development area will be reduced, or development shall be denied, if necessary to avoid a nuisance. Any impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives must be mitigated.

The Commission finds that this will provide private owners of vacant parcels in Malibu that contain ESHA an economically viable use of the property. This determination is based on consideration of the following factors: the long-standing residential zoning applicable to such parcels, the fairly large size of vacant lots in the City, the presence of existing residential development consistent with this scale in the area, including numerous residences approved by the Coastal Commission in areas with the same type of habitat, and property values that reflect the expectation of residential use.

As provided in LUP policies 3.64 through 3.70 (and as described in detail in Section 12 below), new agricultural uses or confined animal facilities are prohibited within or adjacent to ESHA, except within coastal sage scrub or chaparral ESHA in conjunction with development approved to avoid a taking, pursuant to Policy 3.10. Such development may include limited crop, orchard, or vineyard use within the irrigated fuel modification area (Zones A and/or B, if required) required around the approved structure(s), if the agricultural use would not be located on slopes greater than 3:1, would not result in any increase to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides. Development approved pursuant to Policy 3.10 within coastal sage scrub or chaparral may include accessory confined animal structures within the approved development

area and within the fuel modification area (Zones A, B, and/or C, if required) required around the structure(s) approved within the development area, if these facilities would not be located on slopes over 4:1, would not require additional grading (except for minimal grading for foundations), and would not result in any expansion to the required fuel modification area.

Policy 3.51 provides that fencing may be permitted within coastal sage scrub or chaparral ESHA, if necessary for security, only around the clustered development area. Finally, Policy 3.13 allows for an increase in the total development area for projects whereby two or more parcels are merged and one consolidated development area is provided with one access drive. This gives an incentive to cluster development and merge lots.

The Commission finds that the LUP policies regarding economically viable use meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3, as well as other provisions, including Section 30010 of the Coastal Act.

b. Local Implementation Plan Provisions

Section 4.7 of the Malibu LIP details the development standards for the approval of a use other than one that is permitted in the ESHA Overlay. Where all feasible building sites are ESHA or ESHA buffer, the City may only permit development as allowed under Section 4.7 in order to provide the owner with an economically viable use of the property. Standards are provided for the approval of a development area, fencing, agricultural uses, and confined animal facilities.

The LIP allows a development area of 10,000 square feet or 25 percent of the parcel size, whichever is less. For parcels over 40-acres in size, the development area may be increased by 500 sq. ft. for each additional acre over 40 acres in parcel size to a maximum of 1-acre (43,560 sq. ft.). As provided in Chapter 2 (Definitions) of the LIP, the development area is the approved portion of the project site that is developed. This area must include the building pad, all graded slopes, all structures and parking areas. The area of one access driveway and one hammerhead safety turnaround may be excluded from the development area square footage.

The LIP also allows limited fencing, agricultural uses, and confined animal facilities to be approved in conjunction with a residential use permitted only in coastal sage scrub or chaparral ESHA. Fencing may be permitted, if necessary for security, only around the clustered development area. Crop, orchard, or vineyard uses may be permitted only within the irrigated fuel modification area (Zones A and B, if required) for the approved structures, so long as the use is not located on slopes over 3:1, doesn't result in increased fuel modification, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides. Development permitted within coastal sage scrub or chaparral under the provisions of Section 4.7 of the LIP may include accessory confined animal structures within the required fuel modification area for structures

approved within the development area, only if the structures are not located on slopes greater than 4:1, do not require additional grading other than minimal grading for foundations, is constructed from non-flammable materials, and do not result in any expansion to the fuel modification area.

Finally, the LIP allows for an increase in the total development area for projects whereby two or more parcels are merged and one consolidated development area is provided with one access drive. This provision gives an incentive to cluster development and merge lots.

The Commission finds that the provisions of the Malibu LIP conform with and are adequate to carry out the LUP Policies 3.10-3.13, 3.51, 3.64-3.65, and 3.67 regarding economically viable uses.

8. Natural Community Conservation Planning Process

The Local Coastal Program planning process under the California Coastal Act and the Natural Community Conservation Planning Process (NCCP Act, SB 107: Fish and Game Code section 2800 et seq.) can be complimentary and effective tools for protecting environmentally sensitive habitats and concentrating development.

Chapter 3 of the Coastal Act includes strong policies for the protection of coastal resources. Section 30240 affords special protection for environmentally sensitive habitat areas (ESHA) in the coastal zone. The Commission identified, described, and generally mapped ESHA in the City of Malibu based on the substantial scientific evidence documented in the Commission's findings and supporting reports, studies, and other information set forth in the record and based on the criteria in the Coastal Act. The City of Malibu LCP includes strong LUP policies and implementing ordinances to protect environmentally sensitive habitat areas consistent with section 30240 of the Coastal Act. The Commission recognizes that requirements of law may result in some development in ESHA areas necessary to avoid a taking of private property. LUP policy 3.10 could result in some fragmentation and loss of ESHA areas. The Commission also recognizes that if the City of Malibu and other key agencies and property owners choose to participate in a NCCP process for the Santa Monica Mountains that a NCCP plan could be developed that could further enhance the protection of environmentally sensitive habitat areas by establishing preserves and reducing potential fragmentation and improving the functionality of ESHA.

The Commission strongly encourages the City of Malibu to consider initiating a Natural Communities Conservation Planning Program and to work cooperatively with the County of Los Angeles to develop an effective Natural Communities Conservation Plan (NCCP) for the Santa Monica Mountains. The NCCP process is voluntary on the part of the City and is not a requirement of the September 2002 Coastal Commission approval of the City of Malibu LCP. A comprehensive NCCP planning effort would identify areas

for habitat preservation and identify areas that are in proximity to existing development where development could occur in a manner that provides improved functionality of conserved habitats by, among other things, minimizing ESHA fragmentation. With the participation of the California Department of Fish and Game, the California Department of Parks and Recreation, the National Park Service, USFWS, the City of Malibu, the County of Los Angeles, the Coastal Commission, other agencies, public interest groups, and property owners in such a planning effort, adoption of a NCCP incorporated into the LCP through the LCP amendment process could result in a refinement of zoning maps and areas identified for protection in perpetuity.

Through the use of transfer of development credits and other mitigation mechanisms to direct development into the least sensitive areas, more effective protection could be afforded to coastal resources through the NCCP than may be accomplished through the LCP alone. These two processes have the potential, when combined, to result in a more effective natural resource protective outcome than application of the LCP alone.

If the City chooses to initiate a NCCP process to achieve this, the City should submit a LCP amendment to integrate a collaborative NCCP into the Malibu LCP that identifies areas that will be preserved and areas in which habitat protection will be limited. The amendment should also designate the implementation actions that will ensure that these protected areas will be preserved in perpetuity. It is likely that some contribution to implementing the preserve would be required of applicants for development permits in ESHA as mitigation for their individual impacts to ESHA. While many of these areas may be designated ESHA on the current ESHA maps, the Coastal Commission has the authority to apply Section 30007.5 of the Coastal Act to resolve conflicts between policies of the Act and redesignate the ESHA consistent with the NCCP as amended into the LCP. The application of this provision would allow for an analysis that shows that "concentrate (d) development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies", particularly in light of Coastal Act protections against taking of private property. The significant benefit of a multi-species, multi-party conservation planning process, such as is provided through NCCPs and HCPs, is that it provides a mechanism to preserve an ecological system as a whole, by redirecting constitutionally protected development potential to more suitable locations in the larger system.

If a NCCP is prepared in the future for the Santa Monica Mountains area that includes lands within the City of Malibu, it shall be submitted to the Coastal Commission for certification as an amendment to the LCP. Coastal Commission staff will actively participate in the development of any proposed NCCP to ensure that the plan can be recommended to the Commission for approval. If a comprehensive NCCP is certified by the Commission as consistent with the Coastal Act through amendment to the City of Malibu LCP, the amendment will include revised ESHA maps and criteria as appropriate, which designate areas of ESHA where development can be allowed and areas that will continue to be protected and will be managed in perpetuity for their ecological resource values. If the Coastal Commission certifies a NCCP as an

amendment to the City of Malibu Local Coastal Program, Malibu LCP ESHA maps and criteria will be consistent with the NCCP's reserve design.

9. Stream Protection

In addition to protection as ESHA under Section 30240 of the Coastal Act, streams and associated riparian habitat are protected under additional Coastal Act policies in order to maintain the biological productivity and quality of coastal waters. Section 30231 requires that natural vegetation buffer areas that protect riparian habitats be maintained, and that the alteration of natural streams be minimized. Notwithstanding the stream protection provisions, the Coastal Act recognizes that in a few limited circumstances, it may be necessary to alter a stream. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply projects; protection of existing structures in the floodplain where there is no feasible alternative; or improvement of fish and wildlife habitat.

Siting and designing new development such that an adequate buffer is provided between the outer edge of the canopy of riparian vegetation and development will minimize adverse impacts to these habitats. The buffer shall be measured from the outer edge of the canopy of riparian vegetation. Providing a significant distance between new development and riparian areas will ensure that removal or thinning of native vegetation for fuel modification will not be required to provide fire protection. Additionally, the transitional "ecotones" between different habitat types are particularly valuable areas with a higher diversity of plants and animals. The provision of adequate buffers around streams and riparian corridors protects the ecotone.

Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, minimizing erosion and sedimentation. Finally, buffers minimize the spread of invasive exotic vegetation that tend to supplant native species. The presence of surface or subsurface water throughout the year makes riparian areas especially susceptible to invasion by non-native species that can in many instances out compete native plants. Invasive plant species do not provide the same habitat values as natural riparian areas.

a. Land Use Plan Policies

The LUP policies provide for the prohibition of development within stream and riparian ESHA, except for resource dependent uses. Providing buffers as well as prohibiting the planting of invasive plant species in landscaping, as provided in LUP Policy 3.49 will reduce the risk of non-native species invading stream and riparian areas.

Policy 3.31 of the LUP prohibits the channelization or alteration of streams, except for necessary water supply projects; protection of existing structures in the floodplain where there is no other feasible alternative; or improvement of fish and wildlife habitat. Any

alteration approved for one of these three purposes must minimize impacts to coastal resources, and include maximum feasible mitigation measures to mitigate for any unavoidable impacts. In the case of flood protection for existing development, bioengineering alternatives shall be preferred over concrete, riprap, or other hard structures.

To minimize future need for any stream alterations to protect structures from flood hazards, LUP Policy 4.8 prohibits new buildings in areas that are floodprone. Additionally, ESHA buffers around streams and riparian areas, described above, will serve to site new development a significant distance from any stream, providing protection from flooding.

Further, the LUP (Policy 3.32) prohibits the alteration of streams for the purpose of road crossings, except where the alteration would not be substantial, there is no other feasible alternative to provide public access to public recreation areas or development on legal parcels that is sited outside riparian ESHA, and the alteration does not restrict movement of fish or other aquatic wildlife. Any other road crossing shall be bridged with required columns or abutments location outside the bed and banks of the stream. Shared bridges for multiple developments shall be used wherever feasible.

Finally, the LUP addresses specific issues relating to Malibu Creek. In addition to the wetland protection policies discussed below, the LUP provides parameters for any flood protection measures that may be proven necessary in the future along lower Malibu Creek in the Civic Center area. Any applications for such measures must include evidence that existing, permitted development is in danger from flood hazard, that alternatives for flood protection have been considered, that the proposed action is the least environmentally damaging alternative, and that any unavoidable impacts will be mitigated. The LUP also provides that if enlargement, replacement or improvements to the existing at grade crossing of Malibu Creek at Cross Creek Road are determined to be necessary, alternative designs, including, but not limited to, a caisson-supported bridge, that minimize impacts to ESHA shall be considered. In any case, any new improvement to this crossing shall minimize impacts to the movement of fish or other aquatic wildlife to the maximum extent feasible.

The Commission finds that stream protection policies of the LUP (Policies 3.31-3.33) by limiting channelization or alteration of streams, requiring buffers and preservation of riparian habitat, and by establishing a preference for bioengineering solutions, will protect streams. Therefore, the Commission finds that the stream protection policies of the LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

As described above, the Malibu LIP includes an ESHA Overlay Ordinance (Chapter 4) which addresses protection of ESHA, including streams and riparian areas. All ESHA protection provisions of the LIP apply to stream and riparian ESHA. Additionally, Section 4.5 of the LIP sets forth the limited uses that may be permitted in streams, consistent with all applicable provisions of the LCP. The LIP also requires that new development provide a buffer of no less than 100 feet from the outer edge of riparian vegetation, or from the outer edge of the stream bank where riparian vegetation is not present.

The Commission finds that that the Malibu LIP conforms with and is adequate to carry out the stream protection policies (Policies 3.31-3.33) of the Land Use Plan.

10. New Development

New development can adversely impact environmentally sensitive habitat areas through many means including, but not limited to, grading, landform alteration, vegetation clearance, erosion, sedimentation runoff, stream siltation, and reduced water percolation. Additionally, wildlife can be impacted by fencing that blocks migration and by artificial night lighting. In order to protect habitat values as required by Section 30240 of the Coastal Act, the Commission has found, in permit actions, that it is necessary to consider alternatives for siting and designing development in order to ensure that the alternative chosen is the one that minimizes impacts to ESHA.

a. Land Use Plan Policies

The LUP policies require that new development be sited and designed to minimize impacts to ESHA. Alternative locations should be considered for siting proposed development on the project site. The preferred location for development is the one that can minimize grading and landform alteration, limit the removal of natural vegetation, and minimize the length of the approved access road or driveway. These siting and design measures will ensure that impacts from soil erosion, stream siltation, reduced water percolation, increased runoff on sensitive resources will be avoided and minimized, as required by the land and marine policies of the Coastal Act.

The LUP prohibits grading during the rainy season for any development that is located within or adjacent to ESHA, or that includes any grading on slopes over 4:1. In areas next to ESHA, particularly riparian and stream areas, on steep slopes, or in large grading projects, grading during the rainy season greatly increases the potential for erosion and sedimentation. In other areas where grading may be permitted to proceed during the rainy season, erosion control measures must be implemented before grading commences and maintained throughout grading operations until landscaping and the permanent drainage system is installed.

Graded and other disturbed areas must be landscaped or revegetated with primarily native, drought resistant plants at the completion of grading. Invasive plant species may not be used as they will supplant native plants and lead to the degradation of natural habitats. In order to ensure that erosion is minimized from graded or disturbed areas, landscaping must be sufficient to provide ninety percent coverage within a period of five years. Landscaped or revegetated areas within or adjacent to ESHA must be monitored for success for at least five years. Additional plantings and other corrective measures may prove necessary to ensure that the coverage criteria are achieved.

New development shall include measures to restore disturbed or degraded habitat on the project site if feasible. Fencing must be limited, and in or adjacent to ESHA, must be sited and designed to allow wildlife to pass through. The LUP requires exterior lighting to be limited in intensity, shielded, and directed away from ESHA in order to minimize impacts on wildlife.

The Commission finds that LUP policies 3.40-3.53 will ensure that new development is sited and designed to minimize grading, landform alteration, runoff, erosion, and sedimentation, which will minimize impacts to ESHA and marine resources Therefore, the Commission finds that these policies of the LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Local Implementation Plan implements the new development policies (Policies 3.40-3.53) of the Land Use Plan. Chapter 8 of the LIP regulates the total amount of grading and landform alteration, the design of grading projects, and provides seasonal restrictions on grading. Section 3.10 of the LIP requires the landscaping of graded or disturbed areas in order to minimize erosion and sedimentation. Required landscaping that is within ESHA or ESHA buffer must also be monitored for a period of at least five years to ensure success of the plantings. The ESHA Overlay Ordinance (Chapter 4 of the LIP) provides development standards for the siting and design of development. Section 4.6.2 details lighting standards and Section 4.6.3 limits fencing, both to minimize impacts on wildlife.

The Commission finds that the Malibu LIP conforms to and is adequate to carry out Policies 3.40-3.53 of the Land Use Plan.

11. Fuel Modification

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history

of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

> Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.
>
> Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.
>
> Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Less obvious is the likelihood that even thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual

plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into downgradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Finally, the introduction of artificial irrigation required for fuel modification has impacts on habitat. One example described above is the introduction of invasive Argentine ants that are better adapted to the wetter conditions of irrigated areas than are ant species native to California and tend to out-compete them. The loss of the native ants impacts arthropod species that rely on native ants as a food source.

a. Land Use Plan Policies

The LUP policies acknowledge that vegetation will be required by the Fire Department to be removed, thinned or otherwise modified around new buildings in order to minimize the risk of fire hazard. Fuel modification on the project site and brush clearance, if required, on adjacent vacant sites reduces the fire risk for new or existing structures. The LUP, both in this chapter and the Hazards Chapter allows for required fuel modification to minimize the risk of fire.

However, fuel modification removes watershed cover, and may remove or have impacts on ESHA. The LUP policies require that new development is sited and designed to minimize required fuel modification. Policy 4.44 (Hazards) requires that new development minimize risks to life and property from fire hazard by avoiding hazardous locations, using appropriate building materials and design features, and considering topography, slope, vegetation, and wind patterns. These measures will help to minimize the amount of fuel modification that is required as well.

Applications for new development need to include evidence of an approved fuel modification for the project site, a quantification of the area of natural vegetation that would be removed, thinned, irrigated or otherwise modified by the proposed project including the building pad area, road/driveway areas, fuel modification on the site, and brush clearance on adjacent properties (Policies 3.57 and 4.51). This information will be used by the decision-maker to assess the adverse impacts of the project and to identify potential project alternatives that can minimize such impacts.

While the impacts resulting from fuel modification can be reduced through siting and designing alternatives for new development, they cannot be completely avoided, given the high fire risk present in the City and the Santa Monica Mountains. Policy 3.59 of the Malibu LUP requires that impacts to ESHA from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated.

The Commission finds that the fuel modification policies of the Malibu LUP, by requiring that development is sited and designed to minimize required fuel modification to the extent feasible, and requiring mitigation of impacts to ESHA that cannot be avoided, will minimize impacts to ESHA and therefore meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Malibu LIP implements the fuel modification policies of the LUP. The development standards (Section 3.10.2) of the LIP require that new development is sited and designed to minimize require fuel modification and brushing to the maximum extent feasible. Development is required to utilize fire resistant materials and to incorporate alternative fuel modification methods, such as firewalls, and landscaping techniques where feasible, in order to minimize the total area that is subject to fuel modification or brushing.

Additionally, the ESHA Overlay Ordinance (Chapter 4) of the LIP requires that all new development include mitigation for impacts to ESHA from the removal, conversion, or modification of natural habitat that cannot be avoided through the implementation of siting or design alternatives. The acreage of habitat that is impacted must be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site and required brush clearance, if any, on adjacent properties.

Section 4.8.1 of the Malibu LIP sets forth three methods for providing mitigation of habitat impacts. The first method is to provide mitigation through the restoration of an area of degraded habitat that is equivalent in size to the area of habitat impacted by the development. The restored habitat must be permanently preserved through the recordation of an open space easement. The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat

equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. The third habitat impact mitigation option is an in-lieu fee for habitat conservation. The fee will be based on the habitat type(s) in question, the cost per acre to restore or create the comparable habitat type, and the acreage of habitat affected by the project. The fees required through permits will be used to acquire or preserve habitat as mitigation.

The Commission finds that the Malibu LIP conforms with and is adequate to carry out the fuel modification policies (Policies 3.56-3.59) of the Land Use Plan.

12. Native Trees

Trees that are native to the Santa Monica Mountains, including Malibu, are important coastal resources. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife species, contribute nutrients to watersheds, and are important scenic elements in the landscape. Trees that are part of a woodland, savannah, or riparian ESHA would be protected from removal or other development impacts However, due to past development impacts, or historical land uses like grazing, individual trees exist that may not be part of a larger intact habitat area. Additionally, development may be permitted within ESHA in order to avoid a taking of private property, as discussed above. In such cases, native trees should still be protected. Finally, native trees that are not part of a larger, intact habitat may nonetheless provide nesting or roosting habitat for raptors and other birds that are rare, threatened, endangered, fully protected, or species of special concern. It is critical to such species that the tree habitat be protected. In past permit actions, the Commission has required that the removal of native trees, particularly oak trees, or encroachment of structures into the root zone be avoided unless there is no feasible alternative for siting development.

a. Land Use Plan Policies

The LUP requires the protection of native trees, including oak, walnut, sycamore, alder and toyon trees. Policy 3.60 requires that new development be sited and designed to prevent removal of trees and encroachment into the root zone of each tree, unless there is no other feasible alternative. Structures, including roads or driveways must be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone to allow for future growth. Applications for new development on sites containing native trees must provide a tree protection plan

Policy 3.62 requires that mitigation be provided where the removal of trees cannot be avoided by any feasible project alternative. Mitigation is also required for impacts that occur to trees as a result of development encroachments into the root zone that cannot be avoided through the implementation of siting or design alternatives. The mitigation must include, at a minimum the planting of replacement trees. If there is suitable area on the project site, replacement trees should be provided on-site, at a ratio of ten replacement trees for every one tree removed.

The Commission has found, through permit actions, that replacement trees, particularly oak trees, are most successfully established when the trees are seedlings or acorns. Many factors, over the life of the restoration, can result in the death of the replacement trees. In order to ensure that adequate replacement is eventually reached, it is necessary to provide a replacement ratio of at least ten replacement trees for every tree removed or impacted to account for the mortality of some of the replacement trees.

Additionally, Policy 3.62 requires that if on-site mitigation is not feasible, off-site mitigation must be provided through planting replacement trees at a suitable site, or by providing an in-lieu fee. The fees required through permits will be used to restore or create native tree habitat as mitigation.

The Commission finds that the native tree policies of the Malibu LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Local Implementation Plan implements the native tree policies of the LUP in the Native Tree Protection Ordinance (Chapter 5). This ordinance describes the species and size of trees that are subject to protection. Section 5.3 specifies that coastal development permit applications for development on sites containing native trees must include a tree protection plan that includes an inventory and map of the size, type, and health of all native trees on site. This plan must also include an analysis of all potential impacts from the proposed project with an identification of project alternatives that can avoid or minimize impacts to trees. Further, the plan should include mitigation measures to minimize or mitigate residual impacts that cannot be avoided through project alternatives, and a long-term monitoring plan.

Chapter 5 of the Malibu LIP also contains development standards to minimize impacts to native trees. These include siting and design of new development to preserve native trees, and to prevent encroachment into their root zones. Additionally, drainage must be directed away from tree root zones. Further, protective fencing is required to be placed around native trees that will be retained on site, but are within or adjacent to the construction area. Fencing must be placed prior to the commencement of construction

and maintained in place until completion in order to ensure that any grading, staging, or other construction activities do not impact the native trees.

Where there is no feasible project alternative that can avoid removal, encroachment, or other adverse impacts to native trees, Section 5.5 of the Malibu LIP requires that such impacts are mitigated. At a minimum, the mitigation required is the planting of replacement trees on the project site, if suitable habitat area exists on-site. If on-site mitigation is not feasible, off-site mitigation must be provided through planting replacement trees at a suitable site containing suitable habitat area that is restricted from future development or is public parkland. An alternative off-site mitigation provided under Section 5.5.2 of the Malibu LIP is the provision of an in-lieu fee. The appropriate fee will be determined by the City based on the type, size and age of the tree removed or otherwise impacted by encroachments. Any fees collected will be paid into a fund administered by the Santa Monica Mountains Conservancy for the restoration or creation of native tree woodland or savanna habitat areas within the Santa Monica Mountains Coastal Zone.

The Commission finds that the Local Implementation Ordinance conforms with and is adequate to carry out the native tree protection policies (Policies 3.60-3.63) of the Land Use Plan.

13. Agriculture and Confined Animal Facilities

The Coastal Act policies provide for the continuation of coastal agriculture on prime agricultural lands. In many areas of the state, prime soils combine with unique coastal climates for highly productive agriculture. Recognizing increasing pressure to develop these areas with urban land uses, the Coastal Act requires that lands in prime agricultural production be maintained, except in very limited circumstances.

Given the topography and development pattern, there are not significant areas of existing agricultural use in Malibu. Historically, some of the flatter plains, including alluvial plains like those adjacent to Malibu Creek, were cultivated with crops. Additionally, areas were historically used for grazing. However, most of these areas have been converted to residential or commercial development. According to the City of Malibu General Plan, there are only very limited prime agricultural lands within the city, "...due to the patchy distribution of soils that have high capability for agricultural uses, and ..."these soils typically occur along the low relief slopes adjacent to the coast". The low relief slope areas adjacent to the coast are the most intensely developed areas of the City. No areas are specifically designated for exclusive agricultural development by the City General Plan or Interim Zoning Ordinance. As such, the LCP does not designate any areas for agricultural use. However, agricultural uses, including crops, orchards, and vineyards, are permitted as an accessory use in the Rural Residential and Single Family Residential zones. The Commission has found in past permit actions that such accessory uses may be found consistent with the Coastal Act only within the

irrigated fuel modification area, and assuming that this area is not steeply sloping. The irrigated fuel modification zones would already be disturbed to carry out any clearing, thinning, landscaping with low-fuel plant species, and irrigation for the protection of approved residential structures. As such, the development of agricultural or confined animal uses in these areas would not be expected to have additional significant environmental impacts.

a. Land Use Plan Policies

The LUP policies establish parameters for the development of new agricultural uses or confined animal facilities. The conversion of vacant land in ESHA, ESHA buffer, or on slopes over 3:1 to new agricultural use is not permitted. The removal of natural vegetation and conversion of large areas to agricultural use on steep slopes will have significant adverse impacts, through erosion, sedimentation, and loss of habitat, on sensitive resources, including water quality. Crop, orchard, or vineyard uses in conjunction with an existing or new residential use may be permitted only within the irrigated fuel modification area (Zones A and/or B, if required) for any approved structures, so long as such agricultural uses do not result in any expansion of the fuel modification area required for the residential structures. The policies allow for the development of confined animal facilities in conjunction with an existing or new residential project if it is not located on a steep slope (over 4:1), and does not require any expansion to the required fuel modification into ESHA or ESHA buffer.

The development of new agricultural or confined animal uses are prohibited within or adjacent to ESHA. Such uses are not resource-dependent and will have significant adverse environmental impacts if located within or in close proximity to ESHA, particularly riparian and stream areas. The only exception provided is in the case of residential development approved within coastal sage scrub or chaparral ESHA in order to provide an economically viable use (as set forth under LUP Policies 3.10 to 3.12). In the case of such an approved use, limited agricultural use may be permitted within the irrigated fuel modification area (Zones A, and/or B, if required). Further, accessory structures for confined animals may be permitted within the approved development area, and within the approved fuel modification area (Zones A, B, and/or C) so long as they are not located on a slope over 4:1, do not require additional grading (except minor grading for foundations), are constructed of non-flammable materials, and do not result in any expansion to the required fuel modification area.

Any approved agricultural or confined animal use must include measures to minimize impacts to water quality. LUP Policies 3.137 through 3.143 provide for such measures to protect water quality. Best management practices must be implemented in agricultural operations to prevent excessive sediment and pollutant impacts, including but not limited to the proper disposal of compost, wastewater, and any other byproducts of agricultural activities. With regard to confined animal uses, the LUP requires that the total number of animals on any site be limited according to constraints affecting the site,

including, but not limited to size, slope, and presence of sensitive resources. Fewer total animals could be kept for instance, on a steep or small site, or one containing ESHA. Best management practices must be incorporated into approved confined animal projects, including vegetated filter strips and other measures to intercept, infiltrate, and filter runoff from the animal areas, and management of animal waste.

The Commission finds that the agriculture and confined animal facility policies of the Malibu LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

Section 3.11 of the Malibu LIP implements the policies of the LUP regarding agricultural uses and confined animal facilities. This includes provisions for minimum parcel size that is required to allow confined animal uses, maximum standards for the number of animals that may be maintained on a site, and separation standards between confined animal facilities and residential development.

In addition, the ESHA Overlay Ordinance (Chapter 4) provides standards for the approval of agricultural or confined animal uses within coastal sage scrub or chaparral ESHA in conjunction with development approved under Section 4.7 to provide an economically viable use. In such cases, crop, orchard, or vineyard uses may be permitted only within the irrigated fuel modification area (Zones A and B, if required) for the approved structures, so long as the use is not located on slopes over 3:1, doesn't result in increased fuel modification, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides. Development permitted within coastal sage scrub or chaparral under the provisions of Section 4.7 of the LIP may include accessory confined animal structures within the required fuel modification area for structures approved within the development area, only if the structures are not located on slopes greater than 4:1, do not require additional grading other than minimal grading for foundations, is constructed from non-flammable materials, and do not result in any expansion to the fuel modification area.

Section 3.11.2(G) establishes standards for controlling the number of confined animals that may be allowed on a project site. This provision is based on the review of other local government's provisions for confined animals and represents an average based on that review. Finally, as described below, Chapter 17 of the LIP addresses water quality protection. This chapter includes requirements for best management practices designed to minimize impacts from agricultural or confined animal uses.

The Commission finds that the Malibu Local Implementation Ordinance conforms with and is adequate to carry out the agriculture and confined animal facility policies (Policies 3.64-3.70) of the Land Use Plan.

14. Marine Resources

Section 30230 of the Coastal Act requires that marine resources are maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Finally, uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms. Any development proposed within tidelands or submerged lands will remain under the permit jurisdiction of the Coastal Commission. Nonetheless, the Malibu LCP provides guidance on the protection of marine resources in these areas. Additionally, the LCP includes policies and provisions regarding development on inland areas that could impact marine resources.

a. Land Use Plan Policies

The LUP ESHA and Marine Resources Map identifies known marine resources, including kelp forests, clam habitat, near shore shallow fish habitat, and areas utilized by sea lions. As discussed above, the ESHA and Marine Resources Map will be updated periodically to reflect changed circumstances or new information. As for ESHA areas, the presence of marine resources not already designated on the map shall be determined on the basis of site-specific studies of the proposed project site. Policies 3.4 and 3.71 provide that Areas of Special Biological Significance and Marine Protected Areas (as designated by the California department of Fish and Game) are considered ESHA and are subject to all of the protections provided for ESHA. Marine ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA. Residential. commercial or institutional uses shall not be considered resource dependent uses.

The LUP policies provide guidance on the protection of marine resources. Policy 3.77 states that marine mammal habitats, including haul-out areas shall not be altered or disturbed by new development. Near shore shallow fish habitats must be preserved and where feasible enhanced. Additionally, there are many LUP policies regarding development on inland areas that could impact marine resources. Development in areas adjacent to marine and beach habitats must be sited and designed to prevent impacts that could significantly degrade these areas. The LUP policies requiring the minimization of grading and landform alteration (Policy 3.40, and 6.9), the limitation or prohibition of earthmoving during the rainy season (Policies 3.44-3.46), and the landscaping or revegetation of cut and fill slopes and other areas disturbed by construction (Policy 3.47) ensure that erosion and sedimentation will be minimized. Marine resources, particularly kelp forests, are very sensitive to sedimentation. Finally, the water quality policies (Policies 3.89-3.144) require new development to be sited and designed, and to incorporate best management practices to prevent or reduce non-point source pollution and to protect water quality.

The Commission finds that the marine resource policies of the Malibu LUP meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

As discussed above, development proposed within tidelands or submerged lands will remain under the permit jurisdiction of the Coastal Commission after adoption of the LCP. As such, any development proposed within such areas will be considered for conformance with the policies of Coastal Act. Except for wetlands (discussed in Section 14 below), the LIP does not provide development standards for marine areas. The LIP does provide standards for inland projects designed to minimize impacts on marine resources through erosion, sedimentation and non-point source pollution. Chapter 8 regulates the total amount of grading and landform alteration, the design of grading projects, and provides seasonal restrictions on grading. Section 3.10 of the LIP requires the landscaping of graded or disturbed areas in order to minimize erosion and sedimentation. Finally, Chapters 17 and 18 provide standards for new development with regard to the protection of the quality of coastal waters and the protection of marine organisms.

The Commission finds that the Local Implementation Ordinance conforms with and is adequate to carry out the marine resource policies of the Land Use Plan.

15. Wetlands

The Coastal Act requires the protection of wetlands. Section 30231 provides that the biological productivity and the quality of wetlands and estuaries shall be maintained, and where feasible restored to maintain optimum populations of marine organisms. Section 30233 provides that the diking, filling, or dredging of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative and restricted to a limited number of allowable uses.

There are several identified wetland areas within the City, including lower Malibu Creek and Malibu Lagoon. Malibu Lagoon is one of the last large wetlands in Los Angeles County. Federally endangered tidewater gobies (*Eucyclogobius newberyyi*) and southern steelhead trout (*Oncoryhynchus mykiss irideus*) both use the lagoon and creek and federally endangered brown pelicans (*Pelecanus occidentalis californicus*) can be seen in and around the lagoon. Malibu Creek and Lagoon supports one of the remaining steelhead trout runs in Southern California. The Civic Center area of the City is adjacent to lower Malibu Creek and was historically floodplain. One area within the Civic Center has been identified as wetland. Other areas may contain wetland habitat, but have not yet been formally delineated. Finally, in addition to Malibu Lagoon, smaller lagoons form seasonally at the outlet of Zuma Creek (Zuma Lagoon), and Trancas Creek (Trancas Lagoon).

a. Land Use Plan Policies

The LUP policies provide for the protection of wetlands. The biological productivity and the quality of wetlands shall be protected and where feasible restored. Known wetlands are shown on the LUP ESHA and Marine Resources Map. Additionally, any areas which meet the following definition will be considered wetland and accorded all the protections provided for wetlands in the LUP:

> Lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

As described above, applications for new development that is not located within or adjacent to identified ESHA need to include an inventory of the plant and animal species known or expected to occur on the project site. If the City determines that the initial biological inventory indicates the presence or potential for wetland species or indicators, a full, detailed biological survey, as required in LUP Policy 3.37, with the addition of a delineation of all wetland areas on the site will be required. Wetland delineations must indicate all areas that meet the definition of wetland under the Coastal Act and the LUP. Delineations for the purpose of determining jurisdiction under federal law should be prepared in coordination with the U.S. Army Corps of Engineers and other applicable federal resource agencies. The detailed study will provide site-specific information to the City Biologist and the Environmental Review Board for the determination of the presence of ESHA and wetland on the proposed project site.

In order to ensure that wetland habitat within the Civic Center is protected, LUP Policy 5.15b requires, as part of the preparation of a specific plan or other comprehensive plan, that a wetland delineation be prepared, consistent with the requirements of Policy 3.81a, for the area. Further, if no specific plan or comprehensive plan is prepared, then development on individual parcels within the Civic Center must include a wetland delineation.

Buffers must be provided around wetlands to serve as transitional habitat, provide distance and physical barriers to human intrusion, and to provide area for infiltration of runoff, minimizing erosion and sedimentation. Buffers are required to be of a sufficient size to ensure the biological integrity and preservation of the wetland. In no case shall wetland buffers be less than 100 feet in width.

The LUP policies set forth the limited instances in which the diking, filling or dredging of wetlands or open coastal waters could be allowed, where there is no feasible less environmentally damaging alternative and where all feasible mitigation measures have been provided. Such diking, filling or dredging is limited to incidental public service purposes, habitat restoration, or nature study, aquaculture, or similar resource dependent activities. The Coastal Act allows for additional uses in wetland or open coastal waters, including port, energy, coastal dependent industrial uses, maintaining

existing dredged channels, entrance channels for boating facilities, and structural pilings for public recreational piers. However, the LUP policies do not provide for these uses within wetlands or open coastal waters in the City. There are no proposals for such uses and no suitable areas to develop these types of uses have been identified. No LUP land use designation allows port, energy, or boating uses (Section I contains a discussion of energy and coastal dependent industrial uses). Any future proposal for any of these uses would require an LUP amendment.

Coordination with applicable state and federal resource agencies will be required on all projects involving wetlands. Applications for development within or adjacent to wetlands must include evidence of consultation and preliminary approval from such agencies as California Department of Fish and Game, United States Army Corps of Engineers, United States Fish and Wildlife Services and any other applicable resource agency. Areas containing tidelands or submerged lands will also be subject to the permit jurisdiction of the Coastal Commission.

Policy 5.85 states that where dike or fill development is approved in conformance with the Coastal Act and the LCP, mitigation for impacts to wetland habitat shall include, at a minimum, creation or substantial restoration of wetlands of a similar type. Adverse impacts will be mitigated at a ratio of 3:1 for seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for vernal pools and saltmarsh, unless the applicant provides evidence establishing, and the City finds, that creation or restoration of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event will the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands.

Lagoon breaching or water level modification shall not be permitted until and unless a management plan for the lagoon is developed and approved, except in the case of a health or safety emergency. The LUP provides for the development of a lagoon management plan for Malibu Lagoon, which is located within Malibu Lagoon State Beach. Any such management plan must address alternative projects for managing the water level in the lagoon or for breaching the lagoon. The alternatives analyzed should take into account the lagoon hydrology, water quality, sensitive species, potential adverse impacts to identified resources, and the identification of the water level necessary to protect the various existing species within the lagoon. The alternative chosen shall avoid and minimize impacts to sensitive resources, particularly rare, threatened, and endangered plant and animal species. The management plan must include mitigation measures designed to mitigate unavoidable environmental impacts. Finally, the plan shall provide for monitoring the lagoon to evaluate the continuing health of the wetland, to assess adverse impacts resulting from water level management or breaching and the success of mitigation measures, and to identify project corrections. The lagoon management plan must be approved by the City and certified by the Commission as an amendment to the LCP.

The Commission finds that the wetland policies (Policies 3.80-3.88) meet the requirements of and are in conformity with the land and marine resource policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Malibu LIP implements the wetland protection policies in Chapter 4. Section 4.4 details the information that must be provided in a biological study, including a wetland delineation, if there is any indication of the presence or potential for wetland species or indicators on a development site. The LIP provides standards for the preparation of wetland delineations. Section 4.5 of the LIP lists the limited types of development that may be permitted within wetlands. Section 4.6 provides the development standards for wetland buffers. The LIP (Section 4.8.2) requires that any new development that includes dike or fill development in wetlands for a use permitted under the Coastal Act and LCP provide mitigation for impacts to wetland habitat in the form of creation or restoration of wetlands of the same type as the affected wetland. This section identifies the requirements for wetland mitigation, including required mitigation ratios (number of acres of created or restored wetland for each acre of wetland habitat impacted) for different types of wetland habitat.

The Commission finds that the Malibu LIP conforms with and is adequate to carry out the wetland policies of the Land Use Plan.

16. <u>Water Quality</u>

The City of Malibu lies within several significant watersheds, including Malibu Creek Watershed and Topanga Creek Watershed. Numerous coastal creeks drain from these watersheds into the Pacific Ocean and Santa Monica Bay, where popular public recreation areas exist. The California Ocean Plan designates an Area of Special Biological Significance (ASBS) from Point Mugu to Latigo Point extending 1000 feet offshore or to a depth of 100 feet (whichever is more distant from shore). ASBSs are areas designated by the State Water Resources Control Board that require protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Maintaining and restoring water quality throughout the Malibu watersheds is necessary to protect these sensitive coastal resources.

The Commission shares responsibility for regulating nonpoint source water pollution in the Coastal Zone of California with State Water Resources Control Board (SWRCB) and the coastal Regional Water Quality Control Boards (RWQCBs). The Commission and the SWRCB have been co-leads in developing and implementing the January 2000 *Plan for California's Nonpoint Source Pollution Control Program* (Plan), which outlines a strategy to ensure that management measures and practices that reduce or prevent polluted runoff are implemented over a fifteen-year period. Some of these management

measures and practices are best implemented at the local planning level, since they can be most cost effective during the design stage of development.

The Commission and the Los Angeles Regional Water Quality Control Board (LARWQCB) are both working to protect water quality in the Malibu area, although each has different authorities and responsibilities in that effort. The Commission has primary responsibility for protecting many coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the state through writing discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated. Given the common goal of clean coastal water quality, there is a gray zone where the authorities of these agencies overlap. For example, based on the need to regulate land use in order to protect water quality, the LARWQCB has provided guidance and requirements in its model Standard Urban Storm Water Mitigation Plan (SUSMP) for land use development that may impact water quality. The Malibu LCP reflects these guidance and requirements with some modifications due to the site-specific conditions in Malibu, the additional requirements of the Coastal Act and comments of interested parties including the City of Malibu.

Several water bodies in and adjacent to the City of Malibu have been placed on the state's list of impaired water bodes (Clean Water Act 303(d) list) including Malibu Creek, Malibu Lagoon and Malibu Beach. The LARWQCB is developing a Total Maximum Daily Load (TMDL) for bacteria at Santa Monica Bay Beaches, including the Malibu beach area. The Malibu Creek nutrient and pathogens TMDLs are in the preliminary draft stage. Once these TMDLs are completed, the City may need to amend the LCP to further control development in order to reduce the loading of pollutants of concern to these waters.

a. Land Use Plan Policies

The Commission recognizes that new development in the Santa Monica Mountains and Malibu area has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states that:

> The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation,

maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

New development often results in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. The reduction in permeable surface therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, runoff from impervious surfaces results in increased erosion and sedimentation.

Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use;
- nutrients from wastewater discharge, animal waste and crop residue; and
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health.

The goal of the LUP water quality policies is to protect and enhance water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. The objectives of the policies are three-fold:

- Protect, enhance and restore wetlands, streams, and groundwater recharge areas.
- Promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation including but not limited to site planning, environmental review and mitigation, and permit conditions of approval.
- Promote Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services.

The LUP contains several policies to meet the goal of protecting and enhancing water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. Several policies provide specifically for the requirement of Best Management Practices (BMPs) related to siting and design of the project, the construction phase of the project, and the post-construction phase of the project. The wastewater policies in the LUP (3.117 – 3.135) include requirements for the siting, design, installation, maintenance and operation of On-site Wastewater Treatment Systems (OSTSs) to prevent or minimize impacts to water quality. Additional policies (3.135-3.143) require BMPs to prevent or minimize impacts to water quality from agricultural and confined animal facility development. The Malibu LUP policies also recognize the SWRCB and RWQCBs' authority to revise existing water quality standards and regulations, and advise the City to amend any LCP policies or standards that are in conflict with those SWRCB or LARWQCB standards or regulations.

Recent activities or decisions by the LARWQCB that affect the regulation of land use in the Malibu area include support of recommendations by the Santa Monica Bay Restoration Project for the management of OSTSs and approval of Waste Discharge Requirements (WDRs) for OSTSs. Ongoing activities that are expected to result in decisions by the LARWQCB include the development of Total Maximum Daily Loads (TMDLs) for Malibu Creek, Malibu Lagoon and adjacent beaches, the development of new statewide OSTS regulations pursuant to Assembly Bill 885, and the review of existing waivers of WDRs pursuant to Senate Bill 390. Where those activities or decisions by the LARWQCB are substantially complete, the LCP incorporates the aspects of those activities that are relevant to development in the Coastal Zone. Where those activities or decisions that affect coastal development are still in process, the LCP will need to be modified at a later date to reflect the decisions of the LARWQCB.

These policies contained in the Malibu LUP provide for the protection and enhancement of water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. Therefore, the Commission finds that the Malibu LUP meets the requirements of and is in conformity with Section 30231 of the Coastal Act.

b. Local Implementation Plan Provisions

The water quality implementation measures were separated into two chapters in the LIP – Water Quality Protection Ordinance (Chapter 17) and On-Site Wastewater Treatment System Standards Ordinance (Chapter 18).

Water Quality Protection Ordinance (Chapter 17)

The intent of the Water Quality Protection Ordinance is to ensure that all development is evaluated for potential adverse impacts to water quality and that applicants consider Site Design, Source Control and Treatment Control BMPs in order to prevent polluted runoff and water quality impacts resulting from the development. Several components of the Water Quality Protection Ordinance were taken directly from the City's existing Storm Water Management and Discharge Control Ordinance (Article V, Sanitation and Health, Chapter 4, Ordinance 157, amended by Ordinance 219, February 20, 2001). Other provisions were based on the Los Angeles Regional Water Quality Control Board (LARWQCB) Countywide Municipal NPDES Permit and model Standard Urban Storm Water Mitigation Plan (SUSMP). The LARWQCB issued the NPDES Permit to the County and 88 cities in 1996. The Permit requires development and implementation of a program addressing storm water pollution issues in development planning for private projects. In March 2000 the LARWQCB adopted a resolution that approved the SUSMP, which spelled out actions that local land use planning agencies must follow to reduce the impacts of nonpoint source pollution. The LARWQCB required all cities in its region to adopt local SUSMPs and implementing ordinances. The SUSMP contains a list of minimum Best Management Practices (BMP's) that must be used for designated projects.

Chapter 17 requires the development and submittal of water quality plans that incorporate BMPs designed to prevent or minimize impacts to water quality. There are four plans outlined in this ordinance: a Local Storm Water Pollution Prevention Plan that includes BMPs to protect water quality during the construction phase of a project; a Storm Water Management Plan, which is required for all development and includes appropriate Site Design and Source Control BMPs to minimize or prevent adverse effects of the project on water quality; a Water Quality Mitigation Plan, which is only required for certain types of development, and includes Treatment Control (or Structural) BMPs (in addition to Site Design and Source Control BMPs) to minimize or prevent the discharge of polluted runoff from the project; and a Water Quality Mitigation Plan for Agricultural and Confined Animal Facility Development that includes BMPs designed to prevent or minimize water quality impacts from these types of development.

The Water Quality Protection Ordinance also provides Development Standards, which specify BMP selection methods and sizing criteria, requirements for development on steep slopes, and standards related to specific types of development (i.e., commercial,

restaurants, etc.). Provisions related to hydromodification, agriculture and confined animal facilities are also provided in the ordinance.

These plans, developments standards, and other provisions of the Water Quality Protection Ordinance are necessary to implement the water quality policies of the LUP and ensure that all development is evaluated for potential adverse impacts to water quality and that applicants consider Site Design, Source Control and Treatment Control BMPs in order to prevent polluted runoff and water quality impacts resulting from the development. The Commission finds that the provisions of Chapter 17 and 18 of the Malibu LIP conform to and are adequate to carry out the water quality protection policies of the Malibu LUP.

On-Site Wastewater Treatment System Standards Ordinance (Chapter 18)

The intent of the On-Site Wastewater Treatment System Standards Ordinance (OSTS Standards Ordinance) is to protect coastal waters within and adjacent to the City of Malibu from impacts resulting from the design, siting, installation, operation, and maintenance of On-site Wastewater Treatment Systems (OSTSs), in accordance with the policies of the City's Local Coastal Plan. It includes permit application requirements; siting, design and performance standards; maintenance, operation and monitoring requirements; and other measures to ensure that permitted OSTSs prevent the introduction of pollutants into coastal waters and protect the overall quality of coastal waters and resources.

The standards in Chapter 18 are based on the City of Malibu Plumbing Code, determinations made by the Los Angeles Regional Water Quality Control Board (LARWQCB)[111], recommendations of the Santa Monica Bay Restoration Project (SMBRP) septic system management task force, policies being developed for statewide implementation in accordance with Assembly Bill 885 (Jackson)[112], and other sources. In order to provide guidance on OSTS development upon completion of this LCP, Chapter 18 requires that OSTSs be designed, sited, installed, operated and maintained in compliance with the policies and provisions in the LCP and Chapter 18. If the rules and regulations developed for OSTSs by the State Water Resources Control Board pursuant to Assembly Bill 885 conflict with the requirements of the LCP (i.e., if it is not

[111] The LA RWQCB issued General Waste Discharge Requirements for Small Commercial and Multifamily Residential Subsurface Sewage Disposal Systems (Order No. 01-031) in 2001 and General Waste Discharge Requirements for Private Subsurface Sewage Disposal Systems in Area Where Groundwater is Used or May be Used for Domestic Purposes (Order No. 91-94) in 1991.

[112] Assembly Bill (AB) 885, adopted September 27, 2000, requires the State Water Resources Control Board to adopt statewide regulations for the permitting and operation of onsite septic treatment systems on or before January 1, 2004. Currently, the State Board is drafting regulations, with input from a wide spectrum of stakeholders including local government, industry, and environmental organizations. When the regulations are adopted, all individual, commercial and community onsite septic treatment systems will be required to meet the standards. The City of Malibu may be authorized to manage local single-family individual septic systems consistent with AB 885.

possible for applicants to comply with both the LCP and State Board requirements), the City shall submit an LCP amendment seeking to modify the requirements of the LCP to conform with the regulations of the State Water Resources Control Board.

The OSTS Standards Ordinance also requires that development involving onsite wastewater discharges be consistent with the rules and regulations of the LARWQCB including Waste Discharge Requirements (WDRs), revised waivers and other regulations that apply. To date, the LARWQCB has waived the requirement for individual septic system owners to acquire a permit (WDRs) for operating a system that may negatively impact coastal waters. By waiving this requirement under the California water code, they have essentially delegated responsibility for oversight to the local jurisdiction. Senate Bill (SB) 390, signed into law October 6, 1999, requires each regional board to review or terminate, as appropriate, waivers of WDRs by January 1, 2003. Currently, LARWQCB staff are considering whether to renew or terminate the waiver for individual OSTSs. Any implementation of the revised waivers may require an amendment to the LCP.

One of the recommendations of the SMBRP septic system management task force (Task Force) is for the City of Malibu to develop and implement a wastewater management plan (WMP) that would specify how the City of Malibu will manage the use of OSTSs within its jurisdiction and require the owners of those systems to make any modifications necessary to prevent any adverse impacts to water quality. While the Commission strongly supports such a plan, especially in a region that relies on septic systems in such close proximity to coastal resources, an LCP is not the proper vehicle to require a local jurisdiction to create such a plan. Instead of requiring a WMP, the LCP reiterates the Task Force recommendations and, indicates those portions of a WMP that the City is planning to implement. In fact, the City is in the process of implementing several elements of a WMP and has indicated that they will fully develop and adopt the plan by December 31, 2004.

Chapter 18 requires a CDP for all new OSTSs, for any expansion and modification of an existing OSTS, or for a change in the type or intensity of use of an existing system. This ordinance also includes standards for developing Site Evaluation Reports where septic systems are proposed. Standards are provided indicating that a Standard Operating Permit (SOP) is required for standard OSTSs for single-family residences in areas of low environmental sensitivity and a Renewable Operating Permit (ROP) is required for the following:

- Systems for commercial and multi-family residential developments.
- Alternative/enhanced treatment systems.
- Performance-based systems required to achieve specific water quality criteria.

Chapter 18 includes siting, design and performance requirements for OSTSs, as well as operation, maintenance, and monitoring requirements. In addition, standards for the

use of alternative OSTS systems are provided for those areas where standard OSTSs do not provide adequate protection of water quality.

These application requirements, siting, design and performance standards, maintenance, operation and monitoring requirements and other provisions of the OSTS Standards Ordinance are necessary to implement the wastewater policies of the LUP and ensure that permitted OSTSs prevent the introduction of pollutants into coastal waters and protect the overall quality of coastal waters and resources.

The Commission finds that the provisions of Chapter 17 and 18 of the Malibu LIP conform with and are adequate to carry out the water quality policies (Policies 3.89-3.144) of the Land Use Plan.

17. Conclusion

One of the primary goals of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. There are rich, diverse native habitats within the City. As described in detail above, the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the City of Malibu, is rare and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the City of Malibu that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters. In addition to ESHA, there are valuable marine resources and wetland.

a. Land Use Plan

As described in detail above, the LUP Marine and Land Resource Policies (Policies 3.1-3.144) along with the LUP ESHA and Marine Resources Map provide for the protection of sensitive land and marine resources. The Commission finds that the Malibu Land Use Plan meets the requirements of and is in conformity with the provisions of Sections 30230, 30231, 30233, 30236, 30240, 30241, 30241.5, and 30242 of the Coastal Act.

b. Local Implementation Plan

As described in detail above, the Malibu Local Implementation Plan contains provisions including the ESHA Overlay Ordinance, Protected Tree Ordinance, Water Quality Protection Ordinance, On-Site Wastewater Treatment System Standards Ordinance,

that address protection of ESHA. Further, there are provisions in other chapters of the LIP, including zoning, development standards, grading restrictions, and land division standards that also serve to implement the resource protection policies of the Land Use Plan. The Commission finds that the Malibu Local Implementation Plan conforms with and is adequate to carry out the land and marine resource policies of the Malibu Land Use Plan.

E. Hazards & Shoreline/Bluff Structures

1. Coastal Act Provisions

Under the Coastal Act, development is required to be sited and designed to minimize risks, assure stability and structural integrity, and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter the natural landforms along bluffs and cliffs (Section 30253). Section 30235 of the Coastal Act allows the construction of shoreline protective devices where existing development is threatened from erosion and when designed to eliminate or mitigate impacts on shoreline sand supply. The Coastal Act also provides that development damaged or destroyed by natural disasters can be rebuilt in the same location, exempt from a coastal development permit, under certain conditions. Certain emergency actions are also exempt from permit requirements.

2. Coastal Act Policies

Section **30253** of the Coastal Act states that:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

(4) Minimize energy consumption and vehicle miles traveled.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30235 of the Coastal Act allows the construction of shoreline protective devices where existing development is threatened from erosion and when designed to eliminate or mitigate impacts on shoreline sand supply.

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The Coastal Act also provides that development damaged or destroyed by natural disasters can be rebuilt in the same location, exempt from a coastal development permit, under certain conditions in PRC Section 30610(g). Certain emergency actions are also exempt from permit requirements or are allowed subject to temporary restrictions or follow-up permit requirements.

3. Introduction

The City of Malibu lies at the junction of the Santa Monica Mountains and the Pacific Ocean. Development within the City, including roads and other infrastructure is highly vulnerable to a variety of natural hazards including threats from landslides, wild fires, earthquakes, storm waves, and flooding. Bluffs, beaches, and steep hillsides are subject to natural erosional forces, often accelerated by the effects of fires, torrential rains, and winter storms. Fire is a serious potential threat several months of every year due to the typically long summer dry season characteristic of the Mediterranean climate and periodic "El Nino" winter storm seasons which cause considerable destruction or severe damage to beachfront homes, widespread erosion along the shoreline and bluffs, and landslides that destroy or damage homes, septic systems and roads, including Pacific Coast Highway. Occasionally, a severe fire season is followed by a winter of high rainfall, leading to extraordinary erosion and landslides on hillside property which had been denuded of vegetation by the fire. The dependence on septic systems for waste disposal throughout the City, with minor exceptions, creates additional hazards due to the effect of poorly maintained or located systems on steep slopes and beaches, the aforementioned erosional forces and a high water table in many areas.

The Malibu shoreline consists of a series of rocky headlands and narrow crescent shaped beaches, vulnerable to erosion and wave uprush. Unlike many other coastal communities in the State, a large portion of the beachfront property in Malibu was subdivided and developed prior to 1976, before the effective date of the Coastal Act.

Most of this development occurred without the benefit of planning or mitigation to minimize impacts from wave hazards and to coastal resources. Largely as a result of the pre-existing pattern of development in Malibu, development along the shoreline continues to be permitted, placing more property at risk. To reduce the risk to private beachfront development, armoring of the shoreline has often occurred in the form of vertical seawall and rock revetments. Many of these structures have been placed on the beach as emergency actions during or immediately following winter storms, often without permits or adequate planning relative to placement, design, and impacts to adjacent properties and shoreline processes and public recreation. Loss of beach and, therefore, public access is too often the result of the construction of protective structures such as seawalls and revetments.

The cumulative loss of shoreline and public recreational resources from the encroachment of armoring on sandy beaches is an important coastal management issue. The City lies within the Santa Monica Littoral cell. The major sediment source has historically been the streams draining the Santa Monica Mountains. The sediment from much of the drainage area, however, has been trapped behind dams and catchment basins, never reaching the coast (USACOE). Another significant sediment source has been the incremental addition of eroded material from coastal bluffs. In addition to covering beach area that provides for recreation, however, shoreline armoring also can exacerbate erosion by fixing the back beach and eliminating the influx of sediment from coastal bluffs. The City has found that over 60 percent of the bluffs are blocked from the erosive forces of wave action by some form of development, including Pacific Coast Highway, vertical seawalls and revetments. Armoring also causes localized scour in front or at the end of the seawall or revetment. In addition, by allowing shoreline armoring in areas with existing development, the cycle of rebuilding storm damaged or destroyed development in the same hazardous areas is often perpetuated. From 1978 through 1996, the Coastal Commission and the County or City authorized protective devices along an estimated 2.8 miles of shoreline, covering an estimated 3.5 acres of sandy beach (ReCAP, 1999). The ReCAP report found that when added to the amount of shoreline armored prior to 1978, determined by Coastal Commission analysis of aerial photos, and the armoring which has taken place without permits, a total of approximately 50 percent of the City's shoreline has been impacted by shoreline protective structures. The report concluded that unless future armoring is avoided, future buildout of shoreline lots could result in up to 5 miles of additional shoreline armoring with hard structures. Additional armoring is even more likely given the location of Pacific Coast Highway (PCH). PCH continues to be threatened by erosion, wave uprush and flooding wherever it is located adjacent to the ocean, and given its importance to regional access and transportation, it is possible it will be armored throughout most of its length in the City unless alternative means of protection are developed.

To ensure consistency with policies 30235 and 30253 of the Coastal Act, the policies contained in the Land Use Plan are intended to facilitate development in a manner which minimizes impacts from hazards as well as impacts to coastal resources,

including public access and recreation. These policies are discussed below under the following issue areas:

- General Development;
- Shoreline Development;
- Shoreline Erosion and Protective Structures;
- Fire Hazards;
- Emergency Actions and Response.

4. General Development

As discussed above, the shoreline, canyons and mountains within the City of Malibu are subject to an unusually high amount of natural hazards including landslides, erosion, and flooding. In addition, wildfire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Development in Malibu and the surrounding mountains results in an increase in the amount of impervious surfaces on a site, which increases both the volume and velocity of storm water runoff. If not controlled and conveyed off of the site in a non-erosive manner, this runoff will cause increased erosion on and off of the site. Increased erosion may result in sedimentation of a nearby stream during and after construction. Uncontrolled erosion leads to sediment pollution of downgradient water bodies including the ocean as well. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. The construction of single-family residences in sensitive watershed areas and ESHAs has been established as a primary cause of erosion and resultant sediment pollution in coastal streams.

Due to the wide array and frequency of geologic hazards in Malibu it is almost always necessary to conduct specific geotechnical investigations of proposed development sites to determine the site's suitability for development and any restrictions or recommendations that are necessary for safe development. Restrictions or recommendations are commonly included in geotechnical site investigations relative to grading and site preparation, foundations, settlement, drainage, retaining walls and septic systems. Occasionally, geologic restricted use areas are recommended on a site due to the presence of an active fault or landslide, expansive soils or extremely steep slopes. In past actions permitting development in the Santa Monica Mountains, the Commission has frequently required applicants to incorporate all recommendations of the consulting geologist into final design plans and to assume the risk of development and to waive any future claims of liability against the Commission for damage that may occur as a result of development. In addition, the Commission has regularly required

applicants to institute drainage and erosion control measures during and after construction.

a. Land Use Plan Policies

The proposed Land Use Plan contains a number of policies which provide for the siting, design and construction of new development in a manner and/or location which minimizes risks from geologic, flood and fire hazard including a requirement that applications contain a geotechnical investigation of the site (4.2-4.5). Additional policies provide for the remediation or stabilization of landslides (4.6), hillside management requirements for development on steep slopes (4.7 & 4.8), mitigation measures for development within flood hazard areas (4.9 & 4.12), and adequate erosion and drainage control measures (4.10). The LUP requires all development to utilize secondary treatment and evapotranspiration waste disposal systems, where feasible (4.11). The LUP also prohibits land divisions unless all proposed parcels can be demonstrated to be safe from flooding, erosion, geologic and fire hazards and be developed consistent with all applicable policies of the LUP (4.12).

Based on the findings above, the Commission finds that the policies contained in the adopted Land Use Plan for the City of Malibu discussed above, meet the requirements of and are in conformity with Sections 30235 and 30253 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The Hazards policies in the LUP are implemented by the LCP Hazards Ordinance, Chapter 9 in the LIP. The purpose and intent of the Hazards Ordinance is to insure that all new development minimizes risks to life and property in areas of high geologic, flood, and fire hazard (9.1). To implement the LUP, the Ordinance includes development standards, permit and application requirements, and other measures to ensure that permitted development is sited and designed to assure stability and structural integrity and neither create nor contribute to erosion, geologic instability, or destruction of the site or surrounding area. The standards are applicable to areas subject to hazards including, but not limited to: (1) hillside areas that have the potential to slide, fail, or collapse; (2) areas located within the Malibu Coast-Santa Monica Fault Zone-areas identified on the official maps of Alquist-Priolo earthquake fault zones prepared by the California Geological Survey; (3) floodprone areas likely to flood during major storms as designated on FEMA Flood Insurance Rate Maps; (4) areas subject to liquefaction; (5) shoreline areas including bluffs subject to damage from wave action during storms; (6) areas subject to inundation during tsunamis; and, (7) areas subject to major wildfires which includes the majority of the City (9.2). All development requiring a CDP on any parcel of land located on or near any area subject to hazards is governed by the policies, standards, and any other provisions of Chapter 9.

The Hazards Ordinance requires written findings of fact, analysis, and conclusions addressing any potential hazards on or near a proposed development site and/or where it is determined that a proposed project causes the potential to create adverse impacts upon site stability or structural integrity in support of all approvals, conditional approvals, or denials (9.3). The Ordinance further provides that the findings shall address the specific project impacts relative to the applicable development standards contained in the Chapter and be supported by substantial evidence in the record. If found to be necessary to conform to the development standards or any other applicable policy or standard of the certified LCP, the Ordinance also requires that the proposed development be modified, by special condition, relative to height, size, design, or location on the site and, where applicable, be required to incorporate other methods to avoid or minimize adverse impacts. The LCP does not permit off-site mitigation to substitute for implementation of a feasible project alternative that would lessen or avoid impacts to site stability or structural integrity.

The Hazards Ordinance contains numerous development standards applicable to all new development on sites located in or near an area subject to geologic, flooding, wave action, or wildfire which includes a substantial portion of the City (9.4). Development standards include the requirement to submit a geologic/soils/ geotechnical report prepared by a licensed Certified Engineering Geologist or Geotechnical Engineer; that all recommendations of the consulting CEG, GE or City Geologist be incorporated into all final design and construction; and that final plans approved by the consultant or City Geologist be in substantial conformance with the plans approved by the City relative to construction, grading, sewage disposal and drainage. Any substantial change in the proposed development approved by the City shall require an amendment to the CDP or a new permit. The standards require that new development on landslides, steep slopes, unstable soils or any other identified geologic hazard area adhere to a factor of safety of 1.5 (static) and 1.1 (pseudostatic) as demonstrated by a quantitative slope stability analysis. Additional standards provide that measures to remediate or stabilize landslides or unstable slopes that endanger existing structures or threaten public health be designed to be the least environmentally damaging alternative, and incorporate maximum feasible mitigation measures; and, incorporate Best Management Practices (BMPs) to control drainage and erosion.

Standards are included which provide for allowable uses in floodway zones; and, where feasible, requires that development be sited outside of FEMA designated special flood hazard areas and potential tsunami inundation zones or, where it is not feasible, development shall conform to specific siting and construction requirements. Said requirements include anchoring structures, using flood resistant materials, elevating structures above flood levels, siting on-site waste disposal systems to avoid impairment or contamination from flooding, and siting and designing new development to not require the construction or installation of flood protective works, including bank protection or channelization.

All development located entirely or partially within a designated Earthquake Fault Zone as identified by the Alquist-Priolo Earthquake Fault Zone Act or a zone of required investigation for liquefaction or earthquake-induced landslides as identified by the Seismic Hazard Zone Mapping Act are required to demonstrate compliance with said Acts. The development standards prohibit land divisions unless it can be demonstrated that all proposed parcels will be safe from flooding, erosion, geologic and extreme fire hazards and that a safe, legal, all-weather access road can be constructed in conformance with all applicable policies of the LCP including applicable fire safety regulations.

Development standards relative to wildfire hazards, specifically, require that new development utilize design and construction techniques and materials that minimize risks to life and property from fire; and, incorporate fuel modification and brush clearance techniques in compliance with applicable LCP and L.A. County fire safety requirements and be designed and carried out to minimize clearance of natural vegetation and minimize impacts to environmentally sensitive habitat to the maximum extent feasible. All new development is required to utilize fire-retardant, native plant species, to provide for emergency vehicle access and adequate water supply for fire protection.

Finally, development standards provide for permitting emergency actions to repair, replace, or protect damaged or threatened development; and, where applicable, requirements for recorded deed restrictions whereby the applicant assumes the risk of development and waives any future claims of damage or liability against the City arising from any future damage, injury, or destruction from hazards subsequent to approval and construction.

Based on the findings above, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan relative to geologic, flood and fire hazards conform with and are adequate to carry out, the provisions of the adopted Land Use Plan.

5. <u>Shoreline Development</u>

The Malibu Coast has historically been subject to substantial damage from storm wave and flood impacts – most recently, and perhaps most dramatically, during the 1998 severe El Nino winter storm season. Past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in the Malibu area alone. Substantial evidence exists that all beachfront development in Malibu is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion and flooding.

In the winter of 1977-78, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage

to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost $5 million to private property alone. The El Nino storms recorded in 1982-83 combined high tides of over 7 feet, with storm waves of up to 15 feet. These storms caused over $12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Malibu coast. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu coast.

Past Commission review of shoreline residential projects in Malibu has also shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with public access to and the ability to use public tideland areas. In order to accurately determine the adverse effects to coastal processes and public access which may result from proposed development, it is necessary to analyze the development in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

One of the main functions of a shoreline protective device such as a seawall or revetment is the protection of the property or structures landward of the protective device. While they are often effective in protecting the landward development, however, they do nothing to protect the beach seaward of the revetment or seawall and can often have adverse effects on the nearby beach. These adverse effects ultimately cause additional adverse effects on the availability of public access to a beach. Scouring and beach erosion resulting from construction of a seawall or rock revetment will translate into a loss of beach sand at an accelerated rate. The resultant sand loss will be greater during high tide and winter season conditions than would otherwise occur if the beach were unaltered. In addition, as wave run-up strikes the face of the protective device and is deflected seaward, wave energy is concentrated at the face of the wall and ocean conditions along the beach will become more turbulent than would otherwise occur along an unarmored beach. The increase in turbulent ocean conditions along the beach will accelerate displacement of beach sand where the seawall is constructed over time.

The effects of shoreline protective devices on a beach has been documented in numerous past permit decisions by the Commission in Malibu and elsewhere along the California shoreline. The Commission has found that one of the most critical factors controlling the impact of a shoreline protective device on the beach is its position relative to the surf zone. All other things being equal, the further seaward the wall is, the more often and more vigorously waves interact with it. The best place for a seawall or revetment, if one is necessary, is at the back of the beach where it provides protection against the largest of storms. By contrast, a seawall constructed too near to

the mean high tide line may constantly create problems related to frontal and end scour, as well as upcoast sand impoundment. Even though the precise impact of a structure on the beach is a persistent subject of debate within the discipline of coastal engineering, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile whether it is a vertical seawall or a rock revetment. It has been well documented by coastal engineers and coastal geologists that shoreline protective devices will adversely impact the shoreline as a result of beach scour, end scour (the beach area at either end of the structure), the retention of potential beach material behind the wall, the fixing of the back beach, and the interruption of longshore processes.

An additional concern relative to shoreline erosion is the phenomenon of sea level rise. There is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate shoreline erosion. For fixed structures on the shoreline, such as residences or protective devices, an increase in sea level will increase the extent and frequency of wave action and future inundation of the structure.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, ocean bottom depth controls nearshore wave heights, with bigger waves occurring in deeper water. A small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with a physical increase in water elevation, a small rise in sea level can exposed previously protected back shore development to both inundation and wave attack, and those areas that are already exposed to wave attack will be exposed to more frequent wave attack with higher wave forces. An additional concern is that climatic changes associated with global warming and sea level rise could cause changes to storm patterns and wave activity for the entire coast. It is quite possible that some portions of the coast will experience more frequent storms. For these additional reasons to minimize future storm damage and to protect public access, it is important that new development along the shoreline, including shoreline protective devices, be located as far landward as feasible in order to minimize wave attack with higher wave forces as sea level rises over time.

In past permit actions in Malibu the Commission has found the protective devices can be permitted to protect existing structures or new structures which constitute infill development only when designed and engineered to eliminate or mitigate adverse impacts on the shoreline. In some cases the Commission has determined that in certain beach areas largely committed to residential development with shoreline protective devices, it may be appropriate to allow construction of new shoreline protective devices that tie into adjacent existing seawalls or revetments. Both the "District Interpretive Guidelines" for Malibu and the Santa Monica Mountains adopted by the Commission in 1981 and the Malibu/Santa Monica Mountains Land Use Plan

certified by the Commission in 1986 contained a "stringline" policy for the siting of infill development. The stringline policy requires that no portion of a proposed new structure, including decks, seawalls and revetments, shall extend further seaward than an imaginary line drawn between the nearest adjacent corner of similar adjacent structures on either side of the development site. The stringline policy is limited to infill development only in existing developed shoreline areas in order to limit seaward encroachment of new structures, including protective devices, on a beach.

a. Land Use Plan Policies

Shoreline development is subject to any of the policies discussed above under General Development relative to hazards, including storm waves and flooding which may be applicable. In addition, the proposed LUP requires that all applications for new development on a beach or blufftop include a wave uprush report and analysis (4.16) and a site map that shows all easements, deed restrictions or OTDs or other dedications for public access or open space (4.17). Policy 4.17 also requires that any approved development must be located outside of and consistent with the provisions of such easement offers. To address the ongoing problems associated with coastal erosion policy 4.18 recommends that City-wide or beach specific Shoreline Management Plans be developed which address a number of variables and parameters for alternatives to seawalls and revetments in order to protect the shoreline and maintain beaches and sand supply.

In addition to the policies discussed above relative to shoreline development, the LUP contains a number of policies which specifically address the problems and issues associated with shoreline erosion and the construction of protective devices on a beach. Many of the policies discussed below, and some of those previously discussed, are recommendations for future actions and not mandatory requirements. Regardless, they represent recognized and/or effective measures or policy approaches to address particular issues or problems.

Policy 4.19 recommends that a program be developed in conjunction with state and federal agencies to provide incentives to relocate development out of hazardous areas and to acquire oceanfront properties severely damaged by storms when relocation of development on the site is not feasible. Policy 4.20 recommends coordination with other responsible public agencies to fund and establish a program for periodic sand nourishment and 4.21 allows the placement of sediments removed from erosion control or flood control facilities along the shoreline for beach nourishment subject to suitability requirements and measures to minimize or eliminate impacts to beach, intertidal and offshore resources.

The LUP requires that siting and design of new shoreline development including protective devices take into account anticipated future changes in sea level (4.23), and that new development on a beach or bluff be sited outside areas subject to hazards

during the projected 100 year economic life of the development and/or be elevated above the base flood elevation and set back as far landward as possible (4.24). Policy 4.34 provides for developing "soft solutions" to protect existing development such as dune restoration and sand nourishment as an alternative to the placement of shoreline protective structures on Broad Beach and other appropriate beaches.

In addition, the LUP provides for State Lands Commission review and approval, where applicable (4.25), erosion and runoff control measures during construction (4.27), and blufftop setbacks and development prohibitions to ensure structural safety and prevent runoff and erosion (4.28-4.31). Policies 4.32 and 4.33 provide for infill development and utilization of a stringline to determine the maximum extent of seaward development, where applicable.

The Land Use Plan provides that new development, including land divisions, new beachfront and blufftop structures, significant additions, accessory structures, and septic systems be sited and designed to minimize risks from wave hazards and to avoid the need to construct a protective device for the life of the development (4.35 – 4.40). When it is determined that a shoreline protective device is necessary, the LUP requires that it be constructed as far landward as feasible, but, in no circumstance, further seaward than a stringline drawn between the nearest adjacent corners of protective devices on adjacent lots (4.41). Policy 4.42 states that a "vertical" seawall shall be the preferred means of protection for existing structures built at sand level. Rock revetments may be allowed when constructed underneath existing foundations or determined to be the preferred alternative in a "Shoreline Management Plan" for a particular beach and policy 4.43 provides for the repair and maintenance of existing shoreline protective structures.

Due to the extreme hazards associated with development on a beach or coastal bluff, the LUP requires property owners, as a condition of coastal development permits, to acknowledge and assume such risks and to waive any future claims against the permitting agency (4.44); to acknowledge that future repairs or additions to a shoreline protective device shall not extend the footprint seaward (4.45); and, in certain circumstances, where geologic and engineering evaluations conclude that development can be sited and designed to not require a shoreline protective device, to waive any future rights to construct such devices (4.46).

Based on the findings above, the Commission finds that the policies contained in the City of Malibu adopted Land Use Plan relative to shoreline development and hazards meet the requirements of and are in conformity with Sections 30235 and 30253 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

Many of the LUP policies concerning shoreline development are carried out by Chapter 9 in the LIP discussed in the previous section. In addition, policies contained in the

Land Use Plan applicable to new development on or along the shoreline and coastal bluffs are implemented by the Shoreline and Bluff Development Ordinance, Chapter 10 in the LIP. To implement the LUP the Ordinance provides development standards, permit and application requirements, and other measures to ensure that new development permitted on or along the shoreline and bluffs is (1) sited and designed to minimize risks, assure stability and structural integrity and not create or contribute significantly to erosion or adverse impacts on public access or shoreline sand supply; (2) that new development is sited and designed to not require the construction of protective devices and, (3) that shoreline protective devices required to protect existing structures or public beaches in danger from erosion are sited and designed to eliminate or mitigate adverse impacts on shoreline sand supply (10.1). The policies, standards, and provisions of Chapter 10 of the LIP are applicable to all development requiring a CDP including a shoreline protective device on any parcel of land located on or along the shoreline, a coastal bluff or bluff-top fronting the shoreline (10.2). Where applicable, CDPs shall be conditioned to require compliance with any policy, standard, or provision contained in the Ordinance.

Similar to the Hazards Ordinance (Chapter 9), the Shoreline and Bluff Development Ordinance requires that written findings of fact, analysis and conclusions be included to support all approvals, conditional approvals, or denials of development on sites located on or along the shoreline or a coastal bluff which address the specific project impacts on public impacts or shoreline sand supply or other hazards relative to the applicable development standards included in Section 10.4 of the Ordinance (10.3). The finding shall include the basis for conclusions and be supported by substantial evidence in the record. The Ordinance provides that the proposed development shall be modified, by special condition, or required to incorporate other methods to avoid or minimize adverse impacts where necessary and that the findings explain how the special condition(s) alleviate or mitigate the identified adverse effects.

Development standards are included in Chapter 10 to address the siting and design of new shoreline and bluff development including shoreline protective devices(10.4). The standards require that new development take into account anticipated future changes in sea level. In particular, increases in the historic rate of sea level rise and its potential impact on beach and bluff erosion, and shoreline retreat shall be evaluated and development is required to be set back and elevated to eliminate or minimize hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure. In addition, the standards require that new development on a beach or bluff be sited outside of areas subject to hazards such as erosion, inundation, and wave run-up during the projected economic life of the development. Where complete avoidance is not possible, the standards provide that new beach or bluff development be elevated above the FEMA Base Flood Elevation and sited as far landward as feasible. A minimum setback of 10 feet landward of the most landward surveyed mean high tide line is established and whichever setback method is most restrictive shall apply.

The development standards require that new development on a bluff top be set back from the bluff edge a sufficient distance to ensure that it will not be endangered or threatened by erosion or slope instability for the projected life of the development. The standards establish a minimum setback of 100 feet, however, the setback may be reduced to 50 feet if specified conditions can be met as determined by City geotechnical staff. The setback requirement applies to the principle structure and accessory structures such as guesthouses, pools, tennis courts, cabanas, and septic systems. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend to a minimum distance of 15 feet from the bluff edge but must be removed or relocated landward if threatened by erosion.

The development standards require that slope stability analyses and erosion rate estimates be performed by a licensed Certified Engineering Geologist, Geotechnical Engineer or Civil Engineer. The analysis shall address such criteria as factor of safety, bluff retreat rate, earthquake effects, shear strength, groundwater conditions, planes of weakness, etc. The standards also establish criteria for construction of swimming pools and prohibit the construction of any permanent structures on a bluff face, except for engineered stairways or accessways to provide public beach access or drainage devices constructed in compliance with applicable BMPs.

The development standards provide that in existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definitions) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest adjacent residential structures on either side of the subject lot. The stringline policy applies to enclosed area and decks separately. Infill development is also required to be set back a minimum of 10 feet landward from the most landward surveyed mean high tide line and the most restrictive setback method shall apply.

All new beachfront and bluff top development, including infill development, is required to be sized, sited, and designed to minimize risks from wave run-up, flooding, and erosion without requiring a shoreline protection structure at any time during the life of the development. New development on a beach or bluff is also required to utilize a secondary treatment waste disposal system and site such systems as far landward as possible to avoid the need for protective devices to the maximum extent feasible.

The standards provide that shoreline and bluff protection structures shall not be permitted to protect new development, except where necessary to protect a new septic system and there is no feasible alternative location on the site. Protective structures may be permitted to protect existing structures legally constructed prior to the effective date of the Coastal Act or that were legally permitted prior to certification of the Malibu LCP and where it is demonstrated that existing structures are at risk from erosion and that the protective structure is the least environmentally damaging alternative and designed to eliminate or mitigate adverse impacts to shoreline sand supply and public

access. For purposes of this policy "existing structures" include only enclosed buildings use for living space or required parking such as residential dwellings, guesthouses, and garages and do not include such accessory structures as decks, patios, pools, cabanas, tennis courts, stairs and landscaping. No shoreline protective device shall be permitted to protect an accessory or ancillary structure and such structures shall be removed or relocated landward (and designed accordingly) if determined to be threatened from erosion, flooding or wave run-up. The standards also provide that land divisions, which create new beach or blufftop lots, shall not be permitted unless it can be shown that the proposed new lots can be developed without requiring a shoreline protective device at any time during the 100-year economic life of the structure.

The development standards require that any proposed shoreline protective structures be sited as far landward as feasible regardless of the location of protective structures on adjacent lots but in no case shall it be located further seaward than a stringline drawn between the nearest adjacent corners of protective structures on adjacent lots. The standards also provide that a "vertical" seawall or bulkhead shall be the preferred means of protection but that rock revetments may be permitted where they can be constructed underneath raised foundations or where they are determined to be the preferred alternative.

Finally, the development standards provide that on any beach found to be appropriate, alternative "soft solutions" such as dune restoration, sand nourishment, and design criteria such as maximum setbacks and raised foundations should be required as the preferred alternative to protective structures where feasible. The standards permit the placement of sediments removed from erosion control or flood control facilities at appropriate points along the shoreline for beach nourishment provided that they meet U.S. Army Corps criteria for grain size, color and contamination.

The Shoreline and Bluff Development Ordinance also contains application submittal requirements to implement the requirements of the Land Use Plan (10.5). Applications for new development on a beach or blufftop property is required to include an analytical report addressing erosion, wave run-up, inundation and flood hazards prepared by a licensed Certified Engineering Geologist, Geotechnical Engineer or Registered Civil Engineer. Applications for new beach or blufftop are also required to include a site map that shows all easements, deed restrictions, Offers to Dedicate, or any other dedications for public access or open space. Any approved development shall be located outside of and be consistent with the provisions of such easements or offers. Applications are also required to include written evidence of a review and determination from the State Lands Commission relative to the project's location to or impact upon the boundary between public tidelands and private property. Applications shall not be approved if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing. Unless the State Lands Commission determines that there is no evidence that the proposed development will encroach on wetlands or other public

trust lands, the City must reject the application on the ground that the site is within the original permit jurisdiction of the Coastal Commission.

Further, the LIP ordinance includes requirements for recorded documents and deed restrictions to be included as conditions of approval for development on a bluff, beach or shoreline that is found to be subject to wave action, erosion, flooding, landslides, or other hazards. These required documents include an assumption of risk or waiver of liability, a waiver of any future right to repair, maintenance, enhancement, or reinforcement of a shoreline protective device that extends the seaward footprint of the subject structure. In addition, new development approved on a beachfront or bluff-top lot, sited and designed to not require a shoreline protective structure at any time during the life of the project based on geologic or engineering evaluations, shall be conditioned to record a deed restriction that waives any future right to construct a shoreline protective structure.

Based on the findings above, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan relative to hazards and shoreline development, including protective structures, conform with and are adequate to carry out, the provisions of the adopted Land Use Plan.

6. <u>Fire Hazards</u>

Section 30253 of the Coastal Act also requires that new development minimize the risk to life and property in areas of high fire hazard. The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

As previously noted, fire is an inherent threat to the indigenous chaparral community of the Santa Monica Mountains. The long, dry season in combination with frequent "Santa Ana" winds, buildup of vegetation to provide fuel for fire, steep canyon terrain and hillsides, inappropriate development siting and design, and often inadequate access combine to provide a climate which provides extreme fire hazards for several months out of each year.

Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of native coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, <u>Terrestrial Vegetation of California</u>, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean

climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

As a result of the hazardous conditions that exist for wildfires in the Santa Monica Mountains area, the Los Angeles County Fire Department requires the submittal of fuel modification plans for all new construction to reduce the threat of fires in high hazard areas. Typical fuel modification plans for development within the Santa Monica Mountains require setback, irrigation, and thinning zones that extend 200 feet from combustible structures. Off-site fuel modification is generally not recommended due to problems inherent with enforcement of regulations on adjacent property and the potential for confusion regarding responsibility for fuel modifications outside legal ownership. In numerous past actions to permit development on existing legal lots and occasional subdivisions in the Santa Monica Mountains, the Commission has required applicants to comply with County Fire Department fuel modification landscaping requirements while minimizing the removal of natural vegetation and to assume the risk of developing in high fire hazard areas.

a. Land Use Plan Policies

The Land Use Plan requires that new development minimize risks to life and property from fire hazard by considering site specific characteristics in siting and designing structures to avoid hazardous locations, by incorporating County fuel modification and brush clearance techniques, and by using fire-retardant, native plant species in landscaping (4.47-4.48). To minimize or prevent brush clearance in parklands or sensitive habitat areas, the LUP requires that development be sited to avoid such areas to the maximum feasible extent and/or to use brush clearance measures and techniques which minimize removal of natural vegetation and impacts to sensitive environmental resources while providing adequate fire safety (4.48-4.51). In addition, the LUP requires that new development provide for emergency vehicle access, adequate water supply and line flow and to comply with County fire management programs (4.52-4.54).

Based on the findings and policies discussed above, the Commission finds that the policies contained in the City of Malibu adopted Land Use Plan relative to fire hazards meet the requirements of and are in conformity with Section 30253 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

Development standards contained in the Hazards Ordinance, Chapter 9 in the LIP, relative to wildfire hazards, specifically, require that new development utilize design and construction techniques and materials that minimize risks to life and property from fire; and, incorporate fuel modification and brush clearance techniques in compliance with applicable LCP and L.A. County fire safety requirements and be designed and carried

out to minimize clearance of natural vegetation and minimize impacts to environmentally sensitive habitat to the maximum extent feasible. All new development is required to utilize fire-retardant, native plant species, to provide for emergency vehicle access and adequate water supply for fire protection.

Based on the above, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan relative to fire hazards conform with and are adequate to carry out the policies of the adopted Land Use Plan.

7. Emergency Actions and Response

The Land Use Plan recognizes that emergency actions which require quick response are often necessary in certain situations such as fires, storm caused flooding, landsliding and wave damage. In many of these situations the immediacy of the response makes it impractical, if not impossible, to obtain a coastal permit prior to taking action even though the response may meet the Coastal Act definition of development. The Coastal Act recognizes that such conditions occur and such responses are often necessary in the Coastal Zone and provides for certain exemption from permit requirements or the issuance of an emergency permit to address these situations.

a. Land Use Plan Policies

The Land Use Plan contains policies which address emergency actions. Policy 4.56 provides for emergency actions to repair, replace, or protect damaged or threatened development including public works facilities, that such action be the minimum needed to address the emergency, and, to the maximum feasible extent, be the least environmentally damaging alternative. A regular permit application is required as a follow-up to all emergency actions . The LUP also requires that emergency permits be conditioned to obtain a regular follow-up permit or that the development to relieve the emergency be removed within a reasonable period of time. In order to facilitate the identification of unpermitted shoreline protection structures, in particular, which are constructed with greater frequency during severe winter storm seasons, the LUP provides for the development of a permit tracking and monitoring system, including inspection (4.58).

Based on the discussion provided the Commission finds that the policies contained in the draft Land Use Plan relative to hazards and shoreline/bluff development emergency actions meet the requirements of and conform to Sections 30235 and 30253 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

Development standards in Chapter 9 and the CDP Ordinance, Chapter 13 in the LIP provide for permitting emergency actions to repair, replace, or protect damaged or

threatened development; and, where applicable, requirements for recorded deed restrictions whereby the applicant assumes the risk of development and waives any future claims of damage or liability against the City arising from any future damage, injury, or destruction from hazards subsequent to approval and construction.

Based on the above provisions, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan relative to emergency actions conform with and are adequate to carry out the applicable provisions of the adopted Land Use Plan.

F. New Development

1. Coastal Act Provisions

The Coastal Act requires the protection of coastal resources, including public access, land and marine habitat, and scenic and visual quality. Focusing new development to areas in close proximity to existing development with available public services serves to minimize the impacts of remote "leap-frog" development that would require the construction of roads, utilities, and other services. Section 30250 of the Coastal Act requires that new residential, commercial, or industrial development is located near existing developed areas, and where it will not have significant adverse impacts, either individually or cumulatively on coastal resources. Additionally, Section 30250 establishes that land divisions outside existing developed areas can only be permitted where fifty percent of existing parcels have already been developed and that the new parcels are no smaller than the average size of existing parcels. Section 30244 requires the protection of archaeological and paleontological resources and the implementation of mitigation measures to avoid or minimize any impacts.

2. Coastal Act Policies

Section **30250** 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 **30244** of the Coastal Act states that:

> Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

3. Density and Intensity of Use

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

a. Land Use Plan Designations

The LUP provides parameters for new development within the City. The LUP Land Use Map shows the land use designation for each property. The land use designation denotes the type, density and intensity of new development that may be permitted for each property, consistent with all applicable LCP policies. An overlay is applied to the Civic Center area (as shown on LUP Land Use Map No. 5) that provides for a specific plan or other comprehensive plan, pursuant to Policies 5.15a through 5.16a.

There are four categories of commercial use:

> Commercial Neighborhood (CN): The CN designation is intended to provide for low intensity commercial activity to the residents in the surrounding neighborhoods.
>
> Community Commercial (CC): The CC designation is intended to provide for the resident serving needs of the community similar to the CN designation, but on parcels of land more suitable for concentrated commercial activity.
>
> Commercial Visitor Serving (CV): The CV designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting. Uses allowed in the other commercial categories may be permitted on the upper story of visitor serving commercial structures so long as the ground floor of such structures are limited to only visitor serving uses.
>
> Commercial General (CG): The CG designation provides for more intense commercial uses, visitor-serving uses and light industrial uses located on larger sites.

The Commercial Recreation (CR) designation allows for facilities open to the public that are utilized for low intensity recreational use and athletic activities characterized by large open space areas with limited building coverage such as summer camps, hiking, equestrian, and tennis, and includes provision of food and beverage service for participants.

The Institutional (I) category accommodates existing public and quasi-public facilities in the City. This designation includes permitted and conditional uses such as educational institutions, government facilities, libraries, community centers, and religious institutions.

There are five categories of residential use:

Rural Residential (RR): The RR designation allows large lot single-family residential development, with a range of maximum densities from one dwelling unit per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping permitted as accessory uses to approved residential development. The maximum residential density is provided according to the following subcategories:

RR1	One dwelling unit per acre
RR2	One dwelling unit per 2 acres
RR5	One dwelling unit per 5 acres
RR10	One dwelling units per 10 acres
RR20	One dwelling unit per 20 acres
RR40	One dwelling unit per 40 acres

Single-Family Residential (SF): This land use designation allows single-family residential development at a higher density than the rural residential category. Single-Family Low (SFL) allows a maximum density of 2 dwelling units per acre, with a minimum lot size of 0.5 acre. Single-Family Medium (SFM) allows a maximum density of 4 dwelling units per acre, with a minimum lot size of 0.25 acre.

Multi-Family Residential (MF): The MF designation provides for multi-family residential developments, such as duplexes, condominiums, stock cooperatives, and apartments. The Multi-family Residential (MF) designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet.

Mobile Home Residential (MHR): The MHR designation is intended to accommodate existing mobile home parks and associated facilities.

The Private Recreational Facilities (PRF) category provides for existing private recreational facilities whose members have received exclusive use through deeded rights, property ownership or membership. The Public Open Space (OS) designation provides for publicly owned land which is dedicated to recreation or preservation of the City's natural resources, including public beaches, park lands and preserves. Allowable uses include passive recreation, research and education, nature observation, and recreational and support facilities. The Recreational Vehicle Park (RVP) designation provides for recreational vehicle parks and requires 10-acre minimum lot size. This

designation only applies to the existing RV Park located north of Pacific Coast Highway at Corral Canyon.

These land use categories are based on those in the City of Malibu General Plan, with modifications. The designation of some properties has been changed to reflect their acquisition by local, state, or federal park agencies for public open space purposes. The land use designation for these properties has been changed from the various categories they were designated by the City General Plan to "Public Open Space" to reflect their new ownership status and park purpose. With regard to the residential land use categories, the LUP adds the RR40 designation, which is Rural Residential with a density maximum of one dwelling unit per 40 acres. This designation is applied to several parcels that contain steep terrain and contain large areas of habitat designated as ESHA. In several areas, the LUP applies a lower density residential designation than that designated by the City General Plan. These modifications were made to reflect the presence of steep slopes, limited road access, sensitive resources, and other development constraints. Finally, an area in the Civic Center designated "Community Commercial" (CC) and "General Commercial" (CG) by the City General Plan are designated "Visitor Serving Commercial" (CV-1) in the LUP. As discussed above, the Coastal Act requires that priority be given to visitor serving uses. The LUP clusters the areas designated for new visitor serving uses within the Civic Center area.

The Commission finds that Malibu LUP provides appropriate land use designations, including the LUP Land Use Map, that locate development in areas able to accommodate it, and where it will not have individual or cumulative impacts on coastal resources, including public access, recreation, land and marine resources, and scenic and visual quality. The land use designations, applied in combination with the other applicable policies of the Land Use Plan will meet the requirements and conform to Section 30250 and all other applicable Chapter 3 policies of the Coastal Act.

b. Local Implementation Plan Provisions

The Malibu LIP Zoning Map shows the zoning designations for each property within the City. The zoning designations shown on the Zoning Map are consistent with the Land Use designations of the Land Use Plan. Section 3.3 of the LIP provides the purpose, lot development criteria, and site development standards for each zoning district. These changes were made to ensure conformity with the policies of the Coastal Act and the Land Use Plan.

The permitted and conditionally permitted uses for each zoning district are shown in Table B, which is attached to the Malibu LIP and reference in Section 3.3 of the LIP. Staff would note that the City staff prepared this table in order to show the permitted uses in a chart format. For the most part, uses permitted for the various zoning districts in the LIP are based on the permitted and conditionally permitted uses of the City's Interim Zoning Code (although the Interim Zoning Code does not show these uses in a

table). Where a permitted or prohibited use did not implicate Coastal Act or LUP policies or provisions, the LIP did not modify it. However, some modifications have been made to Table B with regard to permitted uses in commercial categories to reflect the Coastal Act priority for visitor serving commercial use. "Public Beach Accessway" as added as a permitted use in several zoning districts to ensure that public access may be provided to and along the coast, as required by the Coastal Act and the LCP. Finally, several notes were added to Table B to denote uses that are prohibited within ESHA, to indicate that non-visitor serving commercial uses may be permitted in the "Commercial Visitor Serving" zone only if at least 50 percent of the total floor area of a commercial project is devoted to visitor serving commercial use, and to note that certain uses are only permitted in the "Commercial Visitor Serving" zoning district if they are made available to the general public. These changes were made to ensure conformity with the policies of the Coastal Act and the Land Use Plan.

Chapter 3 of the LIP also provides general development standards, development standards for residential uses, commercial uses, special uses, landscaping and fuel modification, agricultural use and confined animal facilities, parking regulations, signs and wireless telecommunications facilities. Additionally, there are several overlay districts that provide alternative development standards for several existing developed areas of the City. The development standards contained in the City's IZO were used as the basis for Chapter 3 of the LIP. Where a development standard did not implicate any Coastal Act or LUP policies, the standard was not changed in the LIP. However, some development standards were modified or developed to ensure conformance with the policies of the Land Use Plan. Such modifications include, but are not limited to, stringline requirements, maximum development area within ESHA, second residential structures, maximum commercial floor area ratios for development within the Civic Center, landscaping requirements, agricultural uses, and confined animal facilities.

The Commission finds that the Malibu LIP, including the LIP Zoning Map, permitted uses and development standards, conforms to and is adequate to carry out the land use designations of the Malibu Land Use Plan.

4. General Land Use Provisions

The LUP provides general policies that are applicable to all new development projects. Approval of any coastal development permit must include written findings that the approved project is consistent with all Land Use Plan policies and Implementation Plan provisions of the City's certified LCP. The Environmental Review Board will review and make written recommendations regarding projects within or adjacent to ESHA to ensure that such projects are consistent with the policies of the LUP. The coastal development permit for development reviewed by the ERB shall include written findings relative to the project's conformance to the ERB's recommendations.

As part of all applications for new development on a vacant site, evidence must be provided that the parcel was legally created. Such evidence would include the date and method by which the parcel was created. If the parcel was not legally created or was created after the effective date of the Coastal Act without the approval of a coastal development permit, then a CDP authorizing the land division that created the parcel must be approved prior to the approval of any further development of the site. Policy 5.2 states that if there is a conflict between a provision of the LCP and a provision of the City's General Plan or other City-adopted plan, resolution, or ordinance, and it is not possible for development to comply with both the LCP and other such plan, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

The Coastal Development Permit Ordinance (Chapter 13) of the Malibu LIP and other chapters address the findings required in the approval coastal development permits for various developments, including those that are reviewed by the ERB. Chapter 13 also details the information and materials that must be submitted as part of permit applications. Finally, Policy 5.2 of the LUP is implemented by Chapter 1 (Title, Purpose, and General Provisions).

The Commission finds that the general land use policies of the Malibu LUP (Policies 5.1-5.7) meet the requirements of and is in conformity with Section 30250 of the Coastal Act. The Commission further finds that the Malibu LIP conforms with and is adequate to carry out the general land use policies of the Land Use Plan.

5. Commercial Development / Civic Center Development

Existing commercial development flanks the Pacific Coast Highway from Topanga to Point Dume. The Malibu Civic Center, located at the base of Malibu Canyon, and Point Dume Plaza contain the major commercial areas. The Civic Center is the commercial and social focal point in the City of Malibu. It is the principle area in the City where the general public and residents visit, and includes retail shops, restaurants, coffee shops and other commercial uses. While there are many constraints to development of the Civic Center, there is also great opportunity to achieve multiple beneficial goals. It consists of approximately 173 acres as shown on Land Use Map 5 which depicts the Civic Center Overlay Area; of this total, approximately 63 acres are developed and 110 acres undeveloped. The largest property owner is the Malibu Bay Company with approximately 47 acres in the Civic Center.

a. Land Use Plan Policies

The commercial development policies (Policies 5.9-5.15) provide for pedestrian and bicycle circulation to be provided within new commercial projects in order to minimize vehicular traffic. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent

development. Adequate off-street parking must be provided for new commercial and other uses to ensure that on-street parking remains available to the public for beach access. Parking facilities approved for office or other commercial developments shall be made available for public beach parking on weekends and other times when the parking is not needed for the approved uses.

In policies 5.15a through 5.16a of the Malibu LCP Land Use Plan, the Commission is strongly encouraging the utilization of a specific plan or other comprehensive plan approach to guide development in the Malibu Civic Center. Any such specific plan or comprehensive plan would have to be developed with input from the general public and approved by the City and the California Coastal Commission as an amendment to the Local Coastal Program. Incentives have been included in the LCP to encourage a specific plan or comprehensive plan approach in the form of an increased Floor Area Ratio (FAR) for development. The LCP also limits development for two years, to provide the time needed for preparation of a specific plan or comprehensive plan for the Civic Center.

The long term goal of a specific plan or other comprehensive plan for the Malibu Civic Center is to provide a planning tool to better evaluate issues and opportunities in the Civic Center related to land use, environmental conditions and constraints and infrastructure limitations. Such an approach allows for greater flexibility in considering where to concentrate and cluster development, where to provide park and open space and where natural resources can be enhanced. It potentially also allows for incentives to promote greater open space through an increased Floor Area Ratio (FAR), and a different mix in the land uses. While the provision of recreational and visitor serving commercial uses in the Civic Center is a primary concern under the Coastal Act, the Coastal Commission recognizes that there are better ways to achieve this goal through a specific/comprehensive plan than on a parcel by parcel piecemeal basis. In addition, there has been considerable debate over the extent of any wetland and environmentally sensitive habitat that may be present in the Civic Center area, and a specific plan or comprehensive plan approach provides a better means of concentrating development away from any such areas than on an individual site project proposal basis.

While the base Floor Area Ratio (FAR) allowed in the Civic Center under the City's General Plan and the LCP is a relatively low 0.15 FAR, it would still allow potentially for upwards of a million square feet of total development in the Civic Center. In considering this development, it must be done so taking into account the constraints in the Civic Center area, including environmental constraints. The Commission finds that through a specific plan or other overall plan, a comprehensive set of standards for land use, development design, public improvements, open space and habitat protection/enhancement can be enacted that will provide greater public amenities and visitor services and will minimize adverse impacts on traffic, public access to the beach and visual qualities of the area. In addition, issues related to drainage and runoff, sewage disposal, flood hazard, joint use of parking and a pedestrian scale of development could be better addressed. All of these issues are important in the Civic

Center, and the Commission finds that every effort should be made to encourage a single comprehensive plan that provides for a unified approach to dealing with these important issues. The Commission finds that requiring a two year period during which no major new development can take place in the Civic Center and that allows for the City and affected property owners to develop a specific plan or comprehensive plan is appropriate since it would clearly allow greater flexibility for an overall preferable solution, consistent with Sections 30213, 30222, 30236, 30240, 30250, 30251, 30252 and 30253 of Chapter 3 of the Coastal Act as compared to a parcel by parcel piecemeal approach to development within this critical commercial area. The Commission notes that there is an approved coastal development permit for a hotel that has not yet been built on several parcels (owned by the Adamson Co.) in the western area of the Civic Center; the specific plan or comprehensive plan could include this development.

It should be recognized that the Malibu Bay Company and the City have been in the process of preparing a development agreement affecting its properties both within and outside the Civic Center. While there are advantages to having a development agreement, it does not include all the Civic Center properties and does not provide the same level of flexibility and opportunity from a planning perspective as a specific plan or comprehensive plan for the Civic Center would achieve. Certainly the development agreement could be prepared in conjunction with a specific plan or comprehensive plan, and may be preferable to a site by site piecemeal approach; however, as mentioned, it does not allow for the same flexibility and opportunities that a specific plan or comprehensive plan, that includes all the property owners, could achieve. Nevertheless, recognizing that the development agreement could provide added public benefits in relation to Coastal Act policies, the Commission does find that if a specific plan or other comprehensive plan is not prepared within the two year period provided in policy 5.15a of the Land Use Plan, then pursuant to a development agreement the Floor Area Ratio may be increased, but not to exceed a 0.20 FAR. Any development agreement would need to be submitted to the Commission for review as a LCP amendment in order to evaluate the land uses and public benefits in relation to the increased FAR.

In conclusion, while the Malibu LCP provides the underlying land use designation for all properties in the Civic Center consistent with the policies of the Coastal Act, it is recognized that there would be substantial enhancement to coastal resources if an overall specific plan or comprehensive plan was developed that allowed greater flexibility in dealing with the myriad of issues that affect development in the Civic Center. The City would gain by having a clear vision as to the future of the Civic Center, the affected property owners would gain by potentially having more desirable development in relation to the overall development of the Civic Center and an increased Floor Area Ratio, and the general public would gain by the overall standards that would apply to future Civic Center development including greater open space and possibly habitat enhancement. The Commission finds that a specific plan or comprehensive plan for this critical area would meet the intent of Section 30001.5 of the California Coastal Act of 1976 which states:

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
(d) Assure priority for coastal-dependent and coastal related development over other development on the coast.
(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission finds that the commercial development policies (Policies 5.9-5.15) and the provisions in the LCP related to preparation of a specific plan or other comprehensive plan for the Civic Center area is in conformance with Section 30001.5 of the Coastal Act, and as previously noted, meet the requirements of and are in conformance with the applicable policies of Chapter 3 of the Coastal Act.

b. Local Implementation Plan Provisions

The Malibu LIP implements the commercial development policies of the Land Use Plan. Chapter 3 of the LIP details the commercial zone designations as well as the general commercial development standards. Section 3.8(A)(4) of the Local Implementation Plan sets forth the requirements regarding a specific plan or other comprehensive plan for the Civic Center area.

The Commission finds that the Local Implementation Plan conforms with and is adequate to carry out the Land Use Plan Commercial Development Policies (Policies 5.9-5.15) and the Civic Center Policies (Policies 5.15a-5.16a).

6. Residential Development

Pursuant to Coastal Act Sections 30250 and 30252 cited above, new development raises issues relative to cumulative impacts on coastal resources. As described above, it is necessary to establish the maximum density and intensity of development to ensure

that impacts on coastal resources are minimized. The majority of land in the City is designated for residential use.

In addition to designation of residential density standards, it is necessary to also consider other ancillary development that may be developed in residential areas. Construction of accessory structures, particularly a second residential unit, on a site where a primary residence exists intensifies the use of the subject parcel. The intensified use creates additional demands on public services, such as water, sewage, electricity, and roads. Thus, additional structures pose potential cumulative impacts in addition to the impacts otherwise caused by the primary residential development.

With regard to the maximum size of secondary structures, the Commission has consistently limited the size of second residential units (including guest houses) on residential parcels in the Malibu and Santa Monica Mountain areas. The Commission has found that placing an upper limit on the size of second residential units was necessary given the traffic and infrastructure constraints which exist in Malibu/Santa Monica Mountains area and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units would ensure that they are likely to be occupied by one, or at most two people, serving to minimize any adverse impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints such as water, sewage, and electricity), as compared to the development of the equivalent of a second single family residence. A size limitation encourages the units to be used for their intended purpose, as a guest unit, or "granny unit", rather than as a second residence or rental unit, which would have greatly intensified demands on coastal resources and community infrastructure.

a. Land Use Plan Policies

The LUP policies address new residential development. All new residential development, including land divisions (subdivisions, lot line adjustments, and certificates of compliance) must conform to all of the applicable LUP policies, including density provisions. The residential density indicates the maximum number of units that could be allowed. It is not a guarantee. In order to ensure compliance with other applicable LCP policies or standards, the permitted density may be less than the maximum density indicated by the land use designation.

The maximum number of structures allowed by the LUP policies in a residential development is one main residence and one second residential structure (including second unit or guest house) of no more than 900 sq. ft. Other accessory structures including, but not limited to, stable, workshop, gym, studio, pool cabana, office, or tennis court may be permitted if they are located within the approved development area and are clustered to minimize required fuel modification. The LUP requires that a minimum of one on-site parking space must be provided for the exclusive use of any second

residential unit. Finally, any proposed accessory structure that includes plumbing facilities must demonstrate that the project site can accommodate the additional sewage disposal.

b. Local Implementation Plan Provisions

Section 3.6 (N) of the Malibu LIP addresses uses accessory to residential development, including development standards for second residential units. The LIP requires that second units do not exceed 900 sq. ft., that they are located within the approved development area for the project site, and clustered with other structures in order to minimize required fuel modification. Development of a second residential structure requires that a primary residence is developed on the project site prior to or concurrent with the second residential unit.

The Commission finds that the Malibu LIP conforms with and is adequate to carry out the residential development policies (Policies 5.19-5.24) of the Malibu Land Use Plan.

7. Land Divisions

a. Land Use Plan Policies

The Coastal Act includes land divisions in the definition of development. Section 30601 states that "development" includes:

> ".... subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use ..."

Because they constitute development, all land divisions must be authorized in a coastal development permit. (Section 30600). The LCP defines "land division" to include: "subdivisions (through parcel map, tract map, grant deed or any other method), lot line adjustments, redivisions, mergers and certificates of compliance except as provided in LUP Policy 5.40." (LUP Policy 5.32; LIP Ch. 2.1, General Definitions). This is intended to be a broad definition that includes any method used to divide land into separate parcels or to modify parcel boundaries. Lot line adjustments are "land divisions" that require a coastal development permit because they constitute "development" as defined in the Coastal Act. (*La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231).

The definition of development also includes certificates of compliance that grant . authorization for a lot that was created through a land division that occurred previously but was illegal because it failed to comply with applicable state laws or local ordinances.

An owner of property may request that the local government determine whether a parcel was created in conformance with the requirements of the Subdivision Map Act. After review, the local government may issue a certificate of compliance with or without conditions. Certificates of compliance recognize property as a separate legal parcel for purposes of conveyance, transfer or financing, but they do not grant any right to develop the parcel. There are three separate situations in which the issuance of a certificate of compliance may be requested:

1. Land division occurred prior to the effective date of the Coastal Act and lot was created in compliance with laws in effect at the time (LUP Policy 5.40).
2. Land division occurred prior to the effective date of the Coastal Act and lot was not created in compliance with laws in effect at the time (LUP Policy 5.41).
3. Land division occurred after the effective date of the Coastal Act without approval of a coastal development permit (LUP Policy 5.42).

In the first case described above, the certificate of compliance confirms that creation of the parcel already occurred legally prior to the Coastal Act; therefore, issuing the certificate of compliance does not constitute "development" and does not require a coastal development permit. In the second and third instances, the action of issuing a certificate of compliance grants government authorization for a parcel that was previously created illegally, through means that did not comply with the laws in effect at the time. This type of certificate, for the first time, authorizes the land division that created a new parcel. Therefore it constitutes development under the Coastal Act, and requires a coastal development permit. A certificate of compliance in the second and third instances shall not be issued unless a coastal development permit that authorizes the land division is approved. The coastal development permit can only be approved if the land division is consistent with the policies of the LUP. Compliance with the LUP policies insures that the land division is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

Numerous LUP policies require that land divisions minimize impacts to coastal resources and public access. Land divisions may not be approved if they would result in adverse impacts on coastal resources, such as water quality, wetlands and ESHA, which are protected under Sections 30230, 30231, 30233 and 30240. A land division cannot be approved unless every new lot created would contain an identified building site that can later be developed consistent with all policies and standards of the LCP. For example, a land division cannot be approved if geologic hazards make it unsafe to build on the proposed parcel or if development on the proposed parcel would destroy ESHA or block public views of a scenic area (Sections 30253, 30240 and 30251). Applications for land divisions must include plans depicting proposed grading, drainage, landscaping, conceptual fuel modification, and visual analysis for the proposed building pad and driveway for each proposed parcel. Additionally, a land division may not be approved unless there will be adequate services, such as sufficient water for each parcel and the ability to accommodate an on-site sewage disposal system. Land

divisions must be designed to cluster development, to minimize landform alteration, to minimize site disturbance, and to maximize open space.

Furthermore, to implement Section 30250, the LUP provides that new parcels may not be approved that are smaller than the average size of surrounding parcels. Additionally, to comply with 30250, as well as numerous other policies of Chapter 3 of the Coastal Act, adverse impacts from the creation of new parcels must be mitigated. There are numerous existing undeveloped parcels in Malibu (in 1999, there were an estimated 1,370 such parcels) and development of these parcels alone would have significant adverse impacts on coastal resources, such as public access to the sea and recreation, which are protected by Section 30210 and 30211. Therefore, the LUP requires transfer of development credits that retire the development potential of existing parcels, to mitigate the cumulative impacts of approval of land divisions creating new parcels. The LUP requires that an expedited process for voluntary merger of parcels be included as part of the transfer of development credit program (Policy 5.30), to insure that the parcel where development potential is retired is combined or merged with another developable parcel, and this process is included in the LIP (Ch. 15.4).

Accordingly, the restrictions on new land divisions in the LUP, and the mitigation measures required for land divisions that can be approved under the LUP, are necessary to conform to the policies of Chapter 3 of the Coastal Act, including the policies cited above.

The Commission finds that the Land Division Policies of the Land Use Plan are consistent with Section 30250 of the Coastal Act.

b. Local Implementation Plan Provisions

Chapter 15 of the LIP contains the information requirements and findings that must be made to insure that land divisions are only approved when consistent with all LUP policies. The requirements for approval of all land divisions, except mergers and lot line adjustments, are set forth in Section 15.2.

The requirements for approval of certificates of compliance are set forth in Section 15.3. As stated above, a certificate of compliance for a land division that occurred prior to the Coastal Act and complied with state law and local ordinances in effect at the time does not require a coastal development permit. The documents that an applicant must submit so it can be determined whether a parcel was created in compliance with state laws and local ordinances, or whether the parcels were subsequently merged or altered, are set forth in Section 15.3 (B).

For a land division that occurred prior to the Coastal Act and did not comply with state law and/or local ordinances in effect at the time, a coastal development permit is required. Except in specific situations described below, a coastal development permit may be approved only if the land division being authorized is consistent with all the

requirements set forth in Section 15.2 or the permit is conditioned to prohibit development on the parcel until compliance with all requirements of Section 15.2 is achieved. For a land division that occurred after the effective date of the Coastal Act and was not previously authorized in a coastal development permit, there has been a violation of the Coastal Act. A coastal development permit is required for a certificate of compliance recognizing such a land division and, except in specific situations described below, may only be approved if all requirements of Section 15.2 are met.

The LIP provides that a coastal development permit authorizing a land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 *except the minimum parcel size*, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.

Section 15.4 addresses mergers. Section 15.4.1 includes expedited procedures and a reduced fee for voluntary merger of parcels. This simplified process allows merger of parcels when development rights on one of the parcels are retired to provide a transfer of development credit. This section also includes provisions that allow, but do not require, the City to initiate mergers of contiguous parcels held by the same owners, consistent with the applicable requirements of the Subdivision Map Act (Section 15.4.1A).

Section 15.5 contains requirements for approval of lot line adjustments. The goal of these provisions is to insure that lot line adjustments are only approved if the newly configured lots can be developed consistent with all LCP policies and standards. However, if the existing parcels do not currently meet this requirement, then a lot line adjustment may be approved if it does not increase the conflict with LCP policies and standards that will occur from development of the parcels. In addition, a lot line adjustment may not be approved if it will result in future development that necessitates removal of a greater amount of ESHA, increases the amount of landform alteration, or has greater adverse visual impacts, than would have occurred from development on the existing parcels.

Section 15.6 sets forth "slope/density criteria" that shall govern proposed subdivisions in the rural residential zone districts. These criteria are required by LUP Policies 5.7 and 5.37. The criteria are applied in combination with the base land use designation/zoning in order to determine the maximum allowable density (Section 15.6.2 and 15.6.3). The application of the slope density criteria results in reducing the overall density allowed on steeply sloping terrain.

The Commission finds that the Malibu LIP conforms to and is adequate to carry out the land division policies of the LUP.

8. Lot Retirement

Land divisions and the development of multi-family residential projects increase the number of parcels and/or the number of residential units that be built over the number of existing parcels in an area. The Commission has long recognized that adverse cumulative impacts to coastal resources would result from an increase in the overall number of parcels in the Malibu/Santa Monica Mountains coastal zone area, particularly given the large number of undeveloped parcels and the limited availability of urban services. The Commission has consistently required the mitigation of the cumulative impacts of creating new lots through subdivision and of developing multi-family units by retirement of future development on existing parcels within the Santa Monica Mountains region. The retirement process is formalized as the Commission's Transfer of Development Credit (TDC) Program. The TDC program is implemented by the Commission through permit actions to mitigate the cumulative impacts caused by the existence of a large number of undeveloped parcels, the limited availability of public services, the impacts to major coastal access routes and the potential significant adverse environmental impacts that would result from developing the parcels and of providing services.

a. Background

In 1978, the report entitled "Cumulative Impacts of Potential Development in the Santa Monica Mountains Coastal Zone" was prepared for the Santa Monica Mountains Comprehensive Planning Commission and the Coastal Commission. The report identified some 5,200 undeveloped parcels in small-lot subdivisions and 3,400 other undeveloped parcels in the Los Angeles County portion of the Santa Monica Mountains area (the area considered in this report included the area now incorporated as the City of Malibu, as well as the unincorporated area remaining under the jurisdiction of Los Angeles County), for total of approximately 8,600 undeveloped lots. Because of the large number of existing lots, greatly increased demands on coastal roads, services, recreational facilities, and beaches would result from development of these lots. The limited road network that provides access to and from the City already experiences extremely heavy traffic, particularly on weekends, and future development of existing, vacant lots will further increase this traffic. Additionally, an example of limited services

is the absence of a City-wide municipal sewer system, which requires that most new residential development must dispose of sewage onsite. Thus, the 1978 report recommended that land divisions should not be approved if they increased the total number of lots in the Santa Monica Mountains coastal zone, including Malibu. In other words, the study recommended that a means should be found to combine existing lots or otherwise retire existing lots so that new land divisions would not result in a net increase in the amount of development that could occur.

At the same time, the Coastal Commission was faced with applications for land divisions which raised at least one, and sometimes a second, major issue of conformance with the policies of the Coastal Act. The major issue raised by all proposed land divisions both inside and outside the existing developed areas in the region was the significant cumulative impacts that would result from development of the large number of existing undeveloped lots mentioned above. The second issue, raised by some land divisions, was the technical requirement of Section 30250(a) of the Coastal Act regarding new land divisions outside existing developed areas. That section requires that such land divisions shall be permitted only where 50 percent of the usable parcels in the area have been developed and where other criteria are met. The Commission found that "existing developed area" applied only to the urbanized strip, or coastal terrace, along Pacific Coast Highway and did not apply to the interior of the Santa Monica Mountains. The Commission further found that because cumulative impacts would result from development of existing lots throughout the region as a whole, in order to assess whether new lots should be created through new land divisions, the area addressed by the 50% criterion should be the entire market area, amounting to the entire Malibu/Santa Monica Mountains coastal zone because development would impact common coastal resources and public access routes and because of comparable proximity to employment centers, recreational resources, and use of the same water supply, roads or other public services.

Based on these concerns, the Commission found no alternative to denial of a number of land divisions requested in the area (#507-77, Bel Mar Estates; #527-77, Schiff; #28-78, Brown). Faced with continuing applications, the Commission adopted conditions to implement the TDC program through a series of permit decisions (#155-78, Zal;:#158-78 Eide). The program was designed to address both the cumulative impact problem represented by the large number of existing lots and the technical criteria of Section 30250(a) regarding proposed land divisions outside the coastal terrace.

The TDC program ensures that no net increase in development occurs, even if land divisions are approved. The developability of existing parcels is extinguished at the same time new parcels are created, in order to accomplish this end. Because under this program land divisions do not add to the stock of parcels eligible for future potential development and, in fact, "transfer" development (parcels) to more appropriate areas, the potential cumulative impacts are mitigated. Similarly, because land divisions coupled with lot retirement do not increase the number of potentially usable parcels, the

technical criterion of 30250(a) concerning 50% of the usable parcels in the area is, in effect, met.

In addition to assuring conformance with Section 30250(a), the TDC program implements the objectives articulated in the following Coastal Act sections: Sections 30210 and 30211, which state in part, that maximum public access and recreational opportunities shall be provided to all people, consistent with private property rights and new development shall not interfere with the public's right of access to the sea; Section 30251, which requires that scenic and visual qualities of coastal areas be considered and protected as a resource of importance; Section 30231, which requires maintaining the biological productivity and quality of streams and other water bodies; Section 30240, which states in part, that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values; Section 30253, which requires that new development minimize risks to life and property in areas of high hazard and that such development neither create nor contribute to erosion, geologic instability or destruction of the site or surrounding area; and, Section 30254 which requires that limited capacity in existing public facilities be reserved for priority uses

The program was seen, in connection with these first permit actions, as a pilot program. Later, as applications for land divisions continued to be filed, the program was extended (#346-78; Flood and #119-78, Markham). The program was later applied to construction of multi-family projects, not involving land divisions, and the sliding scale TDC requirement for multi-family projects with relatively small units was also instituted (#182-81; Malibu Deville and #196-81, Malibu Pacifica). The program was fully described in the Interpretive Guidelines for the Malibu/Santa Monica Mountains Coastal Zone which were adopted by the Commission on July 16, 1979 and later revised on June 17, 1981.

In these actions the Commission reaffirmed the appropriateness of the TDC program to mitigate cumulative impacts from creation of new developable lots throughout the Malibu/Santa Monica Mountains area. For example, in the Malibu Deville permit and Malibu Pacifica permits noted above the Commission reaffirmed the direct mitigation embodied in the TDC program and found it to be necessary throughout the Malibu coastal zone, including existing developed areas. Later Commission permit decisions also reaffirmed the use of the program (#5-83-43, Heathercliff).

In 1985, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan (LUP) with Suggested Modifications. One suggested modification the Commission made to the County was that the TDC program be added to the LUP to address the mitigation of the cumulative impacts of development. When the County submitted their revised LUP in 1986, it did not include a TDC program. However, the LUP did include (Policy P272) six alternative techniques to reduce the potential buildout of existing non-conforming lots. The LUP was certified with these six provisions and no TDC program; however, the County never adopted an implementation plan or otherwise implemented any of its proposals for reducing the potential buildout of existing lots.

In several permit actions after the LUP certification [5-86-592 (Central Diagnostic Labs), 5-86-951 (Ehrman and Coombs), 5-85-459A2 (Ohanian), and 5-86-299A2 and A3 (Young and Golling)], the Commission found that until such time as the County did have the means to implement these programs, it was necessary to continue to require permittees to participate in the TDC program as a way to mitigate the cumulative impacts of new subdivisions and multi-family project. Without this means of mitigation, the Commission found that it would have no alternative but to deny the proposed subdivisions.

The Commission's evaluation of the TDC program completed in June 1999 as part of the *Regional Cumulative Assessment Project, Findings and Recommendations, Santa Monica Mountains/Malibu Area (ReCAP)*, confirmed the effectiveness of the TDC program in mitigating cumulative impacts of development in the Malibu/Santa Monica Mountains area. The ReCAP report evaluated potential maximum buildout scenarios under land use plan densities current at the time and identified potential impacts from the development in the region including, in part, that[113]:

- The number of residential units could increase from the buildout of existing vacant lots. The ReCAP project scenarios estimated that if existing vacant lots were to be developed, even without additional subdivisions, the number of residential units in the overall region could increase by 60%;
- The overall number of parcels could increase through potential subdivision of existing vacant lots. If not offset by TDCs this could greatly increase current levels of development in the region;
- Hundreds of additional residential units could be added through second units and legalization of previously created but unrecorded lots;
- Impacts could increase because In general, parcels available for future development have significantly greater constraints -- such as steep slopes and sensitive resources -- than do the parcels where the Commission has previously approved development.

The report concluded that the amount of potential future development coupled with the topographic, infrastructure and resource constraints of the area suggest a potential for significant cumulative impacts from new development in the Malibu/Santa Monica Mountains area. The report noted that some regulatory tools, for example denying proposals to extend infrastructure into undeveloped areas, adopting mitigating conditions on permits, and reducing hillside densities, could help mitigate the impacts. But the Commission found:

> "Developing to the maximum densities designated through the various plans for the region would result in the same significant cumulative impacts documented in the late 1970s. The use of the various regulatory tools discussed above can reduce the levels of

[113] California Coastal Commission, *Regional Cumulative Assessment Project, Findings and Recommendations, Santa Monica Mountains/Malibu Area,* June 1999, pp. 17-20.

impacts. However, because of the total number of parcels that could be developed, these regulatory tools alone will not decrease the level of development enough to adequately address the impacts. While development of the existing parcels will lead to additional impacts, any further increase in the potential density of the region, created through additional subdivisions, will lead to further impacts. Therefore, an objective in addressing cumulative impacts of growth and development in the ReCAP region is to prevent a further increase in the overall number of lots that can be developed." [114]

The ReCAP report went on to note that the TDC program implemented by the Commission effectively mitigated impacts of proposed new subdivisions by retiring development potential on approximately 1,051 existing residential lots covering about 1,673 acres of land in the Santa Monica Mountains/Malibu region while allowing subdivisions to create about 700 new lots. Most retired lots were located in the small lots subdivisions and without these lots being retired ReCAP estimated that about 1,145 new residential units could have been developed. The result of this program has been to not only reduce the overall density of development in the region, but also to direct development to more appropriate locations. For example, density in the small lots subdivisions has been reduced and lots containing significant sensitive resources have been retired. [115] Nevertheless, the ReCAP report indicated that there still are approximately 1,370 vacant existing parcels in the City of Malibu. Thus, there is the potential for significant adverse cumulative impacts to coastal resources simply from future development of the existing parcels.

b. Land Use Plan Policies

The LUP provides for a lot retirement program designed to minimize the individual and cumulative impacts of future subdivisions and multifamily development and of the potential buildout of existing parcels that are located in ESHA or other constrained areas while still allowing for creation of parcels in areas with fewer constraints. The Malibu LUP includes provisions for a Transfer of Development Credit (TDC) Program, and a voluntary merger process. New development that results in the creation of new parcels, or multi-family development, with certain exceptions explained below, that includes more than one unit per existing parcel must retire an equivalent number of existing parcels that meet the qualification criteria of the program.

The LUP Policies 5.25-5.31 recognize that the cumulative impact of buildout throughout the region affects coastal resources and public access and as such require that the TDC program be implemented on a region-wide basis, including the City as well as the unincorporated area of the Santa Monica Mountains Area as defined in Section 7.3 of the Local Implementation Plan. These policies address Section 30250 of the Coastal Act. This section requires that development occur in existing developed areas able to

[114] California Coastal Commission, 1999, pp. 19-20.

[115] California Coastal Commission, 1999, pp. 20-28.

accommodate it. Existing developed areas, as well as areas outside of existing developed areas, must not only have adequate public services to serve the needs of the development, but also must have enough services to accommodate other priority coastal uses such as public recreation and visitor serving uses, consistent with Section 30254.

Public services are already severely constrained in the City. Areas of the City's shoreline are already experiencing water pollution related to development. Increased dependence on private septic systems will further contribute to cumulative impacts. Coastal access continues to be impacted by the cumulative effects of development on major coastal access roads within, and leading to, the city. Given its location between erosive bluffs and expensive beachfront homes, significant widening of PCH is unlikely. Widening of the cross-mountain roads that also provide access to the City is also difficult.

The constraints on the major coastal access routes was also noted in documents submitted as work products in compliance with an LCP grant awarded to the City by the Commission. In background discussions in an Administrative Draft LUP, the draft notes the importance of Pacific Coast Highway as the single, major through coastal highway from the Ventura County line to the Santa Monica Freeway, serving recreational, commuter, emergency and local community traffic for the coast. The draft notes that PCH's traffic capacity is, at times, exceeded in areas close to metropolitan population centers and that, on weekends, capacity is below what would be expected of a four lane arterial. It notes that Pacific Coast Highway, east of Trancas Canyon Road, Malibu Canyon Road, north of Civic Center Drive and Kanan Dume Road are roadways in the City of Malibu that are, at times, currently operating at levels of service beyond the free to stable flow range and also identifies level of service E or F on PCH at several locations. In discussing future demand the background discussion notes that PCH is frequently at maximum capacity and is expected to deteriorate further. The major cross-mountain roads, which are mostly two lane provide not only local access to residences but also provide the major access to the beaches within the City from the Ventura Freeway and are also heavily used.[116]

As the Commission has found in implementing the TDC program, there are insufficient public services to accommodate development of all the existing vacant lots and development of multiple family units within the City without cumulative impacts to coastal resources and public access. Given the importance of the coastal resources, the large number of vacant lots and already constrained infrastructure, the Santa Monica Mountains area coastal zone overall, be it within or outside of an existing developed area, cannot accommodate new development which results in an increase in new lots or new multi-family development on existing lots. Thus, the LUP policies provide for a lot retirement program to ensure no net increase in building sites to avoid further increases in cumulative impacts. The Commission will seek similar requirements to address

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[116] City of Malibu Local Coastal Program Land Use Plan February 2000 *Administrative Draft*, pgs. 143-145.

cumulative impacts of new land divisions in the Los Angeles County LCP currently under development by the County.

Credits to mitigate new development within the City may be generated from qualifying lots anywhere within this region. The TDC program was developed based on addressing the cumulative impacts of development over the region as a whole to best protect sensitive resources. Continuing to retire the development potential of parcels throughout the region as mitigation for the approval of new land divisions or multi-family development in the City will mitigate the cumulative impacts of such development. [Regional Cumulative Assessment Project (ReCAP), 1999]. The Santa Monica Mountains region of the County and the City of Malibu are inextricably linked by the watersheds that cross them, as well as by roads that provide access to and from both areas. Retirement of parcels that qualify under the TDC program, including those within small lot subdivisions or ESHA will benefit the region as a whole, including the City.

In addition to the TDC program, the LUP policies provide that contiguous substandard lots may be merged, thereby reducing the potential impacts of developing existing small lots. Finally, an expedited voluntary merger procedure will be implemented as part of the LCP.

c. Local Implementation Plan Provisions

The LUP Policies 5.25 and 5.26 call for the implementation of a Transfer of Development Credit Program in the LCP.

> 5.25 A Lot Retirement Program will be implemented in order to minimize the individual and cumulative impacts to coastal resources of the buildout of existing parcels in sensitive and constrained areas and to allow for new development in areas less constrained. The Lot Retirement Program shall comprise the following components:
>
> - Transfer of Development Credit Program
> - Expedited Voluntary Merger Process
>
> 5.26 The Transfer of Development Credit (TDC) Program shall be implemented in order to ensure that the individual and cumulative impacts of creating new lots or developing multi-family residential units are minimized and mitigated through the retirement of an equivalent number of development credits from existing lots that meet the qualification criteria of the program. Lots that contain ESHA, are located in small-lot subdivisions, or are located adjacent to parklands can be retired for transfer of development credits

The Local Implementation Plan includes a Transfer of Development Credit requirements (Chapter 7) that carries out the LUP Policies 5.25-5.31 by ensuring that density increased through new land divisions or multifamily unit development, excluding affordable housing units, will be offset by the retirement of development rights on existing lots throughout the Santa Monica Mountains Area. Chapter 15 (Requirements for Land Divisions) contains a process for the voluntary merger of lots.

Section 7.2 of the LIP outlines when the requirements of the TDC program are applicable consistent with LUP Policies 5.25, 5.26 and 5.28. TDC requirements are not required for development of specific affordable housing units. The TDC program in the Malibu/Santa Monica Mountains Coastal Zone is voluntary, in that it applies only to those who wish to intensify land use through land divisions or multi-family projects. As such, an applicant retains the option of applying for one residential unit on each residential parcel without being required to comply with the TDC ordinance. The program requires that individuals applying for land divisions or multi-family projects provide TDC credits for additional lots/units created. In the same way, retirement of those lots, which are eligible for TDC credit because of their location within designated donor areas, is also voluntary. The TDC program provides an incentive for the owner of a lot within a donor area to not develop the parcel by selling development rights.

One of the underpinnings of the TDC Program is Section 30250(a) of the Coastal Act that requires that new development be located within, contiguous with, or in close proximity to existing developed areas able to accommodate it. The areas where new development created through land divisions or multi-family projects may be accommodated are designated as "receiver areas". The LIP Section 7.6 designates receiver areas as residential zones, including multifamily zones, within the City where new lots and multifamily units may be created, if it complies with the applicable land use designation, consistent with LUP policy 5.26.

The LUP Policy 5.26 also identifies the areas where development rights should be retired through the program. Consistent with that policy, Section 7.7 of the Local Implementation Plan identifies donor areas where credits may be obtained through purchase of development rights throughout the Santa Monica Mountains Area, in:

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

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

Throughout the Malibu/Santa Monica Mountains coastal zone there are a number of areas that were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "small-lot subdivisions" are comprised of parcels of less than one acre but generally range in size from 2,000 to 15,000 square feet. The 1978 "Build-out" report prepared for the Santa Monica Mountains Comprehensive Planning Commission and for the Coastal Commission, found that of the total existing

undeveloped parcels identified in the Malibu/Santa Monica Mountains area, 60 percent were located within the small lot subdivisions.[117] The cumulative development constraints common to small-lot subdivisions were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development In the Santa Monica Mountains Coastal Zone". The study acknowledged that the existing small-lot subdivisions can only accommodate a limited amount of additional new development due to major constraints to buildout of these areas that include: geologic problems, road access problems, water quality problems, disruption of rural community character, creation of unreasonable fire hazards and others. With steep slopes and smaller average lot sizes, the ability to site development within the small lot subdivisions to avoid impacts to resources is limited. Further, if fully developed, the densities in these small lot subdivisions would exceed the capacity of the narrow winding access roads and the local watershed's ability to assimilate the septic system effluents. The report concluded that the large number of existing undeveloped small lots, if developed, would have a significant adverse impact on coastal resources.

The TDC donor site qualification criteria in Section 7.7 and 7.8 of the Ordinance include parcels located within Environmentally Sensitive Habitat Areas (ESHAs) and Significant Watersheds. Environmentally sensitive habitat area is defined in the Local Implementation Plan [Chapter 2 (Definitions)] as:

> ...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed or degraded by human activities and developments.

Significant Watersheds are large, relatively undisturbed, natural drainage basins that contain exceptional riparian and oak woodlands and provide habitat for various declining, restricted, rare or endangered species. The Ordinance identifies eight Significant Watersheds where donor areas may be retired. These areas are designated as donor areas in order to preserve and protect the most critical resource areas where continued build-out would adversely impact sensitive coastal resources.

Other donor areas include areas to provide buffer areas to parkland habitat and recreational resources and to protect wildlife corridors. In the 1978 Commission action on coastal development permit (A-158-78) the Commission retired development potential of two building sites located adjacent to Malibu Creek State Park finding that if developed, such development would have adverse impacts on parkland resources. The LUP Policy 5.26 reflects the importance of protecting these areas.

[117]Cumulative Impacts of Potential Development in the Santa Monica Mountains Coastal Zone, prepared by Curtis S. Williams and Dale Briker, 1978.

LUP Policy 5.28 sets forth the procedure for retiring development potential:

> 5.28 Any coastal development permit for a land division resulting in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired.

Section 7.8 of the Local Implementation Plan establishes the criteria for determining if specific lots qualify to be retired as mitigation. While lots may be reviewed for qualification at any time, the actual retirement of development credit(s) on the TDC lot(s) will take place after approval of the project, as condition compliance. Section .7.8.3 specifies the process by which the City will qualify development credits. The procedures assure that where development rights are retired, the lots are protected from future development through the recordation of a permanent irrevocable open space easement in favor of the City that conveys an interest in the lots that insure that future development is prohibited consistent with requirements of LUP policy 5.28. In addition, Section 7.8.3 requires that retired lots are either merged or recombined with other adjacent unrestricted lots The procedures in the Implementation Plan to carry out the transfer of development credits are based on procedures and calculations developed through administration of the TDC program as applied in numerous coastal development permits authorized by the Commission.

To begin, the applicant submits a coastal development permit application to the City for approval of a parcel map, tract map, or multi-family project. To approve land division permits, the City must find that the parcels created contain building sites which can be developed in accordance with all LCP policies and which will create lots no smaller than the average size of the lots in the surrounding areas. As a condition of approval, the City then will require the applicant to mitigate the cumulative impacts of the project with the purchase of TDCs.

The applicant will be required to retire sufficient lots ("donor sites") to provide 1 TDC per new lot created. In the approval of multi-family projects, the ordinance requires one development credit for each unit, minus the number of existing parcels within the project site (i.e., a six-unit project to be sited on two existing parcels requires four development credits). An exception to this requirement may be allowed where multiple-family projects include units with less than 2500 square feet of gross structural area (GSA). In such cases, the TDC credit requirement may be calculated at a lesser rate, proportionate to the size of the units (one TDC per 2500 sq. ft. of GSA).

The ordinance section 7.82 sets forth the process to determine if lots qualify for TDC credit. Applicants may compare prospective donor sites with the criteria in 7.7. If the

sites qualify, Section 7.8 outlines how many TDCs may be generated from their retirement. Applicants can then determine how many lots must be retired to comply with the TDC requirements.

LUP Policy 5.27 requires:

> 5.27 One TDC Program shall be implemented on a region-wide basis for the Santa Monica Mountains Coastal Zone, including the City of Malibu and the County of Los Angeles. Credits to mitigate development approved in the City may be generated from qualifying lots anywhere within this region.

The LIP as proposed will result in retirement of development rights on lots which, if otherwise developed would have resulted in individual and cumulative impacts to coastal resources in the City. The prior Commission studies and the more recent ReCAP report noted the importance of implementing a TDC program throughout the Santa Monica Mountains/Malibu area in order to address the cumulative impacts of development. Development in the mountainous watersheds will adversely affect the downstream resources in the City. Development throughout the region will have comparable impacts on infrastructure and capacity of the major coastal access roads that bring visitors from inland areas to the City's shoreline. As the ReCAP report noted:

> The Commission developed its current TDC program based on addressing the cumulative impacts of development over the region as a whole to best protect the resources. As a result, the Commission found that development was more appropriately focused on the coastal terrace rather than in the interior, more mountainous portion of the region where development was more constrained and would lead to more significant impacts on resources.
>
> . . . . .
>
> By continuing to retire the development potential of parcels in the Los Angeles County portion of the coastal zone, the City of Malibu will benefit. Impacts from development will affect the entire region, and will not be isolated to the political jurisdiction where the development occurs. As discussed throughout these findings, a main problem in addressing cumulative impacts to coastal resources is the sheer number of parcels that could ultimately be developed in the region as a whole. By continuing to reduce the density in the mountain area, the overall density of the region continues to be held or reduced, thereby reducing the cumulative impacts from development[118]

The Implementation Ordinance proposes a program that reflects the mitigation of impacts throughout the region. While coastal development permits will be authorized for the area within the City, development potential can be retired throughout the region. Thus, as called for in LUP policy 5. 27, the coastal resources in the City, such as major beach access roads and downstream water resources will benefit from overall control of new lot development throughout the watersheds and region.

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[118] California Coastal Commission, 1999, pp.35.

LUP policies 5.29 and 5.30 require:

> 5.29 The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, merged, and that such actions are accurately reflected in the records of the County Tax Assessor.
>
> 5.30 An ordinance to create an expedited procedure and reduced fee for processing voluntary mergers should be developed.

In conformance with this policy, Section 7.8.3of the LIP, as well as provisions of the subdivision ordinance provide for these recordations. Development rights are retired through recordation of a dedication of a permanent open space easement, and the ordinance requires that retired lots be combined with one or more adjacent unrestricted lots through a recorded deed restriction or through a voluntary merger. These recordations are to be reflected in Los Angeles County Tax Assessor records. This ordinance provision is intended to assure that once development potential on a lot is retired that this information is considered in future land assessments. It will also ensure that through recombination the mitigation on these retired lots will remain in effect and enforced. Potential tax defaults and involuntary, unplanned transfer (through tax lien foreclosure sales) of these lots will be minimized. This will assure that development potential is retired consistent with Policy 5.28 and 5.29.

LUP policy 5.31 provides that:

> A record of the number and location of lots permanently retired through the lot retirement program should be maintained and made available to members of the public upon request.

Section 7.10 of the LIP contains requirements for maintenance of TDC records by the City in a manner that will facilitate monitoring and enforcement of TDC requirements. Maintaining the information on retired development potential will also provide data to evaluate continued progress in addressing cumulative impacts.

d. Conclusion

The Land Use Plan provides the means to mitigate the cumulative impacts to coastal resources and coastal access resulting from authorization of any new subdivision or new multifamily units through a transfer of development credit program. The Commission finds that the Lot Retirement Policies of the Land Use Plan meet the requirements of and are in conformity with the applicable policies of Chapter 3 of the Coastal Act. The Implementation Plan contains mechanisms to require TDCs as a condition of applicable coastal development permits, and through condition compliance to qualify lots in designated sensitive donor areas throughout the region where development rights may be purchased. The ordinance contains directives for calculating donor credits and for effectuating the retirement of development potential on

donor lots in perpetuity. As a result the LIP ensures that as new lots and multifamily units are authorized that development potential on an equivalent number of lots is retired. The Commission finds that the Malibu Local Implementation Plan conforms with and is adequate to carry out Policies 5.25-5.31 of the Malibu Land Use Plan.

9. Communications Policies

a. Land Use Plan Policies

Communication facilities are provided for as a conditional use in all land use designations. All facilities and related support structures shall be sited and designed to avoid or minimize impacts to all coastal resources, consistent with all applicable provisions of the LCP. Co-location of facilities is required where feasible to avoid the impacts of facility proliferation. New transmission lines and support structures will be placed underground where feasible. Existing facilities should be relocated underground when they are replaced. The Commission finds that the Communications Facilities policies (Policies 5.56-5.58) of the Land Use Plan meet the requirements of and conform with Section 30250 of the Coastal Act.

b. Local Implementation Plan Provisions

Section 3.14 of the Malibu LIP provides the siting, development, and design standards for the development of wireless communications antennae and facilities. The Commission finds that the LIP conforms with and is adequate to carry out Policies 5.56-5.58 of the Land Use Plan.

10. Archaeology

The greater province of the Santa Monica Mountains is the locus of one of the most important concentrations of archaeological sites in Southern California. Although most of the area has not been systematically surveyed to compile an inventory, the sites already recorded are sufficient in both numbers and diversity to predict the ultimate significance of these unique resources. As so many archaeological sites have been destroyed or damaged as a result of development activity or natural processes, the remaining sites, even if they are less rich in materials, have become increasingly valuable. Additionally, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites that remain intact.

New development on natural sites or additional development on natural areas of developed sites can damage or destroy archaeological resources. Site preparation can

disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be lost. If a project is not properly monitored and managed during construction activities, archaeological resources can be degraded or destroyed. Section 30244 of the Coastal Act requires the protection of archaeological and paleontological resources and the implementation of mitigation measures to avoid or minimize any impacts.

a. Land Use Plan Policies

The LUP policies require that new development protect and preserve archaeological, historical, and paleontological resources from destruction and avoid and minimize impacts to such resources. Applications for new development in areas known or anticipated to be archaeologically sensitive must include a site survey prepared by a qualified archaeologist. If cultural resources are identified on the project site, the development must be designed to protect or avoid such resources, consistent with the recommendations of the archaeologist. Where project alternatives cannot avoid all impacts to archaeological or paleontological resources, reasonable mitigation measures shall be required. In addition to protecting cultural resources, and implementing mitigation measures, all grading, excavation, and site preparation that involves earth-moving operations for new development must be monitored by a qualified archaeologist and appropriate Native American consultants.

b. Local Implementation Plan Provisions

Chapter 11 (Archaeological/Cultural Resources) of the Malibu LIP provides the standards for review of projects on site with known or potential cultural resources. The LIP requires the Planning Director, in consultation with the Native American Heritage Commission, State Historic Preservation Officer, and the City's Native American Cultural Resources Advisory Committee, to consider the presence of cultural resources, adverse impacts to such resources resulting from proposed development, alternative project designs to minimize impacts, and mitigation measures to mitigate impacts that cannot be avoided through siting or design alternatives.

The Commission finds that the Malibu LIP conforms with and is adequate to carry out the cultural resource policies (Policies 5.59-5.64) of the Malibu Land Use Plan.

11. Conclusion

The Coastal Act requires the protection of coastal resources, including public access, land and marine habitat, and scenic and visual quality. Section 30250 of the Coastal Act requires that new residential, commercial, or industrial development is located near existing developed areas, and where it will not have significant adverse impacts, either individually or cumulatively on coastal resources. Section 30244 requires the protection

of archaeological and paleontological resources and the implementation of mitigation measures to avoid or minimize any impacts.

a. Land Use Plan

As described in detail above, the Land Use Plan, including the LUP Land Use Map, provides for the location and design of new development to minimize impacts, both individual and cumulative, on coastal resources, including cultural resources. In order to ensure that new development is located in areas able to accommodate it, as required by Section 30250 of the Coastal Act, the LUP designates the appropriate location, density, and intensity for different kinds of development. Such designations take into account the requirements of other applicable policies of Chapter 3 of the Coastal Act, including public access, recreation, land and marine resources, and scenic and visual quality. The LUP policies ensure that land divisions will be sited and designed to minimize impacts to coastal resources. The LUP requires that the cumulative impacts of land divisions or multi-family development (except for affordable housing) will be mitigated by retiring the development rights to existing lots, as required by the lot retirement policies. The cultural resource policies of the LUP provide for the protection of archaeological and paleontological resources and the implementation of mitigation measures to avoid or minimize any impacts. The Commission finds that the Land Use Plan meets the requirements of and conforms to the provisions of Sections 30250, 30244 and all other applicable Chapter 3 policies of the Coastal Act.

b. Local Implementation Plan

As described above, the Local Implementation Plan, including the LIP Zoning Map contains provisions including zoning, permitted and prohibited uses, development standards, parking regulations, sign regulations, and wireless telecommunications standards that implement the land use policies of the Land Use Plan. Additionally, the LIP contains provisions for a specific plan or other comprehensive plan to be developed for the Civic Center area. Chapter 11 of the LIP establishes standards for the review of projects on site with known or potential cultural resources. The Coastal Development Permit Ordinance (Chapter 13) establishes the procedures for review of coastal development permit applications, including information requirements and necessary findings. Chapter 15 of the LIP provides requirements for land divisions and Chapter 7 establishes requirements for lot retirements necessary to mitigate the cumulative impacts of land divisions or multi-family residential development. The Commission finds that the Local Implementation Plan conforms with and is adequate to carry out the new development policies of the Land Use Plan.

G. Scenic and Visual Resources

1. Coastal Act Provisions

One of the primary objectives of the Coastal Act is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. New development must minimize the alteration of natural landforms. This policy also requires that development is sited and designed to be visually compatible with the character of surrounding areas. Where feasible, development shall include measures to restore and enhance visual quality in visually degraded areas.

2. Coastal Act Policies

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

> 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.

3. Introduction

The Santa Monica Mountains region, including the City of Malibu, is an area of incredible scenic beauty. This is due in large part to the dramatic topography. Steep mountains rise virtually out of the ocean. There is a narrow coastal plain in most areas that parallels the coastline. The plain is much wider in the center of the City on the Point Dume headland and on the alluvial plain formed by Malibu Creek where the City's Civic Center is located. In other areas there are wave-cut terraces separated from the beach below by sheer coastal bluffs. Deep stream-cut canyons extend through the mountains.

In addition to the topography, the scenic beauty of the area is inextricably linked to the native vegetation communities that typify the California Mediterranean landscape. Different vegetation communities have different visual textures and colors. South facing drier slopes support low growing coastal sage scrub species, while north facing or wetter slopes support denser chaparral vegetation. The textures of these areas contrast

with the taller trees and shrubs growing in the riparian corridors that form linear features along streams and canyons.

There are sweeping views of the ocean and beach. Coastal views are possible from Pacific Coast Highway where there are breaks in the existing pattern of development. There are excellent views from the cross-mountain roads, each of which follows a canyon through the mountains. Descending these scenic roads, there are alternating views of natural canyon areas and the ocean. There are also views of the beach, ocean and scenic areas from public parks, and riding and hiking trails. Finally, while the beach and ocean are important scenic elements, there are also mountain and canyon views as seen looking inland from the beach and ocean.

4. Scenic and Visual Resource Identification

a. Land Use Plan Policies

The Land Use Plan provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LUP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LUP also addresses Public Viewing Areas, located along existing public roads where there are views of the beach and/or ocean, and other scenic areas. Additionally, there are intermittent beach or ocean views from all of the cross-mountain roads within the City (with the exception of certain portions of Decker Canyon Road where the topography prevents ocean views). Further, there are views of the ocean and other scenic areas from public parklands and from riding and hiking trails. Trails and parklands are shown on the LUP Park and Trail Map. Finally, the LUP Public Access Map shows public beach parks and accessways that provide views of the mountains and other scenic areas. The Scenic and Visual Resource protection policies are also carried out by the requirements of LUP policies 6.1 - 6.3.

Based on the above, the Commission finds that the City of Malibu adopted Land Use Plan policies provided above, meet the requirements of and conform with Section 30251 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The purpose of the Scenic, Visual, and Hillside Resource Protection Ordinance is to carry out the policies of the certified LUP which require the enhancement and protection of the scenic and visual qualities of coastal and mountain areas within the City and the unincorporated L.A. County portion of the Santa Monica Mountains Coastal Zone (6.1). To implement the policies of the LUP, development standards, permit and application

requirements, and other measures are provided to ensure that permitted development is sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. All policies, standards and provisions in the ordinance are applicable to all CDP applications for any parcel of land located along, within, or that provides views to or is visible from any Scenic Area, Scenic Road, or Public Viewing Area (see definitions in LIP or LUP policies 6.2 – 6.3a). The hillside development standards of this chapter are applicable to parcels where the project site includes a slope over 20 percent (6.2).

Based on the above, the Commission finds that the policies contained in the City of Malibu LCP Implementation Plan provided above, conform with and are adequate to carry out the policies and provisions of the adopted Land Use Plan relative to Scenic and Visual resources.

5. New Development

a. Land Use Plan Policies

The LUP policies require that new development minimize view impacts from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. Protection is provided for prominent ridgelines by requiring structures to be set below the ridgeline and to avoid intrusions into the skyline. These measures and/or requirements are carried out by LUP policies 6.4 – 6.8.

The policies give parameters for the siting and design of all new development to ensure that the alteration of natural landforms is minimized. These measures include siting development on flatter areas of the site, conforming development to the natural topography, clustering development, and preventing flat building pads on slopes. Graded slopes must blend with the existing terrain of the site and the height and length of slopes must be minimized. Finally, the length of roads or driveways shall be minimized and slopes designed to follow the natural topography in order to minimize landform alteration. These measures are provided for in LUP policies 6.9 – 6.11.

The Commission has found through past permit actions that in highly scenic areas the color of a structure can adversely impact a viewshed if the color is not consistent with the surrounding environment. For example white structures are highly visible from long distances and can adversely impact the visual resources from scenic highways trails and public view areas. The Commission has found that structures that have exterior colors and materials that are compatible with the surrounding environment are less visually obtrusive. In addition, the Coastal Act provides, and the Commission has

found, that new development should be visually compatible with the character of surrounding areas.

The policies require that new structures are sited and designed to minimize impacts to visual resources, by incorporating design measures to limit the appearance of bulk, ensuring visual compatibility with the character of surrounding areas, and by using colors and materials that are similar and blend in with natural materials on the site (6.12). The height of retaining walls must be minimized and fences, walls and landscaping must not block or obscure views from public viewing areas (6.13, 6.14). Development is required to be setback sufficiently from the bluff edge in order to minimize visual impacts from the beach (6.15).

Pacific Coast Highway is designated as a scenic highway for coastal views by the LUP. Further, Pacific Coast Highway is also a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access public beaches which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single-family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. The Commission notes that the construction of individual beachfront or bluff top residences, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In past permit actions, consistent with Coastal Act Section 30251, the Commission has required that new development located on the seaward side of Pacific Coast Highway be sited and designed to protect public bluewater views of the ocean and, where feasible, to restore and enhance visual quality in visually degraded areas. Specifically, in regard to new development located on beachfront lots, where it is not possible to limit the height of new structures to an elevation lower than the highway, the Commission has required that new development occupy no more than 80% of the lineal frontage of Pacific Coast Highway in order to maintain a public view corridor over the lot for ocean views [Saban (4-99-146), Broad (4-99-185), 4-99-154 (Montanaro)]. However, in past permit actions regarding development on bluff top sites where slopes descend seaward from the highway, the Commission has further limited the height of new structures and landscaping to an elevation adequate to ensure that public views of the ocean are retained over the entire project site [CDPs 4-98-142, 143, & 163 (Duggan & Levinson), CDP 4-97-031 (Anvil), CDP 5-90-020 (Young)].

The LUP requires that new development must preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site. These objectives are carried out by

policies 6.16 –6.19. In addition, the LUP includes policies to enhance the Pacific Coast Highway corridor as a scenic highway and viewshed (6.33 – 6.36). The LUP also requires that public works projects along scenic highways incorporate design elements to ensure compatibility with the rural character of the Santa Monica Mountains (6.20).

Further, the LUP policies set forth restrictions regarding the design of land divisions, including lot line adjustments, to ensure that building sites are clustered, that the length of roads and driveways are minimized, that shared driveways are provided, that grading is minimized, and that all graded slopes are revegetated. Land divisions that do not avoid or minimize impacts to visual resources will not be permitted. These provisions are carried out by policies 6.24 – 6.26.

Development is required to minimize the removal of natural vegetation both for the actual development area, as well as vegetation removed or thinned for fuel modification and brush clearance. Graded slopes and other areas disturbed by construction must be landscaped or revegetated with primarily native, drought tolerant plants to provide coverage of the disturbed areas and monitored to ensure success. These provisions are carried out by policies 6.27 – 6.29.

The LUP also contains policies relative to the protection of scenic and visual resources that address the design and location of signs and utilities (6.30 – 6.32) and permit application requirements (6.22, 6.33).

Based on the provisions above, the Commission finds that the Scenic and Visual Resource protection policies contained in the adopted City of Malibu Land Use Plan meet the requirements of and are in conformity with Section 30251 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

The ordinance provides that all CDP applications shall be subject to an on-site investigation to determine whether the proposed development has the potential to cause adverse impacts upon Scenic Areas from or along Scenic Roads or Public Viewing Areas (6.3). Where applicable, proposed structures, grading, and roads shall be indicated on the site by the placement of story poles or stakes. Written findings of fact, analysis and conclusions addressing scenic or visual resources must be included in support of all approvals, conditional approvals, or denials of development where it is determined that the proposed project causes the potential to cause adverse impacts. Findings must be supported by substantial evidence in the record and, if found to be necessary to conform to the development standards contained in this chapter, the proposed development shall be modified, by special condition relative to height, size, design, or location on the site and may be required to incorporate landscaping or other means to avoid or minimize adverse scenic impacts.

The ordinance contains development standards to ensure that new development is required to be sited and designed to minimize adverse impacts on scenic areas from scenic roads and public viewing areas to the maximum extent feasible. Standards include siting development in the least visible portion of the site where feasible, setting structures into the hillside, restricting building size and height, minimizing grading, clustering development and incorporating landscaping. Maximum height standards are included in the ordinance and, where applicable, development in scenic areas is required to incorporate colors and materials that are compatible with the surrounding landscape.

The standards provide that new structures are prohibited on major ridgelines, where feasible. Where it is not feasible, design measures shall be utilized to minimize the adverse visual impacts. In hillside areas, new development is required to be located as close to existing roads as feasible except where a longer road would allow for an alternative building site that is more protective of visual resources or environmentally sensitive habitat.

New development on a bluff-top is required to be set back from the edge of the bluff a sufficient distance to avoid or minimize visual impacts from the beach or ocean below in addition to the setback requirements necessary to insure geologic stability. The standards provide that no permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access when designed and constructed to not increase erosion of the bluff and be visually compatible with the surrounding area. Any permitted landscaping on a bluff face or hillside must consist of native, drought tolerant plant species.

New development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue and Cliffside Drive, is required to protect public views of the ocean by incorporating specific siting and design features such as restricting height to below road grade, where feasible, and maintaining view corridors. New development on parcels located inland of Pacific Coast Highway must be sited and designed to protect public views of the ridgelines and natural features of the Santa Monica Mountains through measures such as restricting building size and height, clustering development and incorporating landscaping. New commercial development within the Civic Center must also be sited and designed to not obstruct public views of the ridgelines and natural features of the Santa Monica Mountains.

The development standards require public works along scenic roads such as retaining walls, bridges, or culverts to incorporate textures and colors that blend with the surrounding landscape. Exterior lighting, except traffic lights and other safety lighting, must be minimized, restricted, shielded, or concealed to the maximum feasible extent to minimize the visibility of light sources from public viewing areas. Night lighting for sports courts and private recreational facilities on parcels located in scenic areas is prohibited. Standards to protect Pacific Coast Highway as a Scenic Highway are provided which

includes requiring landscape features and siting telecommunication facilities underground, where feasible.

Application submittal requirements for new development in scenic areas include a visual analysis of the proposed development relative to potential visual impacts (6.7). The submittal shall contain grading plans, cross sections of grading and structures, line of sight analysis, photos of the site from public viewing areas and/or scenic roads with story poles indicating the location and height of proposed structures and grading, project alternatives, and mitigation measures to minimize or mitigate unavoidable impacts. This requirement is applicable to proposed land divisions also.

Based on the above, the Commission finds that the Scenic and Visual Resource protection policies contained in the City of Malibu LCP Implementation Plan conform with and are adequate to carry out the provisions of the adopted Land Use Plan.

H. Public Works

1. Coastal Act Provisions

Coastal Act 30254 requires that new or expanded public works facilities be "designed and limited" to accommodate development that can be permitted consistent with the policies of the Coastal Act. This section also provides that, where public works facilities to serve new development are limited, priority shall be given to coastal dependent uses, essential services, public and commercial recreation and visitor-serving land uses. The Coastal Act also provides that no term or condition may be imposed on the development of any sewage treatment plant relative to future development that can be accommodated (consistent with the Coastal Act).

2. Coastal Act Policies

Section **30254** of the Coastal Act states that:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route I in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Section **30254.5** of the Coastal Act states that:

Notwithstanding any other provision of law, the commission may not impose any term or condition on the development of any sewage treatment plant that is applicable to any future development that the commission finds can be accommodated by that plant consistent with this division. Nothing in this section modifies the provisions and requirements of Sections 30254 and 30412.

3. Public Works

Development and growth in the City of Malibu is limited by geologic and environmental constraints, steep slopes, and dependence on private septic systems for wastewater management as well as the general desire to limit growth throughout the City. Public works facilities that exist in the City include roads and highways, public water and telephone utilities and all publicly financed recreational facilities including parks, trails and public accessways financed by the State Coastal Conservancy, State Department of Parks and Recreation and Los Angeles County. There is no public sewage treatment plant in Malibu other than the small Malibu Mesa facility that serves Pepperdine University and the Malibu Mesa residential tract. While continued dependence on private septic systems for wastewater treatment has been a limiting factor for development, it has also been suspected of being a contributing factor to water pollution in Malibu Creek and Lagoon and other areas including the beaches. Prior to the City's incorporation in 1991, Los Angeles County proposed a large regional sewer system for much of Malibu. The County's application to construct the facility was withdrawn while it was pending before the Coastal Commission. The City proposes no facilities at present.

Major public works projects in Malibu consist of road repairs, maintenance and improvements. Responsibility for maintaining Pacific Coast Highway lies with the State Department of Transportation (Caltrans). Pacific Coast Highway is periodically damaged by landslides and mudflows on its inland side and by storm waves and erosion on its seaward side. In order to provide for adequate traffic circulation into and out of the City by residents and visitors accessing the public beaches and parks and to facilitate public safety it is important for the City to coordinate with Caltrans. The City is responsible for maintenance and improvements of other roads in the City. There has been considerable damage to roads within the City due to the impacts from several major winter storms since incorporation and considerable effort and expense has been required to keep roads open. It is also necessary to coordinate with Los Angeles County to insure a smooth flow of traffic along cross-mountain roads that provide access between the inland valleys and mountain areas to Pacific Coast Highway in the City. Most of the roads in the City traverse areas that are highly scenic and/or contain sensitive natural resources. Therefore, it is important that road improvements, repairs

and maintenance utilize Best Management Practices including the least environmentally damaging feasible alternative.

a. Land Use Plan Policies

To ensure consistency with the Coastal Act, the policies contained in the Land Use Plan are intended to facilitate the provision and maintenance of public services, including roads, parking, water and electricity, and wastewater management to protect existing and future residents and visitors to the City and to accommodate the level and types of development that the LUP envisions.

Pursuant to Section 30114 publicly financed recreational facilities, including all projects of the State Coastal Conservancy, are considered "Public Works." The Coastal Act definition of "Public Works" including Conservancy projects is provided for in policies 7.1 and 7.2 of the LUP.

The LUP contains policies which provide for improvements to existing roads and intersections for public safety and to improve coastal access (7.3 – 7.5, 7.9 –7.11) Policies also provide for developing measures to improve transit service to and within the City, provide and improve parking facilities, shuttles and van pools (7.6 – 7.8, 7.12, 7.15).

The LUP recommends the creation of "wastewater management zones" for certain areas to facilitate the function and operation of on-site septic systems (7.17). In addition, as an alternative the plan allows for public package wastewater treatment facilities as a wastewater management solution (7.18)

The LUP also allows for a public sewer system to be designed and proposed by the City subject to approval as an amendment to the LCP by the Coastal Commission (7.19 – 7.21). It is important to note that the LUP does not require a sewer system, however, should one be proposed, it includes restrictions to protect marine resources and riparian habitat, and to limit capacity so that it is not growth inducing.

Based on the above discussed provisions, the Commission finds that the Public Works policies contained in the adopted Land Use Plan for the City of Malibu meet the requirements of and conform with Section 30254 of Chapter 3 of the Coastal Act.

b. Local Implementation Provisions

Many of the policies contained in the LUP regarding Public Works are recommendations or policies to guide possible future actions such as establishing "wastewater management zones" or designing and constructing package treatment plants or a City wide public wastewater treatment system. Other policies are carried out by the Water

Quality Protection Ordinance or the On-Site Wastewater Disposal System Standards Ordinance which are discussed elsewhere in this report.

Based on the above, the Commission finds that the policies contained in the applicable sections of the City of Malibu LCP Implementation relative to public works conform with and are adequate to carry out the relative provisions of the adopted Land Use Plan.

I. Industrial and Energy Development

1. Coastal Act Provisions

The Coastal Act provides for the consideration of coastal-dependent industrial and energy-related development, and for other commercial and industrial land uses such as aquaculture, fishing, kelp harvesting, and seawater desalinization.

2. Coastal Act Policies

Section **30101** of the Coastal Act states that:

"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

Section **30101.3** of the Coastal Act states that:

"Coastal-related development" means any use that is dependent on a coastal-dependent development or use.

Section **30222.5** of the Coastal Act states that:.

Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section **30250** of the Coastal Act states in part that:

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

Section **30255** of the Coastal Act states that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Section **30260** of the Coastal Act states that:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 3026l and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Section **30261** of the Coastal Act states that:

Multicompany use of existing and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible, except where to do so would result in increased tanker operations and associated onshore development incompatible with the land use and environmental goals for the area. New tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site. Tanker facilities shall be designed to (1) minimize the total volume of oil spilled, (2) minimize the risk of collision from movement of other vessels, (3) have ready access to the most effective feasible containment and recovery equipment for oilspills, and (4) have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally or legally required.

Section **30262** of the Coastal Act states that:

Oil and gas development shall be permitted in accordance with Section 30260, if the following conditions are met:

(a) The development is performed safely and consistent with the geologic conditions of the well site.

(b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the

number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

(c) Environmentally safe and feasible subsea completions are used when drilling platforms or islands would substantially degrade coastal visual qualities unless use of such structures will result in substantially less environmental risks.

(d) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, determined in consultation with the United States Coast Guard and the Army Corps of Engineers.

(e) Such development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.

(f) With respect to new facilities, all oilfield brines are reinjected into oil-producing zones unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the Ocean Waters Discharge Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.

Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

Section **30263** of the Coastal Act states that:

(a) New or expanded refineries or petrochemical facilities not otherwise consistent with the provisions of this division shall be permitted if (1) alternative locations are not feasible or are more environmentally damaging; (2) adverse environmental effects are mitigated to the maximum extent feasible; (3) it is found that not permitting such development would adversely affect the public welfare; (4) the facility is not located in a highly scenic or seismically hazardous area, on any of the Channel Islands, or within or contiguous to environmentally sensitive areas; and (5) the facility is sited so as to provide a sufficient buffer area to minimize adverse impacts on surrounding property.

(b) New or expanded refineries or petrochemical facilities shall minimize the need for once-through cooling by using air cooling to the maximum extent feasible and by using treated waste waters from inplant processes where feasible.

Section **30264** of the Coastal Act states that:

Notwithstanding any other provision of this division, except subdivisions (b) and (c) of Section 304l3, new or expanded thermal electric generating plants may be constructed in the coastal zone if the proposed coastal site has been determined by the State Energy Resources Conservation and Development Commission to have greater relative merit pursuant to the provisions of Section 25516.1 than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable pursuant to the provisions of Section 25516.

3. Discussion

The Coastal Act provides for the consideration of coastal-dependent industrial and energy-related development, and for other commercial and industrial land uses such as aquaculture, fishing, kelp harvesting, and seawater desalinization. The City of Malibu presently does not contain any of these land uses, and most--particularly oil and gas development (including directional drilling projects to develop offshore oil and gas resources from inland areas), are unlikely to be proposed within the City's limits in the foreseeable future.

If any land uses governed by the Coastal Act provisions cited in this section are proposed in the future for lands located within the boundaries of the City's certified LCP, an amendment to the City's LCP would be required before a coastal development permit for such a project could be approved.

Coastal Act Sections 30101, 30101.3 and 30255 distinguish among coastal-dependent development, coastal-related development, and other types of developments, and establish priorities among various land uses identified in each category. Coastal Act Section 30250 in part requires that new hazardous industrial development be located away from existing development, where feasible. Other applicable policies of the Coastal Act contain more specific siting and permitting requirements based on the type of project under consideration. Oil and gas development projects, including extraction, processing, refining, or other petrochemical facilities, and tanker facilities, are subject to very specific policy standards that would be considered by the Commission in certifying any related LCP amendment that might be proposed in the future to allow for such development within the City limits.

In addition, potential future projects that would be considered energy and industrial, or related projects, would likely be located in areas subject to tidal action, and thus within the area of the Coastal Commission's retained jurisdiction. Such projects would therefore require a coastal development permit approved by the Coastal Commission, but could also require an LCP amendment to address portions of such projects that would be proposed for location within the boundaries of the City's LCP.

J. Implementation Procedures

1. Coastal Act Provisions

Coastal Act Sections 30600 and 30620.6 provide for the transfer of much of the authority for issuance of coastal development permits to local jurisdictions upon certification of an LCP. Coastal Act Section 30006 also provides for the widest opportunity for public participation in coastal planning and regulatory decisions. The Coastal Act and accompanying implementing regulations (California Code of Regulations Division 5.5 13001 et. seq.) require that the LCP Implementing Ordinances include procedures for carrying out this transferred authority and set forth minimum standards for post certification noticing and hearing requirements.

2. Land Use Plan Policies

The LUP contains extensive policies designed to ensure that development is carried out in a manner consistent with the Coastal Act. The LUP also contains numerous policies to guide the issuance of coastal development permits.

3. Local Implementation Plan Provisions

Permit procedures are included in the Malibu Local Implementation Plan to provide the regulatory framework by which those LUP policies are carried out. There are several essential procedural components provided to ensure that the LIP conforms with and is adequate to carry out the policies and provisions of the Malibu Land Use Plan. These are: 1) requirements for issuing coastal development permits; 2) public hearing and noticing requirements; 3) procedures for the appeal of local actions on coastal development permits; 4) enforcement provisions; and, 5) procedures for amendments of the LCP. Procedures to address these components are contained in Chapter 13 (Coastal Development Permits) and Chapter 19 (LCP Amendments) of the Local Implementation Plan.

Coastal Development Permit Procedures.

The purpose and intent of Chapter 13 of the LIP is to establish procedures for the City to process coastal development permits consistent with the certified LCP, the Coastal Act and the California Code of Regulations.

The Coastal Development Permit (CDP) Ordinance (Chapter 13) specifies what development requires a local coastal development permit but it also includes

exemptions from these requirements. Most improvements to single family residences repair and maintenance activities and improvements to other structures are exempt consistent with Coastal Act section 30610. However, consistent with regulations 13250-13253, the ordinance specifies those improvements and repair and maintenance activities that are not exempt because they result in a risk of significant adverse impacts to coastal resources. Other exemptions include activities specified by Coastal Act 30610 and implementing regulations including exemptions for certain temporary events consistent with LUP Policy 2.19 and certain utility connections. Exemptions are also provided for rebuilding of structures destroyed by natural disaster. Structures, including legal nonconforming structures as defined in Section 13.5(A) of the LIP destroyed by natural disaster can be rebuilt if for the same use, in the same location and no more than 10% larger in size without a coastal development permit.

The ordinance also includes provisions to guide review of coastal permits for legal non-conforming uses or structures. An LCP and the coastal development permits issued pursuant to it are the principal mechanisms by which state coastal policies are applied at the local level. There are currently many older existing structures in the City that were constructed prior to the adoption of the Coastal Act policies. These structures may have been sited and designed in a manner contradictory to coastal management policy and standards. Numerous other structures were permitted and built prior to adoption of this LCP. The LUP Policies 4.15 and 5.53 assure that if these legal nonconforming structures are substantially rebuilt that they will be brought into compliance with LCP standards. These policies state that existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained and repaired. Additionally, additions or improvements may be made to such structures provided that such additions or improvements themselves conform to the LCP. However, substantial additions to non-conforming structures on a blufftop or beach cannot be permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Finally, demolition and site redevelopment cannot be permitted unless all structures are brought into conformance with the policies and standards of the LCP.

The City's existing Interim Zoning Ordinance (IZO) Chapter 9.4.00 (Grandfathering Provisions) includes some provisions that more broadly allow additions, repairs and renovation without regard to whether they would increase the extent of nonconformity. The IZO provides discretion to the Planning Director to allow a wide variety of improvements and modifications to nonconforming uses, including additional square footage improvements, modifications to setbacks, increases in height and addition of parking, without requiring conformance with current standards. Such allowances would permit substantial development upgrades to existing nonconforming structures. The LIP does not include the "Grandfathering" provision because it is not consistent with the LUP Policies 4.15, 5.53, 5.54 and 5.55 that relate to non-conforming uses.

The coastal permitting procedures also allow a variety of repair, maintenance and improvements to legal nonconforming structures, consistent with LUP policies. Section

13.5 (A) of the LIP assures that provisions applied to nonconforming use or structures apply only to any existing and lawfully established or lawfully authorized uses and structures that are not otherwise exempt from permit requirements. The CDP ordinance recognizes that nonconforming uses can continue to be repaired and maintained, but it includes additional criteria for evaluating whether additional, improvements increase the extent of non-conformity or are so substantial as to comprise a new development for which compliance with current LCP standards is required. As proposed this will ensure that these nonconforming uses are not expanded and improved in a manner that increases impacts on coastal resources.

The CDP ordinance (Chapter 13) contains requirements for filing coastal development permits that ensure that adequate information is submitted to evaluate proposals for consistency with the LCP. Required findings for approval of coastal development permits are specified consistent with LUP policy 5.1, including special public access findings for projects located between the first public road and the sea.

The CDP ordinance reflects when the Commission retains authority to issue coastal development in areas of continuing jurisdiction specified in the Coastal Act. It reflects when the Commission retains authority over coastal development permits issued by the Commission in order to maintain and enforce the terms and conditions of development and development mitigation authorized by the Commission.

Noticing and hearing procedures are provided that conform to the Coastal Act's implementing regulations and LUP policies 2.12, 3.39. Provisions are included to allow for issuance of administrative permits, emergency permits, variances and site plan review/minor modifications consistent with the Coastal Act and implementing regulations as well as LUP Policies 3.27,4.56, and 4.57.

The ordinance contains procedures for appeal of local coastal development permits as well as for amendments, revocation reconsideration of permits. Enforcement and penalties are detailed consistent with Coastal Act Section 30800-30822.

Because executed development agreements serve to provide long-term certainty in the development process by creating a long-term agreement binding the City, the ordinance allows for the execution of development agreements provided they are incorporated into the LCP through an LCP amendment that is certified by the Commission.

As proposed, the Coastal Development Permit Ordinance (Chapter 13) adheres to the regulatory process outlined in the Coastal Act, the California Code of Regulations, and LUP policies related to the administration of coastal development permits. These procedures will assure that coastal development permits are administered and issued to adequately and fully carry out the certified Land Use Plan, promote reasonable and sound development practices and preserve the City's coastal resources and public access opportunities.

K. LCP Amendment Procedures

1. Coastal Act Policies

The Coastal Act (sections 30514 –30515 and implementing regulation (Sections 13551-13555 and Sections 13544, 13544.5, 13511-13515) provide for the amendment of certified Local Coastal Programs. Sections 30514 and 30515 provide:

Section 30514 (a), (b) and (e)

(a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission.

(b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513, except that the commission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200) as would otherwise be required by Section 30512. In no event shall there be more than three of these submittals of proposed amendments in any calendar year. However, there are no limitations on the number of amendments included in each of the three submittals.

(e) For purposes of this section, "amendment of a certified local coastal program" includes, but is not limited to, any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel.

Section 30515

Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.

If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity

with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.

2. Land Use Plan Policies

Several policies of the LUP identify circumstances where LCP Amendments may be required, for example, policies 2.48, 2.81,3.5,5.17 and 7.12.

3. Local Implementation Plan Provisions

Chapter 19 of the Local Implementation Plan contains provisions for amendments of the LCP, including:

- Procedures for how amendment requests may be initiated at the local level;
- The required form and content of the submittal consistent with California Code of regulations 13552;
- The requirements for adequate public review of amendment documents at least 6 weeks prior to final local action on an amendment request;
- Procedures for conducting local hearings on proposed amendments;
- Required findings for adoption of an amendment;
- The process for submittal to the Coastal Commission for review; and,
- Provisions that assure that no amendment shall take affect unless and until effectively certified by the Coastal Commission.

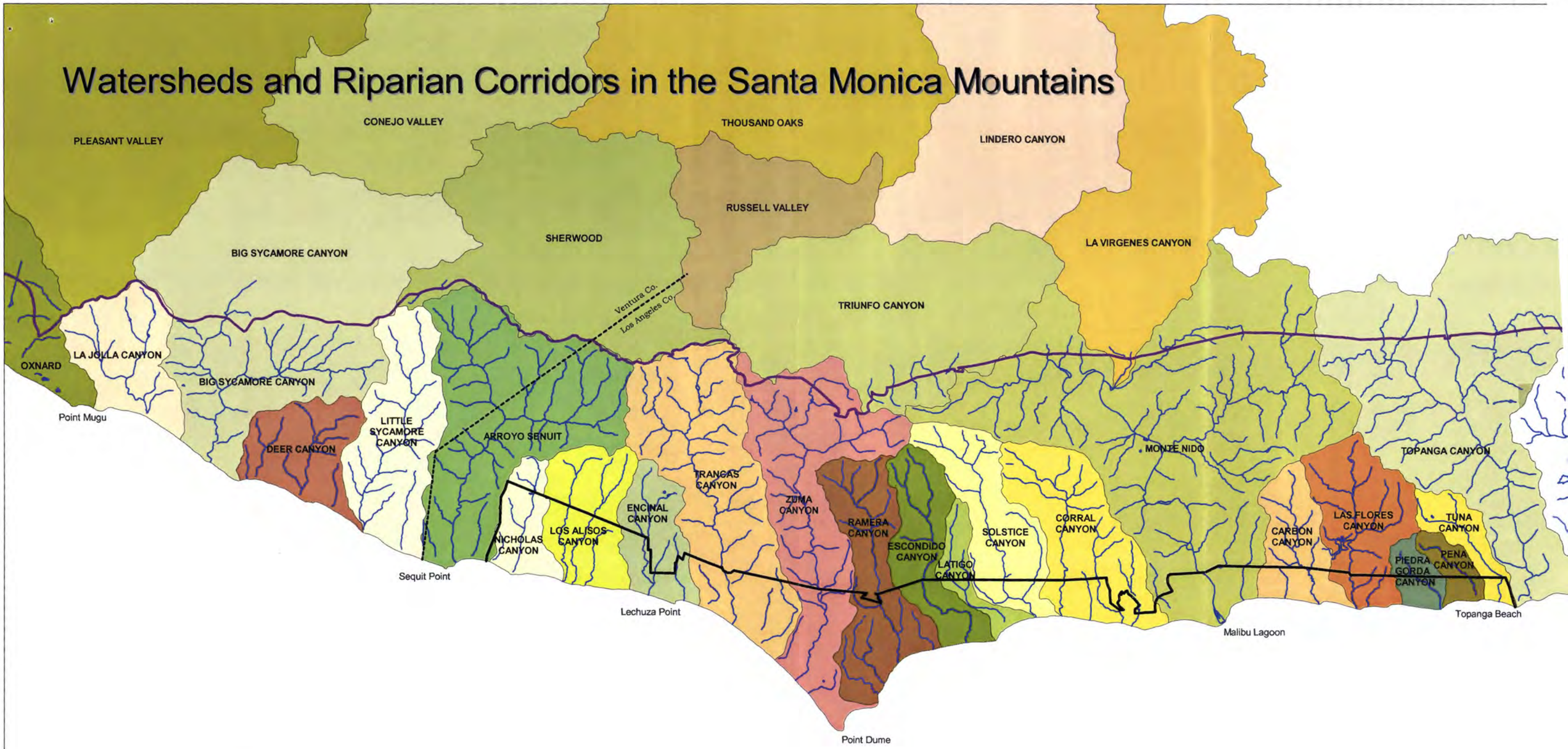
The LIP assures that in considering a proposed amendment, the City will have detailed and adequate information to evaluate the impact of the proposed ordinance on coastal resources, to identify feasible planning alternatives and to evaluate a proposed amendment for consistency with provisions of the Coastal Act. The ordinance also includes procedures to address proposed development of public works or energy facilities that may be of greater than local concern and for which consideration of LCP amendments may be necessary.

The LIP assures that proposed LCP Amendments will be processed in a manner than affords the public maximum opportunity to participate in the LCP amendment decision making at the local level as required by the LUP and the Coastal Act. It requires an adequate document review period and provides public noticing and hearings procedures for Planning Commission and Council review of proposed amendments.

Chapter 19 also assures that LCP amendments will be submitted for certification to the Commission with adequate information and public comments for the Commission in turn to evaluate the LCP amendment for consistency with the Coastal Act.

As proposed, these regulations make certain that the LCP as adopted by the Commission will continue to provide an adequate framework to guide local development decisionmaking consistent with provisions of the Coastal Act. It assures that no changes will occur to the policies and standards of the certified LCP without full evaluation at the local level and without certification by the Coastal Commission. As such the Commission finds that the LCP Amendment provisions of Chapter 19 of the Malibu LIP conform with and are adequate to carry out the policies of the Malibu Land Use Plan.

Watersheds and Riparian Corridors in the Santa Monica Mountains



Coastal Zone Boundary
Malibu City Boundary
Riparian Corridors

California Coastal Commission
Technical Services Division

- Scale and All Locations Approximate -
- For Illustrative Purposes Only -

N

Sources: National Park Service 1993,
CCC Technical Services.

Exhibit 1

DSM 5/02

Exhibit 2

Vegetation of the Malibu Coastal Region:

Santa Monica Mountains Vegetation Mapping Study Area

Draft July 14, 2002
California Department of Fish and Game
Wildlife and Habitat Data Analysis Branch
Todd Keeler-Wolf

Note: this list is preliminary and based on three reconnaissance trips throughout the Santa Monica Mountains in 2001 and 2002. Few of these vegetation types have been verified by sampling and subsequent analysis. Names are likely to change and relationships between proposed associations and alliances may change following vegetation sampling and analysis associated with the development of the formal vegetation classification of the Santa Monica Mountains over the next 18 months. This list currently includes 55 alliances and is a subset assumed to incorporate all vegetation types from the Malibu area. It is derived from a broader list that covers the vegetation of the entire Santa Monica Mountains.

Asterisks beside a vegetation name in the following list designates a type that is either rare throughout the state or is considered to be relatively restricted the Santa Monica Mountains area.

DEFINITIONS:

Alliance: The basic generic unit of floristic classification in the national vegetation classification. An alliance is defined usually by the dominant and characteristic plant species in the upper layer of vegetation. For example in a California sycamore alliance California sycamore is conspicuous or predominate in the tree canopy, although it may occur along with other tree species such as oaks and willows, and numerous other shrub and herb species. Those other species typically cover less ground and are less characteristic of the alliance than the sycamore.

Association: The smallest and most fundamental unit of classification in the national vegetation classification. This is analogous to the species in organismal taxonomy. Associations are subdivisions of alliances based usually on constant patterns of subordinate species within an overall pattern of alliance dominance. These patterns are typically geographically more specific than alliance distributions, Thus, associations tend to be locally distributed and can be easily identified as indicative of a certain environment or ecosystem in a local setting. For example, although the California sagebrush alliance is widespread in coastal California, the California sagebrush-ashy buckwheat association is only found in the Santa Monica Mountains.

Dominance: (dominated, also strongly dominated by) this term refers to the preponderance of the vegetation cover in a stand of uniform composition and site history. It may refer to cover of an individual plant (as in dominated by *Artemisia californica*, or it may refer to dominance by a physiognomic type as in

'stand dominated by shrubs". In the strict sense, dominance refers to the relative cover of one species or physiognomic type as compared to another species or physiognomic type. Anything over 50% relative cover is said to dominate a stand (however, see **dominance by layer**, below). Those species or physiognomic types that do not strongly dominate (considered to be 60% or greater relative cover) are treated in alternate keys so that precise estimation is not necessary to arrive at the correct determination in the key

Co-dominance (Codominated): Co dominance refers to two or more species in a stand with near equal cover. In general, co-dominance can occur among species which have anywhere between 30 and 60% relative cover.

Dominance by Layer: In the National Vegetation Classification tree, shrub, sub-shrub, and herbaceous layers are considered physiognomically distinct. A vegetation type is considered to belong to a certain physiognomic group if it is "dominated" by one layer. Layers are prioritized in order of height. The tallest layer, if it meets a minimum absolute cover of 10% is said to dominate and the type is usually named in the alliance level of classification by the most characteristic species in that dominant layer. Thus, if a stand has 12% trees, 50% shrubs, and 40% herbaceous species, it is a tree type and "dominated" by trees, even though the understory layers have greater cover. In some cases the herbaceous layer is taller than the shrub layer. In those cases the tallest layer takes precedence. Naming conventions for the vegetation types use "/" to denote the difference between layers as in *Juglans californica/Toxicodendron diversilobum/Elymus condensatus* for the woodland dominanted by California walnut with poison oak as the diagnostic shrub and giant wild rye as the diagnostic herbaceous species.

Importance: (important) a species is considered "important" in a stand or a vegetation type if it is greater than 1% absolute cover. This term is usually contrasted with "dominant" to mean that the species referenced is always present in the vegetation and always greater than 1% cover, but not always dominant (>50% relative cover)

Relative cover: the amount of the surface of the plot or stand sampled that is covered by one species (or physiognomic group) as compared (relative to) the amount of surface of the plot or stand covered by all species or groups. Thus, 50% relative cover means that half of the total proportion of cover of all species or physiognomic groups is composed of the single species or group in question. Relative cover values are proportional number, and if added, total 100% for each stand (plot sample).

Absolute cover: The actual percentage of the ground (surface of the plot or stand) that is covered by a species or group of species. As in: " *Baccharis pilularis* covers between 5 and 10% of the stand" Absolute cover of all species or groups if added in a stand or plot may total greater than 100% because it is not a proportional number.

Shrubs: a multi stemmed woody plant that is between 0.2 and 5 m tall. Definitions are blurred at the low and the high ends of the height scales. Small multi-stemmed trees approximately 4-m tall and large woody herbaceous species less than 5 dm tall are individually treated in the keys and distinguished from shrubs individually in the key. Sub-shrubs are considered as multi-stemmed woody plants less than 0.5 m tall on average.

Sparse: generic term relating to low widely spaced cover of individuals of a species or a physiognomic group. Sparsely vegetated is defined as < 2% cover of vegetation , sparse canopy is < 10% (see emergent)

Stand: A stand is the basic physical unit of vegetation in a landscape. It has no set size. Some vegetation stands are very small, such as alpine meadow or tundra types, and some may be several square kilometers in size, such as desert or forest types. A stand is defined by two main unifying characteristics:

1) It has <u>compositional</u> integrity. Throughout the site, the combination of species is similar. The stand is differentiated from adjacent stands by a discernable boundary that may be abruPt. or indistinct.
2) It has <u>structural</u> integrity. It has a similar history or environmental setting that affords relatively similar horizontal and vertical spacing of plant species. For example, a hillside forest originally

dominated by the same species that burned on the upper part of the slopes, but not the lower, would be divided into two stands. Likewise, a sparse woodland occupying a slope with very shallow rocky soils would be considered a different stand from an adjacent slope with deeper, moister soil and a denser woodland or forest of the same species.

The structural and compositional features of a stand are often combined into a term called homogeneity. For an area of vegetated ground to meet the requirements of a stand, it must be homogeneous.

Emergent: a structural layer of vegetation that rises above the main canopy layer . It may be large trees over mid sized or short trees, or large shrubs over denser sub-shrubs or herbaceous layers. Generally emergents are less than 10% absolute cover

Early Seral: Defined as recent post-disturbance stand that is is relatively rapid transition to more mature vegetation. As in *Baccharis* [coyotebrush] alliance stands recolonizing pasture or annual grassland.

Woody plant: any species of plant that has noticeably woody stems. Does not include herbaceous species with woody underground portions such as tubers, roots, or rhizomes.

PRELIMINARY CLASSIFICATION

Tree-dominated vegetation:

**Alnus rhombifolia* Alliance [white alder]

A. rhombifolia Locally dominant along Solstice and Maibu Cyn.s

EucalyPt.us spp mapping unit (includes Pt.. Dume and potentially other areas) (EXOTIC) [mostly blue gum, some *E. camaldulensis* red gum]

**Juglans californica* Alliance [California walnut]

4. *J. Californica /Sambucus mexicana-Malosma laurina* (mouth of Malibu Creek)
5. *J. californica/Ceanothus spinosus* (w end)
6. *J. californica/Toxicodendron diversilobum/Elymus condensatus.* N slopes Solstice Cyn. (post fire 1994) also n slope of Zuma Cyn. above Pt. Dume, behind "Bonsall"(spp?)

**Platanus racemosa* Alliance [California sycamore]

1. *P. racemosa-Alnus rhombifolia* association (Solstice and Malibu Cyn.s)
2. *P. racemosa-Quercus agrifolia*?
4. *P. racemosa-Salix lasiolepis* (Malibu Cr.)
5. *P. racemosa/ Baccharis salicifolia.* Upper Sycamore Cyn.
6. *P. racemosa/ Bromus diandrus* ; middle Sycamore Canyon near house and upstream from Woods Cyn..

Quercus agrifolia Alliance [coast live oak]

1. *Q agrifolia* grassy woodlands Topanga Cyn. on hills
*2. *Q agrifolia / Carex barbarae* (along cold Cyn. stream)
*3. *Q. agrifolia Umbellularia californica* (stream bottoms in e end of range)

*6. *Quercus agrifolia-Juglans californica/Cercocarpus betuloides-Heteromeles arbutifolia-Toxicodendron diversilobum* N facing slope near Pt. Dume ca ½ mi from coast

7. **Quercus agrifolia/Salvia leucophylla.* Scattered on Sycamore Canyon N facing slopes
8. **Quercus agrifolia/Symphoricarpos-Toxicodendron*; semi-riaprian bottomlands as along Woods Cyn. off Big Sycamore and Ranch Center Rd.

Salix exigua Alliance [narrow-leaf willow]
Small stand east of Mugu Lagoon near shooting range

Salix laevigata Alliance [red willow]
Maybe small stands along Malibu Creek and near Paramount Ranch

Salix lasiolepis Alliance [arroyo willow]
Common stands along major creeks may be several associations based on associated other willows and Sycamore, etc. (lines downcut creeks in Chesboro). Most common willow type

**Umbellularia californica* Alliance [California bay]
1. *Umbellularia/Ceanothus spinosus* see *C. spinosus* Alliance, also, uncertain of proper name for mix of these two species)

Shrub-dominated vegetation:

Adenostoma fasciculatum Alliance [chamise]
1. *A. fasciculatum*-pure

Adenostoma fasciculatum-Salvia mellifera Alliance [chamise-black sage]
1. undifferentiated, sw-facing slopes on e side of Mtns
2. *A. fasaciculatum-Salvia mellifera-Ceanothus crassifolius* (good examples on s facing sandstone in upper Chesboro/Simi Hills, also with *Malosoma* Kanan-Dume Rd near big housing pads on n side of range
3. *A. fasciculatum-S. mellifera-Ceanothus spinosus* (NE-facing [!] slope Overlook trail, small patches

Atriplex lentiformis Alliance [quailbush] Roadcuts along Pacific Coast Hwy., Mixes with *Baccharis pilularis* and *Distichlis-Salicornia* at edge of Mugu Lagoon (perhaps > mmu)

Artemisia californica Alliance [California sagebrush]
1. *A. californica-Salvia leucophylla*
2. *A. californica- Salvia mellifera*? (with emergent *Malosma laurina*, Decker Cyn.)
*3. *A. californica-S. leucophylla/Nassella lepida* (mostly coastal above Malibu, Pt. Dume, etc.)

4. *A. californica-Salvia leucophylla-Toxicodendron-Eriogonum cinereum/Elymus condensatus.* Common on east and ne facing slopes above Pt. Dume also has *Mimulus auriantiacus* and may have *Venegasia* as at Overlook trail on ne-facing concavities, mid slope, also similar on upper Sycamore Cyn.
5. **A. californica- Coreopsis gigantea* (W portion of the mapping area above Oxnard plain on n-facing volcanics)

Baccharis pilularis Alliance [coyote bush]

1. *B. pilularis/* annual grass-*Brassica nigra* (disturbed fallow fields, old clearings)

Ceanothus megacarpus Alliance [big-pod ceanothus]

1. *C. megacarpus* (pure) more gentle neutral (non sw-facing slopes) e.g., Decker Cyn.

*2. *C.megacarpus –Adenostoma sparsifolium* (Party Rock, w/ *Malosoma* on SW slopes) w facing slope Zuma motorway

3. *C. megacarpus – Adenostoma fasciculatum* (SW to S-facing Zuma Pk. Also upper N facing slopes) often with Salvia mellifera (may consider as part of mixed Alliance?) above css on steep coastal slopes as on Overlook Trail. Also N facin slope where chamise dominates on Ranch Center Rd (is it a chamise type or a ceme type?)

4. *C. megacarpus-Cercocarpus betuloides* (Pentachaeta site, park w/ artificial lake)

*5. *C .megacarpus-Malosma laurina-Salvia mellifera* (upper Sycamore Cyn. s-facing slopes also simi) variant w/out Mala and just Ceme-Same on e-facing upper sycamore Cyn. along Boney Mtn trail. Also Ceme-Mala w/out Same in Little Sycamore upper S and W slopes

**Ceanothus spinosus* Alliance [green-bark ceanothus] (in bloom 3/4/02)

1. *C. spinosus-C. megacarpus* (northerly-facing mid slopes or concave s slopes head of Sycamore Cyn. and Overlook Rd

2. *C. spinosus-Umbellularia californica* (might better be called UMCA type except UMCA is not always dominant) probably just one type

3. *C. spinosus* (pure) e.g, side canyons of upper Sycamore Cyn. toward La Jolla Valley

Cercocarpus betuloides Alliance [birch-leaf mountain mahogany]

Occasional relatively small pure stands or mixed with *Adeonsotoma, Ceanothus macrocarpus* or *C. spinosus* (may be up to three associations)

*1. *C. betuloides – Malosma laurina-Artemisia californica-Eriogonum cinereum* (coastal within ½ mi of coast at low elev Long Grade, burned '93)

*2. *C. betuloides - Ceanothus spinosus.* Coastal Decker Cyn. and others n and ne-facing slopes may even have *Coreopsis gigantea.* This is a variable type common in Zuma, Ramerez, upper Sycamore Cyn., seems to occur upslope from pure stands of Cesp in upper drainages as Zuma Motorway, but also lower slopes close

to the coast, still Cebe tends to occupy slopes slightly superior to the dominant zone of Cesp.

**Coreposis gigantea* Alliance (?) [giant coreopsis]

1. *C. gigantea-Artemisia californica-Salvia leucophylla-Eriogonum cinereum* (mixed and near pure near water treatment plant between Long Grade and Pt. Mugu) may be considered as an *Artemisia-Salvia leucophylla* type (see Arca Alliance)

Encelia californica Alliance [California brittle bush] (does best and most stable on volcanics)

2. *E. californica*, narrow weedy borders on coastal sage soils adjacent to annual grass and other disturbed areas (below mmu)

**Ericameria erocoides* Alliance (or *E ericoides-Lupinus chamissonis* Alliance) [coastal goldenbush or mock heather]

1. Coastal strand near Pt. Mugu (on climbing dune, etc.)
2. *Ericameia ericoides-Coreopsis gigantea/Croton californica* tip of Pt. Dume sandy area

Eriogonum fasciculatum Alliance [California or flat-topped buckwheat]

*3. distinctive low mounded form on sandy dunes and coastal bluffs on immediate coast from Pt. Mugu east (part of bluff scrub?)

Eriogonum cinereum Alliance (?) [ashy buckwheat]

*1. May occur in relatively pure stands with *A. californica,* etc
On coastal side of mountains, also above Serrano Valley on Coastal side of mtns on S facing slopes with ERFA and Malosma
4. *E. cinereum-Salvia mellifera -Malosma* (the latter as emergent over the css shrubs, Long Grade s facing slopes) WSW-facing slopes above Middle Sycamore Cyn..

**Hazardia squarrosa* (Alliance??) [coastal goldenbush]

Colonizes annual grass stands on N facing slopes in Chesboro area may be important component of css with arca and saleu on Malibu coast, but there probably best considered an association of arca-saleu

**Heteromeles arbutifolia* Alliance (?) [toyon]

1. *H. arbutifolia* as overstory/emergent (acts like Malosma in Ramerez Cyn. near falls mixed with *Salvia mellifera, Eriogonum cinereum,* and *Malosma* on "chaparral soils", not "css soils"

Lotus scoparius Alliance [deerweed] clearings and recent fires, road cuts , fuel breaks; generally only present up to 10 yerars after fire

Malosma laurina Alliance [laurel sumac; taco bush]note: die-back in many areas of coast –disease related; also and radial clonal spreading growth form "doughnut holes"

*1. *M. Laurina – Eriogonum cinereum* (s facing slopes Malibu Cyn. Question of type conversion?) also on steeper and rockier s-facing slopes above Serrano Valley w/less steep being adfa-same-erce.

*3. *M. laurina /Eriogonum cinereum-Salvia mellifera*; s-facing common off CSS soils

4. *M. laurina* ; weedy, invasive version with Bapi, S. leucophylla – La Jolla Valley also Ranch Center Rd.
5. *M. laurina* over annual grass sw-facing slopes Long Grade; high fire frequency
6. **M. laurina* over *Adenostoma fasciculatum-Salvia mellifera* (mid sw-facing slopes Sycamore Cyn., see also Adfa Alliance)

**Opuntia littoralis* Alliance [coast prickly-pear] does best on the volcanics, can be dense on N slopes near Camarillo, may be disturbance related in part; may not occur in Malibu area

Rhus integrifolia Alliance [lemonade berry] A question of hybridization with *R. ovata*, [sugerbush], most individuals generally considered "mostly" I. *integrifolia* here

*3. *R. integrifolia –O. * littoralis – E. fasciculatum – A. californica – E. cinereum* (similar variant to # 1 on xeric sw-facing slopes near Channel Is State U.)

4. *R. integrifolia/Artemisia californica*; on shale E of Mugu Lagoon steep, due s slopes
5. **R. integrifolia-Malosma-S leucophylla-E cinereum-Yucca whipplei* mouth of Sycamore Cyn., scattered on lower sea-ward slopes of Overlook Rd.
6. **Rhus integrifolia-Eriogonum cinereum*; steep rocky coastal strip above PCH near Pt. Mugu, etc.

Salvia leucophylla Alliance [purple sage] (seems to prefer finer-textured "CSS" soils compared to *S. mellifera*)

*2. *S. leucophylla-Artemisia californica* (Conejo open space on ne slopes, also deeper soils at bases of slopes) need to resolve this mix. I'm tending to call it Arca-saleu rather than S leucophylla Alliance. Whatever we call it this is the typical CSS on Malibu coast (Deer Cr rd, etc.), with a mix of these two main species in varying dominance. (see Arca Alliance)

*3. *S. leucophylla-Eriogonum cinereum* (La Jolla Valley)

*4. *S. leucophylla- Mimulus aurantiacus-Yucca whipplei*; sw-facing slopes middle Sycamore Cyn. area

Salvia mellifera Alliance [black sage]

4. *S. mellifera* w/ emergent *Malosma* (see Malosma Alliance also) Mulhulland Dr., Leo Carrillo SP probably over coarser sedimentary rock than adjacnt Arca-Saleu-Malosma

Spartinum junceum [EXOTIC Spanish broom] roadsides (Kanan-Dume, Serrano Valley) often in fill patches (fill cones) below road beds, mixed with non-native pines (may have been in seed mix?)

Toxicodendron diversilobum Alliance [poison oak]
Small coastal patches on N facing slopes as near Pt. Dume, etc.

Herb-dominated vegetation:

Ammophila arenaria Alliance? [European dunegrass EXOTIC]
Beach dunes?

Arundo donax Alliance [giant reed EXOTIC]
Several small clumps along Malabu Cr and other cxreeks, also at Pt. Mugu salt marsh/beach interface

Avena fatua Alliance [slender wild oat EXOTIC]

Bromus diandrus Alliance [ripgut brome EXOTIC]
W/ *Brassica nigra* Wildwood Park may consider a tall weedy type

Carpobrotus edulus Alliance [iceplant EXOTIC]
On dunes and edges of salt marsh Pt. Mugu

Cortaderia selloana Alliance? [pampas grass EXOTIC] note; only individual plants seen near Pt.. Dume)

**Croton californica* Alliance ? [California croton]
Croton-Beach Primrose (near climbing dune Pt.. Mugu) very small, below mmu

**Distichlis spicata* Alliance [saltgrass] salt marsh Pt.. Mugu; may be a Disp-Jaumea carnosa assn?

Elymus condensatus Alliance [giant wild rye]
Several Clonal patches on Cheseboro Cyn.. Mostly on N facing slopes and concavities, proliferates after fire also at Wildwood Park on seeps and n-facing cliff bases (below mmu) in coastal strip, usually a subdominant in Artemisia-Salvia leucophylla stands

Foenuiculum vulgare [Fennel EXOTIC] roadside stands 1-2 acres on lower Long Grade

Lolium multiflorum Alliance? [Italian ryegrass Exotic]
Moister annual grasslands?

Pennesetum [Fountain Grass EXOTIC]
Monocultures along PCH road cuts actually invades "virgin" rock outcrops at least 1 mile inland from coast as along Malibu Cyn. rd

**Nassella lepida* Alliance? [foothill needlegrass] Mixed with *Salvia leucophylla-Artemisia californica* in "css" soils near Malibu, etc. may be small <mmu stands

**Nassella pulchra* Alliance [purple needlegrass] La Jolla Valley mix with *Brassica*, Annual grass, some taken over by Harding grass (Phaleris aquatica)

Phaleris aquatica [Harding grass EXOTIC] has taken over much of the western end of La Jolla Valley and other grassy bottomlands

Ruppia maritima Alliance [ditch grass]
Pt. Mugu?

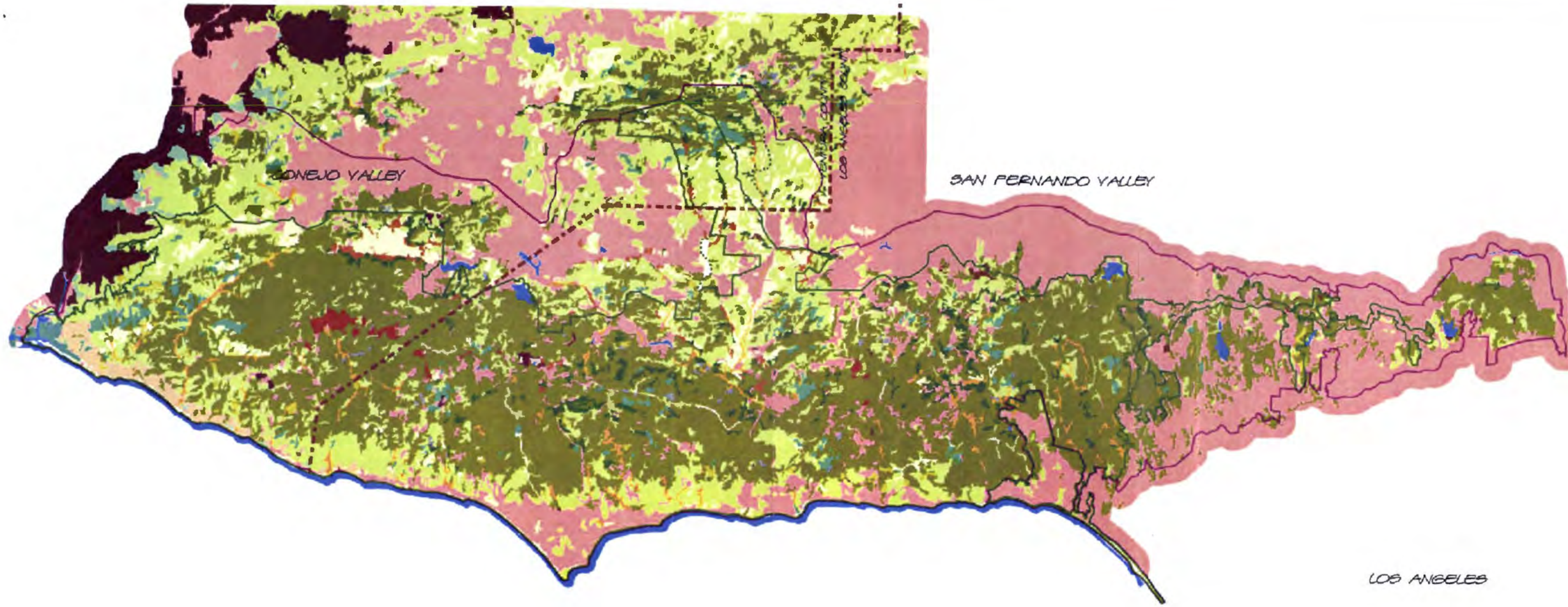
Scirpus californicus Alliance [California bulrush]
Rocky oaks pond, sewage treatment ponds south of Camarillo; below mmu

Salicornia virginica Alliance [pickleweed] saltmarshes
Pt. Mugu, Malibu

1. *S virginica-Limonium californicum* (below mmu)
2. *S. virginica/ Batis* (below mmu)

Typha latifolia Alliance [broadleaf cattail]
Small patch at seaward edge of Zuma Lagoon (below mmu)

**Venegasia carpesioides* Alliance?:[coastal sunflower] common on mesic slopes following fire, may dominate between resprouting chamise, big-pod ceanothus, etc.mostly adjacent to *C. spinosus* and *Toxicodendron* stands n-facing slopes closer to coast on W and central end (e.g., lower Sycamore Cyn. and Overlook trail, also Malibu Cyn.)



- AGRICULTURAL
- CHAMISE CHAPARRAL
- COAST LIVE OAK
- COASTAL CACTUS SCRUB
- COASTAL DUNE / BLUFF SCRUB
- COASTAL SAGE SCRUB
- COASTAL SAGE SCRUB-CHAPARRAL TRANSITION
- COASTAL STRAND
- DEVELOPMENT
- NONNATIVE CONIFER / HARDWOOD
- NONNATIVE GRASSLAND / HERBACEOUS
- NORTHERN MIXED CHAPARRAL
- RED SHANK CHAPARRAL
- RIPARIAN (SYCAMORE-OAK)
- ROCK OUTCROPS (BARREN)
- SALT MARSH
- VALLEY OAK
- WALNUT
- WATER

- LOS ANGELES / VENTURA COUNTY LINE
- SMMRA BOUNDARY
- SMMC BOUNDARY

Figure 11:

VEGETATION

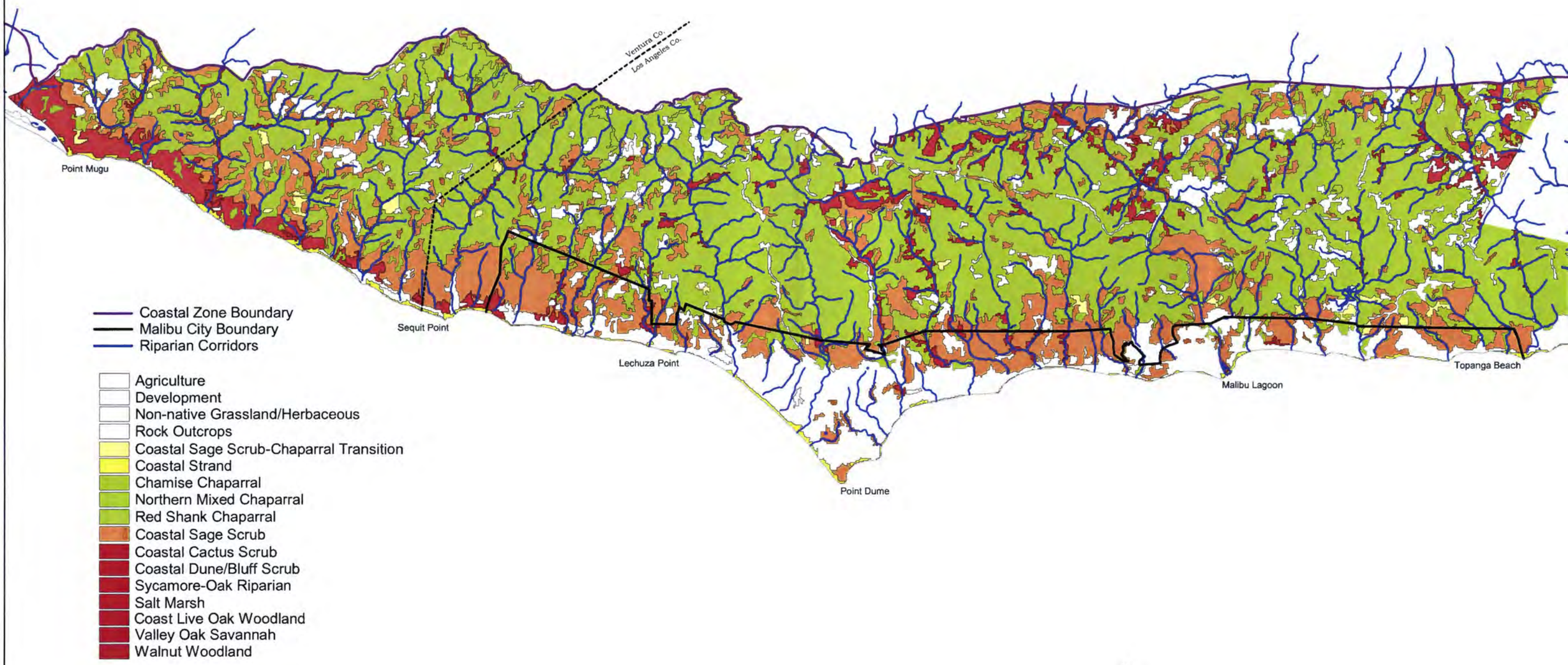
SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA CALIFORNIA

INCLUDES UNITS OF NPS, CALIFORNIA STATE PARKS, AND THE SANTA MONICA MOUNTAINS CONSERVANCY

United States Department of the Interior • National Park Service
SAMO • September 2000 • 638 • 20073

Exhibit 3

Relationship of Riparian Corridors (Dark Blue) and Certain Rare Habitat Types (Red) to Coastal Sage Scrub (Orange) and Chaparral (Green) in the Santa Monica Mountains



California Coastal Commission
Technical Services Division

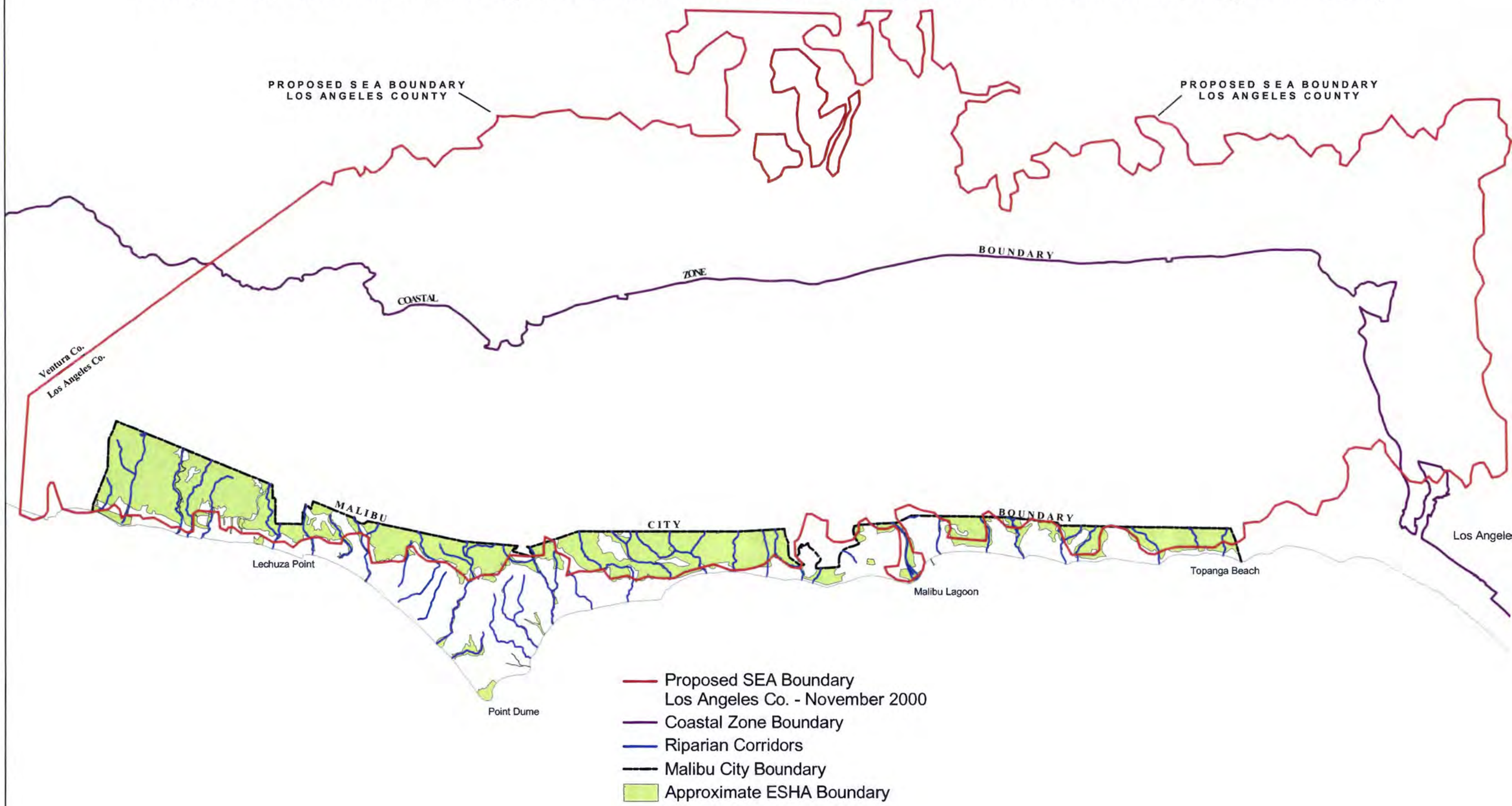
- Scale and All Locations Approximate -
- For Illustrative Purposes Only -

Sources: National Park Service 1993,
CCC Technical Services.

Exhibit 4

DSM 5/02

Comparison of ESHA in the City of Malibu and the Santa Monica Mountains SEA of Los Angeles County



California Coastal Commission
Technical Services Division

- Scale and All Locations Approximate -
- For Illustrative Purposes Only -

N

Sources: PCR Services Corporation, Frank Hovore & Associates, FORMA Systems 2000, National Park Service 1993, CCC Technical Services.

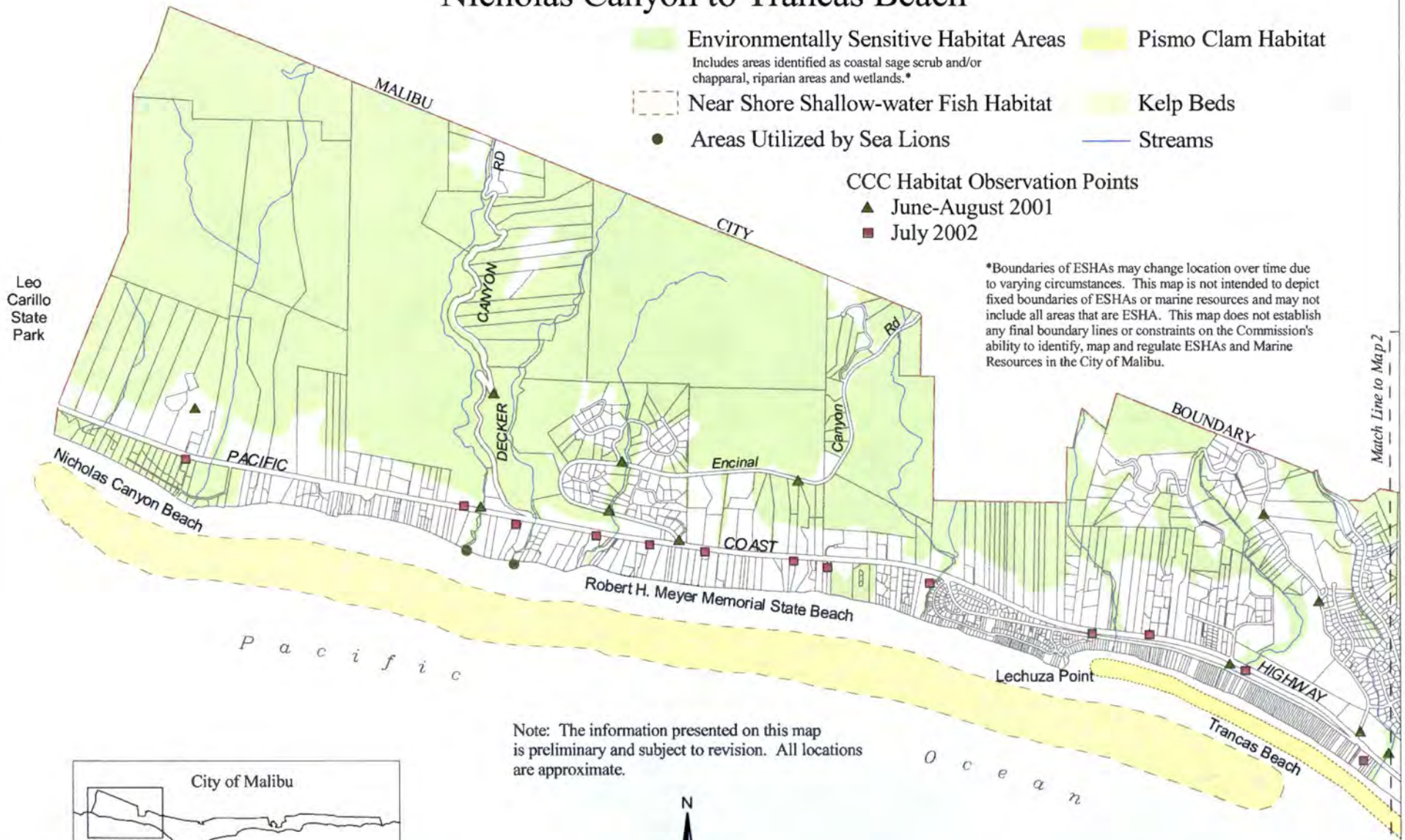
Exhibit 5

DSM 6

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 1: Nicholas Canyon to Trancas Beach



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

California Coastal Commission
Technical Services Division

Exhibit 6-1

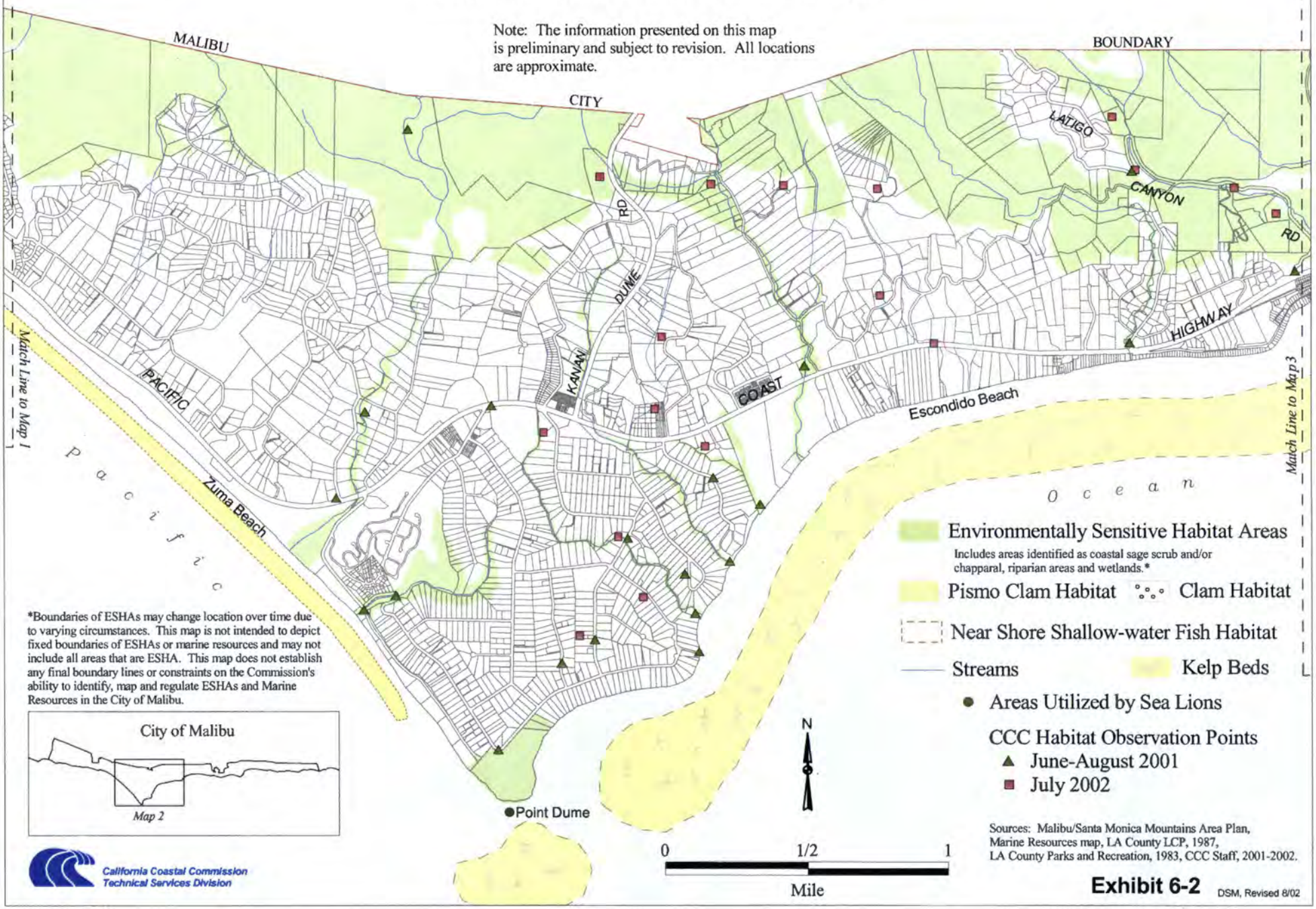
DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 2: Zuma Beach to Escondido Beach

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



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

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

California Coastal Commission
Technical Services Division

Exhibit 6-2

DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

Environmentally Sensitive Habitat Areas

Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

Kelp Beds

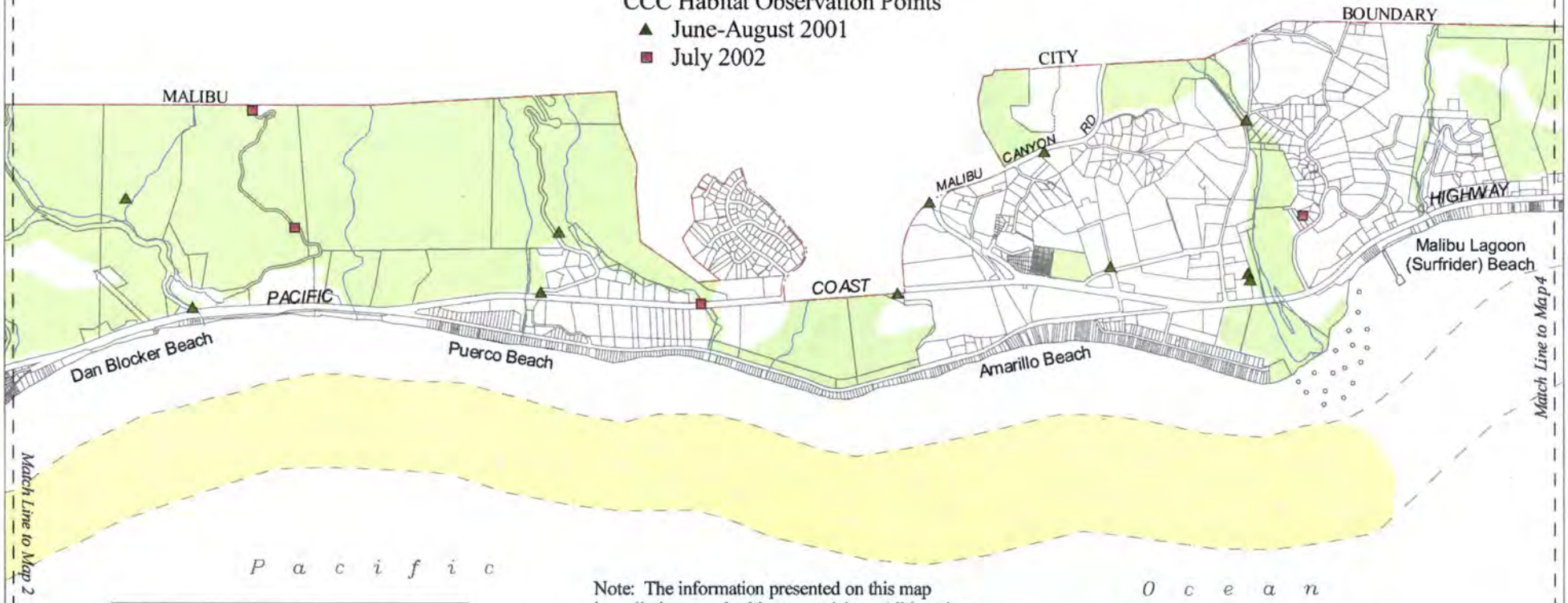
Near Shore Shallow-water Fish Habitat

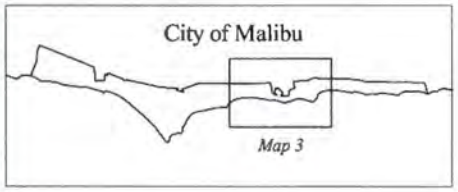
Streams

Clam Habitat

CCC Habitat Observation Points

- June-August 2001
- July 2002





Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.

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

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

California Coastal Commission
Technical Services Division

Exhibit 6-3 DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 4: Carbon Beach to Topanga Beach

Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

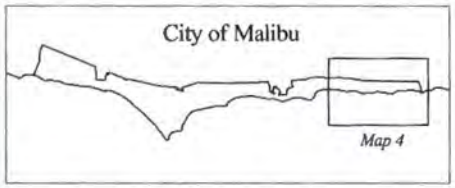
Near Shore Shallow-water Fish Habitat

Streams

CCC Habitat Observation Points
- June-August 2001
- July 2002

P a c i f i c O c e a n

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



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

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

California Coastal Commission
Technical Services Division

Exhibit 6-4 DSM, Revised 8/02

Exhibit 7.

Coastal Commission Response to the City of Malibu's Comments and Resulting Refinements to the ESHA Maps of Malibu

The specific sites in Malibu referenced below by the City of Malibu's numbering system (M1, M2,...,M39) are indicated on the map in Exhibit 8.

Section A. General Hillside and Canyon Areas.

Areas designated ESHA were so designated because they meet the Coastal Act definition, regardless of whether they occur on public or private land or whether the slopes are greater or less than 40%. It is not surprising that much of the ESHA is found on public land and on steep slopes because these are precisely the areas in which development has been minimal or non-existent. In assigning ESHA status, one criterion was that the area not be already developed, and so there is a natural correlation that arises between undeveloped areas and ESHA status.

Section B. Specific Areas.

Site (Malibu's Numbering)	Malibu's Comments	CCC Response
M1. San Nicholas Canyon (State Park)	No Comment from Malibu	We have continued our ESHA designation of this drainage.
M2. Los Alisos Canyon (just west of Decker Canyon Road/PCH intersection)	Drainage has some influx of non-native species, but remains a relatively intact native community. The majority of this drainage south of PCH is ESHA, but **boundaries should be refined to the limits of the drainage channel**, as existing disturbance/development occurs on either side.	Boundaries of the ESHA area have been redefined to only include the limits of the drainage channel. This excludes non-native vegetation that is dominant on the banks.
M3. La Chusa Canyon (just east of Decker Canyon Road/PCH intersection, south of PCH)	This drainage south of PCH is heavily disturbed. The drainage channel qualifies as jurisdictional by Department of Fish and Game standards, but over all habitat is highly disturbed by existing stable/horses, tennis court, and encroaching landscape vegetation. The City recommends that this area be **removed from ESHA designation**.	We have narrowed the ESHA area to only include the drainage channel. This excludes the dominant non-native vegetation on the banks.
M4. Encinal Drainage	Boundaries of the drainage	We have deleted portions of

(Between El Pascador and La Piedera State Beaches)	channel support habitat consistent with ESHA. However, **ESHA boundary lines should be refined to limits of drainage channel** as existing disturbance occurs on either side.	the drainage in which non-native vegetation is dominant.
M5. La Piedra State Beach Drainage (at Encinal Canyon Rd./PCH intersection)	Drainage is located in mostly parkland. Habitat exists in a deeply eroded gully. Native vegetation consists primarily of upland scrub species, some influx of non-native invasive species. Though designation of parkland itself is not an issue, adjacent private properties would be affected significantly by setbacks from mapped boundaries. Habitat is not particularly unique. City recommends this drainage be **removed from ESHA designation**.	This very steep, eroded drainage is mixed upland and non-native species. Not riparian habitat nor connected to other riparian habitat. We have therefore deleted it from ESHA designation.
M6. Drainage east of Encinal Canyon – (just east of Encinal Canyon Road/PCH intersection, south of PCH)	Narrow ditch heavily dominated by non-native species. This drainage has very low habitat value. The City recommends **removal from ESHA designation**.	We have deleted this drainage from ESHA status. The habitat is degraded and dominated by non-native vegetation.
M7. Drainage east of Encinal Canyon – (just east of Encinal Canyon Road/PCH intersection, north of PCH)	Upper portion of drainage supports a native, though somewhat disturbed scrub community. Though some of this portion of drainage provides habitat for wildlife and the drainage channel is jurisdictional, this section of drainage is fragmented from any surrounding habitat. As such, habitat functions and values are substantially reduced. The City Recommends **removal from ESHA designation**.	We have deleted this drainage from ESHA status. The habitat is degraded and dominated by non-native vegetation.
M38. (Out-of-sequence Malibu number). El Matadore Drainage – (West of El Matadore State Beach)	Habitat in this drainage is heavily disturbed, and contains a substantial element of non-native vegetation. In addition, this area is isolated by development and PCH. City recommends **removal of this area from ESHA designation.**	Heavily disturbed drainage dominated by non-native vegetation. This is also an isolated fragment. It has therefore been removed from ESHA designation.
M8. Encinal Canyon (just west	Vegetation consists of	This canyon is

of Broad Beach Road/Sea Level Drive)	predominantly eucalyptus trees with some sycamores mixed in. There was a suggestion from CCC staff that this area may support roosting monarchs, which would justify ESHA status. However, the City does not have any current data to support this. The drainage otherwise does provide some reasonably good habitat. As such, the City recommends that the **ESHA boundary lines be refined to only incorporate the actual drainage channel**, as uplands on both sides are either developed or highly disturbed.	predominantly lined with Eucalyptus trees with some sycamores in the drainage. There are unconfirmed reports of Monarchs using these trees, and the drainage does have some sycamores and willows. We have narrowed our EHSA designation some to remove the non-native habitat, but have kept the channel as ESHA.
M39. (Out-of-sequence Malibu number). Bailard Road Drainage –(just west of the terminus of Bailard Road)	Habitat in this drainage is heavily disturbed, and has no connectivity to open space areas. City recommends **removal of this area from ESHA designation**.	Disturbed, non-native vegetation. Isolated from other habitat. Therefore this drainage was removed from ESHA designation.
M9. Lunita Drainage (just east of Lunita/PCH intersection) – (between Lunita Rd. (to the west) and Trancas Canyon (to the east))	The section of the drainage course identified on the map is highly disturbed. Beyond the banks of both sides, nearly all of the vegetation has been removed through regular disking. The drainage itself supports a variety of upland species. Coyote brush and scattered California sagebrush are dominant and there is a considerable element of non-native plant species. The drainage course is still jurisdictional by the Department of Fish and Game standards, but the habitat is of very low value. The City recommends that this area be **removed from ESHA designation**.	Most of the vegetation beyond the banks of this drainage has been disked. However on the upper west side where disking is not complete, native perennial grass (*Nascella* spp.) is interspersed with California sagebrush scrub. This drainage is connected to significant inland riparian habitat. In addition the drainage itself is willow riparian habitat in the lower portion and fairly good quality coastal sage scrub throughout. Some of the plants observed there are arroyo and red willow, coyote brush, California sagebrush, California buckwheat, laurel sumac, *Yucca whipplii*, and *Nascella* spp.. Because of the riparian willow habitat, connectivity to inland riparian habitat and native grasses, we have retained this drainage in ESHA status.

M10. Morning View Drainage (just west of Malibu High School)	This drainage is heavily dominated by castor bean and other non natives. Portions may be jurisdictional by Department of Fish and Game Standards, but habitat not consistent with ESHA designation. The City recommends that **this area be removed from ESHA designation.**	This was an isolated fragment that was dominated by non-native vegetation. It was therefore removed from ESHA status.
M11. Omitted from Malibu List		
M12. Omitted from Malibu List		
M13. Portshead/Fernhill/Grayfox Drainage (just west of Portshead Road, crosses Fernhill Road and parallel to Grayfox)	The West fork of upper portion of the drainage is not jurisdictional and does not support high quality habitat consistent with ESHA. The City recommends that **this area be removed from ESHA designation.** The East fork is jurisdictional and supports willows within the channel boundaries for a little less than one half mile to the south. The City recommends that the **ESHA boundaries in this area be confined to the channel as shown on the map**. The remainder of the drainage is highly disturbed with encroaching development, sections of channelization and substantial element of non-native vegetation. The City recommends that the **remainder of the drainage be removed from the ESHA designation.**	The upper west fork of this drainage does not connect to any inland riparian habitat and is mostly disturbed scrub with non-native species dominant over most of the drainage. Therefore this section has been removed from ESHA designation. The upper east fork however is an ACOE wetland extending about ½ mile downstream from PCH toward the south. The ESHA boundaries of this section have been narrowed to the jurisdictional area to exclude non-native disturbed vegetation above. This ESHA designation has been retained from the wetland area to the coast to provide ESHA protection to the streambed along this channel.
M14. Upper Portshead Drainage (section north of PCH)	This portion of the drainage is heavily disturbed, fragmented, and surrounded by development. The City recommends that **this area be removed from ESHA designation.**	This drainage is predominantly non-native vegetation and highly disturbed. It is also isolated from any upstream riparian habitat. It has therefore been removed from ESHA status.
M15. Bison Court Drainage (immediately north and south of Bison Court)	This entire drainage is highly disturbed, fragmented, supports predominantly non-native vegetation, providing very low habitat value. The City recommends that **this drainage be removed from ESHA designation**.	All of the non-native vegetation on the banks of this drainage has been removed from ESHA designation. We have narrowed the ESHA area to include only the stream channel.

M16. Kanan Dume Road Drainage (just west of Kanan Dume Road)	Relatively high quality habitat in the drainage channel. The City recommends the **ESHA boundaries in this area be confined to the drainage channel**.	ESHA boundaries have been confined to the drainage channel to protect habitat there.
M17. Upper Walnut Canyon (just west of Zumirez Drive, north of PCH).	This portion of the drainage sustains no riparian associated vegetation, is partially disked, and contains a substantial non-native vegetation component. The City recommends that **this drainage be removed from ESHA designation**.	This drainage is highly disturbed and dominated by non-native vegetation. In addition it is not connected to any inland riparian habitat. It has therefore been remove from ESHA designation.
M18. Lower Walnut Canyon – (just west of Zumirez Drive, south of PCH)	This area exhibits relatively intact riparian vegetation. The City recommends that **this area remain in ESHA designation.**	Willow riparian vegetation present. This area has been retained in ESHA status.
M19. Zuma View Drainage (west and east of Zuma View Place, south of PCH)	This area exhibits some decent riparian habitat south of PCH. Area north is heavily disturbed and surrounded by development with considerable encroaching non-native vegetation. The City recommends that **the portion north of PCH be removed from ESHA designation**. The City also recommends that **the ESHA boundaries in the southern portion be refined to actual resource edge**.	Most of the upper degraded area north of PCH has been removed from ESH status except for the willow patch right at PCH. South of PCH the ESHA designation has been retained due to extensive willow vegetation in the drainage. Some narrowing of the ESHA area has been done to exclude non-native vegetation on the banks.
M20. Ramirez Canyon lots (west side of Ramirez Canyon Road)	This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**	Our 2001 aerial photos do not show disking in all of the area indicated on the Malibu map. We have correspondingly reduced the ESHA area to exclude the road and a narrow adjacent strip to the west of the road that has been disked.
M21. Ramirez Canyon lots (east side of Ramirez Canyon Road)	This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**	The ESHA area to the east of Ramirez Canyon Road has been reduced in accordance with the 2001 aerial photos and the site visit. The area removed from ESHA status has reduced vegetative cover and is heavily impacted.
M22. West Winding Way Road – (west side of West Winding Way Road)	This area is all regularly disked and supports little to no native vegetation. The	This area has extensive disking and the ESHA area has been reduced to

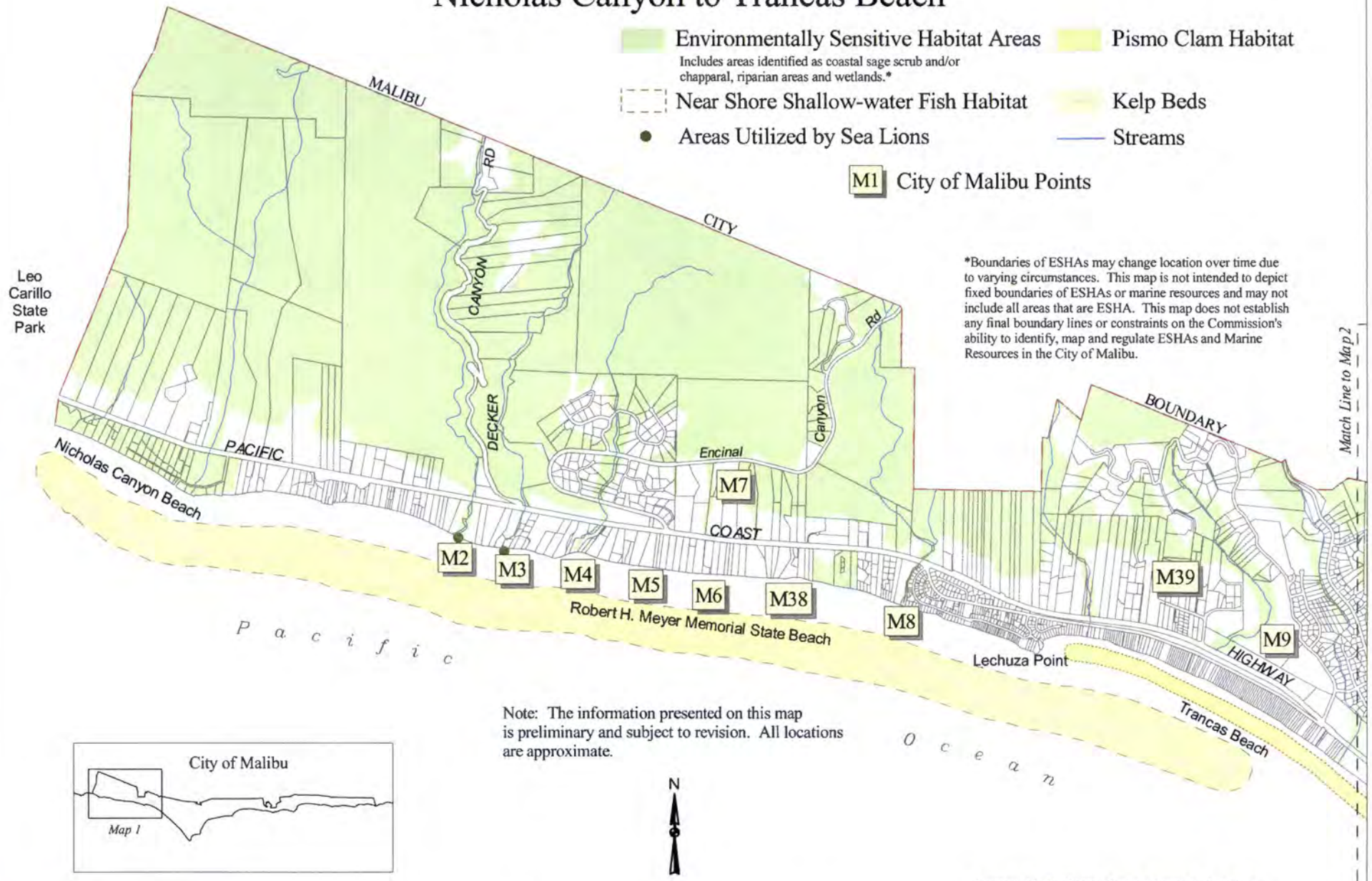
	City recommends **removal from ESHA designation.**	remove these areas.
M23. West Winding Way Road – (east side of West Winding Way Road)	This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**	This area has extensive disking and the ESHA area has been reduced to remove these areas.
M24. Winding Way Drainage (east side of Winding Way/PCH intersection, north of PCH)	No habitat is present in this area. The area illustrated on the ESHA map consists of already developed properties. The City recommends **removal of this area from ESHA designation**.	This area is heavily impacted by development and has been removed from the ESHA map.
M25. Winding Way Drainage (east of Winding Way/PCH intersection, south of PCH)	This drainage is heavily disturbed and dominated by non-native vegetation. The City recommends **removal of this area from ESHA designation**.	This area is also heavily impacted by development and it has been removed from ESHA status.
M26. Latigo Canyon lot		
M27. Latigo Canyon lot		
M28. Latigo Canyon lot	Existing developed lots. The City recommends **removal of this area from ESHA designation**.	The Latigo Canyon lots indicated as 26, 27 & 28 by Malibu have all been developed and have therefore been removed from ESHA status.
M29. Corral Canyon lot (located on east side of Corral Canyon Road at the City boundary)	Existing developed lot. The City recommends **removal of this area from ESHA designation**	This developed lot has been removed from ESHA status.
M30. Corral Canyon Road (paralle to and on both sides of Corral Canyon Road)	This area is regularly disked and/or does not support native vegetation. City recommends **removal of this area from ESHA designation**.	The area along both sides of the road disked and does not support native vegetation. The reasons for the disking were not clear and this area has been temporarily retained in ESHA status.
M31. Puerco Canyon Drainage (west of Bluffs Park and south of PCH)	This area demonstrates good quality riparian habitat in the drainage channel. However, the City recommends that **the ESHA boundaries be refined to the drainage channel edges**.	We have narrowed the ESHA designation on the east side of the drainage to eliminate non-native vegetation there.
M32. Malibu Creek/Serra Road lots (West side of Serra Road)	This area is nearly all developed. Lawns and landscaping abut the edge of Malibu Creek. City recommends **removal of the area shown on the map from ESHA designation**.	We disagree that the ESHA map includes lawns and landscaping between the developed lots along Serra Road and Malibu Creek. The area between the developed parcels and the creek that is designated

		ESHA is State Parks property. We have retained the ESHA designation for this area along the creek. We did however remove from ESHA status an area on the east side of the creek at the "Arizona" crossing just upstream from the Serra Road area.
M33. Sweetwater Mesa Drainage (just east of Sweetwater Mesa Road)	This area demonstrates good quality riparian habitat in the drainage channel. However, the City recommends that **the ESHA boundaries be refined to the drainage channel edges**.	We have narrowed the ESHA designation around this drainage to exclude degraded areas.
M34. Carbon Canyon Road lots (located north of Carbon Mesa Road and on both sides of Carbon Canyon Road)	This area is regularly disked and/or does not support native vegetation. City recommends **removal of this area from ESHA designation.**	These disked areas have been removed from ESHA designation.
M35. Las Flores Creek/Las Flores Canyon Road (located west and along Las Flores Canyon Road)	This area exhibits good quality habitat in the drainage channel. However, the City recommends that **the ESHA boundaries be refined to the drainage channel edges**.	The ESHA boundaries around the creek have been narrowed to exclude non-native vegetation outside of the drainage channel.
M36. Seaboard Road lots (located at the western terminus of Seaboard Road)	This area has a long history of disking/disturbance. Little native vegetation is present. City recommends **removal of the area shown on the map from ESHA designation**.	Most of the disked area has been removed from ESHA designation. We have left some of the area in ESHA status because of permitting questions regarding the timing of this disking.
M37. Piedra Gorda Canyon (west side of Big Rock Drive)	This drainage is heavily disturbed, and essentially has no native habitat remaining. City recommends **removal of this area from ESHA designation.**	Upper portion of this drainage is heavily impacted and has been removed from ESHA designation.

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 1: Nicholas Canyon to Trancas Beach



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

California Coastal Commission
Technical Services Division

Exhibit 8-1

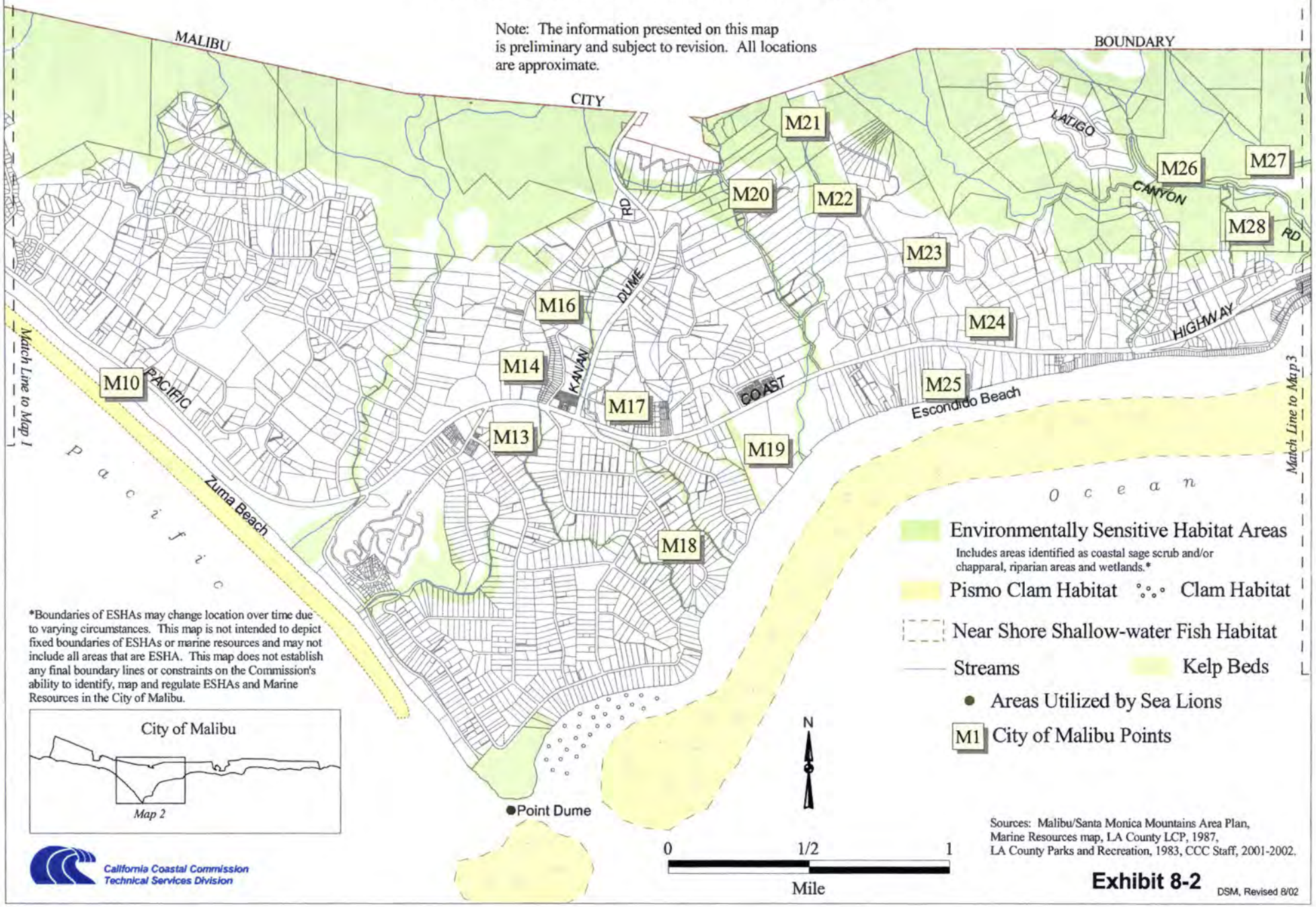
DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 2: Zuma Beach to Escondido Beach

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



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

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

California Coastal Commission
Technical Services Division

Exhibit 8-2

DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

Environmentally Sensitive Habitat Areas

Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

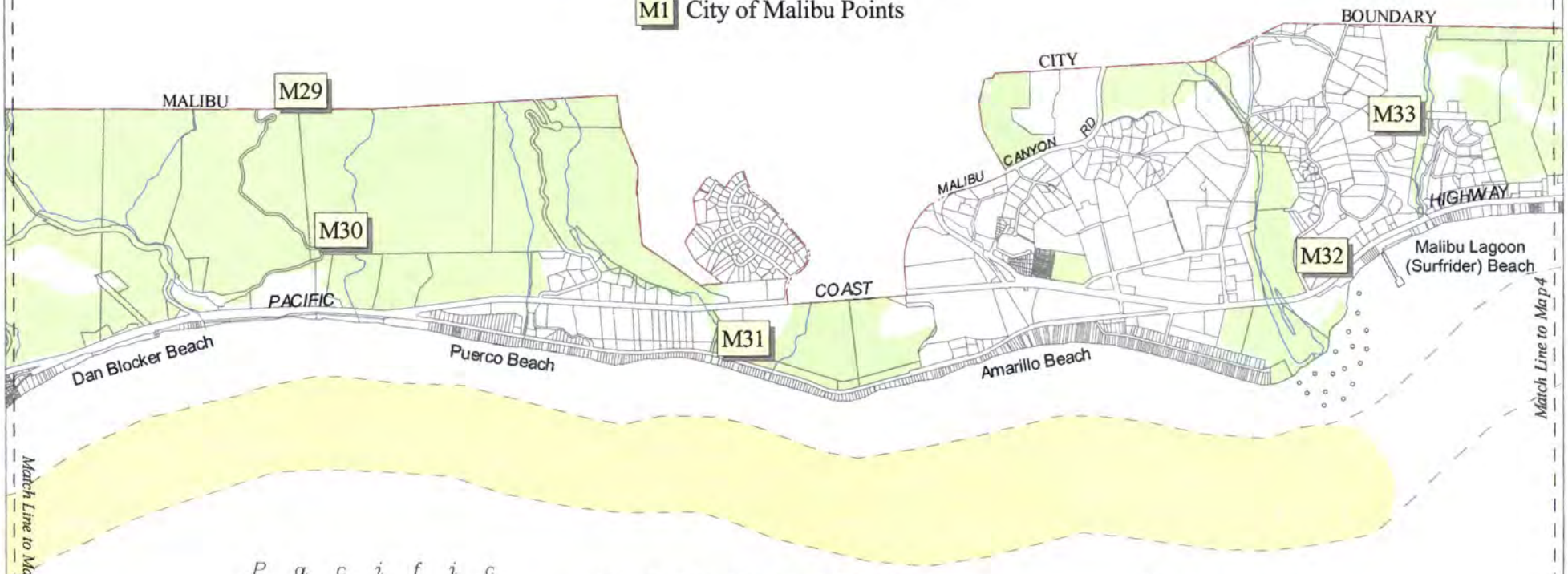
Kelp Beds

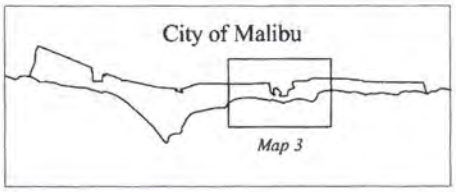
Near Shore Shallow-water Fish Habitat

Streams

Clam Habitat

M1 City of Malibu Points





Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.

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

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

California Coastal Commission
Technical Services Division

Exhibit 8-3 DSM, Revised 8/02

Local Coastal Program - City of Malibu

Preliminary Draft

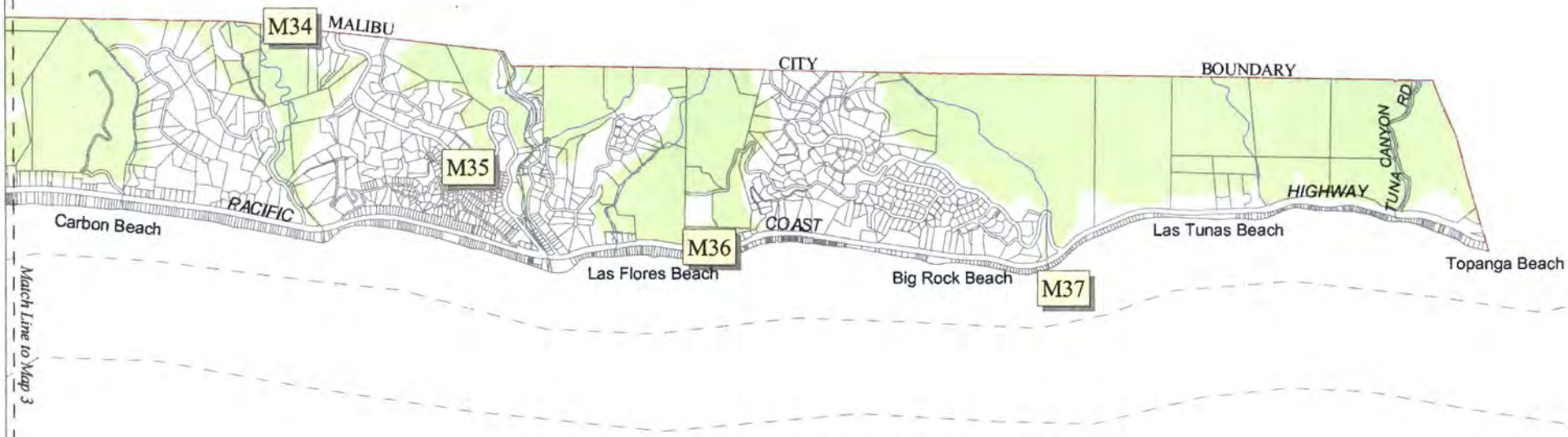
ESHA and Marine Resources Map 4: Carbon Beach to Topanga Beach

Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

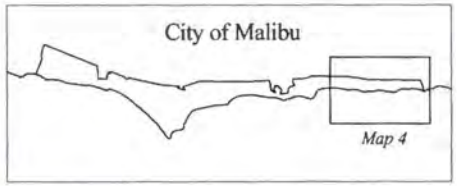
Near Shore Shallow-water Fish Habitat

Streams

M1 City of Malibu Points



Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



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

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

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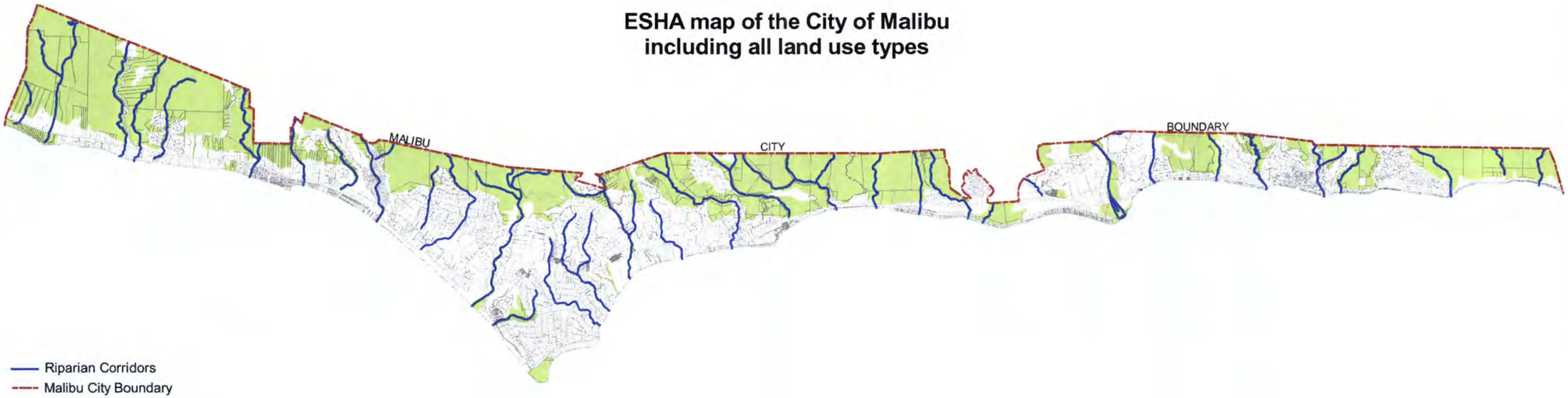
Technical Services Division

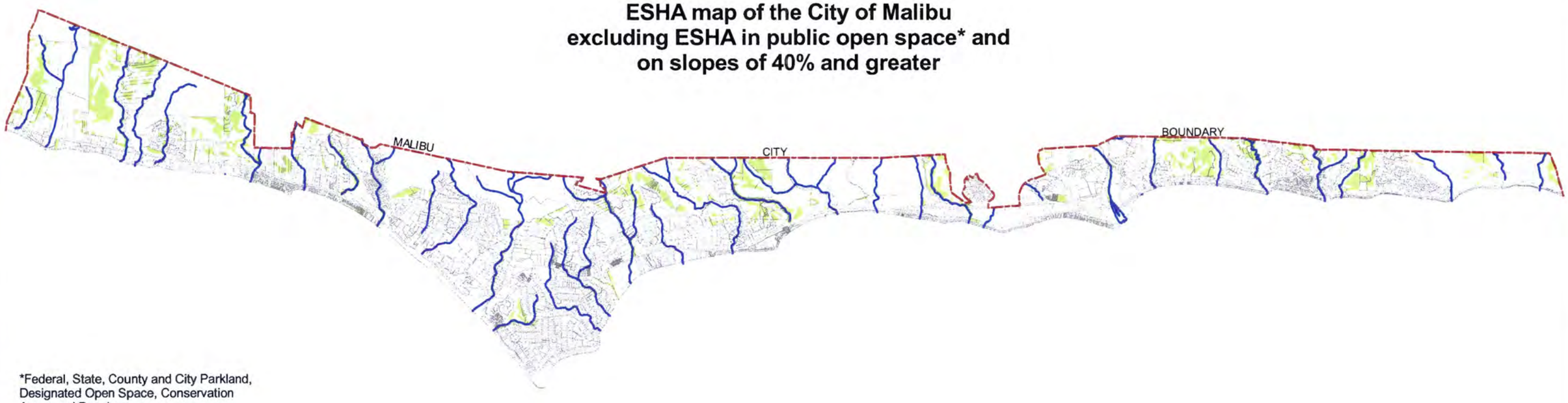
Exhibit 8-4 DSM, Revised 8/02

ESHA map of the City of Malibu including all land use types



Riparian Corridors
Malibu City Boundary
Approximate ESHA Boundary

ESHA map of the City of Malibu excluding ESHA in public open space* and on slopes of 40% and greater



*Federal, State, County and City Parkland, Designated Open Space, Conservation Areas and Beaches.

California Coastal Commission
Technical Services Division

- Scale and All Locations Approximate -
- For Illustrative Purposes Only -

Sources: National Park Service 1993, CCC Technical Services.

Exhibit 9

DSM 6/0

Letters Received Regarding ESHA Determination
In Malibu

Exhibit 10

THE URBAN WILDLANDS GROUP, INC.
P.O. BOX 24020, LOS ANGELES, CALIFORNIA 90024-0020, TEL (310) 276-2306

Protection of Environmentally Sensitive Habitat Areas in Proposed Local Coastal Plan for the City of Malibu

Travis Longcore, Ph.D.
Catherine Rich, J.D., M.A.

May 30, 2002

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Protection of Environmentally Sensitive Habitat Areas in Proposed Local Coastal Plan for the City of Malibu

1. Introduction

Pursuant to AB 988 (Pub. Res. Code § 30166.5), the California Coastal Commission has prepared a draft Local Coastal Plan for the City of Malibu. At its January 10, 2002 meeting, the Commission adopted this draft plan, and final action on the plan is scheduled for September 2002. The purpose of this report, which has been prepared independently and without compensation, is to evaluate the scientific merit of one portion of the Land Use Plan and its findings — the determination of terrestrial Environmentally Sensitive Habitat Areas ("ESHAs") and the policies for their protection.

We review in this document the Initial Draft City of Malibu Local Coastal Program Land Use Plan, dated January 10, 2002 ("LUP"), and the Summary of Ecological Findings for Malibu prepared by Dr. Jon Allen, dated December 24, 2001 ("Ecological Findings"). This review relies upon peer-reviewed scientific literature, or when necessary, secondary sources that summarize peer-reviewed scientific literature.

We consider the determination of terrestrial ESHAs made in the Ecological Findings, and evaluate it against the three parts of the ESHA definition in the California Coastal Act ("Coastal Act"). Through this analysis we find that the ESHA determination proposed in the LUP meets the definition found in the Coastal Act, and is consistent with the best available scientific information about the rarity, ecological role, and vulnerability of species and habitats involved. Furthermore, the policies in the LUP provide mechanisms to minimize the impacts to ESHAs, including several policies that address serious problems that heretofore have been ignored by many local regulators, including the effects of fuel modification and artificial night lighting.

2. Determination of Environmentally Sensitive Habitat Areas

The determination of whether a geographic area is consider to be an ESHA, worthy of protection under Section 30240 of the Coastal Act, has evolved over time. The definition provided in the Coastal Act for environmentally sensitive areas (Section 30107.5) reads: "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." As human occupations expand, more plants and animals become rare, and as scientific understanding advances, the roles of plants, animals, and habitats in the ecosystem are better understood, and the many pathways by which humans may disrupt natural environments become more clear. It is therefore not surprising that more areas now qualify as ESHAs than once did — natural habitats are rarer than they were when the Coastal Act was passed, and science has taught us more about the interrelationships between organisms and their fragility in the face of insensitive human actions.

Three components for the ESHA determination are found in Section 30107.5: 1) is a plant, animal, or its habitat rare? 2) is a plant, animal, or its habitat especially valuable because of its special nature or role in the ecosystem? and 3) if the answer is yes to either of these questions, is the

plant, animal, or habitat easily disturbed or degraded by human activities and developments? ESHAs must meet two conditions, that a geographic area have species or habitat that is rare or plays a special role in the ecosystem, and that the species or habitat is easily disturbed or degraded by human activities and developments.

It is important to note that nowhere does the definition of ESHA depend on the habitat being native. The language of the EHSA definition therefore allows consideration of habitat function, and not just vegetation type, although both are important. We mention this because it is frequently argued that non-native vegetation cannot be ESHA. Non-native vegetation certainly can be ESHA if it serves as habitat for sensitive animal species, or plays an important role within a landscape context. Indeed, the California Department of Fish and Game argued that a bluff with a large component of non-native grasses overlooking a wetland was an ESHA because of its function in the landscape.[1]

As argued in the Ecological Findings, scale is also important in determination of ESHA boundaries. The growing field of landscape ecology has illustrated how important it is to evaluate landscape structure and function across all temporal and spatial scales.[2] A multiscale approach is important to understanding how natural habitats function ecologically.

2.1. Malibu's Rare or Especially Valuable Plants, Animals, and Habitats

2.1.1. Shrublands (Chaparral and Coastal Sage Scrub)

Malibu has two forms of shrubland vegetation, sometimes known as "hard chaparral" and "soft chaparral."[3] Hard chaparral is often called "chaparral" while soft chaparral is known as "coastal sage scrub." The similar nomenclature is not accidental. Both chaparral and coastal sage scrub are shrub-dominated communities characteristic of a Mediterranean climate. Chaparral is dominated by taller, sclerophyllous shrubs that keep their leaves year round, while coastal sage scrub is dominated by shorter malacophyllous shrubs that often drop their leaves during summer.[4] The two vegetation types are often found interspersed with each other, and in fact coastal sage scrub is also successional to chaparral, meaning that following disturbance a site may first be covered by coastal sage scrub, then chaparral.[5] The small wind-dispersed seeds of many understory coastal sage scrub species colonize burns quickly and scrub may therefore establish before chap-

1. "The Bluffs are a typically steep area comprised of the interspersion of various essential habitat factors including coastal sage scrub, grassland and rocky outcroppings on a steep slope. The Bluffs provide foraging, roosting and nesting for a diverse assemblage of birds, including raptors, and appropriate habitat for various small mammals and reptiles. The coastal sage vegetation is a key habitat ingredient of the area. However, it is the combination of the various habitat factors in conjunction with the wetlands immediately below the Bluffs that makes the Bluff area an important one ...." Letter from California Department of Fish and Game to California Coastal Commission, October 27, 1983.
2. Forman, R.T.T. 1995. *Land mosaics: the ecology of landscapes and regions*. Cambridge University Press, Cambridge. 632 pp.
3. O'Leary, J.F. 1989. Californian coastal sage scrub: general characteristics and considerations for biological conservation. Pp. 24–41 *in* Schoenherr, A.A. (ed.). *Endangered plant communities of southern California.* Southern California Botanists Special Publication No. 3.
4. Sclerophyllous refers to leathery leaves, while malacophyllous refers to soft leaves.
5. Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

arral.[6] Many species of these understory herbs are found in both communities.[7] Especially near the coast, as is the case in Malibu, the difference between chaparral vegetation and coastal sage scrub in a location may be simply the time since the last fire.

Because coastal sage scrub may be a successional stage to chaparral, and because of the other soil and moisture effects that determine the extent of chaparral versus coastal sage scrub, the two vegetation types are interlaced in patches in the landscape. Coastal sage scrub is found in sites with less moisture availability, whether through rainfall or soil characteristics.[8] Harrison et al. describe it as follows:

> [T]he close ecological relationship between the chaparral and coastal sage is evident from their intricate spatial relationship, which is determined by disturbance, substrate specificity, and micro-climate. Islands of coastal sage are common within the chaparral, usually on disturbed areas, barren rocky slopes, road cuts, or peculiar soil types such as heavy clays.[9]

At low elevations where fire frequency is high (e.g., Malibu) the frequent invasion of chaparral by coastal sage scrub species following fire has led one researcher to describe the mix as a "coastal sage-chaparral subclimax."[10] Indeed, several researchers have discussed the patterns of replacement of chaparral by coastal sage scrub, and coastal sage scrub by chaparral, depending on fire history.[11]

The two shrub vegetation types of Malibu, chaparral and coastal sage scrub, are closely related in their ecology, intricately interspersed spatially, can replace each other in places over time, and share many plant species. While they rightly are defined as different communities because of the difference in dominant species, those dominant species play similar ecological roles (e.g., *Adenostema fasciculatum* in chaparral and *Artemisia californica* in coastal sage scrub).[12] The

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6. Wells, P. 1962. Vegetation in relation to geological substratum and fire in the San Luis Obispo Quadrangle, California. *Ecological Monographs* 32:79–103.
7. Keeley, J.E., and S.C. Keeley. 1984. Postfire recovery of Californian coastal sage scrub. *American Midland Naturalist* 111:105–117. O'Leary, J.E., and W.E. Westman. 1988. Regional disturbance effects on herb successional patterns in coastal sage scrub. *Journal of Biogeography* 15:775–786.
8. Mooney, H.A. 1988. Southern coastal scrub. Pp. 471–489 *in* Barbour, M.G., and J. Major (eds.). *Terrestrial vegetation of California*. California Native Plant Society, Sacramento, California. Harrison, A., E. Small, and H. Mooney. 1971. Drought relationships and distributions of two Mediterranean climate Californian plant communities. *Ecology* 52(5):869–875. Westman, W.E. 1979. The potential role of coastal sage scrub understories in the recovery of chaparral after fire. *Madroño* 26(2):64–68.
9. Harrison, A., E. Small, and H. Mooney. 1971. Drought relationships and distributions of two Mediterranean climate Californian plant communities. *Ecology* 52(5):869–875. *See also* Epling, C., and H. Lewis. 1942. The centers of distribution of the chaparral and coastal sage associations. *American Midland Naturalist* 27(2):445–462.
10. Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. *Ecological Monographs* 41:27–52.
11. Gray, K.L. 1983. Competition for light and a dynamic boundary between chaparral and coastal sage scrub. *Madroño* 30(1):43–49. Zedler, P.H., C.R. Gautier, and G.S. McMaster. 1983. Vegetation change in response to extreme events: the effect of a short interval between fires in California chaparral and coastal scrub. *Ecology* 64(4):809–818.
12. Epling, C., and H. Lewis. 1942. The centers of distribution of the chaparral and coastal sage associations. *American Midland Naturalist* 27(2):445–462.

two vegetation types also share a close evolutionary history, which further illustrates the affinity between the vegetation types.[13]

Noss et al. estimated that 70–90% of all coastal sage scrub has been lost to agricultural and urban land uses.[14] The historical range is "scattered along the coast" from the Oregon border of California south to the San Francisco Bay region, through the lower elevations of the outer and inner Coast Ranges, the Transverse and Peninsular ranges of southern California, and southward into Baja California.[15] Because of the coincidence of this vegetation type with sites desirable for human uses, it is truly imperiled. By the standard of rarity, coastal sage scrub should be recognized under Section 30107.5 of the Coastal Act as ESHA.

While chaparral is widespread in other parts of the State, its distribution in Malibu is limited. Furthermore, this distribution is dynamic, with chaparral sometimes replaced by coastal sage scrub following fire. Because of their similarities in ecology, landscape function, and animal communities, chaparral is best discussed in conjunction with coastal sage scrub.

O'Leary et al. note that "[n]early one hundred species of plants and animals that are obligately or facultatively associated with coastal sage scrub are currently classified as rare, sensitive, threatened or endangered by federal and state agencies."[16] In Malibu, these include southern California rufous-crowned sparrow (*Ainophila rupiceps canescens*), coastal western whiptail (*Cnemidophorus tigris multiscutatus*), and California horned lizard (*Phrynosoma coronatum frontale*), which are also found in chaparral.

Westman found that many coastal sage scrub plants, especially herbs, were rare. He suggested that the persistence of these rare species is dependent on long-distance dispersal of their seeds over both chaparral and coastal sage scrub.[17] Seeds are spread across large areas (a regional "seed rain"), especially from wildflowers growing in recently burned patches of both chaparral and coastal sage scrub. Based on this observation by Westman, O'Leary noted that "preservation of some rare [plant] species in sage scrub would require conservation of a large regional mosaic of both shrubland types."[18]

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13. Axelrod, D.I. 1978. The origin of coastal sage vegetation, Alta and Baja California. *American Journal of Botany* 65(10):1117–1131.
14. Noss, R.F., E.T. LaRoe III, and J.M. Scott. 1995. *Endangered ecosystems of the United States: a preliminary assessment of loss and degradation.* Biological Report 28. National Biological Service, U.S. Department of Interior. Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. *Ecology* 62:170–184.
15. Axelrod, D.I. 1978. The origin of coastal sage vegetation, Alta and Baja California. *American Journal of Botany* 65(10):1117–1131.
16. O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1–51.
17. Westman, W.E. 1979. The potential role of coastal sage scrub understories in the recovery of chaparral after fire. *Madroño* 26(2):64–68.
18. O'Leary, J.F. 1989. Californian coastal sage scrub: general characteristics and considerations for biological conservation. Pp. 24–41 *in* Schoenheer, A.A. (ed.). *Endangered plant communities of southern California.* Southern California Botanists Special Publication No. 3.

Conservation of coastal sage scrub and chaparral requires also the preservation of pollination mutualisms. As Allen discusses in the Ecological Findings, the timing of flowering of chaparral and coastal sage scrub plant species is staggered so that nectar sources are available from January to August. The pattern of staggered flowering times was recorded by Bauer in 1936 (Figure 1).[19] This seasonal pattern supports a diverse pollinator community that includes insects (bees, beetles, butterflies and moths, flies, hoverflies, wasps, and beeflies) and hummingbirds. Many chaparral and sage scrub plant species are only pollinated by one of these pollinator groups.[20] Pollinators may also travel great distances to plants in flower. Ground-nesting bees may fly over two miles to nectar at plants, and burned sites may require pollinators that find their homes in the surrounding unburned matrix.[21] In an example from another habitat, the lack of ground-nesting bees near reestablished salt marsh bird's-beak (*Cordylanthus maritimus* ssp. *maritimus*) was a limiting factor for pollination of this rare plant.[22]

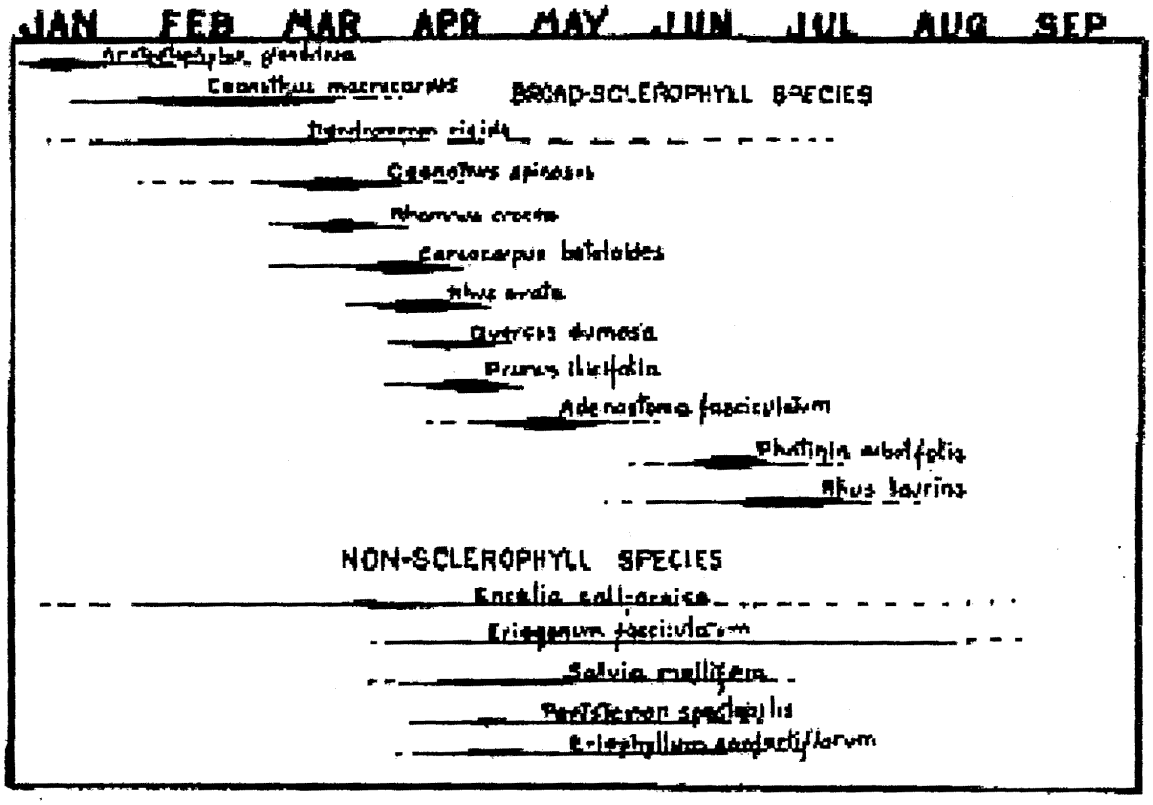

Figure 1. Flowering times of chaparral and coastal sage scrub species (Bauer 1936).

19. Bauer, H.L. 1936. Moisture relations of the chaparral of the Santa Monica Mountains, California. *Ecological Monographs* 6(3):409–454.
20. Moldenke, A.R. 1977. Insect-plant relations. Pp. 199–217 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania.
21. Force, D.C. 1981. Postfire insect succession in southern California chaparral. *American Naturalist* 117:575–582.
22. Parsons, L.S., and J.B. Zedler. 1997. Factors affecting reestablishment of an endangered annual plant at a California salt marsh. *Ecological Applications* 7(1):253–267.

2.1.2. Coastal Strand

The Ecological Findings identify coastal strand as ESHA. This finding is supported by the rarity of this vegetation community statewide, and especially in the Los Angeles region. The manicuring of southern California beaches precludes the establishment of the coastal strand vegetation that can be found on Malibu's coastal dunes. These dune and strand areas are also habitat for rare species, such as globose dune beetle (*Coelus globosus*). In general dune habitats are home to many unique insect species.[23] Dune and strand ESHAs should be designated in Figure 6 of Ecological Findings and in the LUP.

2.1.3. Riparian Forest

Riparian forest also meets the standard of a rare habitat deserving of protection as ESHA. The reduction in riparian habitat in southern California has been close to 95–97%.[24] The importance of riparian forests and their associated wetlands is generally accepted, and their status as ESHA is not disputed. Bowler writes, "[t]here is no question that riparian habitat in southern California is endangered."[25] We note the importance of riparian forests to aquatic communities: "Detritus provided by riparian vegetation is a source of up to 90 percent of the nutrients consumed by in-stream aquatic communities."[26] Faber et al. also report that coastal sage scrub and chaparral contribute nutrients to riparian communities through run-off after fire.[27]

2.1.4. Oak Woodland

The habitat value of oak woodlands is well established.[28] Within the upland habitats of the Santa Monica Mountains, oak woodlands are especially important to birds, supporting greater species diversity and a greater number of individuals per acre than surrounding chaparral.[29] Loss of oak woodland and other riparian habitats is also a major threat to the many species of bats in the south coast bioregion, which includes Malibu.[30] Oak woodlands, and especially their understory species, are disappearing rapidly in California. The rarity and ecological significance of this habitat type qualifies it as ESHA.

---

23. Powell, J.A. 1981. Endangered habitats for insects: California coastal sand dunes. *Atala* 6(1-2):41–55.
24. Faber, P.A., E. Keller, A. Sands, and B.M. Massey. 1989. *The ecology of riparian habitats of the southern California coastal region: a community profile*. U.S. Fish and Wildlife Service Biological Report 85(7.27). 152 pp.
25. Bowler, P.A. 1989. Riparian woodland: an endangered habitat in southern California. Pp. 80–97 *in* Schoenherr, A.A. (ed.). *Endangered plant communities of southern California*. Southern California Botanists Special Publication No. 3.
26. Faber, P.A., E. Keller, A. Sands, and B.M. Massey. 1989. *The ecology of riparian habitats of the southern California coastal region: a community profile*. U.S. Fish and Wildlife Service Biological Report 85(7.27). 152 pp.
27. *Id.*
28. Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.
29. Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania.
30. Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

2.1.5. California Annual Grassland and Native Grassland

At least one other expert (D. Magney, California Native Plant Society) has noted that native forbs frequently are found in annual grasslands where Mediterranean grasses dominate. Grasslands are found in association with other sensitive vegetation types, including coastal sage scrub and oak woodland. As noted above, grasslands are especially valuable as foraging habitats for raptors within a mosaic of other habitat types. Native perennial grasslands are now exceedingly rare,[31] and should be recognized as EHSA.

2.2. Special Nature or Role of Plants, Animals, and Habitats in the Ecosystem

In addition to rarity, areas may be determined to be ESHA because of their special nature or role in the ecosystem. Many of the examples discussed above illustrate these ecosystem roles. Chaparral is necessary to maintain plant diversity in coastal sage scrub, and helps to supports the pollinator community needed by both vegetation types. Riparian woodlands provide necessary nutrient inputs to instream aquatic communities. In the context of Malibu, natural communities play other special roles in the ecosystem, including landscape connectivity, storm-water interception, and soil stabilization.

2.2.1. Landscape Connectivity

Landscape connectivity figures prominently in Allen's determination of ESHAs for Malibu. Large-scale habitat connectivity is necessary to maintain maximum ecological values. This is not to say that habitats in the coastal zone that are unconnected are not important; they may have other values that qualify them as ESHAs. Just because landscape connectivity is mentioned as a reason that some habitats are considered ESHA, it does not mean that all ESHAs will therefore conform to a "reserve design" that has connectivity. To the contrary, the Coastal Act requires protection of rare and special habitats, whether or not they are connected.

Connectivity, which allows the persistence of wide-ranging predators such as coyotes, serves several important functions. First, it keeps the populations of mid-sized predators, such as striped skunks and raccoons, in check. If connectivity is lost, and so-called "mesopredators" increase in abundance, then native bird communities suffer severe losses and local extinctions.[32] The connectivity that allows the presence of large predators is therefore important for the whole vertebrate community, not just for the focal species at the top. Second, connectivity from the heart of the Santa Monica Mountains to coastal wetlands is essential for the survival and recovery of those wetlands. Wetlands are protected by explicit language in the Coastal Act, and this concern should weigh heavily in evaluating the role of connectivity in determining ESHA boundaries. Zembel documented the critical importance of connectivity between coastal wetlands and inland habitat blocks for the endangered light-footed clapper rail (*Rallus longirostris*

31. Noss, R.F., E.T. LaRoe III, and J.M. Scott. 1995. *Endangered ecosystems of the United States: a preliminary assessment of loss and degradation.* Biological Report 28. National Biological Service, U.S. Department of Interior.
32. Crooks, K.R., and M.E. Soulé. 1999. Mesopredator release and avifaunal extinctions in a fragmented system. *Nature* 400(6744):563–566.

levipes). Without the presence of coyotes, allowed by habitat connectivity, smaller predators reduced clapper rail populations at Seal Beach NWR to critically low levels.[33] Zembel concludes:

> Habitat viability and carrying capacity, even for endangered species in coastal wetlands, can be greatly reduced by significant losses of interconnectedness with other habitats. Because our remaining wetlands are so small, viable corridor connections must be maintained or restored between them and much larger parcels of upland habitats.[34]

It is widely accepted among conservation biologists that landscape connectivity is especially important to the protection of biological resources. If upland and wetland habitats in Malibu are further fragmented from the core of the Santa Monica Mountains, those habitats will be more difficult to manage, and will experience a decline in native biodiversity.

Some have suggested that maintenance of landscape connectivity will expose Malibu residents to increased interactions with mountain lions. To the contrary, mountain lions are extremely territorial and their density will not increase beyond that which is already found. The danger from mountain lions in Malibu is and would continue to be infinitesimally small. There have been no reported mountain lion attacks ever in Malibu, and only 10 attacks in California in the 95 years between 1900–1995, which means there is a three-in-one billion chance for a California resident to be injured in a mountain lion attack each year, and a one-in-one billion chance each year for a resident to be killed in such an attack.[35] (A Malibu resident is over 60,000 times more likely to be injured playing golf, the rate of which was 1 per 5,000 residents nationwide in 1999.[36])

2.2.2. Hydrological Function and Soil Stability

The native shrublands of Malibu are important to maintaining good hydrological function and minimizing erosion. The first benefit is that of dampening and lengthening the peak of stormwater following precipitation. First, vegetation intercepts water on its leaves, which results in greater evaporation. Second, vegetation physically slows the runoff of water across the soil surface, allowing greater soil infiltration The result is less runoff overall and lower peak flood levels, compared to denuded areas (or areas cleared for fuel modification).

Table 1. Soil erosion as a function of 24-hour precipitation and chaparral age.[37]

	Erosion (yd^3/acre) at maximum 24-hour precipitation of …		
Years Since Fire	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

33. Zembel, R. 1993. The need for corridors between coastal wetlands and uplands in southern California. Pp. 205–208 *in* Keeley, J.E. (ed.). *Interface between ecology and land development in southern California.* Southern California Academy of Sciences, Los Angeles.
34. *Id.*
35. Davis, M. 1998. *Ecology of fear.* Henry Holt, New York. 484 pp. Beier, P. 1991. Cougar attacks on humans in the United States and Canada. *Wildlife Society Bulletin* 19:403–412.
36. Wright, J.W. (ed.). 2002. *The New York Times almanac.* Penguin, New York.
37. Kittredge, J. 1973. *Forest influences — the effects of woody vegetation on climate, water, and soil.* Dover Publications, New York. 394 pp.

Of the two shrubland vegetation types, chaparral is most efficient at controlling erosion, because of the thick cover formed by the vegetation and the deep roots of the shrubs. Hellmers documented the deep root systems of chaparral plants, finding root systems extending through the upper soil and into cracks in the bedrock below (Figures 2 and 3A).[38] In this way, chaparral literally holds hillsides down and prevents them from slipping. In studies, only 2.5% of the area covered by chaparral experienced downslope slippage, less than half of the area covered by annual grasses.[39] The erosion reduction capability of chaparral is directly related to time since fire. Immediately following fire, erosion can be substantial, but as the chaparral matures again, erosion rapidly decreases (Table 1). For mature chaparral, the most severe storms result in only minimal soil erosion.

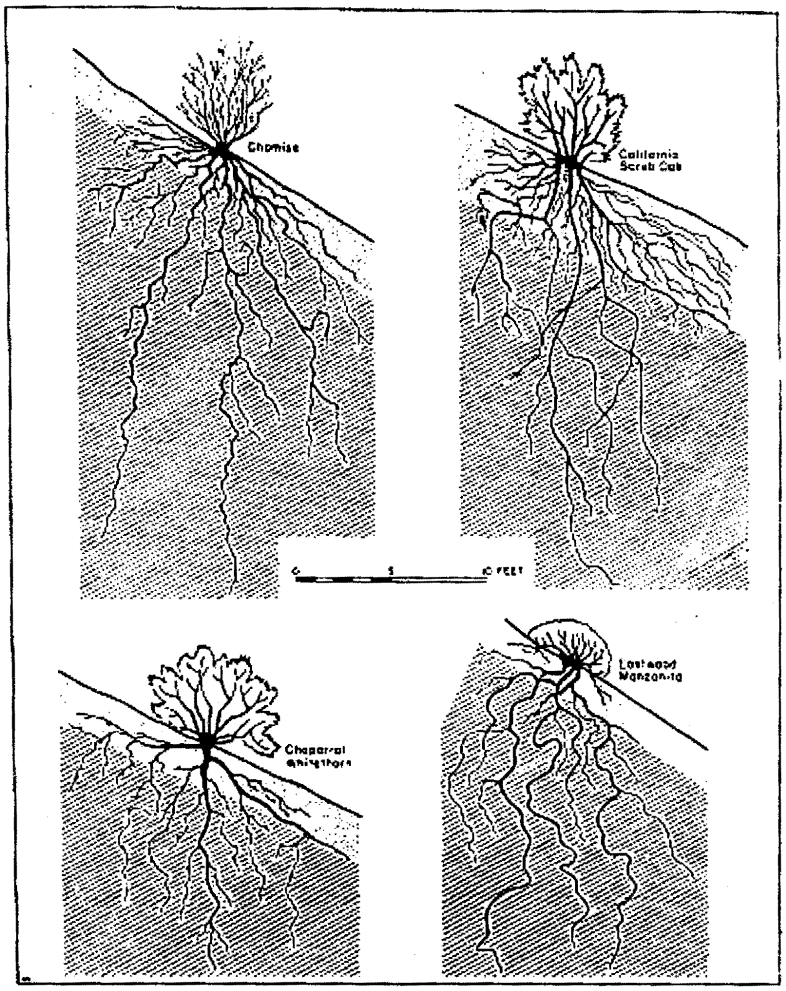

Figure 2. Root zones of selected chaparral (sclerophyll) plant species (Hellmers 1955).

38. Hellmers, H., J.S. Horton, G. Juhren, and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. *Ecology* 36(4):667–678. *See also* Kummerow, J., D. Krause, and W. Jow. 1977. Root systems of chaparral shrubs. *Oecologia* 29:163–177.
39. Radtke, K. 1983. *Living more safely in the chaparral-urban interface.* General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.

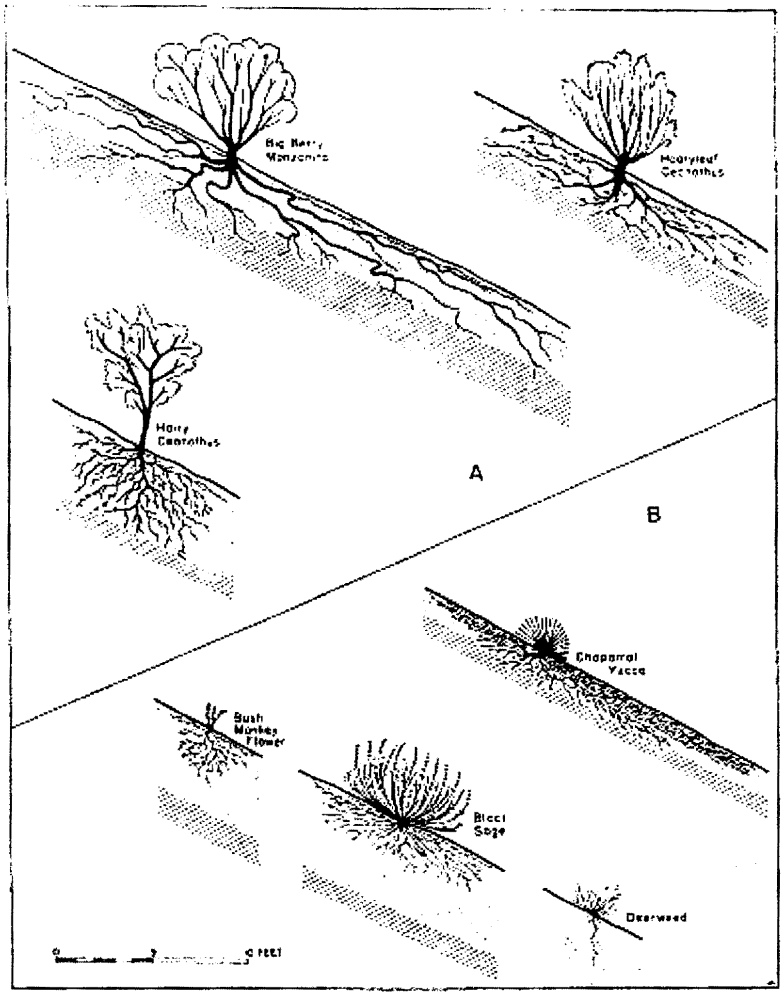

Figure 3. A. Root zones of chaparral (sclerophyll) plant species. B. Root zones of selected coastal sage scrub plant species (Hellmers 1955).

Coastal sage scrub is somewhat less efficient at controlling erosion, but nevertheless its plants have deeper and more extensive root systems than annual grasses. As a whole, shrubland root systems have deeper and denser roots than plants from almost any other habitat,[40] and therefore play a special role in the ecosystem in the conservation of soil and reduction of landslides. Of course, like any tectonically young and steep mountain system, the Santa Monica Mountains will be subject to significant erosion and landslides. The native vegetation, however, is most effective at reducing those hazards over time and should be recognized for this special role.

Chaparral and coastal sage scrub therefore serve at least three very important roles in the Malibu ecosystem — landscape connectivity, stormwater abatement, and erosion control. Because of

40. Jackson, R.B., J. Canadell, J.R. Ehleringer, H.A. Mooney, O.E. Sala, and E.D. Schulze. 1996. A global analysis of root distributions for terrestrial biomes. *Oecologia* 108(3):389–411. Canadell, J., R.B. Jackson, J.R. Ehleringer, H.A. Mooney, O.E. Sala, and E.D. Schulze. 1996. Maximum rooting depth of vegetation types at the global scale. *Oecologia* 108(4):583–594.

the importance of landscape connectivity to coastal resources, and the dangers of increased landslides, erosion, and flooding, these special roles in the ecosystem warrant the recognition of chaparral and coastal sage scrub as ESHA.

2.3. Vulnerability of Plants, Animals, and Habitats to Human Disturbance

The third aspect of the ESHA determination is whether areas supporting rare or special plants, animals, and habitats are easily disrupted by human activities. As research on human disturbance continues, the vulnerability of native ecosystems becomes ever more clear. One example provides an illustration of how one human action can have wide-ranging effects.

A recent study by University of California graduate student Caroline Christian investigated the effect of human-introduced Argentine ants (*Linepithema humile*) on the vegetation of the fynbos in South Africa.[41] Fynbos is equivalent to chaparral, with similar vegetative shrub forms and complex ecological relationships. The seeds of certain fynbos plants are distributed and buried by ants, as are large seeds in California shrublands. Argentine ants were introduced to South Africa by humans, and human disturbance promotes their invasion into shrublands. The Argentine ants displace the native ants, fully eliminating some species of large seed-collecting ants. (The same thing happens in California.) Because the native ants no longer collect and bury the large seeds of native plants (and the Argentine ants do not collect seed either), these seeds are completely consumed by seed-eating species of insects, birds, and mammals. Then, when the fynbos burns, only the smaller seeds of other plants are left to germinate, and the large-seeded plants all but disappear from the post-fire vegetation. In this manner, the invasion of a pest ant species, brought by humans, results in the elimination of some ant species, disrupts an existing "seed dispersal mutualism," and causes the local extinction of certain plant species from the landscape.

Human activities can modify and disrupt native species and habitats in many ways. Introduction of exotic species is just one example. The more direct effects are obvious, with direct habitat loss and fragmentation that separates one habitat from another central among them. It is safe to say that all of the special plants, animals, and habitats of Malibu are vulnerable to human disturbance, meeting the test for describing them as ESHA. We offer a discussion of two disturbance types as illustrations: artificial night lighting and fuel modification or "fire clearance."

2.3.1. Artificial Night Lighting[42]

Illumination of the night sky has increased drastically over the past century. Today, more than two-thirds of the population of the United States lives in a location where the Milky Way is no longer visible at night.[43] Despite increasing knowledge about the effects of artificial lighting on human health, astronomical observation, and energy consumption, the ecological consequences of nighttime lighting are not widely known. Despite the lack of widespread incorporation of the

41. Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635–639.
42. We have summarized effects of artificial lighting elsewhere (Longcore, T, and C. Rich. 2001. *Review of the ecological effects of road expansion and reconfiguration on coastal wetland ecosystems*. The Urban Wildlands Group, Los Angeles, California), and have repeated and slightly modified that discussion here.
43. Cinzano, P., F. Falchi, and C.D. Elvidge. 2001. The first world atlas of artificial night sky brightness. *Monthly Notices of the Royal Astronomical Society* 328(3):689–707.

effects of lighting into the environmental review process, significant scientific research has been completed that can and should guide policy decisions. Failure to regulate lighting in and around EHSAs can result in a substantial degradation of the ESHA for certain species. Artificial night lighting can have significant effects on virtually all classes of terrestrial organisms, so lighting controls are advisable throughout areas near ESHAs. For purposes of aesthetic preservation of the night sky, lighting controls are advisable throughout the Coastal Zone.

2.3.1.1. Plants

Light is central to the function and physiology of plants. However, relatively little published information is available about the effects of artificial night lighting on plants in natural settings. One consequence of lighting is to change the duration of light and dark ("photoperiod") experienced by the plant. Many functions may be triggered by photoperiod, including seed germination,[44] flowering, and leaf loss.[45] Some plants will not flower if night length is not sufficiently long.[46] Trees under streetlights have been observed to retain leaves longer into the fall in temperate climates.[47] Disruption of plant growth by sodium vapor lights has been recorded in several studies.[48]

2.3.1.2. Aquatic Invertebrates

Artificial lighting affects aquatic invertebrates through modification of photoperiodic behaviors such as mating and foraging. In the first experimental study on this topic, Dr. Marianne Moore found that the aquatic zooplankton *Daphnia* exhibited different behaviors in wetlands that had a natural photoperiod from those that were subject to artificial lighting.[49] She found that *Daphnia* in dark night conditions migrate farther up and down the water column to forage on algae than those exposed to higher ambient light levels. She documents that lakes in urban areas are exposed to over 100 times the light levels of rural lakes, and concludes that this will affect the foraging patterns of *Daphnia* across the lighting gradient. This, she states, is important, because "vertical migration of lake grazers may contribute to enhanced concentrations of algae in both urban lakes and coastal waters. This condition, in turn, often results in deterioration of water

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44. Edwards, D.G.W., and Y.A. El-Kassaby. 1996. The effect of stratification and artificial light on the germination of mountain hemlock seeds. *Seed Science and Technology* 24:225–235.
45. Outen, A. 1998. *The possible ecological implications of artificial lighting*. Hertfordshire Biological Records Centre, Hertfordshire, UK.
46. Campbell, N.A. 1990. *Biology* (2nd ed.). Benjamin Cummings, New York.
47. Wilson, A. 1998. Light pollution: efforts to bring back the night sky. *Environmental Building News* 7(8):1, 8–14. Briggs, W.R. 2002. Plant photoreceptors: proteins that perceive information vital for plant development from the light environment. Paper presented at *Ecological Consequences of Artificial Night Lighting*, February 23–24, UCLA, Los Angeles, California.
48. Sinnadurai, S. 1981. High pressure sodium street lights affect crops in Ghana. *World Crops* (Nov/Dec):120–122. Cathey, H.M., and Campbell, L.E. 1975. Effectiveness of five vision-lighting sources on photoregulation of 22 species of ornamental plants. *Journal of the American Society for Horticultural Science* 100:65–71.
49. Moore, M.V., S.M. Pierce, H.M. Walsh, S.K. Kvalvik, and J.D. Lim 2000. Urban light pollution alters the diel vertical migration of Daphnia. *Proceedings of the International Society of Theoretical and Applied Limnology* 27:1–4. Pierce, S.M., and M.V. Moore 1998. Light pollution affects the diel vertical migration of freshwater zooplankton. Abstract, 1998 Annual Meeting of the Ecological Society of America, Baltimore, Maryland.

quality (i.e. low dissolved oxygen, toxicity, and odor problems)."[50] If *Daphnia* or other zooplankton do not migrate to the surface of the wetland to forage on algae because light levels are too high, then the whole aquatic food chain is in jeopardy. Protection of coastal salt marsh and riparian ESHAs should include elimination or minimization of artificial night lighting.

2.3.1.3. Terrestrial Invertebrates

Terrestrial invertebrates are similarly affected by artificial night lighting. Many larval forms of arthropods are positively phototactic (e.g., attracted to light, even artificial light).[51] Artificial lighting results in increased mortality of moths and other nocturnal insects.[52] While the most conspicuous and well-known examples are moths, many types of insects are attracted to artificial lights, including lacewings, beetles, bugs, caddisflies, crane flies, midges, hoverflies, wasps, and bush crickets.[53] Some insects are attracted to night lighting, while other nocturnal species are cued to rest under increased lighting levels, as if it were dawn. Low pressure sodium lamps, which provide a yellow light, attract the fewest number of insects.[54] Lighting not only influences nighttime locomotory behavior but can also affect reproductive activities.[55]

While it may seem to be a benefit for diurnal species to be active under streetlights, any gains from increased activity time can be offset by increased predation risk. In a study of butterfly larvae, a higher growth rate associated with longer photoperiod (as could be caused by artificial light) resulted in significantly higher predation on the butterfly larvae from the primary parasitoid species.[56] Some bat species are attracted to streetlights where they forage on the gathered insects.[57] Mercury vapor streetlights especially increase bat predation on moths because the

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50. Moore, M.V. 2001. Wellesley College Summer Program > Participating Faculty. [Online: http://www.wellesley.edu/Sumres/faculty/faculty.htm].
51. Summers, C.G. 1997. Phototactic behavior of *Bemisia argentifolii* (Homoptera: Aleyrodidae) crawlers. *Annals of the Entomological Society of America* 90(3):372–379.
52. Frank, K.D. 1988. Impact of outdoor lighting on moths: an assessment. *Journal of the Lepidopterists' Society* 42(2):63–93. Kolligs, D. 2000. [Ecological effects of artificial light sources on nocturnally active insects, in particular on butterflies (Lepidoptera)]. *Faunistisch-Oekologische Mitteilungen* Supplement 28:1–136.
53. Kolligs, D. 2000. [Ecological effects of artificial light sources on nocturnally active insects, in particular on butterflies (Lepidoptera)]. *Faunistisch-Oekologische Mitteilungen* Supplement 28:1–136.. Eisenbeis, G., and F. Hassel. 2000. [Attraction of nocturnal insects to street lights — a study of municipal lighting systems in a rural area of Rheinhessen (Germany)]. *Natur und Landschaft* 75(4):145–156. Sustek, Z. 1999. Light attraction of carabid beetles and their survival in the city centre. *Biologia* 54(5):539–551.
54. Frank, K.D. 1988. Impact of outdoor lighting on moths: an assessment. *Journal of the Lepidopterists' Society* 42:63–93. Rydell, J., and H.J. Baagoe. 1996. Street lamps increase bat predation on moths. *Entomologisk Tidskrift* 117:129–135. Kolligs, D. 2000. [Ecological effects of artificial light sources on nocturnally active insects, in particular on butterflies (Lepidoptera)]. *Faunistisch-Oekologische Mitteilungen* Supplement 28:1–136. Eisenbeis, G., and F. Hassel. 2000. [Attraction of nocturnal insects to street lights — a study of municipal lighting systems in a rural area of Rheinhessen (Germany)]. *Natur und Landschaft* 75(4):145–156.
55. Tessmer, J.W., C.L. Meek, and V.L. Wright. 1995. Circadian patterns of oviposition by necrophilous flies (Diptera: Calliphoridae) in southern Louisiana. *Southwestern Entomologist* 20:439–445.
56. Gotthard, K. 2000. Increased risk of predation as a cost of high growth rate: an experimental test in a butterfly. *Journal of Animal Ecology* 69(5):896–902.
57. Blake, D., A.M. Hutson, P.A. Racey, J. Rydell, and J.R. Speakman. 1994. Use of lamplit roads by foraging bats in southern England. *Journal of Zoology* 234:453–462.

lights interfere with the ability of moths to detect the ultrasonic sound bursts used by bats to locate prey.[58]

2.3.1.4. Amphibians

Artificial night lighting has also been shown to affect the behavior of nocturnal frogs and toads, reducing their visual acuity and ability to consume prey.[59] Amphibians are particular about the light levels in which they will forage, and different species specialize in foraging at different lighting levels during the crepuscular hours of dusk and dawn.[60] If the night does not become sufficiently dark, some species will never forage and will disappear from an area. In salamanders, similar partitioning of foraging times by lighting levels is being researched, and salamander diversity decreases under artificial lighting.[61] Only the species adapted to the lighted conditions can persist. Some frogs will remain motionless for hours following brief illumination by car headlights, depriving them of valuable foraging and reproductive time.[62] Increased night lighting adjacent to wetlands can thereby reduce the number of species of amphibians that are present.

2.3.1.5. Fish

Fish respond to artificial light at night in varying ways. Some species are attracted to light sources, so much so that lights are used to lure fish up ladders to bypass dams.[63] Other fish will not forage in artificially lit areas or on nights with a full moon.[64] Seatrout in the United Kingdom provide an example. A tennis club built a lighted court adjacent to a productive seatrout pool on the Little Cowie River south of Aberdeen, Scotland. Seatrout are normally caught at night, especially on dark nights, when they forage at lighting levels between 0.5 and 0.2 lux. Foraging at greater illumination exposes the fish to greater predation. With the tennis court illuminated next to the river, the fish were no longer active in that pool. The local angling association ultimately took the tennis club to court and was successful in having the lighting declared a "light nuisance."[65] For the grunion (*Leuresthes tenuis*) — a well-known southern California spe-

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58. Svensson, A.M., and J. Rydell. 1998. Mercury vapour lamps interfere with the bat defence of tympanate moths (*Operophtera* spp.; Geometridae). *Animal Behaviour* 55:223–226.
59. Buchanan, B.W. 1993. Effects of enhanced lighting on the behaviour of nocturnal frogs. *Animal Behaviour* 45(5):893–899.
60. Jaeger, R.G., and J.P. Hailman. 1976. Phototaxis in anurans: relation between intensity and spectral responses. *Copeia* 1976:352–407. Hailman, J.P., and J.G. Jaeger. 1976. A model of phototaxis and its evaluation with anuran amphibians. *Behaviour* 56:289–296. Hailman, J.P. 1984. Bimodal nocturnal activity of the western toad (*Bufo boreas*) in relation to ambient illumination. *Copeia* 1984:283–290.
61. Dr. Sharon Wise. Personal communication, 2001.
62. Dr. Bryant Buchanan, quoted in Harder, B. 2002. Deprived of darkness: the unnatural ecology of artificial light at night. *Science News* 161(16):248–249.
63. Larinier, M., and S. Boyer-Bernard. 1991. Smolt's downstream migration at Poutes Dam on the Allier River: use of mercury lights to increase the efficiency of a fish bypass structure. *Bulletin Français de la Peche et de la Pisciculture* 323:129–148. Haymes, G.T., P.H. Patrick, and L.J. Onisto. 1984. Attraction of fish to mercury vapor light and its application in a generating station forebay. *Internationale Revue der Gesamten Hydrobiologie* 69(6):867–876.
64. Contor, C.R., and J.S. Griffith 1995. Nocturnal emergence of juvenile rainbow trout from winter concealment relative to light intensity. *Hydrobiologia* 299(3):179–183.
65. Stonehaven & District Angling Association. nd. Seatrout v. light nuisance. [Online: http://www.sana.org.uk/light.htm].

cies — exposure to light decreases egg hatch rates[66] and young grunion are attracted to artificial lights,[67] which may expose them to additional predation.

2.3.1.6. Birds

Artificial lighting affects behavior of birds in many ways. One of the most well-known examples is the attraction of migrating birds to tall, lighted structures (i.e., towers, office buildings, bridges), where they often die in collisions with the structures themselves or with other birds. While effects on migrating birds are theoretically possible in Malibu, other impacts are more likely. Lighting can affect bird species composition. For example, American crows (*Corvus brachy-rhynchos*) roost in areas with high nighttime lighting levels,[68] where artificial lighting allows them to reduce predation from owls.[69] Crows are aggressive, and artificially increased population levels can be detrimental to other native bird species. Lighting can affect singing and foraging times for many species.[70] A review of the impact of artificial light on waterfowl records numerous instances of shorebirds foraging or roosting under artificial lights.[71] There is not yet information about whether these changes in behavior increase or decrease mortality. A controlled study in The Netherlands showed that breeding bird habitat was degraded by nighttime lighting. The number of nests of a grassland bird species decreased up to 325 yards from a lighting source.[72]

2.3.1.7. Mammals

Finally, artificial lighting has significant effects on mammals. Large predators such as wolves and mountain lions are reported to avoid illuminated areas.[73] Bats are also greatly influenced by artificial lighting. Some faster-flying bat species congregate at streetlights, while slower-flying

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66. Hubbs, C. 1965. Developmental temperature tolerance and rates of four southern California fishes, *Fundulus parvipinnnis*, *Atherinops affinis*, *Leuresthes tenuis*, and *Hypsoplennius* sp. *California Fish and Game* 51(2):113–122.
67. Reynolds, W.W., D.A. Thompson, and M.E. Casterlin. 1977. Responses of young California grunion *Leuresthes tenuis*, to gradients of temperature and light. *Copeia* 1977(1):144–149.
68. Gorenzel, W.P., and T.P. Salmon. 1995. Characteristics of American Crow urban roosts in California. *Journal of Wildlife Management* 59(4):638–645.
69. Brody, J.E. 1997. The too-common crow is getting too close for comfort. *New York Times*, May 27. Miller, R. 1998. Flocks of crows making urban areas home, so look out below. *The News-Times*, December 28. [Online: http://www.newstimes.com/archive98/dec2898/lcd.htm].
70. Bergen, F., and M. Abs. 1997. Etho-ecological study of the singing activity of the blue tit (*Parus caeruleus*), great tit (*Parus major*) and chaffinch (*Fringilla coelebs*). *Journal fuer Ornithologie* 138(4):451–467. Derrickson, K.C. 1988. Variation in repertoire presentation in northern mockingbirds. *Condor* 90(3):592–606. Hoetker, H. 1999. What determines the time-activity budgets of avocets (*Recurvirostra avosetta*)? *Journal fuer Ornithologie* 140(1):57–71. Frey, J.K. 1993. Nocturnal foraging by scissor-tailed flycatchers under artificial light. *Western Birds* 24(3):200. Hill, D. 1992. *The impact of noise and artificial light on waterfowl behavior: a review and synthesis of available literature*. British Trust for Ornithology Research Report No. 61.
71. Hill, D. 1990. *The impact of noise and artificial light on waterfowl behaviour: a review and synthesis of the available literature*. British Trust for Ornithology Research Report No. 61.
72. de Molenaar, J.G., D.A. Jonkers, and M.E. Sanders. 2000. *Road illumination and nature. III. Local influence of road lights on a black-tailed godwit (*Limosa l. limosa*) population*. Alterra, Wageningen, The Netherlands.
73. Beier, P. 1995. Dispersal of juvenile cougars in fragmented habitat. *Journal of Wildlife Management* 59:228–237.

species avoid them.[74] For fast species the agglomerations of insects at street lights are a source of food, but for slower species the increased food availability is offset by increased risk of predation by owls.

In conclusion, the effects of artificial night lighting are real, and prudent measures to minimize them are advisable. It is therefore appropriate, necessary, and supported by the best available science to include limitations on lighting as proposed in the draft LUP.

2.3.2. Fire Clearance

To reduce the risk to life and property from structures burning in wildfires, reduction of combustible fuel around structures is mandated by law and insurance carriers. These actions include removal of native shrub vegetation, often accompanied by installation of landscaping species and irrigation. In the Santa Monica Mountains, fuel modification activities include clearance distances of up to 200 feet from structures. This practice of "fuel modification" or "vegetation management" has widespread application, along with structural design (i.e., roofing, chimneys, siding) and local infrastructure (access routes, water supply), in minimizing fire danger for homes.[75]

The fuel modification requirements prescribed by local fire officials are reinforced by insurance carriers. For properties with high fire hazard, the insurer of last resort is the California FAIR Plan. For properties within designated "brush areas" (so designated by the Insurance Services Office), the FAIR Plan assesses a surcharge based on the amount of clearance surrounding a property. Since the most recent revision of these charges in 1999, all structures with less than 200 feet of brush clearance are assessed surcharges, ranging from $0.13 to $2.52 per hundred dollars of insurance, based on clearance distance and other hazard factors, including distance to fire station, roof type, and type of coverage. The combination of official regulation and insurance incentives guarantees that houses in the Santa Monica Mountains will have 200 feet of vegetation removal. For a new structure not adjacent to existing structures, this results in the destruction of a minimum of three acres of natural vegetation through direct removal or manipulation. However, the effects of fuel modification activities extend well beyond the 200-foot radius, and these activities degrade habitats over a much greater area.

Consider first the effects of fire clearance on bird communities. Stralberg identified three categories of birds in the Santa Monica Mountains: local and long-distance migrants (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird).[76] Her study showed that abundance of migrants and chaparral-associated birds decreases closer to edges with

74. Rydell, J., and H.J. Baagoe. 1996. Bats & streetlamps. *Bats* 14(4):10–13.
75. Vicars, M. (ed.). 1999. *FireSmart: protecting your community from wildfire*. Partners in Protection, Edmonton, Alberta.
76. Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 *in* Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

urban developments, while abundance of urban-associated species increases. The effects of urbanization itself is to increase edges across the mountains, and fire clearance greatly exacerbates this effect. Stralberg's explanatory model shows that the increasing percentage of urban area on a landscape scale explains variation in bird communities not explained by site variables. Similarly, Bolger et al. found decreased densities of sensitive bird species in response to increased edge and fragmentation in southern California chaparral.[77]

Many of the urban-associated bird species are also nest predators (e.g., Western scrub-jay, American crow). An increase in edges and abundance of these species will increase nest predation on chaparral-associated species,[78] which may reduce their populations.[79]

In addition to the purposeful introduction of invasive species, the disturbance associated with fire clearance promotes the invasion of plant species already associated with residential development. Over half of the alien species in the Santa Monica Mountains are associated with disturbed areas, including cleared areas.[80] This relationship between invasive exotics and disturbance is found throughout California and in other Mediterranean regions.[81] The understories of areas subject to fuel modification are rapidly dominated by invasive exotic grasses and forbs. Keeley writes:

> Prefire fuel manipulations such as fuel breaks produce conditions that favor weedy aliens and thus act to increase the alien presence, increase the movement of aliens into wildlands, and increase seed sources capable of invading after fire.[82]

As discussed extensively elsewhere,[83] invasive plant species can profoundly affect ecosystem structure and function by modifying fire regimes, nutrient cycling, and erosion patterns. As fuel

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82. Keeley, J.E. 2002. Fire and invasive species in Mediterranean-climate ecosystems of California. Pp. 81–94 *in* Galley, K.E.M., and T.P. Wilson (eds.). *Proceedings of the invasive species workshop: the role of fire in the control and spread of invasive species. Fire conference 2000: the first national congress on fire ecology, prevention and management.* Miscellaneous Publication No. 11. Tall Timbers Research Station, Tallahassee, Florida.
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modification increases the disturbed area across the landscape, invasive species, aided by ongoing disturbance and irrigation, will continue to invade adjacent native habitats.

Fuel modification activities also disrupt native arthropod communities, including relationships such as the seed dispersal mutualism described above. Fuel modification usually requires the introduction of a permanent water source in the form of an "irrigated zone" surrounding structures. This irrigated zone, along with disturbance of clearance, promotes the invasion of alien insect species, such as the Argentine ant, into native habitats. The deleterious effect of Argentine ants on native arthropods is well documented, with numerous studies reporting a decrease in arthropod diversity as Argentine ant abundance increases.[84] Fuel modification increases the abundance of Argentine ants by providing two conditions that increase invasion: a water source,[85] and increased disturbance.[86] Argentine ants invade far beyond the water sources and into surrounding undisturbed habitats, with increased abundance documented to a distance of up to 650 feet.[87]

Community level analysis indicates that arthropod species composition will change and overall diversity will decrease when habitats are subjected to fuel modification. Disturbed coastal sage scrub sites have fewer arthropod predator species such as scorpions and trap-door spiders, and are dominated by exotic arthropods such as Argentine ants, European earwigs *(Forficula auricularia)*, pillbugs and sowbugs (*Armadillidium vulgare* and *Porcellio* sp.), and the sowbug killer (*Dysdera crocata*).[88] These changes in arthropod species diversity will have resonating impacts on vertebrates that use arthropods as prey species. Suarez et al. show that coast horned lizards (*Phrynosoma coronatum*) prefer native ants (*Pogonomyrmex* and *Messor* spp.) as their food source and suffer when these species are eliminated by invading Argentine ants.[89]

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disturbance in Mediterranean-type ecosystems; an overview. Pp. 3–22 *in* Rundel, P.W., G. Montenegro, and F. Jaksic (eds.). *Landscape disturbance and biodiversity in Mediterranean-type ecosystems*. Springer Verlag, Berlin.

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89. Suarez, A.V., J.Q. Richmond, and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711–725.

Research has shown that 200 feet of fire clearance is not necessary for structure protection in most circumstances, especially if the structure itself is built in a firewise manner.[90] However, since the LUP cannot change existing fire clearance policy, it is essential that it provide a mechanism to identify and mitigate for impacts from fire clearance. Failure to identify and mitigate for the loss of habitat and landscape connectivity caused by fire clearance has been the second largest problem facing the environment of the Santa Monica Mountains, after the failure of jurisdictions to transfer development rights away from high fire danger areas. Any plan to protect ESHAs in Malibu must include a mechanism for mitigation of fire clearance impacts, or it will fail to meet the requirement of Section 30240 of the Coastal Act.

3. Conclusion

The draft LUP for the City of Malibu identifies all remaining native habitats as ESHA. We agree with this determination. Natural habitats have become increasingly rare, and their value to ecosystem function is well understood. Without the natural vegetation of Malibu, floods would be more damaging, landslides would be more frequent, erosion would be greater, and water quality would be degraded. Without landscape connectivity, the viability of coastal wetlands would be diminished. Scientific studies have also illustrated how vulnerable these habitats are to human disturbance. We therefore conclude that the best available science supports the adoption of policies to protect those areas from undue disruption.

90. See review in Longcore, T. 2000. Ecological effects of fuel modification on arthropods and other wildlife in an urbanizing wildland. Pp. 000–000 *in* Brennan, L.A., et al. (eds.). *National congress on fire ecology, prevention, and management proceedings*, No. 1. Tall Timbers Research Station, Tallahassee, Florida.

State of California

The Resources Agency

Memorandum

To : Nancy Lucast
California Coastal Commission
South Coast District
245 W. Broadway
Long Beach, California 90802

Date: March 22, 1983

RECEIVED
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CA Coastal Comm.
SCRC

From : Department of Fish and Game
Regional Manager - Region 5

Subject: Draft Land Use Plan for Malibu, Los Angeles County

The Department of Fish and Game has reviewed the Malibu Draft Land Use Plan (LUP) of November, 1982, and the revised plan as approved by the Los Angeles County Board of Supervisors. The Malibu planning subarea contains large, undeveloped areas that are adjacent to the major urban areas of Los Angeles. Besides encompassing a large portion of the Santa Monica Mountains, the subarea contains many streams, a large coastal lagoon, and extensive wildlife habitat. Large areas are State parkland. Also, the National Park Service is acquiring land as part of the Malibu/Santa Monica Mountains National Recreational Area. The importance of the subarea is further emphasized by the fact that it is an important area for environmental education, particularly by the many colleges and universities in the Los Angeles area. The plan as submitted to the Coastal Commission does not provide an adequate level of protection for the fish and wildlife resources of the planning subarea. We are particularly concerned about the deficient policies within the section on environmentally sensitive habitat areas (ESHA's).

The LUP has incorporated few of the findings and recommendations of previous studies into policy language. For example, the reports by Friesen (1982) and England and Nelson (1976) have indicated the importance of open space values of many areas within the planning subarea and the sensitivity of such areas to development. Also, much testimony at public workshops and in the LCP workshop papers indicating the need for better policies dealing with protection of fish and wildlife resources and habitat has not been incorporated into the current draft.

It is our understanding that, as stated in the Malibu LUP workshops, the Friesen report, as well as the environmental studies by Envicom, LCP consultants, would be used by the County as a basis for those portions of the LUP dealing with ESHA's. Due to the brevity of the Envicom field surveys and the fact that these surveys were conducted in the summer and part of the fall, they cannot be considered as an accurate environmental profile. Because of the seasonal variation of plant and animal communities, it is essential that such surveys be conducted over at least one entire year. This is especially true of a planning area as large and diverse as that involved in the Malibu planning subarea.

The distinctions between disturbed sensitive resources (DSR's), ESHA's Significant Watersheds, Resource Management areas, and significant oak woodlands are unclear, both in terms of geographic boundaries and the descriptions provided in the text. Most land use policies dealing within these categories are inadequate and offer no assurance that any adequate restrictions will be applied to land use. It is essential that large areas of land be reclassified to reflect their true status as ESHA's.

One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just the stream bottoms. This point has been stressed at the public hearings on the LUP and has been discussed in various documents, including the Significant Ecological Area (SEA) studies. The policies for the protection of most of these areas come under the category of "significant watersheds". These policies are particularly weak and should be strengthened to provide certainty concerning future permitted activities.

Several environmental problems may arise as a result of the County's approach to this issue. By allowing essentially unrestricted development in environmentally sensitive watersheds, wildlife corridors may be obliterated. It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.

Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chapparal or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life.

An example of an ecosystem which has a large diversity of wildlife and associated wildlife corridors is Malibu Creek. This area supports your year-round populations of shore and wading birds, waterfowl, deer, bobcat, raccoons, and other animal species.

Because of the aforementioned deficiencies in the LUP, we believe that it will require substantial revision in order to comply with the Coastal Act, including Sections 30230, 30231, and 30240.

We have provided oral testimony at the LUP workshops and at the December 8, 1982, hearing before the Los Angeles County Board of Supervisors. We have also met with Envicom to inform them of our concerns with regard to the LUP in terms of habitat protection. Our specific concerns regarding the LUP are as follows: 1. Recreation and Coastal Access, 2. ESHA's, 3. Marine Resources, 4. Hazards, 5. Groundwater/Hydrology, 6, Public Works, 7. Agriculture, and 8. New Development.

SPECIFIC CONCERNS

1. Recreation and Coastal Access

The Department recognizes the importance of public access in the planning subarea and the importance of trails in allowing the public to enjoy the Santa Monica Mountains. We note, however, that the policies for the development of trails on pages 27 and 28 mention nothing about the siting and designing of trails in such a manner that ESHA's, with associated fish and wildlife values, will be protected.

Trails, if inappropriately sited and designed, may cause such impacts as the disturbance or preclusion of nesting birds and other wildlife and increased erosion. We would like to see a policy developed which would ensure that trails, including equestrian trails, would be designed in such a manner that these impacts would be minimized or avoided. Also, trails within ESHA's and associated areas should be consistent with Coastal Act Section 30240. The Department has opposed trails within riparian corridors in our previous comments on the Santa Monica Mountains and would like to reiterate this concern.

2. Environmentally Sensitive Habitat Areas

Page 51, Figure 6 - Sensitive Environmental Resource Map. This map should accurately indicate the boundaries between sensitive habitat areas. Also, it should show the areas of rare and endangered plants, as well as any seabird roosting and nesting areas.

Page 52, Disturbed Sensitive Resource Areas (DSR's). Further clarification is necessary between these areas and ESHA's. For example, lower Arroyo Sequit Creek is classified on Page 214 of the LUP as being "mostly undisturbed" and having significant resources at the mouth of the canyon. There is sufficient evidence presented for classifying this area as an ESHA. It is indicated as such on Figure 6, but is listed as a DSR in the text on this page.

Page 54. (D), Policies and Standards. What is meant by the designation of ESHA's through "biotic review or other means" is not clear to this Department. A mechanism should be instituted in the plan which would require, given certain criteria, that areas that are shown to be ESHA's after plan certification would be eligible for that classification at some later time.

Page 55, Policy 61. It appears that this policy might allow the deletion of these important habitat areas. Problems may occur when an area is reclassified to receive a less-protective land use designation. Should development potential exist on the subject parcel, then the incentive for preserving the sensitive habitat areas of the parcel may be lessened.

Page 55, Policy 64. The specific plans, as well as the rest of the LUP, should specify the kinds, location, and intensity of land uses as mandated by the Coastal Act.

Page 56, Table I. The policies within this section are generally inadequate. Permitted uses within ESHA's should be limited to those which are dependent upon the resources afforded by the area and which are compatible with the long-term maintenance and enhancement of these areas (Coastal Act Section 30240).

The standards allow for the removal of vegetation and land alteration in undisturbed riparian woodlands, oak woodlands, and savannahs. Depending upon one's definition of "undisturbed", all of these areas could be grouped into this category. These vegetation types are important for wildlife habitat, and should receive protection in the LUP. Also, the destruction of up to 30% of an oak woodland should not be allowed, as is permitted in Table I.

Streambeds should not be filled. Also, we consider all riparian vegetation to be environmentally sensitive. Therefore, we cannot condone its removal, unless for such purposes as a demonstrated need to improve public safety.

We have consistently supported the preservation of the County SEA's. It was the original purpose of the SEA's to include areas that would illustrate the full range of biological diversity in Los Angeles County and to protect these areas. To fulfill this function, all SEA's must be preserved in as near a pristine condition as possible. Our examination of the LUP reveals almost no mention of SEA's, nor does Figure 6, Table I, or other portions of the LUP adequately provide for their protection.

Examination of Figure 6 indicates that the ESHA designation for inland areas only applies to canyon bottoms or adjacent areas. However, we have pointed out the importance of preserving entire watersheds. Development in these areas, particularly on steep slopes where high erosion may occur, should be precluded.

The policy language for this table, as well as for other policies in the plan that provide for environmental resource protection, should be made mandatory by replacing the words "should" with "shall".

Page 63, Policy 66. There is a problem with the concept of an Environmental Review Board (ERB) in that this policy does not adequately specify what the guidelines will be for evaluating land use proposals and the appropriate level of mitigation. Also, there is no criteria established for how ERB members would be selected, and how bias would be avoided in the decision-making process. It is likely that, without these guidelines, projects would be approved that are inconsistent with the objectives of the Department and Chapter 3 of the Coastal Act. The policy revision which allows appels of ERB decisions does not ensure adherence to any environmental guidelines.

Stream Protection and Erosion Control Policies

To maximize the spawning habitat of steelhead trout in Malibu Creek, we would like to see the future removal of Rindge Dam. Silt behind the dam should be removed to an off-site location prior to removal of the dam.

Page 63, Policy 73. With regard to this policy governing the use of pesticides, herbicides, etc., the reference to "emergencies which threaten the habitat itself" should be specified. Also, to help avoid the impacts such as the poisoning of fish and wildlife and the destruction of habitat, the use of these substances should be coordinated with other agencies.

Page 64, Policy 76. With regard to flood hazards, we would like to point out that encroachment from development within floodplains will impact environmental resources in several ways, such as the following:

1) Confining the stream flow results in a faster flow, scouring out the channel. This removes pools and slow moving channels that are important habitat for fish (such as young steelhead and gobies) and turtles.

2) Development in the floodplain reduces the amount of riparian habitat available to wildlife for resting, cover, and food. It also increases the amount of human disturbance of remaining habitat areas. In the vicinity of Cross Creek Ford at Malibu Creek, for example, most of the streambank vegetation has been removed. The stream itself was dredged in 1979, primarily to protect existing homes, and this resulted in the removal of willows in the streambed.

3) Development in floodplains leads to increased pressure for dredging and channelization, both of which are environmentally damaging.

4) Development in close proximity to streams is more likely to result in septic or surface pollutants finding their way into the stream.

Page 64, Policy 79. We do not believe that any exception should be made to allow driveways and walkways within riparian areas. These types of development do not conform to Coastal Act Section 30240, and besides causing a loss of environmentally sensitive habitat, may cause an increase in erosion and other runoff-related problems.

Because we consider all riparian vegetation to be environmentally sensitive, we recommend that the reference to "environmentally sensitive" riparian vegetation be deleted. Presumably this policy refers to this type of vegetation in areas considered by the LUP to be ESHA's.

Riparian vegetation is very important in the regulation of water temperature. When it is removed from streams, the water temperature, particularly during the summer months, may increase to a level where the stream will no longer support steelhead or other fish adapted to cold water temperatures. This is particularly critical for a stream like Malibu Creek, where water temperature is a critical factor in the survival of the steelhead.

With regard to the 50-foot buffer for riparian vegetation, it should be noted that the need for the protection of vital habitat adjacent to the riparian areas will obviate the rationale for having such a small buffer. However, in areas that are already built out (residential areas, etc.), we would like to point out the dynamic nature of riparian vegetation. Following flood flows, for example, trees along streams may be torn out. However, if given enough time, the vegetation will regenerate. Should the 50-foot buffer be measured at a time when the riparian vegetation has just been reduced in size due to adverse environmental factors, then wildlife habitat values will be lost. We believe that riparian buffers should be at least 100 feet as measured from the outer edge of the riparian canopy.

Other problems associated with having a riparian buffer of less than 100 feet relate to fire clearance. Such a small buffer would seemingly result in adverse effects to riparian areas due to fire clearance safety requirements, particularly in rural areas. Siting development as close as 50 feet from the riparian vegetation may also cause problems with the contamination of streams from domestic waste and disruption of wildlife that is associated with this vegetation. Also, this would be contrary to the Los Angeles County Fire Control brush clearance requirements.

There may be a problem with locating development in the floodplain, as would often occur when having small riparian buffers, in that such development might necessitate the use of ecologically impacting flood control measures.

Page 64, Policy 80. We are concerned about the potential environmental impacts of leach fields and seepage pits on ESHA's, primrily streams. Malibu Lagoon is presently contaminated by seepage from leach fields. These domestic wastewater disposal systems will, in some cases, contribute to subsurface flow, which may cause an excessive accumultion to nutrients in the streams at a downstream location. Such a nutrient accumulation, which would consist of such inorganic substances as nitrates, nitrites, and ammonia, will, along with the organic constituents of domestic sewage, cause a depletion of oxygen and dense algal blooms. This condition is known as eutropication and may cause a drastic change in the types of fish, invertebrates, and other life forms that are found in these habitats. Steelhead trout, which are found in three streams in the planning subarea, require high dissolved oxygen concentrations and may be eliminated because of this type of condition. Because of this, we believe that it is necessary for strict enforcement of existing septic ordinances and the sewering of effluent where appropriate.

Another problem with Policy 80 is that it does not take into consideration the underlying geology of the area. The location of bedrock formations and the water table, as well as the potential for lateral seepage from the disposal beds into the stream waters, must be considered.

Page 64, Policy 81. It is unclear how the maximum rate of storm water runoff would be measured. We are unaware of studies which would indicate just what the rate of storm runoff was prior to the establishment of development.

Page 64, Policy 83. The policy should be amended to provide mandatory protection from filling for all streams which have value to fish and wildlife, not just those streams or portions of such streams which are presently designated by the plan to be ESHA's.

Page 64, Policy 85. This policy is inadequate since it does not precisely define the terms "very high" or "high" erosion potential. Also, it allows the circumvention of erosion control policies at the discretion of the building official. Because of the high potential for damage to stream, lagoon, and other habitats and the fact that large amounts of rainfall often fall in short periods of time in the Santa Monica Mountains, we believe that there should be

a prohibition of grading and vegetation clerance during the rainy season. This period would be between November 1 and the end of March.

Page 65, Policy 86. See comments regarding erosion control under "Public Works".

Page 65, Policy 90. The requirements of the County Engineer should be specified in the LUP rather than being included by reference. This policy, as stated, gives no assurance of what the requirements would be if changed at some future time by the County.

3. Marine Resources

Page 71, Policy 100. Although it has experienced some degradation, the wetland at the mouth of Zuma Creek is an important habitat area for many species of birds. It is important that this area be restored, irrespective of what might occur with development at another area. Large portions of this wetland have been graded without benefit of a Coastal Development Permit, as documented by site visits by Department and Coastal Commission personnel.

Page 72, Policy 103. There is a need to specify just what is meant by "qualified professional".

Page 72, Policy 106. We commend the County for the inclusion of this policy. The creek mouth has been blocked by fill and a small culvert in the past (1982) and these obstructions would block the downstream migration of steelhead trout smolts.

Page 73, Policy 110. Because of the importance of the Zuma Creek wetland, we concur with the goal of protecting this area for educational and ecological purposes.

4. Hazards

Page 83, Figure 9. This map should be amended to indicate the boundaries of the 100-year floodplain. The categories of "flood prone" and "liquifaction/ flood prone" need clarification. This is especially important with regard to the lower portion of Malibu Creek. Additionally, the level of post-development lows and their effect in terms of expanding flood-prone areas should be explored.

Page 86, Policy 149. This section is inadequate in that there isn't a specific indication of what areas are to be precluded from grading activities. It is our belief that there should be a prohibition on grading and development-related vegetation clearance on slopes greater than 25%. This policy should stae what "Hillside Management Review" procedures are. For the control of erosion in the Malibu planning subarea, we encourge the County to adopt the recommendations contained within the publication entitled Erosion and Sediment Control Handbook by the State Department of Conservation.

Page 87, Fire Hazard. We encourage properly constructed fuelbreaks. Fire breaks with large areas completely denuded of vegetation contribute to erosion and also provide little or no wildlife habitat value. Stripping of the vegetation and repeated bulldozing of ridgelines have resulted in large soil and substrate losses. Fuelbreaks should be no larger than 100 feet and it is preferable that they be smaller. Development should not be allowed in locations where fire safety requirements would require fuelbreaks greater than 100 feet. There is also a need to control development of remote locations which would require a significant increase in the length of access and fire roads and other services, with subsequent accelerated erosion as well as demand for water resources. Because of the ecological value of stream bottoms and oak savannahs, these areas should not be destroyed for fire prevention. Therefore, care should be taken to insure that new development is not located such that these resources must be removed for safety purposes or any other reason. Oak trees provide roosting areas for raptors and cover and food for deer and other wildlife.

A controlled burn program should be instituted within the planning subarea. Besides reducing fire hazards, such a program would improve overll range conditions for wildlife. We are willing to provide assistance to the Los Angeles County Fire Department or other involved agencies in the development and execution of such a program.

5. Groundwater/Hydrology

Page 93. Our concern with this section relates to the need to keep an adequate flow for streams within the planning subarea. For example, several streams such as Arroyo Sequit, Malibu, and Cold Creeks, support water throughout the year. Policies within this section do not insure that adequate stream flows will be provided for fish passage and protection of riparian and other vegetation from impacts from excessive groundwater withdrawals. For example, will there be adequate stream flows for the passage of steelhead trout in Malibu or Arroyo Sequit Creeks?

An appropriate approach might be to set up minimum flow criteria for certain streams or portions of such streams such that the biological productivity can be maintained.

6. Public Works

Pages 95-100. We have a number of concerns about the improvements to existing roadways and the building of new roads, particularly when such development occurs in wtersheds adjacent to streams. Widening of Malibu Canyon Road, as proposed in Policy 196, will have a significant environmental impact. What, for example, is meant by "adequate pavement width" as stated in the policy? Could this be four lanes?

Policy 201 of this section is also indicative of the nebulous nature of the policies in this section. It is important that the standards for road construction be specified in the LUP. Also, impacts to roadways to fish and wildlife resources, such as the connection between Ramblo Pacifico and Las Flores Canyon, need to be examined and resolved.

Standards for road construction should include specific methods to avoid erosion during and after the construction of the roadway. Such measures should be limited to resolving outstanding safety hazards and not related to increasing the flow of traffic. Speed limits, railings, and other safety mesures should be considered as alternatives to widening roads where they may affect streams and wildlife migration corridors. This could include such methods as water bars with debris collectors and energy dissipators and gravelled roads. Also, it will be necessary to have road construction be consistent with Chapter 3 of the Coastal Act. This will require that any roadway be the least environmentally damaging alternative, and such considerations may in fact preclude the options of widening existing roadways or building new roads.

Stream crossings should be carefully designed. For example, in situations where a stream crossing must occur, we would prefer to see a bridge or a structure elevated on pilings rather than solid fill placed in a stream. The latter has occurred at Cross Creek Road on Malibu Creek and has resulted in a structure which will block the passage of steelhead trout.

7. Agriculture

With regard to finding 2(d), on p. 131, some agricultural activities may impact ESHA's even if they do not occur within such areas. Some agricultural practices in erosion-prone areas include the removal of low growing vegetation and scarification of soils on steep hillsides which results in excessive sedimentation within downstream areas, some of which are ESHA's.

Page 132, Policy 267. With regard to greenhouses and nurseries, there should be policies in the LUP to avoid environmental impacts from these types of operations. Greenhouses and nurseries may both contribute pesticides and fertilizers into streams and lagoons, and we believe that policies must specify measures to control water quality impacts. Such impacts might include ammonia nitrogen and nitrates concentration, which will cause accelerated algal blooms and subsequent eutrophication of streams and lagoons.

8. New Development

Page 139, Land Use Designations. We have examined the Land Use Map and the allowable uses for each land use designation.

Mountain Land. Since many environmentally sensitive watersheds are assigned this designation, and since these areas could be adversely affected from inappropriate development practices, it would be wise to have a more specific statement of the allowable uses under this designation. For example, would off-road vehicles be considered a "low intensity" recreational use? A use such as this would be incompatible with the protection of many of the fish and widlife habitat areas in the Santa Monica Mountains.

Page 141, Parks. The allowable uses under this land use designation should be specified. For example, there are ESHA/s within Malibu Creek Stte Park which are not within the Sensitive Environmental Resources Overlay, and for which allowable land uses must be specified.

The land use designations for Mountain Land have been changed, as discussed in the recommendations of the Los Angeles County Planning Commission and approved by the County Board of Supervisors, to allow for increased development within Significant Watersheds. Because of the provision for ERB review of requests for building densities of greater than one acre, it appears that the LUP will allow for densities greater than 1 du/5 acres within these watersheds. In fact, the development within the Rural Land Categories, some of which occur within significant watersheds, will expressly allow densities up to I du/acre. This type of building density, when coupled with the weak policies in the plan for environmental protection, will result in serious impacts to fish and wildlife.

Page 151. We believe that the definition of "non-conforming" parcels must be defined relative to the potential for environmental damage. For example, the effect of allowable uses upon ESHA's should be established prior to the certification of the Local Coastal Plan, rather than being determined by the ERB after plan certification.

Because of the potential impacts to ESHA's from the "non-conforming" parcels, we strongly encourage the concept of developing programs which will in effect "retire" these lots, therefore keeping them in open space. This may include a "transfer of development credit" program.

The Department of Fish and Game is willing to provide additional assistance to the County of Los Angeles and Coastal Commission regarding the resolution of concerns expressed in this letter.

We appreciate the opportunity to comment on this plan. If you have any questions regarding these comments, please call Frank Gray of our Coastal Planning Staff at (213) 590-5142 or ATSS 635-5142.

Fred A. Worthley Jr.

Fred A. Worthley Jr.
Regional Manager
Region 5

cc: K. Klubnikin, Santa Monica Mountains National Recreation Area
S. Lockhart, U.S. Fish and Wildlife Service
B. Hoffman, National Marine Fisheries Service
R. Friedman and R. Gorma, California Coastal Commission
N. Murdock, Los Angeles County Department of Regional Planning
Kirk Wallace, California Parks and Recreation, Santa Monica Mtns. area
Dr. Lou Shinazi, Regional Water Quality Control Board
Albert Hoyt, Topanga-Las Virgenes Resource Conservation District
Roger Willmarth, California Department of Parks and Recreation

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SOUTH CENTRAL COAST DISTRICT

California Sister, Upperside
(Photo: Margaret Huffman)

Margaret Huffman
Chair, Habitats, S M Bay Audubon; Chair, Butterfly Gardening, L A Chapter N A Butterfly Assn
16856 Edgar Street
Pacific Palisades, CA 90272-3227

May 22, 2002

Mr J C Allen
Staff Ecologist, California Coastal Commission
89 S California St
Ventura CA 93001

Dear Mr Allen:

I want to thank Ms Pat Healey for giving me this chance to comment on your *Summary of Ecological Findings for Malibu,* dated December 24, 2001.

I applaud your landscape-scale approach, taking the *landscape* to be the entire Santa Monica Mountains, of which Malibu is an important part. To emphasize the sensitivity of the remaining undeveloped areas in Malibu, the analysis should clearly display them and focus on the roles they play in maintaining the health of other ecological systems in the mountains. Good examples of this approach are the discussion on pp.13-14 and the materials provided by Marti Witter, Jon Keeley, Rosi Dagit and Mary Meyer.

Delete materials not directly relevant to these issues, such as discussion of Valley Oak Savannah and listing sensitive species probably never found in the Malibu area. Including them sounded defensive, giving me the impression that the case was being overstated and they certainly would be seized upon by critics of the plan.

I also feel that a key element of the analysis has been omitted -- the quality of life in Malibu for the people who live there. Though ecological analysis normally focuses on non-human issues and inclusion of human issues invites political controversy, humans

have played essential roles in Santa Monica Mountains ecosystems, *especially* in the Malibu area, for thousands of years.

Continued urbanization and installation of enormous estates are destroying Malibu's rural character and discouraging original residents, many of who have special affinities for the Malibu ecosystem. Concentrating development in areas that are already degraded would lessen these effects.

The Pacific Coast Highway is of particular human concern. It frequently becomes a barrier to traffic for any of several reasons, isolating residents behind the blockage. The Highway also clearly limits the number of people that can be added to Malibu without increasing the occurrence of 5-mile traffic jams until they interfere with safety or health.. CALTRANS must have analyzed this issue and estimated reasonable population limits, which, at the least, should be cited in the plan. Ideally, the Coastal Commission should have an agency that works with developers to ensure that limits are not exceeded.

I would like to comment on Mountain Lions, the indicator species for the health of *all* Santa Monica Mountains ecosystems. Even though Mountain Lions may never venture into Coastal Sage Scrub, the dominant Malibu habitat, they are crucial to controlling populations of mid-level predators that do, and that kill such species of concern as the San Diego Horned Lizard and the Southern California Rufuous-crowned Sparrow. On the other hand, since none of the corridors needed to ensure a healthy gene pool for Mountain Lions passes through the Malibu area, the need for such corridors is irrelevant to the Malibu Plan and a diversion from pressing concerns mentioned above and in the other commentaries.

Thank you for this opportunity to comment on the Malibu Coastal Plan.

Sincerely,

Margaret Huffman
Author, *Wild Heart of Los Angeles -- The Santa Monica Mountains*

Cc: Pat Healey

California Native Plant Society

P.O. Box 1346 Ojai, CA 93024-1346

25 April 2002

California Coastal Commission
South Central Coast Area
89 E. Santa Clara Street, Suite 200
Ventura, CA 93001
Attention: Dr. Jon Allen

Subject: Malibu ESHAs

Dear Dr. Allen:

The California Native Plant Society (CNPS) has reviewed the California Coastal Commission's Findings regarding Environmentally Sensitive Habitat Area (ESHA) designations for chaparral, coastal sage scrub, and grassland communities for the Malibu Local Coastal Plan (LCP).

CNPS finds the rational for designating Grassland, Coastal Sage Scrub, and Chaparral plant communities as ESHAs to be sound and defensible. The focus on these communities providing suitable habitat for wildlife species such as the Mountain Lion is appropriate since they are excellent bell-weathers of ecosystem health.

Habitat fragmentation is a serious (and rarely addressed) development impact. The cumulative losses of these plant communities are also rarely assessed. Fire hazard clearance of Coastal Sage Scrub and Chaparral vegetation is a larger problem (and impact) than the building of individual homes, which has almost never been adequately identified or assessed as an impact to the biological resources of the Santa Monica Mountains.

Use of the term "Non-native Grassland" (Page 6) should be avoided. The most appropriate name for annual grasslands in California is "California Annual Grassland". Even though these grasslands may be dominated by nonnative grasses, a large number of native forbs may and are likely present in any given area (Holstein 2001[1], Stromberg et al. 2001[2]). Many native wildflowers occur exclusively, or primarily, in the annual grasslands. Those sites that generally consist only of weeds could be labeled "Ruderal Grassland", but in no case should "Non-native Grassland" be used. In addition, no mention of the outdated and incomplete Holland (1986[3]) classification system should be made; rather, vegetation classification should follow the California Native Plant Society's *Manual of California Vegetation* by Sawyer and Keeler-Wolf (1995[4]), which all state and federal resource agencies have adopted as the standard for vegetation classification in California.

---

[1] Holstein, G. 2001. Pre-Agricultural Grassland in Central California. *Madroño* 48(4):253-264.
[2] Stromberg,, M.R., P. Kephart, and V. Yadon. 2001. Composition, Invasibility, and Diversity in Coastal California Grasslands. *Madroño* 48(4):236-252.
[3] Holland, R.F. 1986. Preliminary Description of the Terrestrial Natural Communities of California. California Department of Fish and Game, Sacramento, California.
[4] Sawyer, J.O., and T. Keeler-Wolf. 1995. *A Manual of California Vegetation*. California Native Plant Society, Sacramento, California.

Furthermore, both Coastal Sage Scrub and Chaparral plant communities are quite varied, diverse, and species rich, and vary considerably with species composition based on habitat conditions, such as elevation, substrate, slope, aspect, and latitude. To lump all the plant series and plant associations of Coastal Sage Scrub and chaparral into two categories is highly misleading and minimizes their complexity.

While CNPS understands that the Commission is focusing on this issue from a landscape scale for purposes of assuring suitable habitat conditions exist for large mammals such as the Mountain Lion, the fact that these plant communities are complex should also be recognized and considered. Some Coastal Sage Scrub, chaparral, and grassland plant associations (or series) may be unique or regionally rare and should be designated as ESHAs for those reasons as well. By lumping definable, complex and diverse plant associations into one or two categories oversimplifies the conditions of the natural vegetation and habitats of the Malibu area. For example, 23 plant associations of Coastal Sage Scrub have been described and mapped in the Calleguas Creek watershed (southeastern Ventura County) alone. While there are not likely to be so many Coastal Sage Scrub series in Malibu, there will certainly be more than just one.

Development of single-family homes in these plant communities may result in small or minor impacts to the plant communities onsite, which may not be significant; however, indirect and cumulative impacts to them have not been adequately addressed in the past nor have they ever been mitigated. The fuel hazard clearance and modification zones around structures increases the impacts to these plant communities and habitats four-fold since the fire department and insurance companies require such large safety zones to protect the structures from wildfires. These fuel modification zones create habitats for invasive pest species of insects and non-native plants, which further impact adjacent habitats and species (Longcore 2000[5]).

Regardless of our criticisms with certain aspects of the Commissions Findings, CNPS supports the Findings regarding the ESHA designations for the Malibu LCP as they are based on sound ecological and scientific principles and evidence.

Sincerely,

David L. Magney
Botanist, Board Member, Channel Islands Chapter Conservation Chairman

cc: David Chipping, CNPS Conservation Director

[5] Longcore, T. 2000. Ecological Effects of Fuel Modification on Arthropods and Other Wildlife in an Urbanizing Wildland. Pages 000–000 *in* L.A. Brennan et al. (eds.) National Congress on Fire Ecology, Prevention, and Management Proceedings, No. 1 Tall Timbers Research Station, Tallahassee, FL.

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RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

122 NORTH TOPANGA CANYON BOULEVARD TOPANGA, CALIFORNIA 90290
Office (310) 455-1030 Fax (310) 455-1172
Education Reservations (310) 455-1449
E-mail: info@rcdsmm.org • www.rcdsmm.org

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1 March 2002

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Dr. Jon C. Allen
California Coastal Commission
89 South California Street. Suite 200
Ventura, CA 93001

Re: Comments on the Summary of Ecological Findings for Malibu

Dear Jon Allen,

Thank you for the opportunity to review and comment upon the Summary of Ecological Findings for Malibu that will be incorporated into the revision of the Malibu Local Coastal Plan.

Overall, the information was well presented and represents a clear synthesis of the current scientific views on integrating planned development with preservation of natural resources. Malibu represents a unique situation, where the remaining fragments of wildlands still afford sufficient resources to support numerous species which are declining or gone from other coastal areas in Los Angeles County. It has not yet been possible to determine the threshold for sustainability until long after it is exceeded. Therefore, it would seem prudent to err on the side of caution as development proceeds. It is clear that a strong effort in Malibu to protect connectivity on a variety of spatial scales could be the difference between long term functionality or continued degradation. Designation of the "Environmentally Sensitive Areas" as delineated in the document makes good biological sense from a long term planning perspective.

A major point that is very well supported is that habitat function is as important as habitat type. Due to the disturbance regime in Malibu, (fire, development, brush clearance, etc.) the function of the remaining wildlands is critical to long term sustainability. A development plan process that encourages clustering, reduces fragmentation and protects the integrity of the landscape will have significant ancillary benefits in reduced fire hazard and reduced geological hazard while protecting the underlying ecological support system.

There are a few minor points that might also be considered. First, the document lists connectivity with wildlife corridors to the north, including the Sierra Madre, San Gabriel and San Bernardino. Missing from that list is the Santa Susanna Mountains and Simi Hills, which are the closer crucial linkages on a metapopulation scale.

In the descriptions of Malibu Habitats, we concur with the inclusion of chaparral as a critical habitat. While chaparral further inland may not play as crucial a role, this assemblage in Malibu is a necessary transition area and due to its limited extent, clearly meets the criteria of the Coastal Act for designation as an ESHA. Many of the species listed as characteristic of the Coastal Sage Scrub habitat rely upon adjacent mosaics of chaparral for foraging and movement corridors.

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Clearly this area o
threat. I strongly s

Sincerely,

Paul Beier

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Clearance of this community for fire safety around new structures, as well as disturbance for other development is clearly an impact that deserves greater attention.

The description of riparian woodland would benefit from adding that this woodland community is listed as threatened statewide and in need of preservation. In the coastal zone of Malibu, the riparian zones are the clear lifelines for numerous species. Another species found only within that community are the CA Newts (*Taricha torosa torosa*) which are a state listed species of special concern. They are also indicator species that respond negatively to water pollution and other development related disturbances. A recent survey undertaken by a coalition of agencies and universities coordinated by NPS has found that CA Newts are only found in the more undisturbed areas. Their presence then is a valuable tool to use when evaluating potential development impacts.

The Coastal Saltmarsh section should be expanded to note the potential for restoring wetlands at Las Flores and Trancas Canyons. Both of these locations had substantial historical systems and presently retain sufficient habitat to warrant further restoration in the future, as has been possible at Solstice and Zuma Canyons.

No mention is made of the role of invasive exotic species, both plant and animal, on the integrity of the native ecosystem. It might be helpful to include a brief discussion of the impacts these species have not only in out competing the natives, but in increasing fire frequencies, especially in chaparral and coastal scrub areas that are thinned for brush clearance. These impacts are substantial and need to be evaluated for each new proposed development, especially within the context of evaluating ESHA status on a parcel level.

One additional suggestion is inclusion of some form of on-going evaluation (GIS?) of the ESHA process as it is implemented. Without a formal review process that documents the cumulative impacts of development over time, individual project assessments will inevitably fail to achieve the goals of preservation. If the LCP is going to take a more wholistic approach to defining ESHA's, then it is crucial to incorporate annual review on a large scale landscape basis to track effectiveness, identify gaps, and highlight successes.

The coast of Malibu sits at a critical juncture. Decisions made in the Local Coastal Plan will mean the difference between preserving and protecting the natural systems, or loosing them to urban sprawl. It is easy to forget in our technologically advanced society, that the air we breathe, the sea that we swim in, and the land that we live on is really our support base. If we choose to destroy it, we will, in the end, destroy ourselves. The choice to proceed with care within the context of careful planning seems clear. If well implemented, the proposed ESHA designations will help achieve that goal.

Sincerely,

Rosi Dagit

Rosi Dagit
Senior Conservation Biologist

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NORTHERN ARIZONA UNIVERSITY

SCHOOL OF FORESTRY

Paul Beier
Professor, NAU School of Forestry
Flagstaff AZ 86011-5018
Phone: 1-928-523-9341. Email: paul.beier@nau.edu Web Page: http://www.for.nau.edu/~pb1

25 March 2002

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

RE: Draft Ecological Findings regarding ESHA determination for land in City of Malibu's Land Use Plan

Dear Sir or Madam:

I have reviewed the above-referenced report by John Allen, and I am writing to strong agree with the scientific statements and the interpretation of scientific data in this report. Because of my expertise on mountain lions and conservation corridors, I read pages 8-12 in detail. I would add that a recent book summarizing a landmark 10-year study of mountain lions (KA Logan & LL Sweanor. 2001. Desert Puma. Island Press, 463pp) gives strong support to Dr Allen's assertions about the importance of habitat connectivity for mountain lions, and the role of mountain lions in top-down regulation of deer populations.

In particular, I agree with Dr Allen that the continued existence of mountain lions in this area is evidence that the area is still functionally part of a larger interconnected ecosystem, that the area will not continue to support mountain lions unless it is managed as part of a larger ecosystem, and that the loss of ecological values in the proposed ESHA would have impacts on the larger ecosystem of which it is a part. The report's emphasis on *function* (in contrast to a static snapshot of existing conditions) and on the broad regional context is sound conservation science, and the correct way to evaluate the ecological significance of the area.

Clearly this area qualifies as an Environmentally Sensitive Habitat Area, and is under great threat. I strongly support an ESHA designation and the findings in Dr Allen's report.

Sincerely,

Paul Beier

Paul Beier

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DEPARTMENT OF FISH AND GAME

South Coast Region
Mary Meyer, Plant Ecologist
Habitat Conservation Planning Branch North
1429 Foothill Road
Ojai CA 93023
(805)640-8019
mmeyer@dfg.ca.gov

March 12, 2002

Mr. John C Allen
Staff Ecologist
California Coastal Commission
South Central Coast Area
89 S. Ventura Blvd.
Ventura CA 93001

Ecological Findings for the Malibu Area

Dear Mr. Allen,

I appreciated receiving a copy of the above-referenced report and associated materials. The report provides a careful analysis and justification for designating Environmentally Sensitive Habitat Areas (ESHAs) within the coastal zone of the Malibu area. Based upon my familiarity with land use patterns and natural habitats of Los Angeles, Ventura and Santa Barbara Counties, I would strongly agree with the fundamental assertion put forth in this report- that all natural terrestrial habitats in the Malibu area be regarded as ESHA, and that any determination to the contrary must be established via site-specific analysis with emphasis on habitat connectivity issues.

There is a growing body of evidence, documented in this report and elsewhere, which indicates that habitat fragmentation and isolation are causing continued declines in the long term viability of natural habitats and the species they support in coastal southern California counties. The report accurately describes the numerous species of plants and animals which are declining, rare or otherwise sensitive and rely upon these habitats for their continued existence. The analysis emphasizes the need for maintaining connectivity at various landscape scales with particular emphasis on large animal movement and keystone species. I would add that habitat fragments and isolated areas also experience troubling declines in native invertebrates- loss of key invertebrate species can affect pollination, seed dispersal and genetic exchange within plant populations- their loss also has a cascading effect on a broad array of species, destabilizing and reducing species diversity and essential ecosystem processes. Fragmentation and isolation also may reduce the ability of plant species to shift across the landscape in response to environmental change over both the short term and long term.

By recognizing the complexity of natural ecosystems and their inter-connectedness, I would strongly agree with the reports conclusion, and urge that the California Coastal Commission recognize these habitats and work to seek their conservation.

Sincerely,

Mary Meyer

Mary Meyer, Plant Ecologist

[illegible] pers. obs.). Irrig[illegible] complexity has [illegible] (6.5 feet) which [illegible] Suarez, A.V., J[illegible] the invasion of [illegible] and Longcore, T[illegible] sage scrub. Ph.D[illegible]

[illegible] southern California. Ecological Applications [illegible]-725 [illegible] T.R. 1996. Terrestrial arthropods as indicators of restoration success in Coastal [illegible] Thesis, University of California, Los Angeles, CA).

[illegible] Santa Monica Mountains has increased in concern with increased [illegible] anthropogenic fires are a regular and potentially increasing occurrence [illegible] human activity a[illegible]

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United States Department of the Interior

NATIONAL PARK SERVICE
Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, California 91360-4207

In reply refer to:
L76 (SAMO)

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SOUTH CENTRAL COAST DISTRICT

September 13, 2001

Mr. John Allen
California Coastal Commission
89 S. Ventura Blvd.
Ventura, CA 93001

Dear Mr. Allen:

In response to your request, I have analyzed whether coastal sage scrub in the Malibu Coastal Zone meets the biological criteria for an Environmentally Sensitive Habitat type, as defined by the California Coastal Act. The Coastal Act defines Environmentally Sensitive Habitat as *"any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed by human activities and developments"*. Coastal sage scrub is both an ecologically significant habitat type and one that is particularly sensitive to disturbance from human impacts.

The Malibu Coastal Zone is located within the Santa Monica Mountains National Recreation Area, a park with a wide range of ecological diversity that provides habitat for numerous species of mammals including mountain lion, bobcat, coyote, mule deer, and badger, 400 species of birds, 35 species of reptiles and amphibians, 23 federally listed threatened plant and animal species, three state listed threatened and endangered species, and 46 animal and 12 plant "species of concern". The richness and variety of the park is characteristic of its Mediterranean climate zone and the region is recognized as a global "hotspot" of biological diversity (Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. Kent. 2000. "Biodiversity Hotspots for Conservation Priorities." Nature 403: 853-858).

Coastal sage scrub is one of the major plant communities of the Santa Monica Mountains where it occurs on the drier slopes and lower elevations of the mountains. It forms a broad band along the coast and occurs in scattered locations to the north of the immediate coast and is common on eroded slopes in inland areas of the Simi Hills. Within California, the habitat has been heavily impacted and it is estimated that statewide, only 10-25% of the former habitat remains (O'Leary, John. 1990. California coastal sage scrub: General characteristics and considerations for biological conservation. In: Endangered Plant Communities of Southern California. Proceedings of the 15th Annual Symposium of the Southern California

Botanists, Claremont, CA 91711). The Santa Monica Mountains National Recreation Area, Vandenberg Air Force Base and Camp Pendelton are the largest contiguous remainders of coastal sage scrub in southern California (O'Leary. ibid.). The plant community is considered sensitive by the State of California's Department of Fish and Game because of its scarcity, susceptibility to development impacts, and its habitat for sensitive bird and reptile species (California Natural Diversity Database, 2000). A list of sensitive animals associated with coastal sage scrub in the Santa Monica Mountians is attached. A number of species of the coastal scrub plant communities (both coastal sage scrub and southern coastal bluff scrub) occur only on the immediate coast and further destruction of the coastal habitat may eliminate these species from the Santa Monica Mountains region. These include *Coreopsis gigantea, Ericameria ericoides, Isocoma menziesii* var *sedioides, Perityle emoryi, Erysimum suffrutescens, Stanleya pinnata, Opuntia oricola, Isomeris arborea, Cardionema ramosissimum, Atriplex californica, Atriplex coulteri, Atriplex lentiformis, Dudleya caespitosa, Croton californicus, Astragalus trichopodus* var *lonchus, Camissonia lewisii, Camissonia micrantha, Eriogonum parvifolium, Lastarriaea coriacea,* and *Mucronea californica.*

Coastal sage scrub is particularly sensitive to human impacts. In the coastal zone of the Santa Monica Mountains coastal sage scrub has been, and will continue to be, impacted by direct and indirect development effects, increased fire frequency, increased nitrogen deposition and invasive plant and animal species.

Among the most significant impacts to coastal sage scrub from development is vegetation modification for fire safety. This includes a range of activities that can include planting of highly irrigated gardens; slope plantings of moderately irrigated, drought tolerant and "fire-resistant" plants; thinning of native vegetation; or complete removal of all native shrubs. The area affected by fuel modification often exceeds that directly lost to development itself. Even thinning zones, where the fuel management treatment ostensibly has the least impact on coastal sage scrub vegetation, will degrade and simplify community structure and composition over time. Non-native grasses invade the openings created by thinning between shrubs and, as fewer shrubs resprout each year, the complex shrub community is converted to annual grasslands with a greatly reduced number of scattered re-sprouting shrubs (Witter, pers. obs.). Irrigation of fuel management zones in combination with reduced structural complexity has been shown to substantially affect arthropod communities up to 200 meters (656 feet) which has resonating impacts on vertebrates that use arthropods as prey species (Suarez, A.V., J.Q. Richmond, and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10:711–725 and Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in Coastal sage scrub. Ph.D. Thesis, University of California, Los Angeles, CA).

The fire frequency in the Santa Monica Mountains has increased in concert with increased human activity and anthropogenic fires are a regular and potentially increasing occurrence

Sincerely,

Senior Conserv

(Radke, K.W-H. 1981. The effect of fire frequencies on species diversity, vegetation cover, and floristic changes in chaparral. PhD Dissertation. University of California, Berkeley and Keeley, J.E., C.J. Fotheringham, and M. Morais. 1999. Reexamining fire suppression impacts on brushland fire regimes. Science 284:1829-1832.). The result is that in some areas the fire return time is as little as 10 years and sequences of fires with intervals as short as two years have occurred (Tiszler, J. 2000. Fire regime, fire management and the preservation of biological diversity in the Santa Monica Mountians National Recreation Area. Draft manuscript). It has been demonstrated that type conversion from chaparral to a degraded grassland/sumac vegetation occurs with a reduced fire interval (Davis, S. 1997. Increased fire frequency in 20th century Southern California causes vegetation conversion in coastal chaparral. In: Abstracts of the Southern California Environment and History Conference, Sept. 18-20, 1997 California State University, Northridge, Page 6.). Similar conversion to a degraded vegetation type can be observed within the coastal sage scrub zone in high fire frequency corridors such as Malibu Canyon. Type conversion of coastal sage scrub in the Santa Monica Mountains coastal zone is likely, based on studies from other areas that show conversion of coastal sage scrub to grassland with short interval fires (White, Scott. 1995. Disturbance and dynamics in coastal sage scrub. Fremontia.23: 9-16) and with the increased fire frequency within the Santa Monica Mountains.

Anthropogenic nitrogen deposition is a global problem that can cause vegetation type conversion and it has been hypothesized as a contributing factor to the replacement of coastal sage scrub by Mediterranean annual grasses (Yoshida, L.C. and E.B. Allen. 2001. Response to ammonium and nitrate by a mycorrhizal annual invasive grass and native shrub in southern California. American J. Bot. 88:1430-1436). Increased deposition of nitrate from automobile exhaust in the Santa Monica Mountains may enhance or maintain annual grass dominance and may influence changes in coastal sage scrub community structure.

As coastal sage scrub is disturbed by development, fuel modification, or fire, opportunities for establishment of non-native weedy species exist. Conditions for invasion and replacement by annual grasses have been described above. In the coastal zone, the most serious pending threat to coastal sage scrub is from *Euphorbia terracina,* an annual spurge. On the coastal bluffs in eastern Malibu and sporadically throughout the lower reaches of the coastal canyons as far west as Zuma Canyon, monospecific stands of *E. terracina* are replacing coastal sage scrub. Wherever slopes have been cleared in the vicinity of *E. terracina*, in the following year the vegetation is replaced by pure stands of this plant, reducing the complex coastal sage community of native plant and animal species to a virtual wasteland dominated by one species.

In summary, the coastal sage scrub community in the coastal zone of the Santa Monica Mountains is a rich and ecologically important habitat type within the globally significant southern California Mediterranean ecosystem. It is a community that is under multiple threats and is sensitive to human disturbance. It is appropriate that it be recognized as an Environmentally Sensitive Habitat Area in the Malibu Local Coastal Plan.

Thank you for considering the National Park Service's input. If I can be of further assistance, please call me at (805) 370-2333.

Sincerely,

Marti Witter, Ph.D.
Fire Ecologist

cc: Ray Sauvajot, Chief of Planning, Science and Resource Management
Arthur Eck, Superintendent, Santa Monica Mountains National Recreation Area

SAMO:MWitter:mw:09/10/2001:g:\PSRM\mwitter\correspondence chron\file_name

Reptiles
o San Diego horned lizard (Phrynosoma coronatum blainvillei) (Status:[footnote 2] CSC, Protected)
o Coastal western whiptail (Cnemidophorus tigris multiscutatus) (Special Animal)
o Silvery legless lizard (Anniella pulchra pulcha) (CSC)
o San Bernardino ringneck snake (Diadophis punctatus modestus) (Special Animal)
o Coast patchnose snake (Salvadora hexalepis virgultea) (CSC)

Birds
o Cooper's hawk (Accipiter cooperi) (CSC)
o Sharp-shinned hawk (Accipiter striatus) (CSC)
o Golden eagle (Aquila chrysaetos) (CSC, Fully Protected)
o Ferruginous hawk (Buteo regalis) (CSC; MNBMC)
o Northern harrier (Circus cyaneus) (CSC)
o Prairie falcon (Falco mexicanus) (CSC)
o Merlin (Falco columbarius) (CSC)
o Vaux's swift (Chaetura vauxi) (CSC; MNBMC)
o Loggerhead shrike (Lanius ludovicianus) (CSC; MNBMC)
o Southern California rufous-crowned sparrow (Aimophila ruficeps canescens) (CSC)
o Bell's sage sparrow (Amphispiza belli belli) (CSC; MNBMC)

Mammals
o Mexican long-tongued bat (Choeronycteris mexicana) (CSC)
o Yuma myotis (Myotis yumanensis) (CSC)
o Cave myotis (Myotis velifer) (CSC)
o Long-eared myotis (Myotis evotis) (Special Animal)
o Fringed myotis (Myotis thysanodes) (Special Animal)
o Long-legged myotis (Myotis volans) (Special Animal)
o Small-footed myotis (Myotis ciliolabrum) (Special Animal)
o Spotted bat (Euderma maculatum) (CSC)
o Pale big-eared bat (Corynorhinus townsendii pallescens) (CSC)
o Pallid bat (Antrozous pallidus) (CSC)
o Big free-tailed bat (Nyctinomops macrotis) (CSC)
o Western mastiff bat (Eumops perotis) (CSC)
o San Diego black-tailed hare (Lepus californicus bennettii) (CSC)
o San Diego desert woodrat (Neotoma lepida intermedia) (CSC)
o American badger (Taxidea taxus) (Special Animal)
o Ringtail (Bassariscus astutus) (Fully Protected)

USGS
science for a changing world

U. S. Department of the Interior
U.S. Geological Survey
Western Ecological Research Center
Sequoia-Kings Canyon Field Station
47050 Generals Highway
Three Rivers, California 93271-9651
(559) 565-3170; Fax -3177

Dr. Jon C. Allen
California Coastal Commission
South Central Coast Area
89 South California St. Suite 200
Ventura, CA 93001

21 December 2001

Dear Dr. Allen,

I am writing to comment on the Draft Ecological Findings for the ESHA determination for the City of Malibu Land Use Plan. Because of the recent closing down of the Department of Interior's internet, I have received these materials rather late and have not been able to manage time for detailed comments on the draft. I have, however, studied the document and do have comments pertaining to my expertise, which is fire ecology and management. The primary concern I have with the coastal ecology is the problems inherent in the design of developments that interface with wildland areas. Since the middle of the last century, wildfires along the coastal front range of the Santa Monica Mountains have been responsible for significant loss of property and lives. Every decade sees these losses increase, despite concomitant increases in fire management activities. My research in this region has recently shown that the primary factor for this pattern is directly tied to patterns of development. Not only has the perimeter of developments expanded but the increasing fragmentation of native shrublands, both chaparral and coastal sage scrub, have greatly increased the fire hazard in this region. Limited expansion of the urban/wildland interface will certainly contribute to reducing this hazard, however, design of developments to reduce shrubland fragmentation will also contribute to fire hazard reduction. As fragmentation increases, it increases the area of development exposed to extreme fire hazard. Fragmentation of shrublands also contributes substantially to loss of natural resource value because as fragmentation increases, so also does the area/perimeter ratio of the habitat increase. This has negative ecological impacts because it exposes the shrubland fragment to increased chance of alien plant invasion. In this region the primary invasive species are weedy grasses and this in turn has ramifications for altering fire regimes by making the ecosystems more flammable for a longer portion of the year.

In summary, let me say one of the important considerations to planning in this region is to reduce to the maximum extent of shrubland fragmentation. This of course is a value added scheme because there are other notable advantages such as increasing the connectedness of habitats, which is of substantial value to wildlife. I hope these thoughts are of some value.

Sincerely,

Jon E. Keeley, Station Leader

Missing Linkages: Restoring Connectivity to the California Landscape

April 30, 2001

The Honorable Gray Davis
California State Capitol
Sacramento, CA 95814

Dear Governor Davis:

We are writing to alert you to a critical issue for California's environment. Wildlife corridors, the linkages between habitat areas that are necessary for the preservation of our state's biological diversity, are being lost at a rapid rate. Unless we act now to protect these corridors, our efforts to save much of California's native wildlife will likely fail. Because of your strong record of support for conservation, we are asking for your help.

On November 2, 2000, 150 scientists and land use professionals conducted a symposium in San Diego on the most urgent needs for biological diversity conservation in California. At this symposium, the participating scientists identified fragmentation of wildlife habitats throughout the state as an enormous threat to conservation. This problem is particularly acute in Southern California, a recognized global "hotspot" of biological diversity, with its exceedingly rapid population growth and highly fragmented natural habitats.

We, the undersigned scientists from that symposium, want to stress to you the urgent need to protect and restore habitat corridors and landscape linkages to sustain California's native diversity. Under the pressure of our growing human population and associated urban sprawl, critical habitat connections are being lost daily. Without such links between existing protected areas and other public lands, biodiversity will degrade rapidly and we will lose some of the most important and charismatic species found in our state.

A large body of field research demonstrates that the cascading effect of losing area-dependent species including top-carnivores (mountain lion, bobcat, badger, and kit fox) and anadromous fish (salmon and steelhead) – animals dependant on intact habitat linkages – from regions of the state will result in the loss of a large proportion of California's native biological diversity over time. These species maintain countless others by ensuring the balance of nature both within and outside protected areas. Further, the corridors themselves serve as important habitats for many important and rare species.

This issue is fundamental for all of our wildlife conservation spending. In essence, every dollar ever spent to protect natural habitats and wildlife is at risk if we do not work now to preserve and restore the landscape connections that will sustain these areas over time.

We greatly appreciate your support for protecting California's remarkable natural heritage. We urge you to consider the importance of our findings and to invest in the long-term preservation of biological diversity by protecting the "missing linkages" of our state. We stand ready to assist in any way we can.

Sincerely,

Allison C. Alberts

Allison Alberts, Ph.D.
Head of Ecology and Applied Conservation
Center For Reproduction of Endangered Species
Zoological Society of San Diego

Steve Anderson

Steve Anderson
Forest Service, Southern California Conservation Strategy

Lianne Ball

Lianne Ball, Ph.D
AMEC Earth and Environmental, Inc.

Cameron Barrows

Cameron Barrows
Southern California Regional Director
Center for Natural Lands Management

Paul Beier

Paul Beier, Ph.D.
School of Forestry
Northern Arizona University

Carole Bell

Carole Bell
Santa Rosa Plateau
The Nature Conservancy

Liane Benson
The Nature Conservancy

Pete Bloom
Western Foundation for Vertebrate Zoology

Bill Boarman, Ph.D.
Adjunct Professor, Biology
University of California, Riverside

Robert Brothers, Ph.D.
Legacy: The Landscape Connection

David Carr
Chambers Group, Inc.

John Clecker
Independent Biological Consultant

University of California, Berkeley

Robin Cox
The Nature Conservancy

Kevin Crooks, Ph.D.
Department of Wildlife Ecology
University of Wisconsin, Madison

Kathy Daly, M.E.M.
The Wildlands Project

Dawn Dickman
Biologist
County of San Diego

Shana Dodd
Center for Natural Lands Management

Jeff Dunk
USDA Forest Service

Paul Edelman
Mountains Recreation and Conservation Authority

Scott Fleury
Ogden Environmental

(Myotis macrotis) (CSC)
(Eumops perotis) (CSC)

(Special Animal)
(Fully Protected)

o Small-footed myo
o Big free-tailed ba
o Western mastiff b
o American badger
o Ringtail (Bassaris

John Gallo
Conception Coast Project

Elizabeth Gray
The Nature Conservancy

Ed Grumbine, Ph.D.
University of California, Santa Cruz

Chris Haas
USGS - Biological Resources Division

Ruskin Hartley
Save the Redwoods League

Sierra Hayden
San Diego State University

Jodi Hilty
University of California, Berkeley

Verna Jigour
Ventana Wildlands Project

Paul Jorgensen
Resource Ecologist
California State Parks, Colorado Desert District

Patrick Kelly, Ph.D., Director
Endangered Species Recovery Program
California State University, Stanislaus

Lisa Lyren
USGS – Biological Resources Division

M. A. Sanjayan, Ph.D.
Director of Conservation Science
The Nature Conservancy

Craig Mayer
Associate Director of Conservation Planning
The Nature Conservancy

Thomas Oberbauer
Environmental Resource Manager
County of San Diego

Michael O'Connell
The Nature Conservancy

Jeff Opdycke
Center for Reproduction of Endangered Species
Zoological Society of San Diego

Kristeen Henrod
South Coast Wildlands Project

Rick Rayburn
Chief, Natural Resources Division
California Department of Parks and Recreation

Esther Rubin, Ph.D.
Center for Reproduction of Endangered Species
Zoological Society of San Diego

University of California, Los Angeles

Gilberto Ruiz
Senior Planner
Southern California Association of Governments

Tarya Sagar
San Diego Tracking Team

David Schaub
Manager, Natural Heritage Section
California Department of Parks and Recreation

Joe Schultz
Bureau of Land Management

Gary Smith
Lassen National Forest

Trish Smith
The Nature Conservancy

Michael Soulé, Ph.D.
Science Director
The Wildlands Project

Wayne Spencer
Conservation Biology Institute

Markus Spiegelberg
Center for Natural Lands Management

Paul Spitler
California Wilderness Coalition

Jerre Ann Stallcup
Conservation Biology Institute

Sue Townsend, Ph.D.
Live Oak Associates

Rick Truex
USDA Forest Service, Pacific Southwest Research Station

Hartmut Walter, Ph.D.
Department of Geography
University of California, Los Angeles

Rixanne Wehren

Rixanne Wehren
Coastal Land Trust

Terry R. Weiner

Terry Weiner
Chair, Land Use Committee
Sierra Club/Desert Protection Council

Hart Welsh
USDA Forest Service, Redwood Sciences Laboratory

Dan Williams, Ph.D.
Professor of Zoology and Coordinator
Endangered Species Recovery Program
Department of Biological Sciences
California State University, Stanislaus

John Woodbury

John Woodbury
Bay Area Open Space Council

Cindy Zabel

Cindy Zabel, Ph.D.
Research Biologist and Adjunct Professor
USDA Forest Service, Pacific Southwest Research Station
Humboldt State University

Bill Zielinski, Ph.D.
USDA Forest Service, Redwood Sciences Lab

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CALIFORNIA COASTAL PROTECTION NETWORK
CALIFORNIA NATIVE PLANT SOCIETY
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ENDANGERED HABITATS LEAGUE
ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO
ENVIRONMENTALISTS OF SANTA MARIA VALLEY
FRIENDS OF BLACK LAKE CANYON
FRIENDS OF LAS FLORES CREEK
FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL
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SAN MATEO LEAGUE FOR COASTSIDE PROTECTION
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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

April 19, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

Dear Commissioners:

Together we represent millions of Californians and we write in support of the California Coastal Commission for your recent action adopting the draft land use plan (LUP) of the local coastal program (LCP) for the City of Malibu. We especially appreciate your support for continuous public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA). A review of the record indicates the ESHA designation is based, in part, on

the importance of habitat connectivity to the recovery and viability of species that rely on these dwindling habitat types for survival. Wildlife species are being directly and adversely impacted by the continued and increasing fragmentation of this important ecosystem. We feel that applying this type of conservation science-based decision making to long-range land use planning activities should become a statewide model.

Your certification of the LCP will be a much-needed update of the LUP prepared by Los Angeles County prior to Malibu's incorporation, and it underscores the importance of updating older LCPs throughout the coastal zone. The current draft Malibu plan provides a model for how updated LCPs should address the need to revise ESHA designations based on new biological information, incorporating the precautionary principle and reflecting what has been learned regarding conservation biology in the last 25 years. While many coastal landscapes do not contain coastal sage scrub and chaparral (that's in part why it is ESHA in the Santa Monica mountains) they do support other sensitive habitats whose future health and biological viability depends on the application of the type of science and analysis you utilized as the basis of your decision for Malibu.

We also support your draft policies relating to water quality and urge you to explore additional ways to protect wetlands and adjacent open space throughout Malibu, and in particular the area surrounding Malibu Creek in the Civic Center. Development proposed there is too intense to adequately protect water quality and the Malibu estuary. As is the case with habitat protection, we now have the benefit of increased understanding of the sources and impacts of polluted runoff and faulty septic systems. The best management practices to protect marine water quality in the Malibu LUP should be included in all LCPs, with some adaptation for local conditions. Indeed, when most of the state's LCPs were drafted, the term "nonpoint source pollution" was not even a part of the planning vocabulary.

Lastly, we applaud your efforts to increase public access to the coast in Malibu, and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance, and should not continue to be a private enclave for local residents. Setting a goal for at least one vertical accessway every 1000

feet will ensure that local residents not fortunate enough to own beachfront property will be able to enjoy the beach forever.

We strongly urge you to finalize these ESHA, water quality and public access policies when you act to adopt the entire Malibu LCP in September. We know you will be under tremendous pressure to do otherwise and ask that you stand firmly behind the exemplary action you took in January.

Respectfully Submitted,

ACCESS FOR ALL • CALIFORNIA COASTAL PROTECTION NETWORK CALIFORNIA NATIVE PLANT SOCIETY • CALIFORNIA OAK FOUNDATION CALPIRG • CENTER FOR BIOLOGICAL DIVERSITY • CITIZENS FOR A VEHICLE FREE NIPOMO DUNES • DEFENDERS OF WILDLIFE ENDANGERED HABITATS LEAGUE • ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO • ENVIRONMENTALISTS OF SANTA MARIA VALLEY • FRIENDS OF BLACK LAKE CANYON • FRIENDS OF LAS FLORES CREEK • FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL LEAGUE FOR COASTAL PROTECTION • MENDOCINO COASTWATCH MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION NATURAL RESOURCES DEFENSE COUNCIL • PLANNING AND CONSERVATION LEAGUE • SAN DIEGO AUDOBON SOCIETY • SAN DIEGO BAYKEEPER • SAN LUIS OBISPO COUNTY CHUMASH COUNCIL • SAN MATEO LEAGUE FOR COASTSIDE PROTECTION • SANTA BARBARA CHANNELKEEPER • SIERRA CLUB • SOUTH COAST WILDLANDS GROUP SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

cc: Gov. Gray Davis
Sen. John Burton
Hon. Herb Wesson
Hon. Mary Nichols
Sen. Sheila Kuehl
Sen. Byron Sher
Assembly member Fran Pavley
Assembly member Fred Keeley
Sup. Zev Yaroslavsky

STATE OF CALIFORNIA–THE RESOURCES AGENCY GRAY DAVIS, Governor

SANTA MONICA MOUNTAINS CONSERVANCY
RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207

April 22, 2002

Ms. Sara Wan
Chairperson
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

DRAFT

Comment Letter on Initial Draft City of Malibu Local Coastal Program Land Use Plan

Dear Ms. Wan:

The Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the January 10, 2002 Initial Draft City of Malibu Local Coastal Program (LCP) Land Use Plan (LUP). The Conservancy is one of the principle natural resources state agencies in the Santa Monica Mountains and is responsible for implementing the Santa Monica Mountains Comprehensive Plan pursuant to Division 23 of the Public Resources Code. Since 1980, the Conservancy has protected over 50,000 acres in the Santa Monica Mountains zone. We understand that the Implementation Program is being developed and we look forward to providing input on that process.

In this letter, we address the areas of our core competence including parks, trails, public access, and protection of open space and wildlife habitat. With respect to these areas, in general, the Conservancy supports many of the policies in the Initial Draft LUP (discussed below), including many of those found in Chapter 2-Public Access and Recreation, the Land Resources Section in Chapter 3, and Chapter 6-Scenic and Visual Resources.

We also recommend the following modifications to the plan:

Chapter 2-Public Access and Recreation

In light of the tremendous and increasing use of the public areas in the Santa Monica Mountains and the Malibu coastal beaches, it is critically important to keep public access areas open so any one area is not overused. It is also crucial to provide adequate trails to maximize this access. The Conservancy supports many of the public access and recreation policies to increase public access to parks and other public lands. The Conservancy supports protecting, and where feasible, expanding or enhancing recreational opportunities

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as a resource of regional, state and national importance (Policy 2.1); and siting and designing new development to minimize impacts to public access and recreation along the shoreline and trails, and requiring the dedication of access or trail easements for impacts to trails or prescriptive rights (Policy 2.5 and 2.50). We also support encouraging efforts to obtain public and private funding to purchase parcels and/or easements to complete gaps in the public trail system (Policy 2.54). Purchasing areas is the preferred way to implement open space preservation and trail connections, as opposed to land use regulation. We also support restricting landscaping, and any other barriers or obstructions placed by private landowners within existing road rights-of-way where such areas would otherwise be used for public parking (Policy 2.32). We have seen along Mulholland Highway (in Los Angeles County) that public rights-of-way have been encroached upon and public access has been compromised.

The Conservancy also supports Policy 2.33, giving priority to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation, and Policy 2.34, protecting to the maximum feasible extent, lower cost visitor-serving and recreation facilities, including overnight accommodations. The Santa Monica Mountains National Recreation Area (SMMNRA) is one of the most heavily used National Recreation Areas in the United States. Under current conditions, there is an insufficient amount of public accommodations for people using the SMMNRA. The City has an important role to play in providing these facilities.

Policy 2.41 should be amended by replacing the word "may" with "shall." This policy should read in part:

> "For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement <u>shall</u> be recorded instead of an offer to dedicate and easement..."

We agree that "Public accessways and trails to the shoreline and public parklands shall be permitted in all land use and zoning designations." (Policy 2.7). This policy also states, in short, that where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate, construction of necessary access improvements shall permitted to be constructed, opened and operated for its intended use. This policy should be clarified to allow this construction in not only unaccepted and/or unopened Offers-to-Dedicate, but also in accepted Offers-to-Dedicate, opened Offers-to-Dedicate, and to existing parkland.

Policy 2.28 prohibits gates, guardhouses, barriers, or other structures within private street

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easements if they would affect public access where prescriptive rights exist. The following language should be added to Policy 2.28, "However, this policy does not apply where public agencies own private street easements."

The intent of Policy 2.21 is unclear. It states that developments designed or sized to serve a larger market than park users shall be prohibited in public beaches and parks. Would this policy prohibit a proposed or existing destination restaurant on the Malibu Pier (on California Department of Parks and Recreation parkland)?

It is unclear why only signs advertising *off-site non-coastal related uses or services* (italics added) would be prohibited in public beaches and parks (Policy 2.22). All advertising should be prohibited.

Please clarify where the "LCP-mapped access or trail alignments" (Policies 2.5, 2.50) and the "LCP Hiking and Equestrian Trails Map" (Policy 2.46) can be found.

In Policy 2.47, please replace "Santa Monica Mountains Coastal Conservancy" with, "Santa Monica Mountains Conservancy, California Coastal Conservancy."

The Initial Draft LUP should be amended to emphasize that a public agency is the preferred entity to accept Offers to Dedicate easements. Public agencies do not answer to the desires of a private Board of Directors, have a responsibility to serve the public, and may be in existence in the future longer than private associations. The following text should be added to the end of Policy 2.47:

> "Unless a non-profit trust or association chooses to accept a trail dedication offer and can demonstrate the capacity to maintain it in perpetuity, the dedication should generally be made to a public agency."

In addition, Policy 2.42 should be amended to read as follows (changes are underlined):

> "For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the dedication shall generally be made to a public agency. The City also has the authority to approve a private association that seeks to accept the offer. The City may approve any private association that submits a management plan that [illegible] operate and maintain the easement

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> Notwithstanding any provision of this policy, however, any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement."

Policy 2.48 should be amended to include the following language [the suggested addition is underlined]:

> "A strategic plan for the acceptance, construction, and operation of existing recorded trail easement offers which have not been accepted by a public agency or private association should be developed in coordination with the Santa Monica Mountains Conservancy and the California Coastal Conservancy..."

Appropriate management agencies to take responsibility for trail maintenance of the California Coastal Trail (Policy 2.59) could include the Santa Monica Mountains Conservancy, the Conservancy's joint powers partner, the Mountains Recreation Conservation Authority (MRCA), and/or the National Park Service. The MRCA would also be an appropriate entity to accept offers to dedicate easements for shoreline access (Policy 2.72). (The area south of Pacific Coast Highway is outside the zone of the Conservancy.)

Regarding Policies 2.79-2.81, the Conservancy supports the relocation of the ballfields from Malibu Bluffs State Park. The ballfield property was acquired with public funds for State Park purposes. However, we are concerned with the anticipated ecological and aesthetic impacts associated with the construction of both eight residential units and ballfields on the adjacent (Crummer Trust) site. Coastal bluff habitat is exceedingly rare in southern California. Other alternatives to accommodate residential development and City ballfields, which minimize impacts on the Crummer Trust site, should continue to be explored.

Specific Park Management Issues (Chapter 2)

The Conservancy fully supports Coastal Act Section 30210 to provide maximum public access and recreational opportunities, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. We manage our open space lands to that end. The Conservancy believes that certain park management actions should be ultimately left to the appropriate resource or park agency to interpret. Our agency has considerable experience managing and operating parks. We may propose to impose certain restrictions on trail use after careful consideration of numerous factors such as public safety and protection of natural resources.

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For example, we might propose to close a trail if hazards deem the trail unsafe. We make numerous park management and operations decisions every day and obtaining permits for a large number of those decisions would likely create a unjustifiable burden on public resources. These basic park management and operations decisions should be determined by the park agency, without the need to obtain a coastal development permit.

Specifically, in reference to public beaches and parks, Policy 2.17 states that: "Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit." This sentence should be replaced with the following:

> "Nothing shall prohibit normal opening/closing hours for parks. Standard park operations, such as establishing/modifying hours for parks and changing parking fees, shall be determined by the park agency based on park needs, and shall not require a coastal development permit."

In addition, Policy 2.53 refers to the need to obtain a coastal development permit for limitation on access to trails (e.g., for restoration purposes). The last sentence of this policy should be replaced with:

> "Nothing in this policy shall restrict normal maintenance and operations of parks and trails. Limitations on trail access shall be determined by the park agency responsible for the trail, and shall not require a coastal development permit."

Also, Policy 2.19 states that a coastal development permit shall also be required for temporary events that have the potential to result in significant adverse impacts to public access and/or coastal resources. Public parklands frequently host events, which by the nature of the event, affect public access. Under this policy, would a coastal development permit be required for a wedding at Adamson House (on California Department of Parks and Recreation parkland), because it may affect parking for beach users? We recommend that the following language should be added to this policy:

> "For park events hosted by park agencies (e.g., camps, trails maintenance days for volunteers, nature education activities, festivals, weddings, etc.), a conditional use permit shall not be required."

We are concerned that Policy 2.27 could be interpreted in the worst-case scenario to mean

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that public parking would be allowed in all areas of public parks. The following language should be added:

> "However, within parks, the park management agency shall have the discretion to determine restrictions for public parking, taking into account factors such as aesthetics, public safety, natural resource protection, and overall park resources."

Malibu Lagoon, Malibu Creek, and Surrounding Area

Protection and restoration of open space and habitats in the Malibu Creek watershed is crucial with respect to water quality, recreation, and habitat for numerous protected and sensitive species. The Conservancy supports restoration of Malibu Lagoon on State parkland as well as restoration of connections to historic and current wetlands in the immediate surrounding area. Specifically, if a Civic Center Specific Plan is developed, it should include measures to restore historic wetland habitat and to protect existing open space (Civic Center Policies 5.16-5.18). In addition, land use designations within the lower Malibu Creek watershed should not be up-zoned to allow additional development in natural vegetation areas, areas otherwise currently containing significant ecological resources, or in the historic floodplain.

Designation of Environmentally Sensitive Habitat Areas (ESHA) (Chapter 3)

The City of Malibu supports immensely valuable ecological resources and functions. Careful scrutiny of development and other activities within the City is warranted. The Santa Monica Mountains support the best example of Mediterranean habitat in the world with a full range of predators. The City of Malibu has recognized the importance of its resources in its Draft General Plan Draft Environmental Impact Report:

> "The City has a variety of unique natural resources due to this juxtaposition between the mountains and the ocean. These resources include canyon and coastal topography; a variety of terrestrial, freshwater aquatic and marine habitats; and rare, threatened and endangered species of plants and wildlife. The City of Malibu is an important part of, and occupies the majority of the coastal portion of, the Santa Monica Mountains National Recreation Area (SMMNRA). The SMMNRA was established partly to protect the unique plant and animal associations characteristic of the region's Mediterranean climate." (Malibu 1995)

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Coastal sage scrub, in particular, merits increased protection. This plant community has been recognized as very threatened in southern California by the California Department of Fish and Game[1]. It has been reduced greatly in its range and continues to be under tremendous development pressure. Of the many habitat types found in the Santa Monica Mountains area, coastal sage scrub provides unique and valuable habitat value partially due to its location to the coast. Coastal sage scrub also supports a suite of sensitive species (Malibu 1995; Witter 2001). Its value as habitat is also particularly susceptible to degradation from a host of factors associated with development – such as increases in non-native invertebrates, domestic pets, non-native and invasive plants, and changes in fire frequency. As the urban/natural edge increases from additional development, these impacts become cumulatively more detrimental. The designation of ESHAs should ensure that they are large enough to minimize these cumulative adverse impacts.

The designation of ESHAs in Malibu should be tailored to meet the objectives of protecting core habitat and maintaining connectivity between core habitat areas. Coastal sage scrub and chaparral are functionally connected to riparian areas in Malibu. The current ESHAs (from the 1986 LUP) cannot function ecologically as stand-alone units. An ecologically functional ESHA must maintain a critical mass in size, including ample buffer and connectivity to the natural area. These riparian buffers include coastal sage scrub and chaparral. Unless the new Initial Draft LUP provides a strong mechanism to protect riparian buffer areas, it will fail to protect the existing ESHAs. The ESHAs should be expanded from the 1986 designations so that they are large enough to maintain connectivity and to maintain predators and key indicator species.

The boundaries for ESHAs must be determined based on the best available science. Public agencies should invest significant resources to map legitimate areas to connect large enough units that are biologically functional. To this end, the Conservancy recommends that sufficient state funding be provided for an independent analysis of the ESHAs.

Environmental Review Board (Chapter 3)

The composition of the Environmental Review Board (ERB) (Policies 3.36-3.39) is critical to its effectiveness. We believe a minimum of half of the members should be professional

[1] See sensitivity rankings, "Sensitivity of Top Priority Rare Natural Communities in Southern California," determined by the California Department of Fish and Game.

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ecologists from government agencies or universities. A constraints analysis should be required for ERB review for any project within an ESHA. The ERB should include one dozen members, but only require six members to be present for meetings. This arrangement guarantees a functional minimum of members but allows other members to weigh in on key projects.

Additional Comments on Chapter 3- Land Resources Section

Policy 3.5 and 3.7 identify a process for excluding an area from an ESHA if it determined that it does not meet the definition of ESHA. The LCP should clearly state whether a LCP amendment is needed, or the City would make that determination.

The following should be added as a policy to the ESHA Protection section (p. 50):

> "There may be situations where unacceptable impacts to critical ESHA resources would result from a proposed development that would normally be permitted in an ESHA pursuant to the LCP. The ERB and City Biologist shall have the authority to require project modifications or alternatives to avoid unacceptable impacts to critical ESHA resources, or to deny the project. If a project is denied, efforts to obtain public and/or private funding for the purchase of parcels and/or conservation easements within ESHAs should be actively pursued."

The following should be added as a policy to the ESHA Protection section (p. 50): "Efforts to obtain public and/or private funding for the purchase of parcels and/or conservation easements within ESHAs should be encouraged." A mechanism to obtain funds for this purpose should be explicitly included in the Implementation Program.

The policies regarding ESHA protection should be clarified to ensure that necessary park facilities and activities are allowed in ESHAs. Policy 3.9 specifically notes that public accessways and trails are considered resource dependent uses (thus, they are allowed in ESHAs). Policy 3.10 allows non-resource dependent uses in ESHAs, provided that a finding can be made that otherwise a taking of private property would ensue. This does not apply to public agencies. Park facilities and activities such as nature centers, ranger stations, and camps should be allowed in ESHAs in order to maximum public access and education and to protect those resources. It is critical that these basic park needs are allowed in order for us to effectively manage our parks.

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We support the intent of Policy 3.59:

> "All new development shall include mitigation, for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance."

However, numerous issues must be clarified regarding acceptable mitigation including: the method (e.g., preservation, restoration, or enhancement), plant communities, assurances for permanent protection of mitigation sites, and impact to mitigation ratios. We recommend that mitigation guidelines be developed in consultation with various regulatory and park agencies, including the Santa Monica Mountains Conservancy.

A simple accounting system should be established and administered by the City of Malibu to document losses of plant communities resulting from development. This is an important tool to monitor the effectiveness of a jurisdiction's land protection policies and programs.

Policy 3.62 regarding requirements to replace native trees that are impacted from new developments should be clarified. The Conservancy recommends that onsite locations for replacement trees be required unless it can be demonstrated to the ERB, or the City Biologist (if the impact site is not within an ESHA), that an offsite location would have more ecological value. Maps (at 100 scale) must be developed and updated by the City to document the locations of tree replacement. This is the only way to adequately track the success of restoration and preservation of planted trees. Any restoration plan should be consistent with the coverage and monitoring requirements outlined in Policy 3.47.

The Mountains Recreation and Conservation Authority (MRCA), the joint powers partner of the Conservancy, would be an appropriate entity to administer the proposed in-lieu fee mitigation fund for impacts to native trees from new development (Policy 3.63). The MRCA currently manages a riparian habitat in-lieu fee program in conjunction with the U.S. Army Corps of Engineers and the California Department of Fish and Game.

Chapter 4-Shoreline/Bluff Structures and Hazards

We concur with Policy 4.49 if the following language (underlined) is added:

> "Development adjacent to parkland shall be sited and designed to allow required fire-preventative brush clearance to be located outside park boundaries unless no alternative feasible building site exists on the project

DRAFT

site and the project applicant agrees to pay for required fuel modification within the parkland. A natural vegetation buffer of sufficient size should be maintained between the necessary fuel modification area and public parkland."

The cost of fuel modification for private development should not be borne by the taxpayers.

Chapter 5-New Development

The Conservancy supports the Lot Retirement Program and Transfer of Development Credit Program, including the requirement to record an offer to dedicate an open space easement (Policy 5.28). The Conservancy concurs with Policy 5.35 which states in part that "A land division shall not be approved if it creates a parcel that would not contain an identified building site." We also support the requirement to cluster development to minimize site disturbance, minimize fuel modification, and maximize open space (Policy 5.36).

Chapter 6-Scenic and Visual Resources

We support several policies in this chapter including Policy 6.21 which ensures that exterior lighting be concealed so that no light source is directly visible from public viewing areas.

In general, we support the intent of Policy 6.4: "New development shall not be visible from scenic roads or public viewing areas." We recommend the following text be added: "Park-related new development that would enhance the visitor experience shall be allowed."

The Conservancy also generally supports Policy 6.8 which requires that structures be set below the ridgeline. The following language should be added:

"However, it may be appropriate in some cases to allow some intrusion of the development into an ESHA in order to protect critical viewshed from public viewing areas, such as Scenic Roads."

Chapter 7-Public Works

In the Introduction to this chapter (p. 120, 1st paragraph), the Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority should be identified along with the other agencies listed that finance public recreation facilities.

DRAFT

Policy 7.2 states that publicly financed recreational facilities and access improvement projects shall be permitted consistent with the policies contained in the Access and Recreation section of the LCP. Is this directly referring to Chapter 2-Public Access and Recreation of the LUP? If it refers to a separate set of policies, we request a copy of those policies.

Suggested Changes to Land Use and Parklands Maps

On the Park Lands Map 2, the shape of the Conservancy's Escondido Canyon Natural Park is incorrect. On Park Lands Map 3, Solstice Canyon Park, Corral Canyon Park, and Department of Water and Power property should be identified. California Department of Parks and Recreation property should be shown along Malibu Creek. On Park Lands Map 4, recent acquisitions in Tuna Canyon by MRCA and by Mountains Restoration Trust should be depicted. (Land Use Map 4 should also reflect these areas as Public Open Space.)

On Land Use Map 3, the Department of Water and Power property should not be designated as RR2D (at the west end of the figure). It should be designated Public Open Space.

Thank you for the opportunity to comment on this document. Please direct any questions and all future correspondence to Paul Edelman, Deputy Director for Natural Resources and Planning, at the above address and by phone at (310) 589-3200, ext. 128.

Sincerely,

MICHAEL BERGER
Chairperson

Literature cited

Malibu, City of. 1995. Draft Environmental Impact Report for the City of Malibu General Plan. August.

Witter, Marti. 2001. September 13 Letter from Marti Witter, Ph.D. of National Park Service to John Allen of California Coastal Commission.

FOR: JOHN ALLEN
FYI 11 pages

Malibu Citizens for Local Coastal Planning

"Local Planning Based on Science and Public Input"

Malibu Citizens for Local Coastal Planning (MLCP) is a committee of concerned citizens formed in April 2002 in response to efforts by the staff at the state Coastal Commission to dictate a new development plan for Malibu that would ELIMINATE local control over land use planning and development decisions in our city

We strongly support protection of our sensitive coastal environment and we vigorously oppose unnecessary development of the California coastline. Many of us worked for the incorporation of Malibu as a way to obtain local control over major development decisions so we could protect our community from unnecessary development.

We believe that local citizens and local government have the constitutional right to create land use plans for our community. We believe land use planning and development decisions should be made by *local* elected officials after careful environmental review, scientific analysis and public input. These decisions should NOT be made by state bureaucrats who are not accountable or responsive to local citizens.

Currently the state dictated Local Coastal Program (LCP) for Malibu is scheduled for approval by the Coastal Commission by September 15, 2002. This plan is not reflective of Malibu's unique resources or of the concerns and input from our community. Neither is it based on any formal scientific or rigorous environmental analysis. Here are just a couple of ridiculous outcomes that would result from this development plan:

- **CHILDREN/FAMILIES *BOOTED OUT* OF PUBLIC PARKS.** The state plan calls for Bluffs Park to be closed, the ball fields to be torn out and all improvements to be removed so that coastal sagebrush can re-grow on this site. Thousands of area families and children from all over southern California use this park every year for outings, little league games, soccer games and other activities. Does it make any logical sense to close this park and eliminate this vital public recreation resource?

- **RENTERS *BOOTED OUT* OF COASTAL HOUSING.** The state plan would eliminate hundreds of rental units now available in coastal areas by changing the zoning to eliminate duplexes and apartments. This plan would make it virtually impossible for renters to live in some coastal areas of Malibu. This proposal is anti-renter and incredibly elitist!

- **MASSIVE ZONING CHANGES WITH NO PUBLIC NOTICE OR STUDY.** The state plan would make wholesale changes in the types of development permitted in Malibu – increasing density in some areas and decreasing it in others – without any formal public notice or environmental review. No city in California would be permitted to make such radical zoning changes without extensive public input and review.

- ***AGRICULTURE, ROSES, LAWNS* ALL BUT BANNED FROM COASTAL AREAS.** Their plan prohibits "non-native" plants at many homes and in agriculturally zoned areas. If you want to plant grapes or avocados you can't. Want to plant non-native grass? You can't unless it's in an extremely limited area around your home. Nursery Associations, Farm

Bureaus and other AG groups are concerned that this plan means an end to agricultural uses and landscaping in Coastal areas of California.

- **NO LOCAL INPUT – NO LOCAL CONTROL.** The community of Malibu spent months and dedicated hundreds of hours in public hearings to create an LCP for Malibu. The Coastal Commission simply ignored this plan. Instead, they are creating their own LCP for Malibu that IGNORES local concerns, ELIMINATES local control and VIOLATES the right of our community to create our own land use plans.

- **LAND USE POLICE GET PERMANENT TRESPASSING RIGHTS.** Their plan gives the Coastal Commission PERMANENT rights to trespass upon your property – at any hour of the day or night, seven days a week – if they suspect you are in violation of their LCP policies. This is the most invasive, most draconian, most Orwellian land use proposal ever suggested in America.

Coastal Malibu is just the immediate front in this war to retain local control over land use planning. The staff at the Coastal Commission wants to radically expand their scope of authority over land use plans by cities and counties up and down the coast. Examples of their efforts to expand bureaucratic control over land use are endless. The most recent attempt was Assembly Bill 640 which would grant them the right to draft land use plans for every city and county along the coast and MANDATE that those communities follow it – regardless of local concerns.

Our Plan

Malibu Citizens for Local Coastal Planning intends to wage an aggressive public, political and legal battle to retain local control over land use planning and future development decisions faced by our community.

We plan to raise public awareness in Malibu of this impending disaster and mobilize local residents to get involved to reject this state mandated development plan. We also plan to reach out to citizens, groups, elected officials, and interest groups in other communities around the state who should be concerned about the implications for their community if the state-imposed development plan for Malibu is successful.

WHAT YOU *MUST* DO TO HELP

- Join Our Committee. Fill out and return a pledge card indicating your support for our efforts and indicating areas where you can help.
- Raise Public Awareness. Make copies of this fact sheet and distribute them to your family, friends, neighbors, business associates, etc. Ask them to get involved.
- Write the Newspaper. Write to the local newspaper expressing your outrage at this attempt to eliminate local control. Urge others to get involved.
- Contact Legislators/Commissions. Write to our state legislators and to Coastal Commissioners expressing your outrage and demanding a restoration of local control over our future.
- Make a Contribution. We urgently need contributions to wage an effective program. Please consider making an anonymous contribution of $100, $250, $500 or whatever you can afford to "Californians for Local Coastal Planning" (CLCP) at 23852 PCH #152, Malibu, CA 90265. Your help is urgently needed – call 310-317-8487.

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Th3a

To: Commissioners and Interested Parties

Date: August 22, 2002

From: Staff

RECORD PACKET COPY

Subject: Final draft of the Malibu LCP

Attached are the documents the Commission will utilize at the September 12, 2002 hearing regarding the adoption of the City of Malibu Local Coastal Program (LCP). Included are the following:

1. The final draft of the LCP Land Use Plan, dated August 2002
2. The final draft of the LCP Local Implementation Plan, dated August 2002
3. A copy of that portion of the transcript from the July 2002 Commission hearing on the LCP with the Commission discussion and guidance to staff.
4. Correspondence submitted by the City of Malibu regarding the draft LCP.
5. Copies of letters received from the public since the January 10, 2002 Coastal Commission hearing on the draft Land Use Plan.

The staff has utilized a strikethrough and underline format to show the revisions that have been made since the July 2002 Commission hearing to the Land Use Plan and Local Implementation Plan. This should expedite, for the reader of those documents, identification of the revisions.

Staff will be providing to the Commission as part of the second mailing next week the resolution and findings for adoption of the City of Malibu Local Coastal Program. However, since the above materials attached to this memo constitute approximately 80% to 90% of all the documents for the hearing on the LCP, including the entire Land Use Plan and Local Implementation Plan, staff did not want to delay mailing of this material until the resolution and findings were completed next week.

Lastly, we apologize for the documents not being on three-hole punch paper. With the state budget having not yet been adopted, we are out of three-hole paper in the Ventura office.

FINAL DRAFT

CITY OF MALIBU

LOCAL COASTAL PROGRAM

LAND USE PLAN

California Coastal Commissi

Prepared by the Staff of the California C on
Pursuant to the Provisions of AB 988 and PRC Section 30166.5

For Public Review and Comment

August 2002

Please Note: This document is annotated to show changes made to the text of the June 2002 Revised Draft LUP. Additions are shown using underline and deletions are shown using ~~strikethrough~~. The policies have not been renumbered, so reference can be made to the earlier version of each policy.

This Final DRAFT Land Use Plan (LUP) for the City of Malibu was prepared by the staff of the Coastal Commission pursuant to the mandate of AB 988 which added Section 30166.5 to the Coastal Act (see Chapter 1, Introduction). This document is being released for public review and comment and will be subject to further refinement and revision in response to input from the City, the public and other interested parties. The Coastal Commission will consider the Final Draft Land Use Plan and Final Draft Local Implementation Plan and take public comments at its September 12, 2002 hearing at the Westin Hotel-LAX, 5400 West Century Boulevard, Los Angeles. The public, and other interested parties may also submit comments in writing to:

CALIFORNIA COASTAL COMMISSION
South Central Coast District
89 South California St., Ste. 200
Ventura, CA.
805-585-1800
Attention: Gary Timm
District Manager

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CHAPTER 1--INTRODUCTION

A. Description of the City of Malibu

The City of Malibu, which incorporated on Mar State designated Coastal Zone and extends ap Ventura County Line on the west to Topanga C Inland, the City's Coastal Zone boundary exte includes portions of the coastal terrace and slo Mountains.

The shoreline along the City of Malibu Coastal bluff backed crescent coves, and rocky headlan contains the major canyons and watersheds of canyons constitute the natural drainages that ru the mountain peaks, located both within and ou Angeles County Santa Monica Mountains Coa

The marine, canyon, and watershed environme Road to the Ventura County line is in a relatively and hillsides are dominated by coastal sage scr large areas of riparian habitat in the canyons. A found, providing habitat for many species of se from the Civic Center eastward has suffered so Grading and development have eliminated nat areas, portions of creeks have been channelize diminished or disappeared but reef and rock zo species of fish.

Broad sandy beaches at Leo Carrillo, Nicholas C Dume, Surfrider and other beaches provide sunb board sailing and other recreational opportunitie pocket beaches backed by high bluffs provide m environments in the City's western portion. The of Malibu contains several vertical access points residential communities. Access to many beach is restricted due to blockage by development inc private compounds, unopened accessways, and beaches along the Malibu coast is provided by P limited number of cross-mountain roads. The ca

is exceeded regularly on summer weekends as coastal visitors and residents attempt to reach the beach or enjoy a drive along the coast.

Land use patterns vary considerably throughout the City. Commercial and residential development flanks the Pacific Coast Highway from Topanga to Point Dume. The Malibu Civic Center, located at the base of Malibu Canyon, and Point Dume Plaza contain the major commercial areas. The balance of the City generally consists of residentially zoned lots in small clusters of approximately 10,000 square feet to an acre in size, mid-sized parcels of 2, 5 and 10 acres and large parcels exceeding 20 acres on the coastal slopes throughout the City up to 300 acres in the extreme western portion of the City.

B. Local Coastal Planning History

Efforts to complete a Local Coastal Plan in conformance with the California Coastal Act for the Malibu and Santa Monica Mountains area have been ongoing since shortly after the Coastal Act became effective on January 1, 1977. Prior to the City's incorporation, the initial planning, public hearings, and submittals were the responsibility of Los Angeles County. Initial studies and planning documents addressed the larger coastal zone for Malibu and the Santa Monica Mountains, which extends approximately 5 miles inland.

The first phase of the Local Coastal Plan prepared and submitted by the County consisted of the "Issue Identification/Work Program for the Malibu Area." The work program, which was approved by the Coastal Commission in December 1978, identified the specific issues to be addressed in the LCP Land Use Plan (LUP). The second phase consisted of preparation and submittal of the Land Use Plan. In December 1982, the Los Angeles County Board of Supervisors approved a Land Use Plan and subsequently submitted it to the Coastal Commission. After numerous public hearings and revisions the LUP was certified by the Coastal Commission on December 11, 1986. Since certification in 1986 the certified Land Use Plan has been consulted for guidance by the Coastal Commission in its permit decisions.

After incorporation, the City subsequently adopted a General Plan in November 1995 and an interim Zoning Ordinance. The City also appointed a Local Coastal Plan Committee in 1994, which held over 100 meetings on a regular basis for over 5 years.

On August 31, 2000, the State legislature passed Assembly Bill 988 which added Section 30166.5 to the Coastal Act. Subsection (a) requires the Coastal Commission to prepare an initial draft of the Land Use Plan for the City of Malibu

and submit it to the City on or before January 15, 2002. Subsection (b) requires the Commission, after public hearing and consultation with the City of Malibu, to certify a Local Coastal Program for the City by September 15, 2002. Section 30166.5 also requires the City to immediately assume coastal development permitting authority subsequent to adoption ~~certification~~ of the LCP by the Commission and provides that, notwithstanding specified requirements for the review and approval of development projects, no application for a coastal development permit shall be deemed approved if the City fails to take timely action to approve or deny the application.

C. The Coastal Act

In October~~,~~ 1972, the United States Congress passed Title 16 U.S.C. 1451-1464, which established a federal coastal zone management policy and created a federal coastal zone. By that legislation, the Congress declared a national interest in the effective management, beneficial use, protection and development of the coastal zone in order to balance the nation's natural, environmental and aesthetic resource needs with commercial-economic growth. The Congress found and declared that it was a national policy "to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to the need for economic development (16 U.S.C. 1452b). As a result of that federal enactment, coastal states were provided a policy and source of funding for the implementation of federal goals.

The California Coastal Zone Conservation Act of 1972 (Proposition 20) was a temporary measure passed by the voters of the state as a ballot initiative. It set up temporary regional Coastal Commissions with permit authority and a directive to prepare a comprehensive coastal plan. The coastal commissions under Proposition 20 lacked the authority to implement the Coastal Plan but were required to submit the Plan to the legislature for "adoption and implementation."

The California Coastal Act of 1976 is the permanent enacting law approved by the State legislature. The Coastal Act established a different set of policies, a different boundary line, and different permitting procedures than Proposition 20. Further, it provides for the transfer of permitting authority, with certain limitations reserved for the State, to local governments through adoption and certification of Local Coastal Programs (LCP) by the Coastal Commission.

An LCP is defined as "a local government's land use plans, zoning ordinances, zoning district maps, and, within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of [the Coastal Act] at the local level" (PRC Section 30108.6). The Land Use Plan is defined as " the relevant portion of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions (PRC Section 30108.5).

The LCP zoning ordinance, district maps and other implementing actions must be found to conform with and be adequate to carry out the LCP Land Use Plan. After certification of the LCP (Land Use Plan and Implementation), the review authority for new development within the City of Malibu, including most state and federal government proposals, transfers from the Coastal Commission to the City, except for certain geographic areas such as submerged lands, tidelands, and public trust lands where the Commission retains original permit jurisdiction (PRC Section 30519). In authorizing Coastal Development Permits after LCP certification, the City must make the finding that the development conforms to the certified LCP. Any amendments to the certified LCP will require review and approval by the Coastal Commission prior to becoming effective.

In addition, certain types of development, and development within certain geographic areas approved by the City after certification of the LCP are appealable to the Coastal Commission (PRC Section 30603). These include:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.
(2) Developments approved by the local government not included in paragraph (1) that are located on tidelands, submerged lands, and public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
(3) Developments approved by the local government not included with paragraph (1) or (2) that are located in a sensitive coastal resource area.
(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).
(5) Any development which constitutes a major public works project or a major energy facility.

The grounds for an appeal of an approval of a permit are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act. In addition, the grounds for an appeal of a denial of a permit for a major public works project or major energy facility referenced in number (5) above are limited to an allegation that the development conforms to the standards set forth in the certified Local Coastal Program and the public access policies of the Coastal Act.

D. General Goals and Objectives

In order to provide a Local Coastal Program which conforms to the intent of the Coastal Act of 1976 (PRC Section 30001.5), the overriding goals of the City of Malibu Local Coastal ~~Plan~~ Program shall be to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The following standards shall be applied by the City to achieve the goals and objectives of the Coastal Act in applying the policies of this Land Use Plan:

(1) The policies of Chapter 3 of the Coastal Act (PRC Sections 30200 – 30263) shall be the guiding policies of the Land Use Plan.

~~(2)Where conflicts between one or more policies of the Land Use Plan occur, such conflicts shall be resolved in a manner which on balance is~~

~~the most protective of significant coastal resources. In this context, broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies (PRC Section 30007.5)~~

~~(3)~~(2)Where conflicts occur between the policies contained in the Land Use Plan and those contained in any element of the City's General Plan, zoning or any other ordinance, the policies of the Land Use Plan shall take precedence.

~~(4)~~(3)Prior to approval of any Coastal Development Permit, the City shall make the finding that the development conforms to the policies and requirements contained in the Land Use Plan.

Severability Clause

If any policy, chapter, section, subsection, paragraph, sentence, clause, phrase or other portion of the Land Use Plan is for any reason held to be invalid or unenforceable by a court, such decision shall not affect the validity of the remaining portions of the Land Use Plan.

~~The policies of Chapter 3 of the Coastal Act which is the standard of review for the Land Use Plan are governed by PRC Section 30200 relative to establishing the standards for determining adequacy of the LCP and for resolving policy conflicts. Section 30200 states:~~

~~(a) Consistent with the coastal zone values cited in Section 30001 and the basic goals set forth in Section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with Section 30500), and, the permissibility of proposed developments subject to the provisions of this division are determined. All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.~~

~~(b)~~(a) ~~Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.~~

CHAPTER 2--PUBLIC ACCESS AND RECREATION

A. Introduction

The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as to residents of cities and towns located throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands, and a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area including hiking, biking, horseback riding, camping, fishing, picnicking, nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails, and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels and motels has historically been a critical and controversial issue in Malibu. Continuing conflicts in providing maximum public access to and along the shoreline and trails, as mandated by the Coastal Act, is evidenced in the Coastal Commission's permit regulatory reviews and public hearings concerning proposed projects in Malibu since 1976.

The loss of coastal recreation opportunities resulting from development occurring over the past 25 years represents a significant adverse impact to the availability of public access and recreation in Malibu. Defined broadly, these opportunities include not only the physical availability of access and recreation areas, but also the ability of the public to reach and utilize these sites. Coastal access is generally viewed as an issue of physical supply, and includes lateral access (access along a beach), vertical access (access from an upland street, parking area, bluff or public park to the beach), coastal blufftop trails, and upland trails that lead to the shore or traverse inland parklands within the coastal zone. These inland parks provide significant access and recreation opportunities in the City and Santa Monica Mountains coastal zone, and are as important to coastal access as shoreline accessways.

While the physical supply of access is a primary factor in assuring access opportunities, the Local Coastal ~~Plan~~ Program cannot view the issue of supply in isolation of a number of other factors. These variables include the availability of transit to beaches, parking availability, providing other support facilities such as restrooms and picnic areas, addressing user demands and conflicts, and maintenance of a diversity of coastal recreation experiences. Impacts to any one of these variables may ultimately affect the availability and use of the physical

supply of access. For example, without adequate parking or alternate transportation, users will have difficulty reaching the shoreline or trailhead. Therefore, managing and increasing coastal access and ensuring that growth and development does not cumulatively impact the ability of the public to access the shoreline and trails, involves improving not only the physical supply of access, but all of the other variables that contribute to ensuring maximum coastal access.

To understand the importance of protecting and maximizing public access, it is critical to know that the public already possesses ownership interests in tidelands or those lands below the mean high tide line. Because the mean high tide line varies, the extent of lands in public ownership also varies with the location of the mean high tide line. By virtue of its admission into the Union, California became the owner of all tidelands, submerged lands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The use of these lands is limited to public trust uses, such as navigation, fisheries, commerce, public access, water-oriented recreation, open space, and environmental protection. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring both the implementation of a public access program and the minimization of impacts to access through the regulation of development.

1. Coastal Act Provisions

A broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are herein incorporated into the Land Use Plan, work to meet this objective. The Coastal Act requires that development not interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); encourages the provision of lower cost visitor and recreational facilities (Section 30213); addresses the need to regulate the time, place, and manner of public access (30214); specifies the need to protect ocean front land suitable for recreational use (Section 30221); gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses (Section 30222); requires the protection of upland areas to support coastal recreation, where feasible (Section 30223); and encourages recreational boating use of coastal waters (Section 30224).

2. Land Use Plan Provisions

The policies contained in the Local Coastal Program Land Use Plan are intended to carry out the goals and objectives reflected in the policies of the Coastal Act. These policies can be broadly summarized as follows:

- Improving existing public access opportunities by supporting proposals to open accessways including efforts by Los Angeles County to open and improve accessibility to El Sol and Dan Blocker Beaches;
- ~~Relocating existing athletic fields at Malibu Bluffs State Park and supporting efforts by the California Department of Parks and Recreation to develop a public works plan for Malibu Bluffs State Park that provides for regional/state park uses;~~
- Improving public access to Point Dume State Preserve by improving the availability of parking at the blufftop and providing transit service from Point Dume State Beach below the headlands consistent with the terms of the settlement agreement between the City, the Department of Parks and Recreation and the Coastal Commission;
- Providing objectives, standards, and designated sites for locating visitor-serving recreational facilities and commercial uses such as hotels and motels;
- Coordinating with other public agencies to develop a comprehensive signage program to better identify public access and use opportunities and minimize conflicts between public and private use;
- Identifying and seeking removal of all unauthorized physical development, including signs and fences on the beach, which inhibit public use of public beach areas and state tidelands, as well as those that that physically encroach into state tidelands;
- Protecting existing and improving future parking availability near shoreline and trail accessways throughout the City;
- Improving methods and programs to carry out public access impact mitigation measures by coordinating with other public agencies and private associations to ensure that vertical and lateral access and trail easements obtained pursuant to Offers to Dedicate (OTDs) are accepted, opened, maintained and operated;
- Requiring public access OTDs to mitigate demonstrated impacts to public access;
- Providing guidelines to locate, design, map and otherwise implement a California Coastal Trail (CCT) in the City;
- Establishing standards for the siting and provision of public accessways and support facilities at specific beaches throughout the City;
- Supporting efforts to develop and publish a regional access guide for the Malibu area.

The overarching goal and intent of the policies provided below is to ensure that the LCP Land Use Plan provides for protection, provision, and enhancement of public access and recreation opportunities in the City of Malibu consistent with goals, objectives, and policies of the California Coastal Act.

B. Coastal Act Policies

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

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

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than l0 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

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

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile 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.

C. Land Use Plan Policies

2.1 The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

2.2 New development shall minimize impacts to public access to and along the shoreline and inland trails. The City shall assure that the recreational needs resulting from proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and/or development plans with the provision of onsite recreational facilities to serve new development.

2.3 Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access when there is substantial evidence that prescriptive rights exist.

2.4 Public accessways and trails shall be an allowed use in Environmentally Sensitive Habitat Areas. Where determined to be desirable (by consideration of supporting evidence), limited or controlled methods of access and/or mitigation designed to eliminate or minimize impacts to ESHA may be utilized. Accessways to and along the shoreline shall be sited, designed, and managed to avoid and/or protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes.

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

alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.

2.6 Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.

2.7 Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.

2.8 Public recreational facilities throughout the City, including parking areas or facilities, shall be distributed, as feasible, to prevent overcrowding and to protect ~~sensitive environmental resources~~environmentally sensitive habitat areas.

2.9 Public access and recreational planning efforts shall be coordinated, as feasible, with the National Park Service, the State Department of Parks and Recreation, the State Coastal Conservancy, Los Angeles County, Los Angeles County Department of Beaches and Harbors, the Santa Monica Mountains Conservancy, and the Santa Monica Mountains Trails Council.

2.10 Volunteers and conservation or public work programs should be utilized where feasible to assist in the development, maintenance, and operation of public accessways and recreational facilities.

2.11 Public land, including rights of way, easements, dedications, shall be utilized for public recreation or access purposes, where appropriate and consistent with public safety and the protection of ~~sensitive environmental resources~~environmentally sensitive habitat areas.

2.12 For any new development adjacent to or within 100 feet of a public park, beach, trail, or recreation area, notice of proposed developments shall be provided, as applicable, to Los Angeles and Ventura Counties, the

National Park Service, the California Department of Parks and Recreation and the Santa Monica Mountains Conservancy for their review with regard to potential impacts to public access, recreation, environmentally sensitive habitat and any other sensitive environmental resources.

2.13 Open space easements and dedications shall be utilized, where required, to facilitate the objectives of the City's recreational and/or public access program.

2.14 An incentives program that will encourage landowners to make lands available for public access and recreational uses should be developed.

2.15 The City should coordinate with County, federal and state park agencies and nonprofit land trusts or organizations to insure that private land donations and/or public access dedications are accepted and managed for their intended use.

2.16 Entrance roads, parking facilities, and other necessary support facilities for parks, beaches and other shoreline recreation areas shall be sited and designed to minimize adverse impacts to environmentally sensitive habitat areas and other sensitive environmental and visual resources.

2.17 Recreation and access opportunities at existing public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit.

2.18 The City should coordinate with the National Park Service, the California Department of Parks and Recreation, the State Coastal Conservancy, Caltrans, the County Department of Beaches and Harbors and the Santa Monica Mountains Conservancy to provide a comprehensive signage program to identify public parks, trails and accessways. Said signage program should be designed to minimize conflicts between public and private property uses.

2.19 Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day; 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A coastal

development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources.

2.20 New public beach facilities shall be limited to only those structures ~~necessary to~~which provide or enhance public recreation activities. No development shall be permitted on sandy public beach areas, except that lifeguard stations, small visitor serving concessions, trash and recycling receptacles, and physically challenged access improvements may be permitted when sited and designed to minimize adverse impacts to public access, visual resources and ~~sensitive~~ environmentally sensitive habitat areas and marine resources.

2.21 The limited development of visitor-serving commercial recreational facilities designed to serve beach or park users may be permitted on non-sand areas of public beaches or beach parks. Developments designed or sized to serve a larger market than park users shall be prohibited in public beaches and parks.

2.22 Signs advertising off-site non-coastal related uses or services shall be prohibited in public beaches and parks.

2.23 No new structures or reconstruction shall be permitted on a bluff face, except for stairways or accessways to provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster ~~in accordance with PRC Section 30610 (d) and (g), shall be permitted on a bluff face, except for engineered staircases or accessways to provide public shoreline access where no feasible alternative means of public access exists~~.

2.24 The extension of public transit facilities and services, including shuttle programs, to maximize public access and recreation opportunities shall be encouraged, where feasible.

2.25 New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.

2.26 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.

2.27 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.

2.28 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.

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

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

2.31 The City should complete an inventory of existing public parking along Pacific Coast Highway and public roads seaward of PCH to identify all unpermitted signage or physical barriers to public parking and to establish a database to aid in preventing future loss of legal public access and parking. All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted.

2.32 Landscaping and any other barriers or obstructions placed by private landowners shall not be allowed within existing road rights-of-way where such areas would otherwise be available for public parking.

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 ~~sensitive environmental resources~~environmentally sensitive habitat areas and visual resources.

2.35 New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g. campground, RV park, hostel, or lower cost hotel/motel). The lower-cost visitor accommodations may be provided on-site, off-site, or 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 or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.

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.

2.38 (Deleted)

2.39 To help finance the construction and maintenance of new accessways, the use of private or public grants or other local, State and Federal funding sources shall be utilized.

2.40 The City shall not close, abandon, or render unusable by the public any existing accessway which the City owns, operates, maintains, or is otherwise responsible for unless determined to be necessary for public safety without first obtaining a Coastal Development permit. Any accessway which the City or any other managing agency or organization determines cannot be maintained or operated in a condition suitable for public use shall be offered to another public agency or qualified private association that agrees to open and maintain the accessway for public use.

2.41 For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.

2.42 For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.

1. Trails and Bikeways

2.43 Safe and accessible bikeways and support facilities shall be provided, where feasible, through the development and adoption of a Bikeways Plan in the City's Coastal Zone.

2.44 Existing bikeway corridors along roads and highways should be upgraded, as feasible, to eliminate the present hazards between motor vehicles and bicycles, consistent with the sensitive environmental resource and visual resource protection policies. Improvements to any roadway containing a bikeway should not adversely affect the provision of bicycle use, to the extent feasible.

2.45 Proposals to install bike racks, lockers, or other devices for securing bicycles in convenient locations at beach and mountain parks, parking lots throughout the City, trailheads and other staging areas shall be permitted. Funding should be supported and provided where available.

2.46 An extensive public trail system has been developed across the Santa Monica Mountains that provides public coastal access and recreation opportunities. This system includes trails located within state and national parklands as well as those which cross private property in the City and County. The City's existing and proposed trails are shown on the LCP Hiking and Equestrian Trails Map. A safe trail system shall be provided throughout the mountains and along the shoreline that achieves the following:

- Connects parks and major recreational facilities;
- Links with trail systems of adjacent jurisdictions;
- Provides recreational corridors between the mountains and the coast;
- Allows for flexible, site-specific design and routing to minimize impacts on adjacent development, and fragile habitats. In particular, ensure that trails located within or adjacent to Environmentally Sensitive Habitat Areas are designed to protect fish and wildlife resources;
- Provides connections with populated areas;
- Includes trails designed to accommodate multiple use (hiking, biking and equestrian) where multiple use can be provided safely for all users and where impacts to coastal resources are minimized;
- Reserves certain trails for hiking only;
- Facilitates linkages to community trail systems;
- Provides diverse recreational and aesthetic experiences;
- Prohibits public use of motorized vehicles on any trail;
- Provides public parking at trail head areas;
- Ensures that trails are used for their intended purpose and that trail use does not violate private property rights;

2.47 The appropriate agency or organization to accept and develop trail dedication offers resulting from City issued CDPs shall be determined through coordination, where applicable, with the National Park Service, the State Department of Parks and Recreation, the State Coastal Conservancy, Los Angeles County, the Santa Monica Mountains Coastal Conservancy, and the Santa Monica Mountains Trails Council, and nonprofit land trusts or associations.

2.48 A strategic plan for the acceptance, construction, and operation of existing recorded trail easement offers which have not been accepted by a public agency or private association should be developed to address said trail easement offers no later than two years from the date of LCP certification. The strategic plan shall be incorporated into the LCP as an amendment.

2.49 Development of public or private trail campsites along primary trail routes shall be a conditionally permitted use, where impacts to ~~sensitive environmental resources~~environmentally sensitive habitat areas and visual resources are minimized and where designed to meet fire safety standards.

2.50 A trail offer of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide maximum privacy for residents and maximum safety for trail users.

2.51 The opening of a trail easement that was dedicated for public use as a term or condition of a Coastal Development Permit shall occur only after a public agency or private association has accepted the offer of dedication and agreed to open, operate, and maintain the trail. New offers to dedicate public trail easements shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.

2.52 A uniform signage program shall be developed and utilized to assist the public in locating and recognizing trail access points. In areas containing environmentally sensitive habitat or safety hazards, signs shall be posted in English and in Spanish with a description of the sensitive habitat or safety hazard once the trail is opened by a public agency or private association.

2.53 Trail areas that have been degraded through overuse or lack of maintenance should be restored by such techniques as revegetation with native plants, and through the provision of support facilities such as parking, trash receptacles, restrooms, picnic areas etc. In environmentally sensitive habitat areas a limited recovery period during which public access should be controlled may be necessary. Any limitation on access

shall be for the minimum period necessary, shall be evaluated periodically to determine the need for continued limited use and shall require a Coastal Development Permit.

2.54 Efforts to obtain public and/or private funding for the purchase of parcels and/or easements to complete all gaps in the public trail system throughout the City and Santa Monica Mountains Coastal Zone should be encouraged.

2. California Coastal Trail

2.55 The City shall participate and consult with the National Park Service, the State Department of Parks & Recreation, the State Coastal Conservancy, the Santa Monica Mountains Conservancy, Los Angeles & Ventura Counties, and other appropriate public and private entities and interested parties in designing, locating, funding, acquiring, and implementing the Malibu/Santa Monica Mountains California Coastal Trail (CCT) segment.

2.56 The California Coastal Trail shall be identified and defined as a continuous trail system traversing the length of the state's coastline and designed and sited as a continuous lateral trail traversing the length of the City's Coastal Zone and connecting with contiguous trail links in adjacent Coastal jurisdictions (Los Angeles and Ventura Counties).

2.57 The CCT shall be designed and implemented to achieve the following objectives:

- Provide a continuous walking and hiking trail as close to the ocean as possible;
- Provide maximum access for a variety of non-motorized uses by utilizing alternative trail segments where feasible;
- Maximize connections to existing and proposed local trail systems;
- Ensure that all segments of the trail have vertical access connections at reasonable intervals;
- Maximize ocean views and scenic coastal vistas;
- Provide an educational experience where feasible through interpretive facilities.

2.58 CCT Siting and Design Standards:

- The trail should be sited and designed to be located along or as close to the shoreline where physically and aesthetically feasible. Where it is

not feasible to locate the trail along the shoreline due to natural landforms or legally authorized development that prevents passage at all times, inland bypass trail segments located as close to the shoreline as possible should be utilized. Shoreline trail segments that may not be passable at all times should provide inland alternative routes.

- Where gaps are identified in the trail, interim segments should be identified to ensure a continuous coastal trail. Interim segments should be noted as such, with provisions that as opportunities arise, the trail shall be realigned for ideal siting. Interim trail segments should meet as many of the CCT objectives and standards as possible.

- The CCT should be designed and located to minimize impacts to environmentally sensitive habitat areas to the maximum extent feasible. Where appropriate, trail access should be limited to pass and repass. Where necessary to prevent disturbance of nesting birds, sections of the trail may be closed on a seasonal basis. Alternative trail segments shall be provided where feasible.

- The CCT should be located to incorporate existing oceanfront trails and paths and support facilities of public shoreline parks and beaches to the maximum extent feasible.

- To provide a continuously identifiable trail along the base and shoreline of the Santa Monica Mountains, the trail should be integrated with the CCT in Ventura and Los Angeles Counties which border the City.

- The CCT should be designed to avoid being located on roads with motorized vehicle traffic where feasible. In locations where it is not possible to avoid siting the trail along a roadway, the trail should be located off of the pavement and within the public right-of-way, and separated from traffic by a safe distance. In locations where the trail must cross a roadway, appropriate directional and traffic warning signing should be provided.

2.59 CCT Acquisition and Management:

- Trail easements should be obtained by encouraging private donation of land, by public purchase, or by dedication of trail easements. Trail easement dedications shall be required as a condition of approval of a Coastal Development Permit for development on property located on the CCT route, when the dedication will mitigate adverse impacts on public access and/or recreation by the project.

- The ~~CCT plan~~CCT plan should identify the appropriate management agency(s) to take responsibility for trail maintenance.

2.60 CCT Signage Program Standards:

- The trail should provide adequate signage at all access points, trailheads, parking lots, road crossings, and linkages or intersections with other trails or roads which incorporate the CCT logo (to be designed).

- The trail should provide adequate safety signage, including but not limited to, road crossing signs and yield/warning signs on multi-use trail segments. Where appropriate signs should be developed in coordination with Caltrans and/or City and County Public Works Departments and any other applicable public agencies.

- Signs shall be posted in Spanish and in English.

2.61 CCT Support Facilities:

- To maximize access to the CCT, adequate parking and trailhead facilities should be provided.

2.62 CCT Mapping:

- The final CCT map shall identify all planned or secured segments, including existing segments, all access linkages and planned staging areas, public and private lands, existing easements, deed restricted sections and sections subject to an Offer-to-dedicate (OTD). The map shall be updated on a regular basis.

- The CCT shall be identified on all applicable City Trail Maps contained in the LCP Access Component.

2.63 Inclusion of CCT in LCP:

- The LCP shall be amended to incorporate all plans and designs for locating and implementing the CCT within the City including the final mapped alignment.

3. Shoreline Access

2.64 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

2.65 An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.

2.66 On beachfront property containing dune ESHA the required easement for lateral public access shall be located along the entire width of the property from the ambulatory mean high tide line landward to the ambulatory seawardmost limit of dune vegetation. If at some time in the future, there is no dune vegetation seaward of the approved deck/patio line, such easement shall be located from the ambulatory mean high tide line landward to the seaward extent of development.

2.67 An Offer to Dedicate (OTD) an easement for vertical access shall be required in all new development projects causing or contributing to adverse public access impacts when adequate access is not available within 500 feet of the development site. Vertical accessways shall be a minimum of 10 feet in width and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent. Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist.

2.68 Facilities to complement public access to and along the shoreline should be provided where feasible and appropriate. This may include parking areas, restroom facilities, picnic tables, or other such improvements. No

facilities or amenities, including, but not limited to, those referenced above, shall be required as a prerequisite to the approval ~~or~~ of any lateral or vertical accessways OTDs or as a precondition to the approval or construction of said accessways.

2.69 New development located on the seaward side of Pacific Coast Highway and east of Malibu Creek shall be required to construct a public sidewalk with a minimum width of five feet between the approved development and Pacific Coast Highway, where feasible.

2.70 Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept the responsibility for maintenance and operation of the accessway. New offers to dedicate public access shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights in the areas subject to the easement prior to acceptance of the offer and 2) prohibits any development or obstruction in the accessway prior to acceptance of the offer of dedication.

2.71 Offers to dedicate public access shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6 months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.

2.72 Public agencies and private associations which may be appropriate to accept offers of dedication include, but shall not be limited to, the State Coastal Conservancy, the Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.

2.73 A uniform signage program shall be developed and utilized to assist the public in locating and recognizing shoreline access points. In ~~areas of~~environmentally sensitive habitat areas signs may be posted with a

description of the sensitive habitat. Signs shall be posted in English and Spanish.

2.74 Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.

2.75 Where a proposed project would increase the burdens on access to or along the shoreline, additional access may be required to balance or mitigate the impact resulting from construction of the project.

2.76 Accessways or areas adjacent to accessways that have been severely degraded as the result of intense and/or unrestricted use should be restored by such techniques as revegetation with native plants, trail consolidation and improvement and through the provision of support facilities such as parking, defined trail and/or beach walk stairway systems, raised wooden boardwalks, trash receptacles, restrooms, picnic areas. In severely degraded areas controlled and limited public access may be allowed during the recovery period subject to a coastal development permit and consultation with appropriate public agencies and/or resource specialists. Any limitation of public use shall be evaluated periodically to determine the need for continued limited use and the limitation shall be removed at the termination of the recovery period.

2.77 Proposals to open and provide increased public access to El Sol and Dan Blocker Beaches, where feasible, shall be supported and coordinated with the Los Angeles County Department of Beaches and Harbors.

2.78 Acquisition of parcels owned by Caltrans, which may be appropriate for public recreational use, should be supported.

2.79 ~~A future d~~Development ~~plan, including but not limited to a Development Agreement or~~ of a Public Works Plan~~,~~ for Malibu Bluffs State Park by the California Department of Parks and Recreation that ~~results in removal and relocation of existing athletic fields and~~ provides for uses which complement State and regional park objectives to expand public access and visitor opportunities shall be supported.

2.80 No expansion, reconstruction or improvements to existing athletic fields at Malibu Bluffs State Park shall be permitted.

2.81 ~~The Amended Draft Development~~A Development Agreement between the City, the State Department of Parks and Recreation and the Crummer Family Trust ~~presented at a multi-agency meeting on April 15, 2002 and~~ should be pursued which provides for the permanent ~~removal~~ relocation of

the existing athletic fields at Malibu Bluffs State Park~~, with the exception of a 2.678 acre portion of the Park not located in~~out of the prime view shed of the ~~, and relocation~~park onto to the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway. Said agreement may include the construction of up to 8 residential units on the remainder of the (Crummer Trust) site and shall cause the redesignation of the subject site to Residential in the Land Use Plan upon approval of the Coastal Commission. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP.

2.82 The City should continue to support and coordinate with the California Department of Parks and Recreation in improving access to Point Dume State Preserve by ensuring that adequate public parking is provided consistent with the terms of the settlement agreement between the City, State Department of Parks and Recreation and the Coastal Commission. Where applicable, the City should support and coordinate with the Department of Parks and Recreation in designing and constructing trails consistent with ongoing efforts to restore, enhance and protect sensitive resources.

2.83 In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.

2.84 No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.

2.85 Efforts to develop and publish a regional access guide to Malibu area beaches and trails should be encouraged and supported.

2.86 Efforts to ensure that all existing shoreline and inland trail OTD easements are accepted prior to their expiration date shall be coordinated with other public agencies as appropriate.

4. Beach and Blufftop Accessway Standards

2.87 The frequency of public access locations shall vary according to localized beach settings and conditions as set forth below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline unless otherwise specified in Policy 2.89. This requirement shall not preclude the provision or requirement of vertical accessways at less than 1,000 feet separation if a public agency or private landowner offers to dedicate such access or if a project related impact warrants such access (offer-to-dedicate) as a condition of approval.

2.88 Improvements and/or opening of accessways already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance from the nearest available vertical accessway.

5. Specific Vertical Accessway Standards

2.89 The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies.

Nicholas Canyon

- No new dedications required – public beach.

Encinal

- A minimum of two vertical accessway (OTDs) between Nicholas Canyon and El Pescadero for a separation of approximately one accessway per 2500 feet. Development of an accessway at El Sol may satisfy one of the requirements. Additional offers of dedication should be located at least 600 feet west of El Sol.

Lechuza

- Public acquisition of or requirements for two vertical access (OTDs).

Trancas / Broad Beach

- Public acquisition of and/or requirements for vertical access every 1,000 feet of shoreline.

Zuma

- No new dedications required – public beach.

Point Dume State Beach / Westward Beach

- No new dedications required – public beach.

Dume Cove / Point Dume State Reserve

- Vertical access to the beach from the blufftop headlands parking lot.

- Vertical access to and lateral access along the blufftop at the Point Dume headlands for coastal view purposes and passive recreation, with a minimum of two established viewpoints at least 500 feet apart.

- The provision and protection of public parking pursuant to the terms of the settlement agreement between the City, the State Department of Parks and Recreation and the Coastal Commission shall be required.

Paradise Cove

- Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with no fewer than two).

Escondido Beach – Malibu Cove Colony

- Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with at least two additional accessways to those existing at Escondido Creek and ~~Geoffrey's Restaurant~~Seacliff).

- ~~Improvement, opening and operation of~~Maintain and operate 2 existing vertical accessways. ~~and~~

- Improve and open 3 existing vertical access easements.

Latigo Beach

- Requirement for or public acquisition of vertical access dedication on property seaward of and fronting Latigo Shore Drive to meet standard of one accessway every 1,000 feet.

- Requirement for or acquisition of public viewpoint on the blufftop at Pacific Coast Highway (PCH) or public street seaward of PCH.

- Improve~~ment,~~ and open~~ing and operation of~~ existing vertical accessway and OTD.

Dan Blocker Beach

- Improvement of existing vertical accessway, public parking and restroom facilities on portion of shoreline owned by Los Angeles County.

Malibu Beach Road (Amarillo and Puerco Beach)

- Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

- Improve and ~~O~~open existing 100 foot wide vertical access OTD for public use in accordance with the site plan approved by the California Coastal Conservancy on August 8, 2002.

- Maintain and operate existing accessway (5 are open).

- Enhance trail connections to Malibu Bluffs State Park.

~~Malibu Bluffs State Park~~

- ~~No dedications required – Public Park.~~

- ~~Replacement of local City park uses (ballfields, community center) with public blufftop trails and viewpoints, passive recreation, and vertical access trail to Malibu Road.~~

Malibu Beach

- Public vertical access dedications or public acquisition to meet the minimum standard of one accessway per 1,000 feet of shoreline from properties located seaward of and fronting on Malibu Road.

Malibu Lagoon State Beach / Surfrider Beach

- No dedications required – public beach.

Carbon Beach

- Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

- Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.

- Maintain and operate existing "Zonker Harris" vertical accessway.

La Costa / Las Flores Beaches

- Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

- Improve and open vertical access ~~OTD~~ easement at Las Flores Creek.

- Improve and open parcel at 21704 PCH at western end.

Big Rock Beach

- Dedication of one vertical accessway every 1,000 feet of shoreline.

- Maintain and operate 2 existing accessways.

Las Tunas Beach

- Dedication of one vertical accessway every 1,000 feet of shoreline.

- Improve and ~~O~~open~~, operate and maintain~~ existing vertical access OTD and Deed Restriction.

6. Recreational Boating

2.90 Vessel operations near the shoreline, including launching and landing at beaches, shall be done in a safe and responsible manner.

2.91 Boat storage facilities which do not restrict coastal access and which do not impair coastal resources may be permitted in the vicinity of existing launch facilities.

2.91a Other than the State of California or its grantee acting pursuant to the public trust doctrine, no new development shall obstruct the public's right of use of tidelands pursuant to the public trust doctrine or a public easement in navigable waters.

CHAPTER 3--MARINE AND LAND RESOURCES

A. Introduction

The Santa Monica Mountains region, including the City of Malibu, is a unique habitat area. On a global scale, the area is part of the Mediterranean Scrub biome. This biome type is found in only five areas worldwide: around the Mediterranean Sea, Chile, South Africa, Australia, and Southern California. All of these areas occur on the west coast of the respective continents where there are cold ocean currents offshore. The Mediterranean climate includes wet winters and dry summers with precipitation ranging from 15 to 40 inches per year. Temperatures are moderated by the maritime influence and fog associated with the cold ocean currents. Worldwide, this biome occupies a small area and a very small percentage of the historical extent remains undisturbed.

The Santa Monica Mountains are part of the Transverse Ranges, the only mountain range in California that is oriented in an east to west direction. The Transverse Ranges extend from the Santa Barbara Coast to the Mojave Desert, creating a natural barrier between Central and Southern California. There are several habitat types and individual plant species within the City that are considered sensitive. The Department of Fish and Game has identified habitats that are considered sensitive because of their scarcity and because they support a number of endangered, threatened, and rare plants, as well as sensitive bird and animal species. These vegetation communities found within the City include coastal sage scrub, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, salt marsh, and freshwater marsh. Within these habitat areas are several plant species that are considered endangered, threatened, rare, or of special concern under state or federal law or by designation of the California Native Plant Society. Such plants include Santa Susana tarplant, Coulter's saltbush, Blochman's dudleya, Santa Monica Mountains dudleya, and Plummer's mariposa lily.

Large areas of contiguous habitat are particularly rare. For instance, approximately 85 percent of the historical extent of coastal sage scrub habitat has been lost across the State and the remaining areas are therefore much more fragmented and sensitive. Coastal wetlands have become increasingly rare. Malibu Lagoon is a valuable resource, supporting two endangered fish species, the Tidewater Goby and the Southern California Steelhead Trout as well as many other sensitive plant and animal species. It is estimated that less than 10 percent of riparian woodland habitats still exist in California. Riparian areas are recognized as a very complex habitat type, containing a highly diverse

community of plants and animals. There are many riparian areas in the City, including those that are part of relatively intact watershed systems, and those that are surrounded by existing development. Even in developed areas, the riparian/stream corridors have been retained. The Santa Monica Mountains, including the City, still include large areas of intact habitat, an extraordinary fact given the dense urban development that surrounds the area.

1. Coastal Act Provisions

One of the chief objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. The rarest and most ecologically important habitats are protected from development. The Coastal Act provides a definition of "environmentally sensitive area" as: "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Section 30107.5).

Section 30240 requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development, with the exception of uses dependent on the resources, is allowed within any ESHA. This policy further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. Finally, development adjacent to parks and recreation areas must be sited and designed to prevent impacts.

In addition to protection as ESHA, streams and associated riparian habitat are also protected in order to maintain the biological productivity and quality of coastal waters. Section 30231 requires that natural vegetation buffer areas that protect riparian habitats be maintained, and that the alteration of natural streams be minimized. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat.

Marine resources are protected to sustain the biological productivity of coastal waters and to maintain healthy populations of all species of marine organisms. Section 30230 requires that marine resources be maintained, enhanced, and where feasible restored. Uses of the marine environment must provide for the biological productivity of coastal waters and that will maintain healthy populations of marine organisms. Section 30233 provides that the diking, filling, or dredging

of open coastal waters, wetlands, or estuaries may only be permitted where there is no less environmentally damaging alternative and restricted to a limited number of allowable uses.

Finally, the Coastal Act requires that the biological productivity and quality of coastal waters be protected. Section 30231 requires the use of means, including managing waste water discharges, controlling runoff, protecting groundwater and surface water, encouraging waste water reclamation, and protecting streams, in order to maintain and enhance water quality.

2. Land Use Plan Provisions

The LUP contains policies that protect the environmentally sensitive habitat areas ~~resources~~ of the City. The LUP Environmentally Sensitive Habitat Areas (ESHA) Map shows the areas that are designated ESHA. In undeveloped areas, entire canyon habitats have been designated, including riparian corridors, coastal sage scrub, chaparral, and woodlands. Within developed areas, riparian corridors are designated as ESHA. On Point Dume, the streams and riparian corridors ~~and the adjacent canyons~~ are designated ESHA. These areas are recognized as rare and functioning for wildlife, notwithstanding the disturbances resulting from adjacent residential development. Coastal dunes and bluff face areas are designated as ESHA. There are also valuable marine resource ~~ESHA~~ areas including kelp forests, intertidal areas, and near shore shallow fish habitats. The ESHA Map will be reviewed and updated periodically to reflect up to date information and necessary revisions shall be made as an amendment to the LUP.

The LUP policies establish that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Such determinations shall be reviewed by the City's Environmental Review Board~~, or other qualified professionals~~. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA. If the application of the ESHA policies would result in taking private property for public use, without the payment of just compensation, then a use that is not resource dependent ~~consistent with the ESHA policies~~ will be permitted in accordance with the maximum standards. The LUP sets forth the process and parameters for approval of such a use.

The LUP policies establish the protection of areas adjacent to ESHA and adjacent to parklands through the provision of buffers. Natural vegetation buffer

areas must be provided around ESHA or parkland that are of sufficient size to prevent impacts that would significantly degrade these areas. Development, including fuel modification, shall not be permitted within required buffer areas.

The LUP policies require that new development be sited and designed to minimize impacts to ESHA ~~and sensitive resources~~ by minimizing grading, limiting the removal of natural vegetation, and prohibiting grading during the rainy season. Graded and other disturbed areas must be landscaped or revegetated with primarily native, drought resistant plants at the completion of grading. If new development removes or adversely impacts native vegetation, measures to restore disturbed or degraded habitat on the project site shall be included as mitigation, if feasible. Fencing must be limited, and in or adjacent to ESHA, must be sited and designed to allow wildlife to pass through. The LUP requires exterior lighting to be limited in intensity and shielded to minimize impacts on wildlife.

The LUP policies require that new development minimize the removal of natural vegetation. The policies acknowledge that vegetation is often required by the Fire Department to be removed, thinned or otherwise modified in order to minimize the risk of fire hazard. Fuel modification on the project site and brush clearance, if required, on adjacent sites reduces the fire risk for new or existing structures. The LUP, both in this chapter and the Hazards Chapter allows for required fuel modification to minimize the risk of fire. However, fuel modification removes watershed cover, and may remove or have impacts on ESHA. The LUP policies require that new development is sited and designed to minimize required fuel modification. Additionally, the policies require mitigation for ~~that compensatory mitigation, be provided for unavoidable~~ impacts resulting from the removal, conversion, or modification of natural vegetation that cannot be avoided through the implementation of project alternatives. The mitigation to be provided includes one of three measures: habitat restoration, habitat conservation, or in-lieu fee for habitat conservation. ~~The measures required to provide mitigation will be formalized in the IP. One of the potential measures is the use of an in-lieu fee.~~

The LUP requires the protection of native trees, including oak, walnut, alder, toyon, and sycamore trees. Development must be sited and designed to avoid removal of trees and encroachment into the root zone of each tree. Where the removal of trees cannot be avoided by any feasible project alternative, replacement trees must be provided. Additionally, the policies require that if on-site mitigation is not feasible, then ~~compensatory~~ off-site mitigation must be provided either through the planting of replacement trees on a suitable site that is public parkland or otherwise restricted from development, or by ~~, in the form of an~~providing an in-lieu fee ~~will be provided for unavoidable impacts of the loss of native tree habitat.~~ ~~The~~Any fees required through permits will be used to restore or create native tree habitat as mitigation.

The LUP policies establish parameters for the development of agricultural uses or confined animal facilities. The policies allow for the development of accessory structures for confined animals or corrals in conjunction with an existing or new residential project within the approved development area. Additionally, confined animal or corral facilities may be included within the required ~~irrigated~~ fuel modification area if they are not located on a steep slope, are constructed from non-flammable materials, and do not require additional grading other than minor grading for foundations or fuel modification. Within or adjacent to ESHA, ~~C~~crop, orchard, or vineyard uses may be permitted only in conjunction with an existing or new residential use ~~may be permitted only~~ and within the required irrigated fuel modification area for any approved structures.

The LUP provides protection for marine resources~~, including marine ESHA~~ such as kelp forests, intertidal areas, and near shore shallow fish habitats. Although development proposed in tidelands or submerged lands would remain under the permit jurisdiction of the Coastal Commission, the LUP provides guidance regarding the protection of marine areas. The LUP ESHA Map also shows marine ~~ESHA~~ resource areas. ~~The ESHA Map will be reviewed and updated periodically to reflect up to date information and necessary revisions shall be made as an amendment to the LUP. The LUP policies establish that the presence of ESHA not already designated on the ESHA map shall be determined on the basis of site-specific study prior to the approval of any development. Habitat area found to meet the definition of ESHA shall be accorded all protection provided for ESHA by the LUP. ESHA shall be protected against significant disruption of habitat values and only resource dependent uses may be permitted within ESHA.~~

The LUP policies provide for the protection of wetlands. The biological productivity and the quality of wetlands shall be protected and where feasible restored. The policies set forth the limited instances in which the diking, filling or dredging of wetlands or open coastal waters could be allowed, where there is no feasible less environmentally damaging alternative and where all feasible mitigation measures have been provided. Lagoon breaching or water level modification shall not be permitted until and unless a management plan for the lagoon is developed and approved, except in the case a health or safety emergency. The LUP provides for the development of a lagoon management plan for Malibu Lagoon, which is located within Malibu Lagoon ~~Creek~~ State Beach.~~Park.~~

The LUP also provides for the protection of water quality. The policies require that new development protects, and where feasible, enhances and restores wetlands, streams, and groundwater recharge areas. The policies promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation, including

site planning, environmental review and mitigation, and project and permit conditions of approval. Additionally, the policies require the implementation of Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services. Finally, the policies require that the water quality objectives established in the California Water Quality Control Plan, Los Angeles Region ~~RWQCB~~ (Basin Plan), and the policies established by the Los Angeles Regional Water Quality Control Board (RWQCB) in the Los Angeles County municipal stormwater permit and the Standard Urban Storm Water Mitigation Plan for Los Angeles County and the Cities in Los Angeles County (SUSMP) ~~and the SUSMP are~~ be incorporated into planning and implementation of new development.

B. Coastal Act Policies

The Coastal Act definition set forth below~~,~~ is incorporated herein as a definition of the Land Use Plan.

Section 30107.5.

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan:

Section 30230.

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231.

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of

waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the I9 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30236.

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (I) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240.

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

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

Section 30241.

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30241.5

(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:

(1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

(2) An analysis of the operational expenses, excluding the cost of land, associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.

For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.

(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.

Section 30242.

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (l) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

C. Land Use Plan Policies

1. Land Resources

a. ESHA Designation

3.1 Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The natural habitats in the City of Malibu that are rare or especially valuable because of their special nature or role in the Santa Monica Mountains ecosystem are ~~include~~ riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, and are designated as ESHA. An exception to this ESHA designation is where native trees, coastal sage scrub, ~~or~~ chaparral, riparian areas, streams, or wetlands exist in such small isolated patches or are so degraded due to existing legal development, including required fuel modification, that they will not maintain long term viability as habitat. ~~due to existing development, including fuel modification.~~

3.2 If a Natural Community Conservation Plan (NCCP) is prepared in the future for the Santa Monica Mountains area that includes lands within the City of Malibu, it shall be submitted to the Coastal Commission for certification as an amendment to the LCP. Coastal Commission staff will actively participate in the development of any proposed NCCP to ensure that the plan can be recommended to the Commission for approval. If a comprehensive NCCP is certified by the Commission as consistent with the Coastal Act through amendment to the City of Malibu LCP, the amendment will include revised ESHA maps and criteria as appropriate, which designate areas of ESHA where development can be allowed and areas that will continue to be protected and will be managed in perpetuity for their ecological resource values. If the Coastal Commission certifies a NCCP as an amendment to the City of Malibu Local Coastal Program, Malibu LCP ESHA maps and criteria will be consistent with the NCCP's reserve design.

~~Watersheds in the Santa Monica Mountains, including the City, contain complex systems of plant and animal habitats ranging from riparian areas in and near streams, to chaparral, coastal sage scrub, grasslands, savannas, woodlands and wetlands. Watershed areas containing~~

~~exceptional undisturbed habitats and recognized as important in contributing to the integrity of these habitat systems are designated as ESHA. These include:~~

- ~~San Nicholas Canyon~~
- ~~Los Alisos Canyon~~
- ~~Lachusa Canyon~~
- ~~Encinal Canyon~~
- ~~Trancas Canyon~~
- ~~Zuma Canyon (Upper Portion)~~
- ~~Escondido Canyon (Upper Portion)~~
- ~~Solstice Canyon~~
- ~~Corral Canyon~~
- ~~Malibu Canyon~~
- ~~Carbon Canyon (Upper Portion)~~
- ~~Tuna/Pena Canyons~~

3.3 All Areas of Special Biological Significance~~,~~ and Marine Protected Areas (as designated by the California Department of Fish and Game), ~~and streams~~ shall be considered ESHA and shall be accorded all protection provided for ESHA in the LCP.

3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary:

- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis. ~~shall be considered ESHA, unless there is compelling site-specific evidence to the contrary. Similarly, a~~
- Areas that contribute to the viability of ~~supporting~~ plant or animal species designated as rare, threatened, or endangered under State or Federal law. ~~and a~~
- Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.
- Areas ~~supporting~~ that contribute to the viability of ~~significant populations~~ plant species for which there is compelling evidence of rarity, such as those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society ~~shall be considered ESHA, unless there is compelling, site-specific evidence to the contrary~~.

3.5 The LUP ESHA Map shall be reviewed every five years in co-operation with the Environmental Review Board~~, or other qualified professionals~~ and the resources agencies within the Santa Monica Mountains and updated to reflect current information, including information on rare, threatened, or endangered species. Areas subject to habitat restoration projects shall also be considered for designation as ESHA. Revisions to the map depicting ESHA shall be treated as LCP amendments and shall be subject to the approval of the Coastal Commission.

3.6 Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem ~~of concern~~ have been eliminated.

3.7 If a site-specific biological study, prepared pursuant to Policy 3.35 contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6, the City Biologist and the Environmental Review Board~~, or other qualified professionals~~ shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, Policies 3.23 to 3.30 shall apply. The ERB~~, or other qualified professionals,~~ shall provide recommendations to the ~~Planning Commission (or~~ applicable decision-making body ~~for coastal permits)~~(Planning Director, Planning Commission, or City Council) as to the ESHA status of the area in question. If the decision-making body finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Map, as part of a map update, consistent with Policy 3.5. If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be allowed (consistent with other LCP requirements) even if the ESHA map has not been amended.

b. ESHA Protection

3.8 Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

3.9 Public accessways and trails are considered resource dependent uses. Accessways and trails located within or adjacent to ESHA shall be sited to minimize impacts to ~~sensitive resources~~ ESHA to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect ESHA~~sensitive resources~~.

3.10 If the application of the policies and standards contained in this LCP regarding use of property designated as Environmentally Sensitive Habitat Area, including the restriction of ESHA to only resource-dependent use, would likely constitute a taking of private property, then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.

3.11 Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.

3.12 No development shall be allowed in wetlands unless it is authorized under Policy 3.84. For ~~other~~ all ESHA other than wetlands, ~~types~~, the allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size. The development must be sited to avoid destruction of riparian habitat to the maximum extent feasible. These development areas shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance. Mitigation of ~~unavoidable~~ adverse impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be required.

3.13 The allowable development area may be increased for projects that comprise two or more legal lots, if the existing lots are merged into one lot and one consolidated development area is provided with one access road or driveway. The allowable development area shall not exceed the total of the development areas allowed for each individual parcel in Policy 3.12.

3.14 New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. ~~Residual adverse i~~Impacts to ESHA ~~sensitive resources~~that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA ~~sensitive resources~~.

3.15 Mitigation measures for ~~unavoidable~~ impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives, including habitat restoration and/or enhancement shall be monitored for a period of no less than five years following completion. Specific mitigation objectives and performance standards shall be designed to measure the success of the restoration and/or enhancement. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the five-year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met. However, if after ten years, performance standards have still not been met, the applicant shall submit an amendment proposing alternative mitigation measures.

3.16 Dune ESHA shall be protected and, where feasible, enhanced. Vehicle traffic through dunes shall be prohibited. Where pedestrian access through dunes is permitted, well-defined footpaths or other means of directing use and minimizing adverse impacts shall be used. Nesting and roosting areas for sensitive birds such as Western snowy plovers and Least terns shall be protected by means, which may include, but are not limited to, fencing, signing, or seasonal access restrictions.

3.17 Access to beach areas by motorized vehicles, including off-road vehicles shall be prohibited, except for beach maintenance, emergency or lifeguard services. Emergency services shall not include routine patrolling by private security forces. Such vehicular uses shall avoid sensitive habitat areas to the maximum extent feasible.

3.18 The use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas, shall be prohibited within and adjacent to ESHAs, where

application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application. Application of such chemicals must be supervised by a trained biologist or resource specialist.

3.19 The use of insecticides, herbicides, or other toxic substances by City employees and contractors in construction and maintenance of City facilities shall be minimized.

3.20 Mosquito abatement within or adjacent to ESHA shall be limited to the implementation of the minimum measures necessary to protect human health, and shall minimize adverse impacts to ESHA ~~sensitive resources~~.

3.21 Wildfire burn areas shall be allowed to revegetate naturally, except where re-seeding is necessary to minimize risks to public health or safety. Where necessary, re-seeding shall utilize a mix of native plant seeds appropriate for the site and collected in a similar habitat within the same geographic region ~~native plant seed mix appropriate for the site~~.

3.22 Interpretive signage may be used in ESHA accessible to the public to provide information about the value and need to protect sensitive resources.

c. Areas adjacent to ESHA and Parks

3.23 Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for those cases addressed in Policies 3.26a and 3.26b.

3.24 New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a sufficient size to prevent

impacts to parkland resources, but in no case shall they be less than 100 feet in width.

3.25 New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, except for those cases addressed in policies 3.26a and 3.26b. ~~that h~~ Habitat restoration and invasive plant eradication may be permitted within required buffer areas if designed to protect and enhance habitat values.

3.26 Required buffer areas shall extend from the following points:

- The outer edge of the canopy of riparian vegetation for riparian ESHA.
- The outer edge of the tree canopy for oak or other native woodland ESHA.
- The top of bluff for coastal bluff ESHA

3.26a ~~Development setbacks~~ Buffers shall be provided from the canyon ESHAs in the Point Dume area such that ~~to serve as transitional habitat and provide distance and physical barriers to human intrusion. The setback shall be of sufficient width to ensure that all the required irrigated fuel modification area (Zone A and B, if required) is located above the top of slope and that~~ all new structures are setback a minimum of 25 feet from the top of slope. Patios, swimming pools and other similar accessory uses may be constructed within the area 25 feet from the top of slope, if such use does not result in any expansion to the required fuel modification area.

3.26b ~~Development setbacks~~ Buffers shall be provided from coastal sage scrub and chaparral ESHA ~~to serve as transitional habitat and provide distance and physical barriers to human intrusion. The setback shall be~~ that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.

3.27 Variances or modifications to ~~setback,~~ buffers~~,~~ or other ESHA ~~sensitive resource~~ protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development pursuant to Policies 3.10-3.12.

3.28 Modifications to required development standards that are not related to ESHA ~~sensitive resource~~ protection (street setbacks, height limits, etc.)

shall be permitted where necessary to avoid or minimize impacts to ESHA ~~sensitive resources.~~

3.29 Protection of ESHA ~~sensitive resources~~ and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA ~~sensitive resource~~ and/or public access protection, the standards that are most protective of ESHA ~~sensitive resources~~ and public access shall have precedence.

3.30 Permitted development located within or adjacent to ESHA and/or parklands that adversely impact those areas may include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.

d. Stream Protection

3.31 Channelizations or other substantial alterations of streams shall be prohibited except for: 1) necessary water supply projects where no feasible alternative exists; 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat. Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of groundwater, and shall include maximum feasible mitigation measures to mitigate unavoidable impacts. Bioengineering alternatives shall be preferred for flood protection over "hard" solutions such as concrete or riprap channels.

3.32 Alteration of natural streams for the purpose of stream road crossings shall be prohibited, except where the alteration is not substantial, there is no other feasible alternative to provide access to public recreation areas or development on legal parcels, and the alteration does not restrict movement of fish or other aquatic wildlife. Any ~~such~~ other stream crossings shall be accomplished by bridging. Bridge columns shall be located outside streambeds and banks. Wherever possible, shared bridges shall be used for providing access to multiple home sites. Culverts may be utilized for the crossing of minor drainages lacking beds and banks and riparian vegetation. If enlargement, replacement or improvements to the existing at grade crossing of Malibu Creek at Cross Creek Road are determined to be necessary, alternative designs, including, but not limited to, a caisson-supported bridge, that minimize impacts to ESHA shall be considered. In any case, any new improvement

to this crossing shall minimize impacts to the movement of fish or other aquatic wildlife to the maximum extent feasible.

3.33 Bioengineering methods or "soft solutions" should be developed as an alternative to constructing rock revetments, vertical retaining walls or other "hard structures" along lower Malibu Creek. If bioengineering methods are demonstrated to be infeasible, then other alternatives may be considered. Any applications for protective measures along lower Malibu Creek shall demonstrate that existing development in the Civic Center is in danger from flood hazards, that the proposed protective device is the least environmentally damaging alternative, that it is sited and designed to avoid and minimize impacts to the habitat values of the riparian corridor along the creek and the recreational and public access use of State Park property along the creek, and that any unavoidable impacts have been mitigated to the maximum extent feasible.

e. Application Requirements

3.34 New development shall include an inventory conducted by a qualified biologist of the plant and animal species present on the project site. If the initial inventory indicates the presence or potential for sensitive species or habitat on the project site, a detailed biological study shall be required.

3.35 New development within or adjacent to ESHA shall include a detailed biological study of the site.

f. Environmental Review

3.36 The Environmental Review Board (ERB) shall be comprised of~~, or other~~ qualified professionals with technical expertise in biological resources (marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity), geology (coastal protection devices, slope stability, onsite waste treatment), architecture or civil engineering (siting of structures in hillside areas), and landscape architecture (fuel modification, planting of wildland edges). ~~in resource management, shall review and make recommendations to the Planning Director, Planning Commission and/or City Council on development proposals within or adjacent to ESHA, or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35. The ERB or other qualified professionals shall consider the individual and cumulative impact of each development proposal within or adjacent to ESHA. The City may~~

~~impose a fee on applicants to recover the cost of review of a proposed project by the ERB or qualified professional when required by this policy.~~

3.37 The ERB, in consultation with the City Biologist, shall review development within or adjacent to designated ESHA or other areas containing ESHA identified through a biological study as required pursuant to Policy 3.35. The ERB shall consider the individual and cumulative impacts of the development on ESHA, define the least environmentally damaging alternative, and recommend modifications or mitigation measures to avoid or minimize impacts. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB when required by this policy. ~~or other qualified professionals shall provide recommendations to the Planning Commission (or decision-making body for coastal permits) on the conformance or lack of conformance of the reviewed development project with the policies of the LUP. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources. The decision-making body shall make written findings relative to the approved project's conformance with the recommendations of the ERB or other qualified professionals.~~

3.38 The ERB shall make recommendations on all projects reviewed under Policy 3.37 to the applicable decision making body (Planning Director, Planning Commission, or City Council). Any recommendation of approval shall include an identification of the preferred project alternative, required modifications, or mitigation measures necessary to ensure conformance with the LUP. The decision making body (Planning Director, Planning Commission, or City Council) shall make findings relative to the project's conformance to the recommendations of the ERB. ~~All applications for development within or adjacent to ESHA shall be reviewed by the City Biologist or other qualified professional for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision-making body.~~

3.39 The City shall coordinate with the California Department of Fish and Game, U. S. Fish and Wildlife Service, National Marine Fisheries Service, and other resource management agencies, as applicable, in the review of development applications in order to ensure that impacts to ESHA and marine ~~sensitive~~ resources, including rare, threatened, or endangered species, are avoided and minimized.

g. New Development

3.40 New development shall be sited and designed to minimize impacts to ESHA by:

- Minimizing grading and landform alteration, consistent with Policy 6.9
- Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.
- Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.
- Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.
- Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.44.
- Minimizing impacts to water quality, consistent with Policies 3.89-3.144

3.41 New septic systems shall be sited and designed to ensure that impacts to ESHA ~~sensitive environmental resources~~ are minimized, including those impacts from grading and site disturbance as well as the introduction of increased amounts of water. Adequate setbacks and/or buffers shall be required to protect ESHA ~~sensitive environmental resources~~ and to prevent lateral seepage from the leachfield(s) or seepage pit(s) into stream waters or the ocean.

3.42 Land divisions, including lot line adjustments and certificates of compliance (except as provided under Policy 5.40), for property which includes area within or adjacent to an ESHA or parklands shall only be permitted if each new parcel being created could be developed (including construction of any necessary access road), without building in ESHA or ESHA buffer, or removing ESHA for fuel modification.

3.43 All new development shall be sited and designed so as to minimize grading, alteration of physical features, and vegetation clearance in order to prevent soil erosion, stream siltation, reduced water percolation, increased runoff, and adverse impacts on plant and animal life and prevent net increases in baseline flows for any receiving waterbody.

3.43a Grading or earthmoving exceeding 50 cubic yards shall require a grading permit. Grading plans shall meet the requirements of the local implementation plan with respect to maximum quantities, maximum cuts and fills, remedial grading, grading for safety purposes, and maximum heights of cut or fill. Grading proposed in or adjacent to an ESHA shall be minimized to the maximum extent feasible.

3.44 Earthmoving during the rainy season (extending from November 1 to March 31) shall be prohibited for development that is 1) located within or adjacent to ESHA, or 2) that includes grading on slopes greater than 4:1. In such cases, approved grading shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources.

3.45 Where grading is permitted during the rainy season (extending from November 1 to March 31), erosion control measures such as sediment basins, silt fencing, sandbagging, installation of geofabrics, shall be implemented prior to and concurrent with grading operations. Such measures shall be maintained through final grading and until landscaping and permanent drainage is installed.

3.46 Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.

3.47 Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:

- Plantings shall be ~~primarily~~ native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.
- Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.
- Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.

- Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration.
- Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.

3.48 ESHAs that exhibit any level of disturbance shall be maintained, and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.

3.49 Access for geologic testing (or percolation or well testing) shall use existing roads or track mounted drill rigs where feasible. Where there is no feasible access, a temporary access road may be permitted when it is designed to minimize length, width and total grading to that necessary to accommodate required equipment. All such temporary roads shall be restored to the maximum extent feasible, through grading to original contours, revegetatinge~~d~~ with native plant species indigenous to the project site, and monitoringe~~d~~ to ensure successful restoration.

3.50 Fencing or walls shall be prohibited within riparian, bluff, Point Dume canyon or dune ESHA, except where necessary for public safety or habitat protection or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor.

3.51 Development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include fencing, if necessary for security, that is limited to the area around the clustered development area. Any such fencing shall be sited and designed to be wildlife permeable.

3.52 Fencing adjacent to ESHA shall be sited and designed to be wildlife permeable, enabling wildlife to pass through.

3.53 Exterior night lighting shall be minimized, restricted to low ~~limited in~~ intensity fixtures, ~~and~~ shielded, and directed away from ESHA in order to minimize impacts on wildlife. High intensity perimeter lighting and lighting for sports courts or other private recreational facilities in ESHA, ESHA

buffer, or where night lighting would increase illumination in ESHA~~areas designated for residential use~~ is prohibited.

3.54 New recreational facilities or structures on beaches shall be designed and located to minimize impacts to ESHA and marine ~~sensitive~~ resources.

3.55 To protect seabird-nesting areas, no pedestrian access shall be provided on bluff faces except along existing, formal trails or stairways. New structures shall be prohibited on bluff faces, except for ~~engineered~~ stairs or accessways to provide public beach access ~~where no feasible alternative means of public access exists~~.

h. Fuel Modification

3.56 All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.47 through 4.55. Development shall utilize fire resistant materials and incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified.

3.57 As required by Policy 4.51, applications for new development shall include a fuel modification plan for the project site, approved by the County Fire Department. Additionally, applications shall include a site plan depicting the brush clearance, if any, that would be required on adjacent properties to provide fire safety for the proposed structures.

3.58 Applications for new development shall include a quantification of the acreage of natural vegetation that would be removed or made subject to thinning, irrigation, or other modification by the proposed project, including building pad and road/driveway areas, as well as required fuel modification on the project site and brush clearance on adjacent properties.

3.59 All new development shall include mitigation~~,~~ for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance.

i. Native Tree Protection

3.60 New development shall be sited and designed to preserve oak, walnut, sycamore, alder, toyon, or other native trees that are not otherwise protected as ESHA. Removal of native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual native trees in order to allow for future growth.

3.61 New development on sites containing oak, walnut, sycamore, alder, toyon, or other native trees shall include a tree protection plan.

3.62 Where the removal of native trees cannot be avoided through the implementation of project alternatives or where development encroachments into the protected zone of native trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees on-site, if suitable area exists on the project site, at a ratio of 10 replacement trees for every 1 tree removed. Where on-site mitigation is not feasible, ~~compensatory~~ off-site mitigation shall be provided through planting replacement trees or by providing an ~~,~~ ~~in the form of an~~ in-lieu fee. ~~shall be provided for the unavoidable impacts of the loss of native tree habitat. The fee shall be~~ based on the type, size and age of the tree(s) removed.

3.63 A fund shall be established to receive the in-lieu fee payments required under Policy 3.62. This fund, administered by the Santa Monica Mountains Conservancy, shall be used for the restoration or creation of native tree woodland or savanna habitat areas within the Santa Monica Mountains Coastal Zone. Fees paid to mitigate impacts of development approved within the City may be used to restore habitat anywhere within this area. Priority shall be given to restoration or creation on properties containing areas designated ESHA, and to properties contiguous with existing parklands containing suitable native tree habitat.

j. Agriculture and Confined Animal Facilities

3.64 The conversion of vacant land in ESHA, ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard, or other agricultural use shall not be permitted, except as provided in Policies 3.65 and 3.66.

3.65 New agricultural uses shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater than 3:1, does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides.

3.66 Crop, orchard, or vineyard uses in conjunction with an existing or new single family residence may be permitted only within the irrigated fuel modification area (Zones A & B, if required) required by an approved fuel modification plan for the approved structure(s). Such uses shall not result in any expansion to the fuel modification area required for the approved residential structure(s).

3.67 New confined animal facilities for the keeping of horses or other ungulates for personal recreational use shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include accessory confined animal structures such as stables, barns, or tack rooms, as well as corrals within the approved development area. Confined animal facilities or corrals may be included within the ~~irrigated~~ fuel modification area required by the Los Angeles County Fire Department (Zones A, B and/or C~~B~~ if required) for the ~~approved~~ structure(s) approved within the development area, only if such confined animal use is not located on slopes greater than 4:1, does not require additional grading other than minimal grading for foundations, is constructed of non-flammable materials, ~~and~~ does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides.

3.68 Accessory structures used for confined animal facilities or corrals may be permitted in conjunction with an existing or new single family residence ~~within the approved development area. Confined animal facilities and corrals may also be permitted within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s)~~ if such use is not located on a slope greater than 4:1, ~~does not require additional grading, is constructed of non-flammable materials,~~ and does not result in any expansion to the required fuel modification area into ESHA or ESHA buffer~~, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides~~.

3.69 The use of reclaimed water for any approved agricultural use is required where feasible.

3.70 Any approved agricultural or confined animal use shall include measures to minimize impacts to water quality, consistent with Policies 3.136 through 3.144.

2. Marine Resources

a. Marine ESHA Protection

3.71 ~~Within the coastal zone, there are valuable marine resources and habitats including beaches, dunes, intertidal areas, kelp forests, near shore shallow fish habitats, and wetlands that require protection. Among these resources are some that, because of their special characteristics and/or vulnerability to degradation, require a greater level of protection. These resources are designated Environmentally Sensitive Habitat Areas (ESHAs) and shown on the LUP ESHA Map.~~ As set forth in Policy 3.4, any ~~other~~ marine area that meets the ESHA criteria, including Areas of Special Biological Significance and Marine Protected Areas (as designated by the California Department of Fish and Game) is ESHA, and shall be accorded all of the protections provided for ESHA in the LCP.

b. Marine Protection

3.72 Marine ESHAs shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential, commercial, or institutional uses shall not be considered resource dependent uses.

3.73 Permitted land uses or developments shall have no significant adverse impacts on marine and beach ESHA.

3.74 Development on beach or ocean bluff areas adjacent to marine and beach habitats shall be sited and designed to prevent impacts that could significantly degrade the Environmentally Sensitive Habitats Areas. All uses shall be compatible with the maintenance of the biological productivity of such areas.

3.75 New development shall prevent or reduce non-point source pollution in the near shore environment through implementation of the non-point source pollution and private sewage disposal system policies.

3.76 Grading and landform alteration shall be limited to minimize impacts from erosion and sedimentation on marine resources.

3.77 Marine mammal habitats, including haul-out areas shall not be altered or disturbed by development of recreational facilities or any other new land uses.

3.78 Efforts by the California Department of Fish and Game and Regional Water Quality Control Board to increase monitoring to assess the conditions of near shore species, water quality and kelp beds, and to rehabilitate or enhance areas that have been degraded by human activities shall be encouraged and allowed.

3.79 Near shore shallow fish habitats and shore fishing areas shall be preserved, and where appropriate and feasible, enhanced.

3. Wetlands

a. Wetland Designation

3.80 Lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens shall be designated as wetland. Identified wetlands include Malibu and Zuma Lagoons. Any unmapped areas that meet these criteria are wetlands and shall be accorded all of the protections provided for wetlands in the LCP.

3.80a Any wetland area mapped as ESHA or otherwise determined to have previously been wetlands shall not be deprived of protection, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, filled, degraded, or that species of concern have been eliminated.

3.81 Where the required initial site inventory indicates the presence or potential for wetland species or indicators, the City shall require the submittal of a detailed biological study of the site, with the addition of a delineation of all wetland areas on the project site. Wetland delineations shall be based on

the definitions contained in Section 13577(b) of Title 14 of the California Code of Regulations.

3.81a Wetland delineations will be conducted according to the definitions of wetland boundaries contained in section 13577(b) of the California Code of Regulation. A preponderance of hydric soils or a preponderance of wetland indicator species will be considered presumptive evidence of wetland conditions. The delineation report will include at a minimum a (1) a map at a scale of 1":200' or larger with polygons delineating all wetland areas, polygons delineating all areas of vegetation with a preponderance of wetland indicator species, and the location of sampling points, and (2) a description of the surface indicators used for delineating the wetland polygons. Paired sample points will be placed inside and outside of vegetation polygons and wetland polygons identified by the consultant doing the delineation.

3.82 The biological productivity and the quality of wetlands shall be protected and, where feasible, restored.

3.83 Buffer areas shall be provided around wetlands to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the wetland they are designed to protect, but in no case shall they be less than 100 feet in width.

b. New Development

3.84 The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes may be permitted in accordance with all policies of the LCP, where there is no feasible less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- Restoration purposes.
- Nature study, aquaculture, or similar resource dependent activities.

Other uses specified in Section 30233 of the Coastal Act may only be allowed pursuant to an LCP amendment.

3.85 Where any.dike or fill development is permitted in wetlands in accordance with the Coastal Act and any applicable LCP policies, mitigation measures shall include, at a minimum, creation or substantial restoration of wetlands of a similar type. Adverse impacts will be mitigated at a ratio of 3:1 for seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for vernal pools and saltmarsh, unless the applicant provides evidence establishing, and the City finds, that creation or restoration of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event will the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands.

3.86 Applications for new development within or adjacent to wetlands shall include evidence of the preliminary approval of the California Department of Fish and Game, U.S. Army Corps of Engineers, U. S. Fish and Wildlife Service, and other resource management agencies, as applicable.

c. Lagoon Protection

3.87 Lagoon breaching or water level modification shall not be permitted until and unless a management plan for the lagoon in question is approved by the City and certified by the Coastal Commission as an amendment to the LCP, unless it can be demonstrated that there is a health or safety emergency, there is no feasible less environmentally damaging alternative, and all feasible mitigation measures will be implemented to minimize adverse environmental effects.

3.88 A lagoon management plan should be developed for Malibu Lagoon, in consultation with all applicable resource management agencies. The plan shall address the following at a minimum:

- Biological study of the lagoon habitat, including identification of all rare, threatened, and endangered species.
- Lagoon hydrology.
- Water quality sampling study.
- Identification of the water levels appropriate and necessary for protection of the various species.
- Measures to protect endangered species.
- Water quality protection and enhancement measures.

- Identification of potential impacts from breaching or water level management, including reduction of certain kinds or areas of habitat.
- Identification of project alternatives to the proposed breaching or water level management designed to avoid and minimize impacts to sensitive resources.
- Mitigation measures necessary to offset unavoidable impacts from the proposed breaching or water level management.
- Monitoring plan to monitor the management area to evaluate the health of the wetland, assess adverse impacts resulting from breaching or water level management, and to identify project corrections.

4. Water Quality

a. Watershed Planning

3.89 The City will support and participate in watershed based planning efforts with the County of Los Angeles and the Regional Water Quality Control Board. Watershed planning efforts shall be facilitated by helping to:

- Pursue funding to support the development of watershed plans;
- Identify priority watersheds where there are known water quality problems or where development pressures are greatest;
- Assess land uses in the priority areas that degrade coastal water quality;
- Ensure full public participation in the plan's development.

b. Development

3.90 New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:

- Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.
- Limiting increases of impervious surfaces.
- Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
- Limiting disturbance of natural drainage features and vegetation.

3.91 New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, to the maximum extent feasible.

3.92 Development must be designed to minimize, to the maximum extent ~~practicable~~feasible, the introduction of pollutants of concern[1] that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible~~Maximum Extent Practicable~~.

3.93 A water quality checklist shall be developed and used in the permit review process to assess potential water quality impacts.

3.94 Post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate~~ for developments .~~. Dry weather runoff from new development must not exceed the pre-development baseline flow rate to receiving waterbodies.

3.95 New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.

3.95a If the State Water Resources Control Board (State Board) or the California Regional Water Control Board, Los Angeles Region (Regional Board) revise the California Water Quality Control Plan, Los Angeles Region (Basin Plan), the Water Quality Control Plan for Ocean Waters of California (California Ocean Plan), or other applicable regulatory requirements, the City of Malibu should consult with the State Board,

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[1] Pollutants of concern are defined in the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County as consisting " of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water , elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bioaccumulate in organisms therein, or the detectable inputs of the pollutant are at a concentrations or loads considered potentially toxic to humans and/or flora or fauna".

Regional Board and the Coastal Commission to determine if an LCP amendment is appropriate.

3.96 Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.

3.97 Land divisions that would result in building pads, access roads, or driveways located on slopes over 30%, or result in grading on slopes over 30% shall be prohibited. All land divisions shall be designed such that the location of building pads and access roads minimizes erosion and sedimentation.

3.98 New roads, bridges, culverts, and outfalls shall not cause or contribute to streambank or hillside erosion or creek or wetland siltation and shall include BMPs to minimize impacts to water quality including construction phase erosion control and polluted runoff control plans, and soil stabilization practices. Where space is available, dispersal of sheet flow from roads into vegetated areas or other on-site infiltration practices shall be incorporated into road and bridge design.

3.99 Commercial development shall use BMPs to control the runoff of pollutants from structures, parking and loading areas.

3.100 Restaurants shall incorporate BMPs designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system.

3.101 Gasoline stations, car washes and automotive repair facilities shall incorporate BMPs designed to minimize runoff of oil and grease, solvents, car battery acid, coolant and gasoline to stormwater system.

3.102 The City should develop and implement a program to detect and remove illicit connections and to stop illicit discharges.

3.103 New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate

sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.

3.104 New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.

3.105 Storm drain stenciling and signage shall be provided for new stormdrain construction in order to discourage dumping into drains. Signs shall be provided at creek public access points to similarly discourage creek dumping.

3.106 Outdoor material storage areas shall be designed using BMPs to prevent stormwater contamination from stored materials.

3.107 Trash storage areas shall be designed using BMPs to prevent stormwater contamination by loose trash and debris.

3.108 Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPS. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.

3.109 The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.

3.110 Public streets and parking lots shall be swept frequently to remove debris and contaminant residue. For private streets and parking lots, the property owner shall be responsible for frequent sweeping to remove debris and contaminant residue.

3.111 ~~Many~~Some BMPs ~~recommended~~ for reducing the impacts of non-point source pollution ~~rely on or increase the infiltration of surface water into the~~

~~soil. Use of these BMPs~~ may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not ~~rely on or increase infiltration~~ increase the degree of geologic instability.

3.112 New development that requires a grading/erosion control plan shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.47. An integrated vegetation management plan shall be required and implemented. Use of native or drought-tolerant non-invasive plants shall be required to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.

3.113 New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.

c. Hydromodification

3.114 Alterations or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except where consistent with Policy 3.31. Any permitted stream alterations shall include BMPs for hydromodification activities.

3.115 Natural vegetation buffer areas that protect riparian habitats shall be maintained. Buffers shall function as transitional habitat and provide a separation from developed areas to minimize adverse impacts. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the riparian habitat, but in no case shall the buffer be less than 100 feet, except for development permitted pursuant to Policy 3.10.

3.116 Any channelization or dam proposals shall be evaluated as part of a watershed planning process, evaluating potential benefits and/or adverse impacts. Potential adverse impacts of such projects include effects on wildlife migration, downstream erosion, dam maintenance (to remove silt and trash) and interruption of sand supplies to beaches.

d. Wastewater and On-site ~~Disposal~~Treatment Systems

3.117 A Wastewater Management Plan should be developed within a timeframe to be determined by the City in consultation with the Environmental Review Board and other pertinent City committees, to address future wastewater issues.

3.117a Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.

3.118 Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site ~~disposal~~treatment systems (OSTSs ~~OSDSs~~) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters. ~~Discharges for new or expanded wastewater treatment facilities shall not alter baseflow of any waterbody during the dry season (April 1-November 15) or peak flow of any waterbody during the wet season.~~

3.119 ~~OSDSs~~OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables, that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.

3.120 New development shall be sited and designed to provide an area for a backup soil absorption field ~~(leach field)~~ in the event of failure of the first field.

3.121 Soils should not be compacted in the soil absorption field areas during construction ~~and should be a balanced mix of coarse and fine particles~~. No vehicles should be parked over the soil absorption field or driven over the inlet and outlet pipes to the septic tank.

3.121a Subsurface sewage effluent dispersal ~~disposal~~ fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or ~~other nonporous~~ surface covering.

3.122 New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use ~~the elimination~~ of garbage disposals to ~~avoid~~minimize hydraulic and/or organic overloading of the OSTS ~~OSDS~~.

3.123 New development ~~shall~~may include a separate greywater ~~treatment~~ dispersal system where ~~feasible~~ approved by the Building Safety Department.

3.124 New development shall include protective setbacks from surface waters, wetlands and floodplains for conventional or alternative OSTSs ~~OSDSs~~, as well as separation distances between OSTS ~~OSDS~~ system components, building components, property lines, and groundwater. Under no conditions shall the ~~leach field distribution lines~~ bottom of the effluent dispersal system be within five feet of groundwater.

3.125 The construction of private sewage treatment ~~disposal~~ systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment ~~disposal~~ system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.

3.125a OSTSs shall be designed, sited, installed, operated and maintained in compliance with the policies and provisions contained herein. At such time as the rules and regulations developed for OSTSs by the State Water Resources Control Board pursuant to Assembly Bill 885 become effective, if they conflict with the requirements of the LCP, the City shall submit an LCP amendment seeking to modify the requirements of the LCP.

3.126 In areas with constraints on private sewage treatment and disposal, including, but not limited to, small lots, beachfront parcels, and geologic hazard areas, innovative and alternative methods of wastewater treatment and disposal are permitted. Such systems shall minimize impacts to water quality and coastal resources and be acceptable to the Environmental and Building Safety Department, ~~the Department of Health Services,~~ and the Regional Water Quality Control Board.

3.127 The expansion of existing community sewer facilities (package wastewater treatment plants, dedicated sewer service systems, existing trunk lines,

etc.) in existing developed areas shall be limited in capacity to the maximum level of development allowed by this LUP.

3.128 Applications for new development relying on an OSTS ~~OSDS~~ shall include a soils analysis and or percolation test report. Soils analysis shall be conducted by a ~~California Registered Geologist or~~ California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist. The OSTS ~~OSDS~~ shall be designed, sited, installed, operated, and maintained in full compliance with the building and plumbing codes and the requirements of the LA RWQCB.

3.129 Applications for land divisions relying on an OSTS ~~OSDS~~ shall include a soils analysis and/or percolation test report for each proposed lot, or for any lot(s) used for a community OSTS ~~OSDS~~, where allowed. Soils analysis shall be conducted by a ~~California Registered Geologist or~~ California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Civil Engineer, a California Registered Geotechnical Engineer or a California Registered Environmental Health Specialist. Applications for land divisions shall also include a report prepared by a California ~~Certified Engineering Geologist or Registered Geotechnical Engineer~~Registered Groundwater Hydrologist or a California Registered Civil Engineer in the environmental/geotechnical field that includes an analysis of depth to groundwater on each proposed lot or on any lot(s) used for a community OSTS ~~OSDS~~, where allowed, that addresses seasonal and cyclical variations as well as the adequacy of percolation rates in post-grading conditions.

3.130 New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems. ~~to prevent lateral seepage from the leach field(s) or seepage pit(s) into stream waters.~~

3.131 Applications for a coastal development permit for OSTS installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, ~~new development relying on an OSDS~~ shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTS ~~OSDS~~ on groundwater level, quality of nearby surface drainages, and slope stability. Where it is ~~conclusively~~ shown that the OSTS ~~OSDS~~ will negatively impact groundwater, nearby surface waters, or slope stability, the OSTS ~~OSDS~~ shall not be allowed.

3.132 The construction of new privately maintained package wastewater treatment plants shall not be allowed unless it can be demonstrated that a package treatment plant would have fewer adverse impacts to coastal resources, water quality or geologic stability than individual sewage disposal systems. No new discharges shall be permitted from privately-maintained package wastewater plants into streams, wetlands or areas of saturated groundwater.

3.133 The formation of On-site Wastewater ~~Disposal~~ Zones pursuant to Section 6950 et seq. of the California Health and Safety Code shall be ~~investigated and~~ considered in appropriate areas.

3.134 Cooperation and coordination with the Los Angeles Regional Water Quality Control Board to ensure ~~test~~ septic systems~~ for~~ conformance with regional water quality standards shall be provided.

3.135 The City shall provide to the public ~~I~~information on the proper operational and maintenance of an OSTS ~~procedures for private sewage disposal systems should be distributed by mailing with water bills or another method annually~~. The City will establish an OSTS management program which includes, but is not limited to, OSTS inspections by a qualified professional. ~~OSDSs should also be regularly inspected by qualified professionals.~~

e. Agriculture and Confined Animal Facilities

3.136 Agricultural and confined animal uses may be permitted only in conformance with Policies 3.64 through 3.70.

3.136a Agricultural development and confined animal facility development shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.

3.137 When undertaking agricultural activities, BMPs to minimize erosion and prevent excessive sediment and pollutant impacts shall be implemented.

3.138 Animal waste, wastewater, and any other byproducts of agricultural activities shall be properly disposed of on land or through suitable sewage disposal systems, if available. The disposal of such wastes in or near streams or ESHA is prohibited.

3.139 Compost, fertilizer, and amended soil products shall be used in a way that minimizes impacts to water quality. The placement of such products in or near streams is prohibited.

3.140 The maximum number of animals permitted on a site shall be limited to that appropriate to the parcel size, slope, location of ESHA ~~sensitive resources~~, and any other constraints.

3.141 Vegetated filter strips and other treatment measures shall be incorporated into animal facilities to intercept, infiltrate, and filter runoff.

3.142 Confined animal facilities shall be sited and designed to manage, contain, and dispose of animal waste using BMPs to insure that waste is not introduced to surface runoff or groundwater.

3.143 All stables and other animal keeping operations shall be managed to prevent discharge of sediment, nutrients, contaminants, and feces to surface and ground water. In no case shall an animal keeping operation be managed or maintained so as to produce sedimentation or polluted runoff on any public road, adjoining property, or in any drainage channel.

3.144 BMPs to protect sensitive areas (such as streams, wetlands, estuaries, ponds, lakes, shores, and riparian zones) shall be implemented to reduce physical disturbance and to reduce direct loading of animal waste and sediment caused by animals.

CHAPTER 4--HAZARDS & SHORELINE / BLUFF DEVELOPMENT~~SHORELINE/BLUFF STRUCTURES & HAZARDS~~

A. Introduction

The City of Malibu lies at the junction of the Santa Monica Mountains and the Pacific Ocean. Development within the City, including roads and other infrastructure is highly vulnerable to a variety of natural hazards including threats from landslides, wild fires, earthquakes, storm waves, and flooding. Bluffs, beaches, and steep hillsides are subject to natural erosional forces, often accelerated by the effects of fires, torrential rains, and winter storms. Fire is a serious potential threat several months of every year due to the typically long summer dry season characteristic of the Mediterranean climate and periodic "El Nino" winter storm seasons which cause considerable destruction or severe damage to beachfront homes, widespread erosion along the shoreline and bluffs, and landslides that destroy or damage homes, septic systems and roads, including Pacific Coast Highway. Occasionally, a severe fire season is followed by a winter of high rainfall, leading to extraordinary erosion and landslides on hillside property which had been denuded of vegetation by the fire. The dependence on septic systems for waste disposal throughout the City, with minor exceptions, creates additional hazards due to the effect of poorly maintained or located systems on steep slopes and beaches, the aforementioned erosional forces and a high water table in many areas.

The Malibu shoreline consists of a series of rocky headlands and narrow crescent shaped beaches, vulnerable to erosion and wave uprush. Unlike many other coastal communities in the State, a large portion of the beachfront property in Malibu was subdivided and developed prior to 1976, before the effective date of the Coastal Act. Most of this development occurred without the benefit of planning or mitigation to minimize impacts from wave hazards and to coastal resources. Largely as a result of the pre-existing pattern of development in Malibu, development along the shoreline continues to be permitted, placing more property at risk. To reduce the risk to private beachfront development, armoring of the shoreline has often occurred in the form of vertical seawall and rock revetments. Many of these structures have been placed on the beach as emergency actions during or immediately following winter storms, often without permits or adequate planning relative to placement, design, and impacts to adjacent properties and shoreline processes and public recreation. Loss of

beach and, therefore, public access is too often the result of the construction of protective structures such as seawalls and revetments.

The cumulative loss of shoreline and public recreational resources from the encroachment of armoring on sandy beaches is an important coastal management issue. The City lies within the Santa Monica Littoral cell. The major sediment source has historically been the streams draining the Santa Monica Mountains. The sediment from much of the drainage area, however, has been trapped behind dams and catchment basins, never reaching the coast (USACOE). Another significant sediment source has been the incremental addition of eroded material from coastal bluffs. In addition to covering beach area that provides for recreation, however, shoreline armoring also can exacerbate erosion by fixing the back beach and eliminating the influx of sediment from coastal bluffs. The City has found that over 60 percent of the bluffs are blocked from the erosive forces of wave action by some form of development, including Pacific Coast Highway, vertical seawalls and revetments. Armoring also causes localized scour in front or at the end of the seawall or revetment. In addition, by allowing shoreline armoring in areas with existing development, the cycle of rebuilding storm damaged or destroyed development in the same hazardous areas is often perpetuated. From 1978 through 1996, the Coastal Commission and the County or City authorized protective devices along an estimated 2.8 miles of shoreline, covering an estimated 3.5 acres of sandy beach (ReCAP, 1999). The ReCAP report found that when added to the amount of shoreline armored prior to 1978, determined by Coastal Commission analysis of aerial photos, and the armoring which has taken place without permits, a total of approximately 50 percent of the City's shoreline has been impacted by shoreline protective structures. The report concluded that unless future armoring is avoided, future buildout of shoreline lots could result in up to 5 miles of additional shoreline armoring with hard structures. Additional armoring is even more likely given the location of Pacific Coast Highway (PCH). PCH continues to be threatened by erosion, wave uprush and flooding wherever it is located adjacent to the ocean, and given its importance to regional access and transportation, it is possible it will be armored throughout most of its length in the City unless alternative means of protection are developed.

1. Coastal Act Provisions

Under the Coastal Act, development is required to be sited and designed to minimize risks, assure stability and structural integrity, and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter the natural landforms along bluffs and cliffs (Section 30253). Section 30235 of the Coastal Act allows the construction of shoreline

protective devices where existing development is threatened from erosion and when designed to eliminate or mitigate impacts on shoreline sand supply. The Coastal Act also provides that development damaged or destroyed by natural disasters can be rebuilt in the same location, exempt from a coastal development permit, under certain conditions. Certain emergency actions are also exempt from permit requirements.

2. Land Use Plan Provisions

To ensure consistency with the Coastal Act, the policies contained below in the Land Use Plan are intended to facilitate development in a manner which minimizes impacts from hazards as well as impacts to coastal resources, including public access and recreation. These policies can be summarized as follows:

- Prohibiting new development that would require armoring, including new land divisions which create new lots within high wave hazard areas;
- Requiring that new development on a beach or oceanfront bluff be set back as far landward as possible and be sited outside areas subject to wave hazards or elevated above base flood elevation;
- Providing that applicants assume the risk of building in hazardous areas without assurance that future armoring will be allowed;
- Utilizing alternative waste treatment systems, where feasible, including relocation, to avoid the need for protective devices to protect them;
- Providing for the submittal of a comprehensive wave uprush study prepared by a ~~competent~~ qualified professional and documentation and maps of existing offers to dedicate (OTD) or existing dedicated easements in relation to all proposed development as an application filing requirement;
- Developing emergency permit procedures and follow-up actions and monitoring to ensure that the emergency response, whether temporary or permanent, is the least environmentally damaging alternative;
- Providing for the development of Shoreline Management Plans City wide or beach specific;
- Including measures to establish periodic nourishment of key beaches vulnerable to wave damage and erosion;
- Developing a strategy to address the issue of sea level rise, both in the short term via permitting actions and a long term response to address future development impacts along the shoreline;
- Siting and designing development to minimize risk from geologic and fire hazards;

- Developing a Hillside Management Program for siting and designing development and to minimize grading and vegetation clearance on steep slopes;
- Providing that development utilize adequate drainage and erosion control measures both during construction and as a long term feature;
- Requiring that new development be sited and designed to minimize the impacts of Fire Department required fuel modification and brush clearance on native habitat and neighboring property, particularly parkland.

B. Coastal Act Policies

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan:

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

(4) Minimize energy consumption and vehicle miles traveled.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

C. Land Use Plan Policies

4.1 The City of Malibu and the Santa Monica Mountains coastal zone contains areas subject to hazards that present substantial risks to life and property. These areas require additional development controls to minimize risks, and include, but shall not be limited to, the following:

- Low Slope Stability & Landslide/Rockfall Potential: hillside areas that have the potential to slide, fail, or collapse.
- Fault Rupture: the Malibu Coast-Santa Monica Fault Zone.
- Seismic Ground Shaking: shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault.
- Floodprone areas most likely to flood during major storms.
- Liquefaction: areas where water-saturated materials (including soil, sediment, and certain types of volcanic deposits) can potentially lose strength and fail during strong ground shaking.
- Liquefaction/Floodprone areas where saturated sediments lie in flood plains.
- Tsunami: shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.
- Wave Action: shoreline areas subject to damage from wave activity during storms.
- Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.

1. General Development

4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

4.3 Information should be provided to the public concerning hazards and appropriate means of minimizing the harmful effects of natural disasters upon persons and property relative to siting, design and construction.

4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the ~~City/County Code~~certified Local Implementation Plan.

4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.

4.6 The remediation or stabilization of landslides that affect existing structures or that threaten public health or safety may be permitted. Alternative remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources.

4.7 Hillside Management Program requirements shall be applicable to proposed development on steep slopes.

4.8 Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 40 percent (2.5:1), except that driveways and/or utilities may be located on such slopes, where there is no less environmentally damaging feasible alternative means of providing access to a building site, provided that the building site is determined to be the preferred alternative and consistent with all other policies of the LCP.

4.9 Buildings within floodprone areas subject to inundation or erosion shall be prohibited unless no alternative building site exists on the property and proper mitigation measures are provided to minimize or eliminate risks to life and property from flood hazard.

4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.

4.11 New development involving a structure dependent on a wastewater disposal system shall utilize secondary treatment, at a minimum, and

evapotranspiration waste disposal systems or other innovative measures, where feasible.

4.12 Land divisions, including lot line adjustments, shall be prohibited unless all proposed parcels can be demonstrated to be safe from flooding, erosion, and geologic hazards and will provide a safe, legal, all-weather access road(s), which can be constructed consistent with all policies of the LCP.

4.13 Land Divisions including lot line adjustments shall be prohibited unless all proposed parcels and access roads are found to comply with all applicable fire safety regulations and all required approvals are obtained.

4.14 New development shall be prohibited on property or in areas where such development would present an extraordinary risk to life and property due to an existing or demonstrated potential public health and safety hazard.

4.15 Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the ~~degree~~ extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.

2. Shoreline Development

4.16 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development in relation to the following:

- The profile of the beach;
- Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
- The availability of public access to the beach;
- The area of the project site subject to design wave uprush;
- Foundation design requirements;

- The need for a shoreline protection structure over the life of the project;
- Alternatives for protection of the septic system;
- The long term effects of proposed development ~~of~~ on sand supply;
- Future projections in sea level rise; and,
- Project alternatives designed to avoid or minimize impacts to public access.

4.17 Applications for new beachfront or blufftop development, including but not limited to shoreline protective structures, shall include a site map that shows all easements, deed restrictions, or OTD's and/or other dedications for public access or open space and provides documentation for said easements or dedications. The approved development shall be located outside of and consistent with the provisions of such easement or offers.

4.18 City-wide or beach specific Shoreline Management Plans should be developed for shoreline areas subject to wave hazards and erosion which include:

- An examination of local and regional annual erosion rates in order to reflect current shoreline changes;

- Standard engineering plans and analyses defining the specific types of armoring that would be acceptable or preferable for specific areas, and where appropriate, identification of the types of armoring that should not be considered for certain areas or beaches in order to minimize risks and impacts from armoring to public access and scenic resources along the shoreline and beach recreation areas.

- Standard alternatives feasibility analysis that would be a required element of all hazard response projects and that would require applicants to go through a series of steps to assure that hard protective devices were only used as a last resort. The analysis should require, but not be limited to, the use of technical evaluations of the site (geotechnical reports, engineering geology reports, wave uprush reports etc.), an examination of all other options (removal, relocation, sand replenishment, no action etc.), and a conclusion that a shoreline protective device would be the "best option" (most protective of the public trust, best long term solution etc.) for the subject site.

- Standard conditions and monitoring requirements that should include mechanisms to ensure shoreline protection effectiveness and public safety with provisions for the removal or ineffective or hazardous

protective structures as well as programs to address beach replenishment and sand supply.

- Procedures to address emergency armoring, such as: coordination with property owners and for field inspections before and after storm seasons; guidance for types of temporary protective structures preferred and a provision for removal of temporary structures if no follow up permit is filed.

- Shoreline Management Plans developed pursuant to the above stated standards shall not be effective until they have been certified by the Coastal Commission as an amendment to the LCP.

3. Shoreline Erosion and Protective Structures

4.19 A program should be developed in conjunction with state and federal agencies, to provide incentives to relocate development out of hazardous areas and to acquire oceanfront properties that have been damaged by storm activities, where relocation of development to a safer location on the site is not feasible and additional protection measures are not feasible.

4.20 Coordination should be pursued with the State Lands Commission, the State Department of Transportation (Caltrans), the Los Angeles County Beach Nourishment Task Force and the Los Angeles County Department of Beaches and Harbors to fund and establish a program for periodic sand nourishment of beaches which are vulnerable to wave damage and erosion. Beach nourishment programs should include measures to minimize adverse biological resource impacts from deposition of material, including measures such as timing or seasonal restrictions and identification of environmentally preferred locations for deposits. Any program for beach sand nourishment shall not be effective until certified as an amendment to the LCP by the Coastal Commission.

4.21 The placement of sediments removed from erosion control or flood control facilities at appropriate points along the shoreline may be permitted for the purpose of beach nourishment. Any beach nourishment program for sediment deposition shall be designed to minimize adverse impacts to beach, intertidal and offshore resources, shall incorporate appropriate mitigation measures, and shall consider the method, location and timing of placement. Sediment removed from catchment basins may be disposed of in the littoral system if it is tested and is found to be of suitable grain size and type. The program shall identify and designate appropriate beaches

or offshore feeder sites in the littoral system for placement of suitable materials from catchment basins.

4.22 (Deleted)

4.23 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

4.24 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected ~~100 year~~100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

4.25 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.

4.26 For beachfront development that will be subject to wave action periodically, unless the State Lands Commission determines that there is no evidence that the proposed development will encroach on tidelands or other public trust interests, the City shall reject the application on the ground that it is within the original permit jurisdiction of the Coastal Commission, and shall direct the applicant to file his or her application with the Coastal Commission.

4.27 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:

- No stockpiling of dirt or construction materials shall occur on the beach;
- All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;
- Measures to control erosion shall be implemented at the end of each day's work;
- No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
- All construction debris shall be removed from the beach.

4.28 All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.

4.29 (Deleted)

4.30 In addition to the bluff edge setback requirements all swimming pools shall contain double wall construction with drains and leak detection systems.

4.31 No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access ~~where no feasible alternative means of public access exists~~. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

4.32 In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing

residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.

4.33 "Infill Development" shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beach front development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protection device.

4.34 On any beach found to be appropriate, alternative "soft solutions" to the placement of shoreline protection structures shall be required for new development or to protect existing development such as dune restoration, sand nourishment, and design criteria emphasizing maximum landward setbacks and raised foundations.

4.35 All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.

4.36 Land divisions, including subdivisions, lot splits, lot line adjustments, and certificates of compliance which create new beachfront or blufftop lots, shall not be permitted unless the subdivision can be shown to create lots which can be developed without requiring a current or future bluff or shoreline protection structure. No new lots shall be created that could require shoreline protection or bluff stabilization structures at any time during the full 100 year life of the development.

4.37 All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.

4.38 New development on or along the shoreline or a coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.

4.39 Shoreline and bluff protection structures shall not be permitted to protect new development. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling or required garage, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

4.40 No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush or if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.

4.41 All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.

4.42 Where it is determined to be necessary to provide shoreline protection for an existing residential structure built at sand level a "vertical" seawall shall be the preferred means of protection. Rock revetments may be permitted to protect existing structures where they can be constructed entirely underneath raised foundations or where they are determined to be the preferred alternative.

4.43 Existing shoreline protection structures which do not conform to the provisions of the LCP may be repaired and maintained to the extent that such repairs and/or maintenance conform to the provisions of Chapter 13.4 and 13.5 of the ~~certified LCP~~Malibu Local Implementation Plan.

4.44 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

4.45 As a condition of approval of a shoreline protection structure, or repairs or additions to a shoreline protection structure, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. The restrictions shall also acknowledge that the intended purpose of the subject structure is solely to protect existing structures located on the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure.

4.46 As a condition of approval of new development on a vacant beachfront or blufftop lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be

sited and designed to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235.

4. Fire Hazards

4.47 New development shall minimize risks to life and property from fire hazard through:

- Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;
- Siting and designing development to avoid hazardous locations;
- Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive ~~natural~~ habitat to the maximum feasible extent;
- Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;
- Use of fire-retardant, native plant species in landscaping.

4.48 New development within Environmentally Sensitive Habitat Areas and habitat buffers shall be sized, sited and designed to minimize the impacts of fuel modification and brush clearance activities on habitat and neighboring property.

4.49 Development adjacent to parkland shall be sited and designed to allow all required fire-preventive brush clearance to be located outside park boundaries, unless no alternative feasible building site exists on the project site. A natural vegetation buffer of sufficient size should be maintained between the necessary fuel modification area and the public parkland.

4.50 When brush clearance is required for fire safety, brushing techniques that minimize impacts to native vegetation, ~~sensitive environmental resources~~ESHA and that minimize erosion, runoff, and sedimentation shall be utilized.

4.51 Applications for new development, which require fuel modification, shall include a fuel modification plan for the project, prepared by a landscape architect or resource specialist that incorporates measures to minimize removal of native vegetation and to minimize impacts to ~~sensitive environmental resources~~ESHA, while providing for fire safety, consistent with the requirements of the applicable fire safety regulations. Such plans shall be reviewed and approved by the Forestry Division.

4.52 New development shall provide for emergency vehicle access and fire-flow water supply in accordance with applicable fire safety regulations.

4.53 All new development shall demonstrate the availability of an adequate water supply for fire protection, as required by applicable fire safety regulations.

4.54 Where applicable, property owners shall comply with applicable fire safety regulations for management of combustible vegetative materials (controlled burns) in fire hazardous areas.

4.55 The City shall coordinate with County, State and National Park agencies to develop a closure policy for public recreation areas during periods of extreme fire hazard.

5. Emergency Actions and Response

4.56 Emergency actions to repair or replace or protect damaged or threatened development including public works facilities shall be the minimum needed to address the emergency and shall, to the maximum extent feasible, be the least environmentally damaging temporary alternative. A regular permit application shall be required as follow-up to all emergency protection devices or measures. All emergency protection devices shall be designed to facilitate removal and replacement with the alternative found to be consistent with all policies and standards of the LCP through the regular permit process.

4.57 All emergency permits shall be conditioned and tracked to insure that all authorized development is either removed or approved under a regular coastal development permit in a timely manner.

4.58 A permit tracking and monitoring system to identify and prevent the illegal and unpermitted construction of shoreline protection structures should be developed as a component of the code enforcement program.

CHAPTER 5--NEW DEVELOPMENT

A. Introduction

New development in the City of Malibu is constrained by topography, the lack of or difficulty of providing new infrastructure or expanding the capacity of existing facilities, the presence of environmentally sensitive habitat areas ~~environmental resources~~, visual resources, and hazards. The Land Use Plan, provides a framework within which new development may be accommodated, taking into consideration the protection of environmentally sensitive habitat areas ~~environmental resources~~, visual resources, and public access, as well as the avoidance or mitigation of hazards.

The majority of the existing development is located along the narrow coastal strip extending from the City of Los Angeles to Trancas Beach (near Decker Road). The highest densities of development occur in the strip between the eastern City boundary and Pepperdine University. East of the Malibu Civic Center area, the land use pattern is characterized by a single lot depth of single family and multi-family residential development and local and visitor serving commercial on the ocean side of Pacific Coast Highway, limited residential and commercial at the base of the bluffs on the inland side of the highway, and scattered concentrations of residences in canyons and on ridges abutting the highway (e.g. Las Flores Canyon and Big Rock Mesa).

The Malibu Civic Center area is, generally, a flat alluvial plain located at the mouth of Malibu Canyon. This area contains the largest aggregation of existing and planned commercial uses in the City as well as the regional administrative offices of the County of Los Angeles, courts, library, and the City of Malibu's offices. Uses included in the commercial area are food stores, restaurants, small general clothing and specialty shops, financial institutions, and entertainment establishments. On the slopes surrounding the plain are single family residences and town home clusters. Along the coastal edge is a private residential community, known as the "Malibu Colony".

Immediately west of the Civic Center area is the campus of Pepperdine University. Although the University is located just outside the City limits, this high density development is contiguous with other land within the City. The Hughes Research facilities, which is the largest industrial and commercial-office use in the City, are located just northeast of Pepperdine University. West of Malibu Canyon Road, the pattern of developed land uses becomes more rural in character. Residential units on one-acre lots or larger are typically found along

the immediate coastal strip. Scattered throughout the area are individual clusters of higher density development.

In the greater Point Dume area, the width of the coastal strip on which development has occurred expands to encompass gently rolling ridges and valleys. The moderate topography has permitted the development of a broad band of residential uses, most of which are at densities of one unit per acre or less. Point Dume, south of Pacific Coast Highway, accommodates the greatest amount of development. A higher-density cluster of residential uses has evolved along the northwestern flank of this area and commercial uses are located along the highway. The town homes, restaurants, and commercial uses function as a second major center of the Coastal Zone. These serve both resident and beach visitors. West of Point Dume residential units are scattered across the slopes at the base of Trancas and Zuma Canyons. A commercial center is located at the intersection of Pacific Coast Highway and Trancas Canyon Road. This provides limited services to the residents of the area and beach visitors. Continuous strips of single family residential units are located west of Trancas Beach.

1. Coastal Act Provisions

The Coastal Act requires the protection of coastal resources, including public access, land and marine habitat, and scenic and visual quality. Focusing new development to areas in close proximity to existing development with available public services serves to minimize the impacts of remote "leap-frog" development that would require the construction of roads, utilities, and other services. Section 30250 of the Coastal Act requires that new residential, commercial, or industrial development is located near existing developed areas, and where it will not have significant adverse impacts, either individually or cumulatively on coastal resources. Additionally, Section 30250 establishes that land divisions outside existing developed areas can only be permitted where fifty percent of existing parcels have already been developed and that the new parcels are no smaller than the average size of existing parcels. Section 30244 requires the protection of archaeological and paleontological resources and the implementation of mitigation measures to avoid or minimize any impacts.

2. Land Use Plan Provisions

The LUP provides parameters for new development within the City. The Land Use Plan Map designates the allowable land use, including type, maximum density and intensity, for each parcel. Land use types include local commercial,

visitor serving commercial, residential, institutional, recreational, and open space. The LUP describes the allowable uses in each category.

The commercial development policies provide for pedestrian and bicycle circulation to be provided within new commercial projects in order to minimize vehicular traffic. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent development. Parking facilities approved for office or other commercial developments shall be permitted to be used for public beach parking on weekends and other times when the parking is not needed for the approved uses.

The LUP encourages and provides for the preparation of a specific plan or other comprehensive plan for the Civic Center area. The Land Use Plan Map designates this area for Community Commercial, General Commercial, and Visitor- ~~s~~Serving ~~c~~Commercial uses. By preparing a Specific Plan ~~A~~a wider range and mix of uses, development standards, and design guidelines tailored to the unique characteristics of the Civic Center could be provided for this area ~~in an~~ as a future amendment to the LCP.

The LUP policies address new residential development. The maximum number of structures allowed in a residential development is one main residence, one second residential structure, and additional accessory structures provided that all such structures are located within the approved development area and clustered to minimize required fuel modification, landform alteration, and removal of native vegetation.

The LUP provides for a lot retirement program designed to minimize the individual and cumulative impacts of the potential buildout of existing parcels that are located in ESHA or other constrained areas and still allow for new development and creation of parcels in areas with fewer constraints. This includes the Transfer of Development Credit (TDC) Program, and an expedited reversion to acreage process. The TDC program will be implemented on a region-wide basis, including the City as well as the unincorporated area of the Santa Monica Mountains within the Coastal Zone. New development that results in the creation of new parcels, or multi-family development that includes more than one unit per existing parcel , except for affordable housing units, must retire an equivalent number of existing parcels that meet the qualification criteria of the program. Finally, an expedited procedure will be implemented to process reversion to acreage maps.

The LUP policies require that land divisions minimize impacts to coastal resources and public access. Land divisions include subdivisions through parcel or tract map, lot line adjustments, and certificates of compliance. Land divisions

are only permitted if they are approved in a coastal development permit. A land division cannot be approved unless every new lot created would contain an identified building site that could be developed consistent with all policies of the LCP. Land divisions must be designed to cluster development, to minimize landform alteration, to minimize site disturbance, and to maximize open space. Any land division resulting in the creation of additional lots must be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created. ~~The approval of c~~Certificates of compliance must ~~requires a coastal development permit to ensure that they~~ meet all policies of the LCP.

The LUP policies provide for the protection of water resources. New development must provide evidence of an adequate potable water supply. The use of water wells to serve new development must minimize individual and cumulative impacts on groundwater supplies and on adjacent or nearby streams, springs or seeps and their associated riparian habitats. Water conservation shall be promoted. Reclaimed water may be used for approved landscaping, but landscaping or irrigation of natural vegetation for the sole purpose of disposing of reclaimed water is prohibited.

Communication facilities are provided for as a conditional use in all land use designations. All facilities and related support structures shall be sited and designed to protect coastal resources, including scenic and visual resources. Co-location of facilities is required where feasible to avoid the impacts of facility proliferation. New transmission lines and support structures will be placed underground where feasible. Existing facilities should be relocated underground when they are replaced.

Finally, the New Development policies provide for the protection and preservation of archaeological and paleontological resources. Measures to avoid and/or minimize impacts to identified archaeological and paleontological resources must be incorporated into the project and monitoring must be provided during construction to protect resources.

B. Coastal Act Policies

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan:

Section 30250

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 30244

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

C. Land Use Plan Policies

1. Land Use Plan Map

The Land Use Plan Map shows the land use designation for each property. The land use designation denotes the type, density and intensity of development that may be permitted for each property, consistent with all applicable LCP policies. An overlay is applied to the Civic Center area that allows for a mix of land uses and specific development standards if a specific plan or other comprehensive plan is developed, adopted, and certified as an LCP amendment for the area. New development in the City shall be consistent with the Land Use Plan map, and all applicable LCP policies. Following is a description of the land use designations.

2. Land Use Designations

COMMERCIAL NEIGHBORHOOD (CN): The CN designation is intended to provide for low intensity commercial activity such as individual retail and service uses and cultural and artistic uses emphasizing convenient shopping/service to the residents in the surrounding neighborhoods. This designation ensures that the types of uses and intensity of use must be compatible with nearby and adjacent residential areas. Businesses are generally smaller in floor area than those in other commercial categories and are located on smaller sites. The maximum Floor to Area Ratios (FAR) within this category is 0.15. Uses that are permitted and/or conditionally permitted include the following: medical office, small retail stores, bakeries, beauty salons and bookstores, small restaurants, nursery schools/day care facilities, offices, and public open space and recreation.

COMMUNITY COMMERCIAL (CC): The CC designation is intended to provide for the resident serving needs of the community similar to the CN designation, but on parcels of land more suitable for concentrated commercial activity. The community commercial category plans for centers that offer a greater depth and range of merchandise in shopping and specialty goods than the neighborhood center although this category may include some of the uses also found in a neighborhood center. Often a supermarket or variety store functions as the anchor tenant. The maximum Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.20 where public benefits and amenities are provided as part of the project. Uses that are permitted and/or conditionally permitted include the following: all permitted uses within the CN designation, financial institutions, medical clinics, restaurants, service stations, heath care facilities, offices, and public open space and recreation.

COMMERCIAL VISITOR SERVING (CV): The CV designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting, as well as public open space and recreation uses. Uses allowed in the other commercial categories (Commercial Neighborhood, Community Commercial, and Commercial General) may be permitted as part of projects approved on parcels designated Commercial Visitor Serving, so long as at least 50 percent of the overall floor area of any individual project is devoted to visitor serving uses. ~~on the upper story of visitor serving commercial structures so long as the ground floor of such structures are limited to only visitor serving uses~~. The maximum Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.25 where public benefits and amenities are provided as part of the project. CV designations are divided into two levels of density. Hotels are only permitted in

CV-2 designations, the highest density designation. Motels and bed and breakfast inns are allowed in the CV-1 designation.

COMMERCIAL GENERAL (CG): The CG designation provides for more intense commercial uses, visitor serving uses and light industrial uses located on larger sites. The maximum Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.25 where public benefits and amenities are provided as part of the project. Uses that are permitted and conditionally permitted include the following: all permitted uses within the CN and CC designations and mixed commercial and residential projects, masonry supplies, plant nurseries, and restaurants, movie theaters, performing arts facilities, offices, and public open space and recreation. Affordable housing for very low, low, and moderate-income families may also be permitted.

COMMERCIAL RECREATION (CR): The CR designation allows for facilities open to the public that are utilized for low intensity recreational use and athletic activities characterized by large open space areas with limited building coverage such as summer camps, hiking, equestrian, tennis, camping, public open space, and includes provision of food and beverage service for participants.

INSTITUTIONAL (I): The I designation accommodates existing public and quasi-public facilities in the City. This designation includes permitted and conditional uses such as educational institutions, government facilities, libraries, community centers, and religious institutions. The maximum allowable Floor to Area Ratio (FAR) is 0.15.

RURAL RESIDENTIAL (RR): The RR designation allows sensitively designed, large lot single family residential development, with a range of maximum densities from one dwelling per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping as accessory uses to approved residential development. Public open space and recreation may be permitted. The following maximum residential density standards shall apply:

RR1 One dwelling unit per acre
RR2 One dwelling unit per 2 acres
RR5 One dwelling unit per 5 acres
RR10 One dwelling units per 10 acres
RR20 One dwelling unit per 20 acres
RR40 One dwelling unit per 40 acres

SINGLE-FAMILY RESIDENTIAL (SF): This land use designation allows single family residential development at higher density than the rural residential category. It is intended to enhance the rural characteristics of the community by

maintaining low-density single-family residential development on lots ranging from 1/4 to 1 acre in size. Single-Family Low (SFL) allows a maximum density of 2 dwelling units per acre, with a minimum lot size of 0.5 acre. Single-Family Medium (SFM) allows a maximum density of 4 dwelling units per acre, with a minimum lot size of 0.25 acre. Public open space and recreation may be permitted.

MOBILE HOME RESIDENTIAL (MHR): The MHR designation is intended to accommodate existing mobile home parks and associated facilities.

MULTI-FAMILY RESIDENTIAL (MF): The MF designation provides for multi-family residential developments, such as duplexes, condominiums, stock cooperatives, and apartments. The Multi-family Residential (MF) designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. Public open space and recreation may be permitted.

PRIVATE RECREATIONAL FACILITIES (PRF): The PRF designation provides for existing private recreational facilities whose members have received exclusive use through deeded rights, property ownership or membership.

PUBLIC OPEN SPACE (OS): The OS designation provides for publicly owned land which is dedicated to recreation or preservation of the City's natural resources, including public beaches, park lands and preserves. Allowable uses include passive recreation, research and education, nature observation, and recreational and support facilities.

RECREATIONAL VEHICLE PARK (RVP): The RVP designation provides for recreational vehicle parks and requires 10 acre minimum lot size. This designation only applies to the existing RV Park located north of Pacific Coast Highway at Corral Canyon.

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 order to facilitate permanent removal and relocation of existing athletic fields at Malibu Bluffs State Park out of the prime viewshed in accordance with Policy 2.81 of the Land Use Plan.

3. General Policies

5.1 All development that requires a coastal development permit is subject to written findings by the City's decision making body for coastal

development permits (Planning Director, Planning Commission, or City Council, as appropriate) that it is consistent with all Land Use Plan (LUP) policies and Local Implementation Plan (LIP) provisions of the City's certified Local Coastal Program.

5.2 If there is a conflict between a provision of this LCP and a provision of the General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

5.3 A coastal development permit may only be approved for new development on legally created lots. All applications for new development on a vacant parcel shall include evidence of the date and method by which the subject parcel was created.

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

5.5 The Environmental Review Board ~~or other qualified professional with technical expertise in resource management~~ shall review and make written recommendations on development proposals within or adjacent to ESHA or other areas containing ESHA~~sensitive resources~~ as identified through a biological study. The decision-making body (Planning Director, Planning Commission, or City Council) ~~for coastal permits~~ shall make written findings relative to the project's conformance with the recommendations of the Environmental Review Board ~~or other qualified professional~~.

5.6 Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

5.7 New development shall conform to the hillside management provisions of the LIP, including measures to minimize impacts to scenic and visual resources and to minimize the risk from hazards. The measures include but are not limited to limiting grading and retaining walls, restricting

development on steep slopes, protecting ridgelines, and applying siting and design restrictions (scenic and visual policies). The slope density criteria of the subdivision ordinance shall apply to sloping terrain and be applied in combination with the base land use designation in order to determine the maximum allowable density.

5.8 ~~The Implementation Plan shall address coastal development permit application requirements and will include, but not be limited to those shown on Appendix 1 of the LUP.~~

4. Commercial Development Policies

5.9 Pedestrian and bicycle circulation shall be required as part of all new commercial development.

5.10 New commercial development shall be designed to minimize conflicts with adjacent residential uses, including preserving the character and integrity of the adjacent residential areas. Commercial development shall be designed to avoid intrusive traffic circulation and light and glare.

5.11 The City shall work with Caltrans to provide safe pedestrian crossings on Pacific Coast Highway adjacent to existing and new visitor serving uses to allow the public safe access to the beach.

5.12 Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent uses. All uses shall be consistent with protection of public access and ESHA ~~significant coastal resources~~.

5.13 Visitor serving retail uses shall be permitted in all commercial zones in the City. Visitor serving retail uses shall fit the character and scale of the surrounding community.

5.14 Public use of private parking facilities currently underutilized on weekends (i.e. serving office buildings) adjacent to the beach shall be a permitted use in all commercial zones.

5.15 All new commercial and higher density residential development must be located and designed to facilitate provision or extension of transit service to the development and must provide nonautomobile circulation within the development to the extent feasible.

5. Civic Center Policies

5.15a No development shall be approved on any parcel located within the Civic Center Overlay Area (LIP Zoning Map 5), other than improvements to existing uses, for a period of two (2) years commencing September 15, 2002, or until a Specific Plan, or other comprehensive plan encompassing all parcels located within the Civic Center Overlay Area is adopted by the City and certified by the Coastal Commission as an LCP amendment.

5.15b The components of a specific plan or other comprehensive plan for the Civic Center area shall include, but not be limited to:

- Land use designations and permitted uses.
- Provision for visitor serving commercial uses, including overnight accommodations, throughout the area.
- Maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio currently allowed pursuant to the Land Use Plan where public benefits and amenities are provided as part of the project.
- Development standards, including heights, lot coverage, setbacks, and open space requirements.
- Measures to protect wetland habitat ~~(as defined in Policy 3.80)~~ identified through a wetland delineation prepared for the Civic Center area pursuant to LUP Policy 3.81a.
- Provisions for shared or consolidated parking areas.
- Provisions for public open space areas, and restoration or enhancement of habitat.
- Design guidelines, including architectural design, lighting, signs, and landscaping.
- Provisions for mixed use development.

5.16 Subsequent to September 15, 2004, if no Specific Plan or other comprehensive plan has been approved by the Coastal Commission as an LCP amendment, Visitor-Serving Commercial, General Commercial, and Community Commercial uses shall be allowed on individual parcels located in the Civic Center Overlay area, as designated by the Land Use Map, consistent with all policies of the L~~U~~CP. A maximum FAR of 0.15 is permitted, except that the project FAR may be increased to no greater than a maximum of 0.20 FAR ~~the maximum permitted for the parcel by the LUP,~~ if public benefits and amenities, including public open space and habitat restoration or enhancement, are provided and the project site is included as part of a planned development~~,~~ or development agreement for

multiple parcels, ~~or other comprehensive plan~~ approved under a LCP amendment certified by the California Coastal Commission.

5.16a Subsequent to September 15, 2004, if no Specific Plan or comprehensive plan is approved by the Coastal Commission as an LCP amendment, applications for new development, other than improvements to existing uses, on individual parcels located in the Civic Center Overlay area shall be subject to a wetland delineation determination in accordance with the requirements of Policy 3.81(a) prior to approval of any new development on the site.

5.17 ~~To allow any other uses, the City must develop a specific plan, planned development, development agreement, or other type of comprehensive plan for the Civic Center area that allows for a wider range of uses, including visitor-serving and other commercial uses, office, public open space, and/or residential uses. Such a plan must be adopted by the City and certified by the Coastal Commission as an amendment to the LCP.~~

5.18 ~~The components of a specific plan or other comprehensive plan for the Civic Center area shall include, but not be limited to:~~

- ~~Land use designations and permitted uses.~~
- ~~Provision for visitor serving commercial uses, including overnight accommodations, throughout the area.~~
- ~~Maximum density and intensity standards, including floor area ratios for commercial use.~~
- ~~Development standards, including heights, lot coverage, setbacks, and open space requirements.~~
- ~~Measures to protect wetland habitat (as defined in Policy 3.80) identified through a wetland delineation prepared for the Civic Center area~~
- ~~Provisions for shared or consolidated parking areas.~~
- ~~Provisions for public open space areas.~~
- ~~Design guidelines, including architectural design, lighting, signs, and landscaping.~~
- ~~Provisions for mixed use development.~~

6. Residential Development Policies

5.19 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with

the other policies of the LCP may further limit the maximum allowable density of development.

5.20 The maximum number of structures permitted in a residential development shall be limited to one main residence, one second residential structure, and accessory structures such as stable, workshop, gym, studio, pool cabana, office, or tennis court provided that all such structures are located within the approved development area and structures are clustered to minimize required fuel modification.

5.21 Second residential units (guesthouses, granny units, etc.) shall be limited in size to a maximum of ~~750~~900 square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. Detached garages, including garages provided as part of a second residential unit, shall not exceed 400 square feet (2-car) maximum. The area of a garage provided as part of a second residential unit shall not be included in the ~~750~~900 square foot limit.

5.22 A minimum of one on-site parking space shall be required for the exclusive use of any second residential unit.

5.23 New development of a second residential unit or other accessory structure that includes plumbing facilities shall demonstrate that adequate private sewage disposal can be provided on the project site consistent with all of the policies of the LCP.

5.24 In order to protect the rural character, improvements, which create a suburban atmosphere such as sidewalks and streetlights, shall be avoided in any rural residential designation.

7. Lot Retirement Program

5.25 A Lot Retirement Program will be implemented in order to minimize the individual and cumulative impacts to coastal resources of the buildout of existing parcels in sensitive and constrained areas and to allow for new development in areas less constrained. The Lot Retirement Program shall comprise the following components:

- Transfer of Development Credit Program
- Expedited Reversion to Acreage Process

5.26 The Transfer of Development Credit (TDC) Program shall be implemented in order to ensure that the individual and cumulative impacts of creating new lots or developing multi-family residential units are minimized and mitigated through the retirement of an equivalent number of development credits from existing lots that meet the qualification criteria of the program. Lots that contain ESHA, are located in small-lot subdivisions, or are located adjacent to parklands can be retired for transfer of development credits.

5.27 One TDC Program shall be implemented on a region-wide basis for the Santa Monica Mountains Coastal Zone, including the City of Malibu and the County of Los Angeles. Credits to mitigate development approved in the City may be generated from qualifying lots anywhere within this region.

5.28 Any coastal development permit for a land division resulting in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or recombination ~~reversion to acreage~~ of the retired parcel(s) with a contiguous parcel where the development potential is not retired.

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

5.30 An ordinance to create an expedited procedure and reduced fee for processing reversion to acreage maps should be developed.

5.31 A record of the number and location of lots permanently retired through the lot retirement program should be maintained and made available to members of the public upon request.

8. Land Divisions

5.32 Land divisions include subdivisions (through parcel map or tract map), lot line adjustments, and certificates of compliance (except as provided in Policy 5.40). Land divisions are only permitted if they are approved in a ~~c~~Coastal ~~d~~Development ~~p~~Permit.

5.33 Land divisions outside existing developed areas shall be permitted only in areas with adequate public services, where they will not have significant adverse effects, either individually or cumulatively, on coastal resources.

5.34 The minimum lot size in all land use designations shall not allow land divisions where the created parcels would be smaller than the average size of surrounding parcels.

5.35 Land divisions shall be designed to minimize impacts to coastal resources and public access. A land division shall not be approved if it creates a parcel that would not contain an identified building site that could be developed consistent with all of the policies of the LCP.

5.36 Land divisions shall be designed to cluster development, including building pads, if any, in order to minimize site disturbance, landform alteration, and removal of native vegetation, to minimize required fuel modification, and to maximize open space.

5.37 The City shall not approve a land division if any parcel being created would not be consistent with the maximum density designated by the Land Use Plan map, and the slope density criteria. Land divisions shall not be considered the principal permitted use in any land use category.

5.38 Any ~~c~~Coastal ~~d~~Development ~~p~~Permit for a land division resulting in the creation of additional lots shall be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created.

5.39 Subsequent development on a parcel created through a land division shall conform to all provisions of the approved land division permit, including, but not limited to, the building site location, access road/driveway design, and grading design and volumes.

5.40 For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was created in compliance with the law in effect at the time of its creation and the parcel(s) has not subsequently been merged or otherwise altered, the City shall not require a coastal development permit.

5.41 For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was not created in compliance with the law in effect at the time of its creation, or the parcel has subsequently

been merged or otherwise altered, the certificate of compliance shall not be issued unless a CDP that authorizes the land division is approved. In such a situation, the City shall only approve a coastal development permit if the land division as proposed, or as conditioned, complies with all policies of the LCP.

5.42 For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred after the effective date of the Coastal Act, the certificate of compliance shall not be issued unless a CDP that authorizes the land division is approved. In such a situation, the City shall only approve a coastal development permit if the land division, as proposed or as conditioned, complies with all policies of the LCP.

5.43 On beachfront parcels, land divisions may be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure, on-site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs, consistent with all other policies in the LUP including those regarding geologic, wave uprush, and public access.

5.44 Land divisions, including lot line adjustments, for property which includes area within or adjacent to an ESHA shall not be permitted unless consistent with Policy 3.42.

9. Water Policies

5.45 All new development shall demonstrate that an adequate potable water supply is available to each parcel. An on-site water well shall provide water of potable quality and be able to provide a quantity of water sufficient to meet domestic supply requirements for the life of the development.

5.46 New water wells shall minimize individual and cumulative impacts on groundwater, streams, springs, or seeps, and their associated riparian habitats.

5.47 A water conservation and wastewater recycling program should be developed in coordination with Los Angeles County and the applicable water purveyors for respective water service areas.

5.48 All new development shall comply with the City's water conservation and wastewater regulations.

5.49 The installation of reclaimed water lines to provide irrigation for approved landscaping or fuel modification areas (Zone A or B, if required) for approved development may be permitted, if consistent with all policies of the LUP.

5.50 The use of reclaimed water in lieu of fresh water supplies for the maintenance of public lands and other non-consumptive uses shall be encouraged and supported provided such use can be found to be consistent with all applicable policies of the LCP.

5.51 Landscaping and/or irrigation of ESHA for the purpose of disposing of reclaimed water shall be prohibited.

5.52 The construction of a new water well may only be permitted where it will not have significant adverse individual or cumulative impacts on groundwater, streams, or ESHA.

10. Non-Conforming Uses and Structures

5.53 Existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained, and repaired. Except as provided below, additions and~~Minor~~ improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. ~~do not increase the degree of nonconformity.~~ Substantial additions to non-conforming structures on a blufftop or on the beach are not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. ~~, or d~~Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure ~~s are~~is not permitted unless the entire ~~such~~ structure ~~s are~~is brought into conformance with the policies and standards of the LCP. Non-conforming uses may not be increased or expanded into additional locations or structures.

5.54 Removal of vegetation from or other minor road improvements to a lawfully established road on private property, which has not been maintained for a period of 5 years, shall require a coastal development permit.

5.55 The City shall not approve a ~~c~~Coastal ~~d~~Development ~~p~~Permit for new road improvements unless the road is needed to serve an approved or existing

development and complies with all LCP policies. Road improvements necessary for geologic testing may be approved prior to approval of other development, if consistent with Policy 3.49.

11. Communications Facilities

5.56 Communication processing, storage and transmission facilities and lines shall be sited, designed, and operated to avoid or minimize impacts to all resources, consistent with all provisions of the LCP. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.

5.57 All facilities and related support structures shall be sited, designed, and operated to avoid the visibility of the facility from public viewing areas, and to preserve the character of surrounding areas by protecting ridgelines by setting facilities below the ridge, and co-locating facilities, where feasible, to avoid proliferation of facilities.

5.58 All facilities shall place support facilities underground, where feasible. New communication transmission lines shall be sited and designed to be located underground, except where it would present or contribute to geologic hazards. Existing communication transmission lines should be relocated underground when they are replaced or when funding for undergrounding is available.

12. Archaeology

5.59 New development shall protect and preserve archaeological, historical and paleontological resources from destruction, and shall avoid and minimize impacts to such resources.

5.60 Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

5.61 The City should coordinate with appropriate agencies, such as the UCLA Archaeological Center, to identify archaeologically sensitive areas. Such information should be kept confidential to protect archaeological resources.

5.62 Coastal ~~d~~Development ~~p~~Permits for new development within archaeologically sensitive areas shall be conditioned upon the implementation of the appropriate mitigation measures.

5.63 New development on sites identified as archaeologically sensitive shall include on-site monitoring of all grading, excavation and site preparation that involve earth moving operations by a qualified archaeologist(s) and appropriate Native American consultant(s).

5.64 The establishment of a museum/visitor center to display local archaeological and or paleontological artifacts and to provide public educational information on the cultural and historic value of these resources shall be encouraged.

CHAPTER 6--SCENIC AND VISUAL RESOURCES

A. Introduction

The Santa Monica Mountains region, including the City of Malibu, is an area of incredible scenic beauty. This is due in large part to the dramatic topography. Steep mountains rise virtually out of the ocean. There is a narrow coastal plain in most areas that parallels the coastline. The plain is much wider in the center of the City on the Point Dume headland and on the alluvial plain formed by Malibu Creek where the City's Civic Center is located. In other areas there are wave-cut terraces separated from the beach below by sheer coastal bluffs. Deep stream-cut canyons extend through the mountains.

In addition to the topography, the scenic beauty of the area is inextricably linked to the native vegetation communities that typify the California Mediterranean landscape. Different vegetation communities have different visual textures and colors. South facing drier slopes support low growing coastal sage scrub species, while north facing or wetter slopes support denser chaparral vegetation. The textures of these areas contrast with the taller trees and shrubs growing in the riparian corridors that form linear features along streams.

There are sweeping views of the ocean and beach. Coastal views are possible from Pacific Coast Highway where there are breaks in the existing pattern of development. There are excellent views from the cross mountain roads, each of which follows a canyon through the mountains. Descending these scenic roads, there are alternating views of natural canyon areas and the ocean. There are also views of the beach, ocean and scenic areas from public parks, and riding and hiking trails. Finally, while the beach and ocean are important scenic elements, there are also mountain and canyon views as seen looking inland from the beach and ocean.

1. Coastal Act Provisions

One of the primary objectives of the Coastal Act is the protection of scenic and visual resources, particularly as viewed from public places. Section 30251 requires that development be sited and designed to protect views to and along the ocean and other scenic coastal areas. New development must minimize the alteration of natural landforms. This policy also requires that development is sited and designed to be visually compatible with the character of surrounding areas.

Where feasible, development shall include measures to restore and enhance visual quality in visually degraded areas.

2. Land Use Plan Provisions

The Land Use Plan provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The ~~LUP~~LUP ~~Visual Resource Map shows the location of~~ identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. ~~The Visual Resource Map also shows public viewing areas, located along existing public roads where there are views of the beach and/or ocean, and other scenic areas.~~ Additionally, there are intermittent beach or ocean views from all of the cross-mountain roads within the City (with the exception of certain portions of Decker Canyon Road where the topography prevents ocean views). Further, there are views of the ocean and other scenic areas from public parklands and from riding and hiking trails. Trails and parklands are shown on the LUP Park and Trail Map. Finally, the LUP Public Access Map shows public beach parks and accessways that provide views of the mountains and other scenic areas.

The LUP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. Protection is provided for prominent ridgelines by requiring structures to be set below the ridgeline and to avoid intrusions into the skyline. ~~Where the site is visible from public viewing areas or contains slopes over 3:1, the policies establish a maximum development area to limit the overall area of site disturbance.~~

The policies give parameters for the siting and design of all new development to ensure that the alteration of natural landforms is minimized. These measures include siting development on flatter areas of the site, conforming development to the natural topography, clustering development, and preventing flat building pads on slopes. Graded slopes must blend with the existing terrain of the site and the height and length of slopes must be minimized. Finally, the length of roads or driveways shall be minimized and slopes designed to follow the natural topography in order to minimize landform alteration.

The policies require that new structures are sited and designed to minimize impacts to visual resources, by incorporating design measures to limit the appearance of bulk, ensuring visual compatibility with the character of

surrounding areas, and by using colors and materials that are similar and blend in with natural materials on the site. The height of retaining walls must be minimized and fences, walls and landscaping must not block views from public viewing areas. Development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

The LUP policies set forth restrictions regarding the design of land divisions, including lot line adjustments, to ensure that building sites are clustered, that the length of roads and driveways are minimized, that shared driveways are provided, that grading is minimized, and that all graded slopes are revegetated. Land divisions that do not avoid or minimize impacts to visual resources will not be permitted.

Development is required to minimize the removal of natural vegetation both for the actual development area, as well as vegetation removed or thinned for fuel modification and brush clearance. Graded slopes and other areas disturbed by construction must be landscaped or revegetated with primarily native, drought tolerant plants to provide coverage of the disturbed areas and monitored to ensure success.

B. Coastal Act Policies

Section 30251 of the Coastal Act set forth below, is incorporated herein as a policy of the Land Use Plan.

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.

C. Land Use Plan Policies

1. Scenic and Visual Resource Identification

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.

6.2 Places on and along public roads, trails, parklands, beaches, and state waters that offer scenic vistas are considered public viewing areas. ~~The LUP Scenic Resources Map shows public viewing areas located along~~ ~~e~~Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads . ~~Public viewing areas within p~~ Public parklands and ~~along~~ 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.

6.3 Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads ~~shown on the LUP Scenic Resources Map~~ within the City are considered Scenic Roads:

- Pacific Coast Highway
- Decker Canyon Road
- Encinal Canyon Road
- Kanan Dume Road
- Latigo Canyon Road
- Corral Canyon Road
- Malibu Canyon Road
- Tuna Canyon Road

6.3a 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.

2. New Development

6.4 New development shall ~~not be visible~~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.

6.5 ~~The maximum allowable development area (including the building pad and all graded slopes, if any, as well as any permitted structures) for residential development shall be limited to 10,000 sq. ft. or 25 percent of the parcel size, whichever is less on sites visible from scenic roads or public viewing areas, or on slopes over 3:1. The maximum development area shall be further restricted if necessary to protect visual or other sensitive resources. All permitted structures shall be located within the approved development area. The maximum allowable development area for commercial development shall be restricted by the maximum floor area ratio.This policy shall not apply to ocean side parcels subject to policy 6.18.~~

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.

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.

6.8 Prominent ridgelines and other intervening ridgelines that are visible from a public road, a beach, public viewing areas, or public hiking trails, shall be protected by setting structures below the ridgeline to avoid intrusions into the skyline where feasible. Where there are no feasible alternative building sites below the ridgeline or where the only alternative building site would result in unavoidable adverse impacts to ESHA, structures shall be limited to one-story (18 feet maximum from existing or finished grade, whichever is lower) in height to minimize visual impacts.

6.9 All new development shall be sited and designed to minimize alteration of natural landforms by:

- Conforming to the natural topography.
- Preventing substantial grading or reconfiguration of the project site.
- Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.
- Requiring that man-made contours mimic the natural contours.
- Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.
- Minimizing grading permitted outside of the building footprint.
- Clustering structures to minimize site disturbance and to minimize development area.
- Minimizing height and length of cut and fill slopes.
- Minimizing the height and length of retaining walls.
- Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.

6.10 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 ~~or other sensitive~~ resources or ESHA.

6.11 The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual ~~or other sensitive~~ resources or ESHA. Driveway slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic ~~highway~~road, a beach, a public viewing area, or public hiking trail shall be a neutral color that blends with the surrounding landforms and vegetation.

6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:

- Ensuring visual compatibility with the character of surrounding areas.
- Avoiding large cantilevers or understories.
- Setting back higher elements of the structure toward the center or uphill portion of the building.

6.13 New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.

6.14 The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.

6.15 Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.

6.16 Blufftop development 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 the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.28.

6.17 Where parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive descend from the roadway, new development shall be sited and designed to preserve bluewater ocean views by:

- Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.
- Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.

- Setting fences away from the road edge and limiting the height of fences or walls to no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.
- Using native vegetation types with a maximum growth height and located such that landscaping will not extend above road grade.

6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.
- No portion of any structure shall extend into the view corridor.
- Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.

6.19 Except for replacement of structures destroyed by disaster, redevelopment of sites involving substantial remodels or demolition and reconstruction where existing landscaping or development blocks or obscures public views of the ocean or other scenic ~~views~~areas, the existing landscaping or development shall be removed and where appropriate replaced with landscaping and development that is sited and designed to provide maximum views, as required by Policies 6.17 or 6.18, as applicable.

6.19a New development on properties visible from and inland of Pacific Coast Highway shall be sited and designed to protect public views of the ridgelines and natural features of the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height limits, clustering development, incorporating landscape elements, and, where appropriate, berming.

6.19b New commercial development within the Civic Center shall be sited and designed to minimize obstruction to the maximum feasible extent of public views of the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.

6.20 Public works projects along scenic roads that include hardscape elements such as retaining walls, cut-off walls, abutments, bridges, and culverts shall incorporate veneers, texturing, and colors that blend with the surrounding earth materials or landscape. The design of new bridges on scenic roads shall be compatible with the rural character of the Santa Monica Mountains and designed to protect scenic views.

6.21 ~~The quality of the night skies and visibility of stars shall be preserved by controlling outdoor lighting, thereby reducing visual intrusion.~~ Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.

3. Land Divisions

6.22 Land divisions, including lot line adjustments, shall be designed to minimize impacts to visual resources by:

- Clustering the building sites to minimize site disturbance and maximize open space.
- Prohibiting building sites on ridgelines.
- Minimizing the length of access roads and driveways.
- Using shared driveways to access development on adjacent lots, where feasible.
- Reducing the maximum allowable density in steeply sloping and visually sensitive areas.
- Minimizing grading and alteration of natural landforms, consistent with Policy 6.9.
- Landscaping or revegetating all cut and fill slopes, and other disturbed areas at the completion of grading, consistent with Policy 6.27 ~~3.49~~.

- Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.

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

6.24 Subsequent development on a parcel created through a land division shall conform to all provisions of the approved coastal development permit that authorized the land division, or any amendments thereto.

4. Protection of Native Vegetation

6.25 New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site, consistent with Policy 3.60.

6.26 All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible. Development shall incorporate alternative fuel modification measures, where feasible, in order to minimize the visual resource impacts of site disturbance, removal, and thinning of natural vegetation.

6.27 Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:

- Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site.
- Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.
- Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.
- Lawn shall not be located on any geologically sensitive area such as coastal blufftop.
- Landscaping or revegetation shall provide 90 percent coverage within five years.
- ~~Criteria shall be designed to measure the success of the plantings and shall be monitored for a period of at least five years. Mid-course~~

~~corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.~~

5. Signs

6.28 Signs shall be designed and located to minimize impacts to visual resources. Signs approved as part of commercial development shall be incorporated into the design of the project and shall be subject to height and width limitations that ensure that signs are visually compatible with surrounding areas and protect scenic views. Roof signs, pole signs, projecting signs and internally illuminated signs shall not be permitted.

6.29 Placement of signs other than traffic or public safety signs, utilities, or other accessory equipment that obstruct views to the ocean, beaches, parks, or other scenic areas, ~~or along~~from public viewing areas and scenic roads shall be prohibited.

6.30 Existing offsite outdoor advertising billboards shall be phased out and the construction of new billboards is prohibited.

6. Pacific Coast Highway

6.31 The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed.

6.32 Landscape improvements, including median plantings, may be permitted along Pacific Coast Highway east of Malibu Canyon Road. Any proposed landscaping shall be comprised primarily of native and drought tolerant plant species. Landscaping shall be designed and maintained to be subordinate to the character of the area, and not block ocean or mountain views at maturity. No such improvements shall be provided west of Malibu Canyon Road in order to maintain the rural character of that area.

6.33 New commercial development that includes a parking lot visible from Pacific Coast Highway shall include landscaping and/or berming to screen the view, so long as such measures do not obscure or block views of the ocean.

6.34 Any telecommunications facilities approved along Pacific Coast Highway shall place support facilities underground, where feasible. New

transmission lines shall be sited and designed to be located underground, except where it would present or contribute to geologic hazards. Existing transmission lines should be relocated underground when they are replaced or when funding for undergrounding is available.

CHAPTER 7--PUBLIC WORKS

A. Introduction

Development and growth in the City of Malibu is limited by geologic and environmental constraints, steep slopes, and dependence on private septic systems for wastewater management as well as the general desire to limit growth throughout the City. Public works facilities that exist in the City include roads and highways, public water and telephone utilities and all publicly financed recreational facilities including parks, trails and public accessways financed by the State Coastal Conservancy, State Department of Parks and Recreation and Los Angeles County. There is no public sewage treatment plant in Malibu other than the small Malibu Mesa facility that serves Pepperdine University and the Malibu Mesa residential tract. While continued dependence on private septic systems for wastewater treatment has been a limiting factor for development, it has also been suspected of being a contributing factor to water pollution in Malibu Creek and Lagoon and other areas including the beaches. Prior to the City's incorporation in 1991, Los Angeles County proposed a large regional sewer system for much of Malibu. The County's application to construct the facility was withdrawn while it was pending before the Coastal Commission. The City proposes no facilities at present.

Major public works projects in Malibu consist of road repairs, maintenance and improvements. Responsibility for maintaining Pacific Coast Highway lies with the State Department of Transportation (Caltrans). Pacific Coast Highway is periodically damaged by landslides and mudflows on its inland side and by storm waves and erosion on its seaward side. In order to provide for adequate traffic circulation into and out of the City by residents and visitors accessing the public beaches and parks and to facilitate public safety it is important for the City to coordinate with Caltrans. The City is responsible for maintenance and improvements of other roads in the City. There has been considerable damage to roads within the City due to the impacts from several major winter storms since incorporation and considerable effort and expense has been required to keep roads open. It is also necessary to coordinate with Los Angeles County to insure a smooth flow of traffic along cross-mountain roads that provide access between the inland valleys and mountain areas to Pacific Coast Highway in the City. Most of the roads in the City traverse areas that are ~~highly~~ scenic and/or contain sensitive natural resources. Therefore, it is important that road improvements, repairs and maintenance utilize Best Management Practices including the least environmentally damaging feasible alternative.

1. Coastal Act Provisions

Coastal Act 30254 requires that new or expanded public works facilities be "designed and limited" to accommodate development that can be permitted consistent with the policies of the Coastal Act. This section also provides that, where public works facilities to serve new development are limited, priority shall be given to coastal dependent uses, essential services, public and commercial recreation and visitor-serving land uses. Pursuant to Section 30114 publicly financed recreational facilities, including all projects of the State Coastal Conservancy, are considered "Public Works." The Coastal Act also provides that no term or condition may be imposed on the development of any sewage treatment plant relative to future development that can be accommodated (consistent with the Coastal Act).

2. Land Use Plan Provisions

To ensure consistency with the Coastal Act, the policies contained below in the Land Use Plan are intended to facilitate the provision and maintenance of public services, including roads, parking, water and electricity, and wastewater management to protect existing and future residents and visitors to the City and to accommodate the level and types of development that the LUP envisions. Policies also provide for developing measures to improve transit service to and within the City, provide and improve parking facilities, shuttles and van pools. The LUP recommends the creation of "wastewater management zones' for certain areas to facilitate the function and operation of on-site septic systems. As an alternative the plan allows for a public sewer system to be designed and proposed subject to approval as an amendment to the LCP by the Coastal Commission.

B. Coastal Act Policies

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan.

Section 30254.

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route I in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except

where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Section 30254.5.

Notwithstanding any other provision of law, the commission may not impose any term or condition on the development of any sewage treatment plant that is applicable to any future development that the commission finds can be accommodated by that plant consistent with this division. Nothing in this section modifies the provisions and requirements of Sections 30254 and 30412.

C. Land Use Plan Policies

7.1 In applying the policies of this Chapter "Public Works" shall be defined by PRC Section 30114.

7.2 Publicly financed recreational facilities and access improvement projects, including all projects of the State Coastal Conservancy, shall be permitted consistent with the policies contained in the Access and Recreation Section of the LCP and the Access and Recreation policies of the Coastal Act when located between the sea and the first public road. All projects conducted or financed by the State Coastal Conservancy shall constitute "public works facilities" pursuant to the definition provided above in PRC Section 30114.

1. Circulation and Traffic

7.3 Improvements to existing public roads shall be permitted as necessary for public safety and to improve access to recreation areas where such improvements are consistent with all policies of the LCP.

7.4 Improvements to major road intersections for public safety or increased vehicle capacity shall be permitted, as necessary, in existing developed areas and where such improvements are sited and designed to be consistent with all policies of the LCP.

7.5 In scenic areas, roadway improvements, including culverts, bridges or overpasses, shall be designed and constructed to protect public views and avoid or minimize visual impacts and to blend in with the natural setting to the maximum extent feasible.

7.6 Measures to improve public access to beaches and recreation areas through the use of transit and alternative means of transportation should be developed in coordination with state and national park agencies, Los Angeles County, Caltrans, and any other appropriate transit providers. Measures may include, but not be limited to:

- Increased transit service;
- Improved transfer opportunities between regional transit routes and routes serving the Coastal Zone;
- Provision of parking facilities for bicycles, motorcycles and transit vehicles at recreation areas;
- Development of park-and-ride or other staging facilities at points along the Ventura Freeway (Highway 101), Pacific Coast Highway, Kanan Dume Road and Malibu Canyon Road at minimum;
- Implementation of beach and other recreation shuttles;
- Construction of road improvements necessary to facilitate bus travel.

7.7 Use of public transit modes (bus or van pool service) by commuters to and from metropolitan Los Angeles to reduce congestion on Pacific Coast Highway and cross-mountain roads during peak use hours shall be supported and encouraged.

7.8 Efforts should be made to improve the availability of public transit to and from downtown Los Angeles and other urban areas to public beaches on weekends.

7.9 Road improvements to provide legal access to or facilitate development of a legal parcel may be permitted provided such improvements are consistent with all policies of the LCP. Existing legal roads shall be utilized for access where feasible.

7.10 Road construction and maintenance shall minimize landform alteration and impacts to visual ~~and sensitive environmental~~ resources and environmentally sensitive habitat areas. Roadway improvements shall be the least environmentally damaging feasible alternative available. Rural (limited secondary) roads shall be the minimum width necessary to accommodate traffic, including public safety vehicles, consistent with County Fire Department standards. Road construction, maintenance and

improvements shall conform to Best Management Practices designed to achieve the standards set forth above.

7.11 Caltrans projects to improve traffic flow and safety on Pacific Coast Highway such as establishing bike lanes, use of "reversible lanes", coordinating or retiming traffic signals, providing off-street parking and installing pedestrian overpasses where feasible shall be supported and permitted to the extent they are consistent with all other policies of the LCP.

7.12 Restrictions on or elimination of existing on-street public parking on Pacific Coast Highway and adjacent side-streets shall not be permitted unless a comparable number of replacement parking spaces are provided in the immediate vicinity and it is demonstrated that such restrictions or elimination will not adversely impact public access to the shoreline.

7.13 All cross-mountain roads shall remain two-lane roads except for passing lanes and safety turnouts.

7.14 Wherever feasible, private driveways shall access local roads and access to the major roadways that serve as primary access routes to recreation areas shall be limited to these local roads. Where private access directly onto a major roadway is the only feasible alternative consolidated driveways and turning lanes should be utilized.

7.15 Cooperation and coordination with LACMTA, Caltrans, and Southern California Rideshare to support and publicize van pooling, car pooling, telecommuting, and other transportation demand management programs from the Santa Monica Mountains to and from the urban centers of Los Angeles County shall be provided.

2. Water Systems / Wastewater Management

7.16 Additional water storage facilities and/or new pipelines may be allowed in the City to replace deteriorated or undersized facilities and/or to ensure an adequate source of domestic and fire protection water supply during outages or pipeline interruptions provided such facilities are designed and limited to accommodate existing or planned development allowed by the Land Use Plan and can be found to be consistent with all applicable policies of the LCP.

7.17 On-site wastewater management zones that establish performance standards including water quality protection measures and periodic inspections should be created and enforced by the Department of Health Services and/or City engineer for the Civic Center area, Point Dume, the immediate coastal strip and any areas known to have poor percolation rates, a high water table or be prone to geologic hazards.

7.18 The construction of public package wastewater treatment facilities may be permitted where it is demonstrated to be the preferable long-term wastewater management solution, where it is designed to not exceed the capacity for growth allowed in the LCP, and where it can be constructed consistent with all policies of the LCP.

7.19 A City-wide public sewer system may be designed and proposed, in consultation with the Departments of Health Services and Public Works where it is found to be the least environmentally damaging wastewater treatment alternative, where it is designed to serve a capacity of development which does not exceed the amount allowed by the LCP, and where it is found to be consistent with all other policies of the LCP. In particular, the proposed method of effluent disposal shall be required to be consistent with policies requiring the protection of marine resources, riparian habitat and water quality.

7.20 Any proposed sewer system shall be submitted to and approved by the Coastal Commission as an LCP amendment prior to issuance of local permits and construction.

7.21 Any assessment district formed to finance construction of a public sewer system shall be considered a public works project pursuant to PRC Section 30114 and must be found consistent with all applicable policies of the LCP including the ultimate level of growth allowed by the LCP and shall not be effective until and unless the Coastal Commission has approved the proposed system as an LCP amendment.

LIST OF MAPS

Public Access

Parks

Environmentally Sensitive Habitat Areas

Land Use Plan

~~Scenic Resources~~

DRAFT CITY OF MALIBU LAND USE PLAN APPENDIX 1

This Appendix has been deleted from the LUP.

Appendix 1 contained a listing of all policies relating to coastal development permit application requirements that were deleted from the December 2001 Draft LUP to be inserted into the Local Implementation Program. Those policies are now incorporated into the LIP.

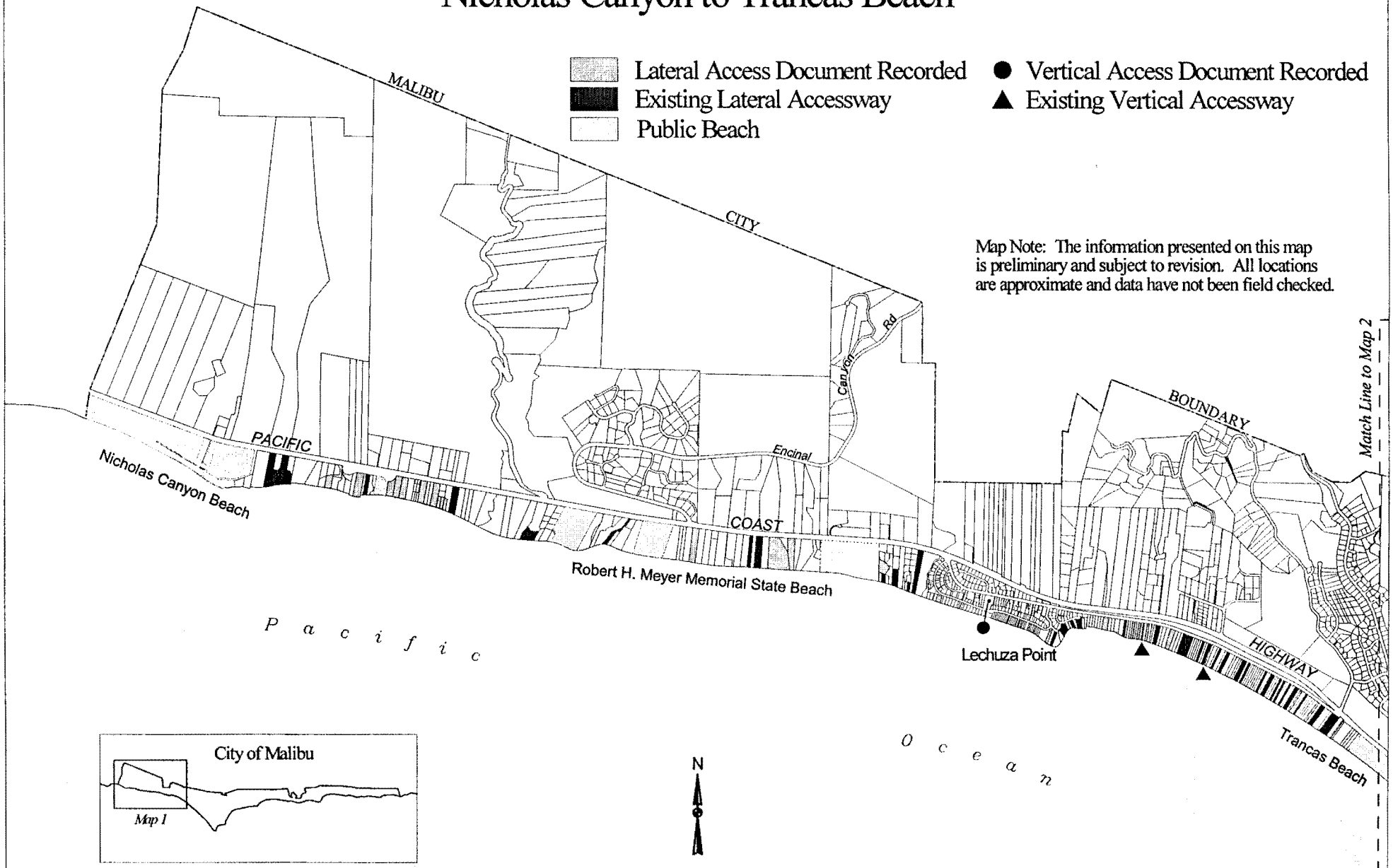
DRAFT CITY OF MALIBU LAND USE PLAN APPENDIX 1~~2~~ LIST OF ACRONYMS

BMP	Best Management Practice
CALTRANS	California Department of Transportation
CCT	California Coastal Trail
CDP	Coastal Development Permit
CEG	Certified Engineering Geologist
ERB	Environmental Review Board
ESHA	Environmentally Sensitive Habitat Area
FAR	Floor to Area Ratio
FEMA	Federal Emergency Management Agency
GE	Geotechnical Engineer
GIS	Geographic Information System
GP	General Plan
LA	Los Angeles
LACMTA	Los Angeles County Metropolitan Transit Authority
LA CO	Los Angeles County
LCP	Local Coastal Plan
LIP	Local Implementation Plan
LUP	Land Use Plan
MHTL	Mean High Tide Line
NPS	National Park Service
OSDS	On Site Disposal System
OTD	Offer to Dedicate
PCH	Pacific Coast Highway
PRC	Public Resources Code
ReCAP	Regional Cumulative Assessment Project
RV	Recreational Vehicle

RWQCB	Regional Water Quality Control Board
SLC	State Lands Commission
SUSMP	Standard Urban Stormwater Mitigation Plan
TDC	Transfer of Development Credit
UCLA	University of California – Los Angeles
USACOE	United States Army Corps of Engineers

Local Coastal Program - City of Malibu

Public Access Map 1: Nicholas Canyon to Trancas Beach



Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

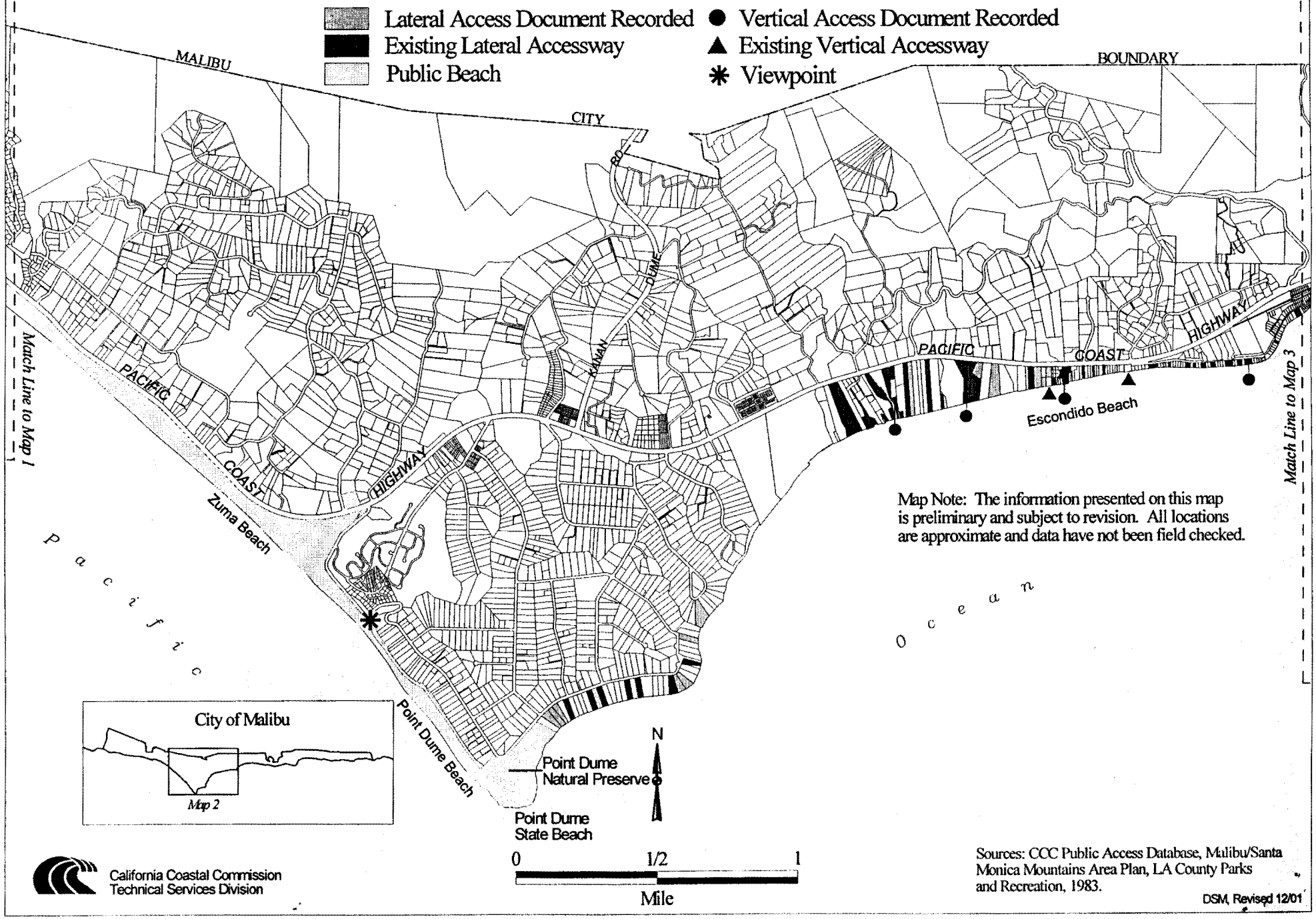
California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

Local Coastal Program - City of Malibu

Public Access Map 2: Zuma Beach to Escondido Beach



California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

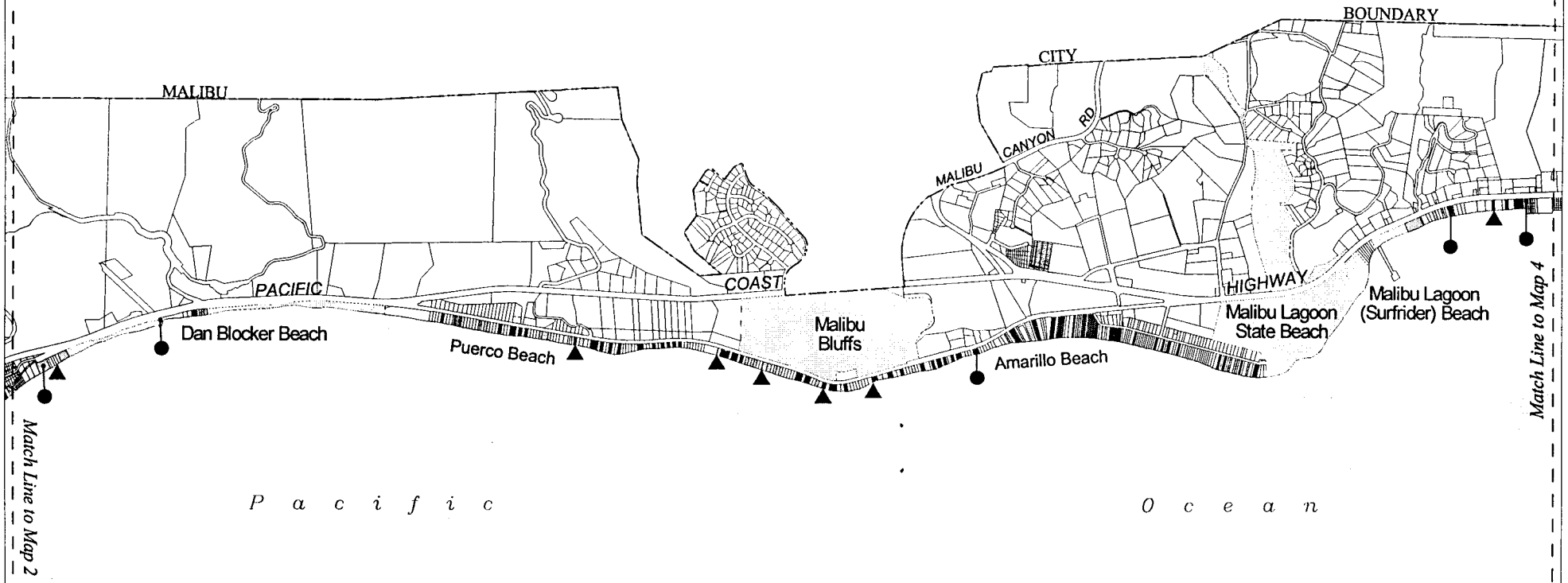
DSM, Revised 12/01

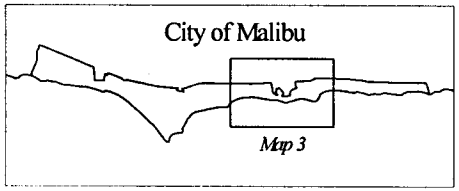
Local Coastal Program - City of Malibu

Public Access Map 3: Dan Blocker to Malibu Pier

Lateral Access Document Recorded
Existing Lateral Accessway
Public Beach
Vertical Access Document Recorded
Existing Vertical Accessway

Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.





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California Coastal Commission
Technical Services Division

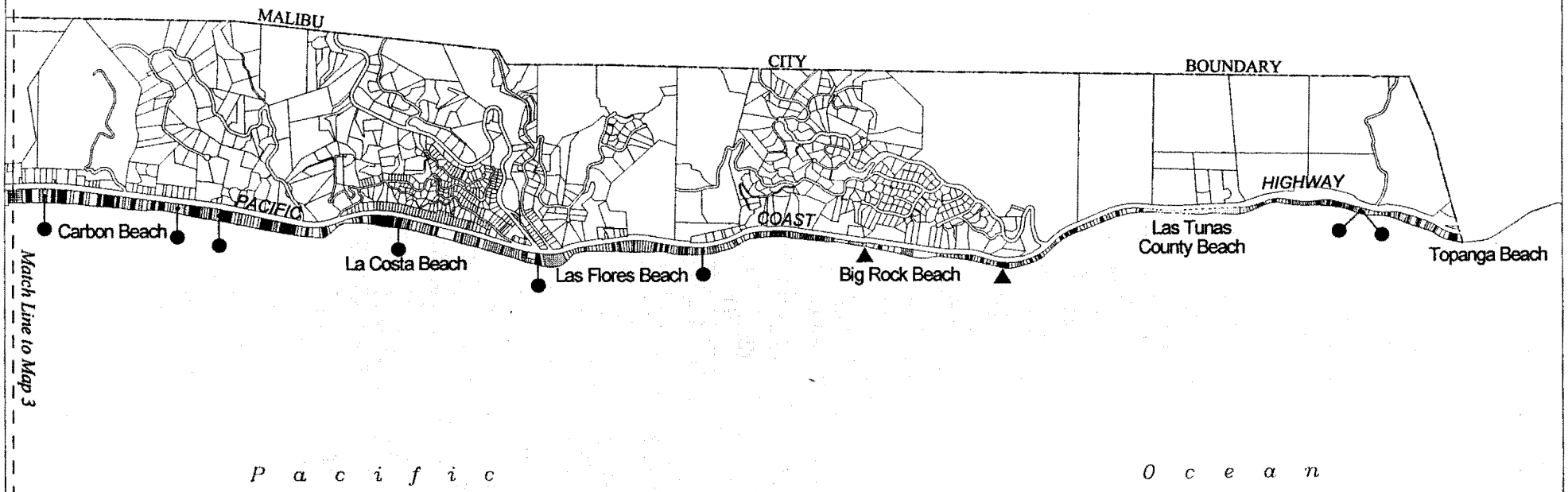
Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

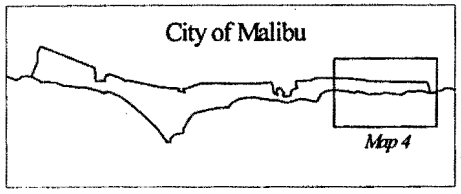
DSM, Revised 12/01

Local Coastal Program - City of Malibu

Public Access Map 4: Carbon Beach to Topanga Beach

Lateral Access Document Recorded
Existing Lateral Accessway
Public Beach
Vertical Access Document Recorded
Existing Vertical Accessway





Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

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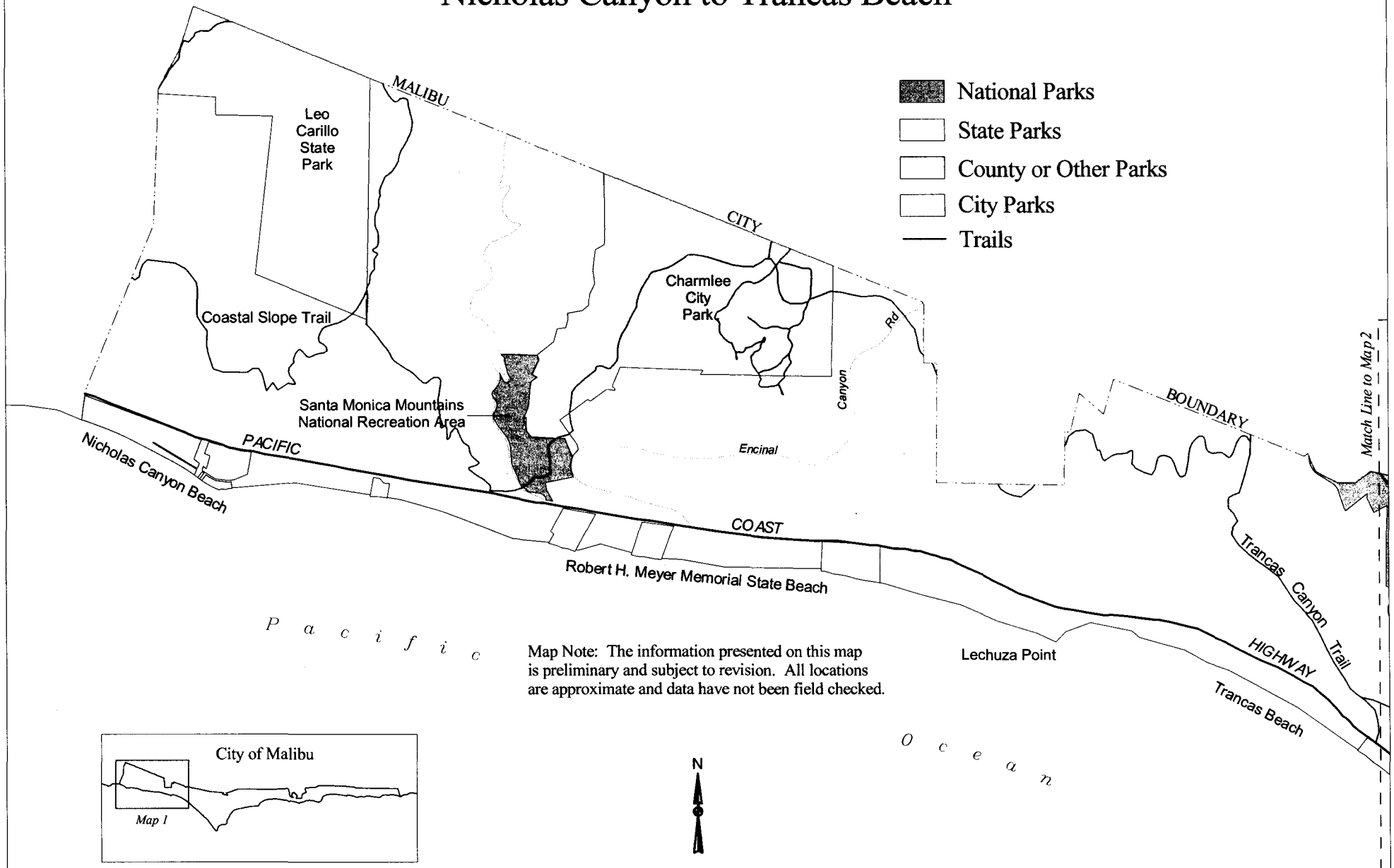
California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

Local Coastal Program - City of Malibu

Park Lands Map 1: Nicholas Canyon to Trancas Beach



Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

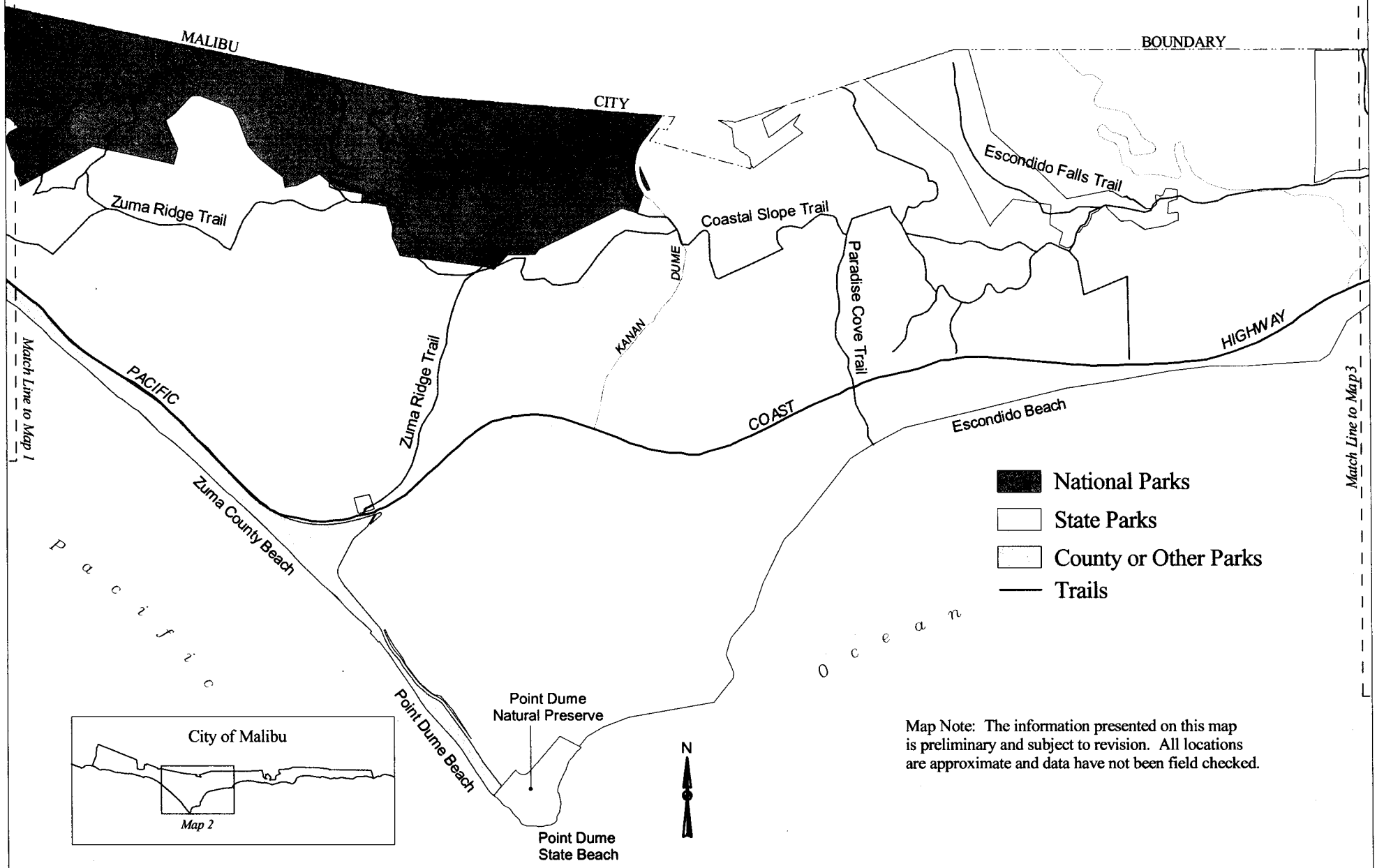
California Coastal Commission
Technical Services Division

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

Local Coastal Program - City of Malibu

Park Lands Map 2: Zuma Beach to Escondido Beach



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California Coastal Commission
Technical Services Division

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

Local Coastal Program - City of Malibu

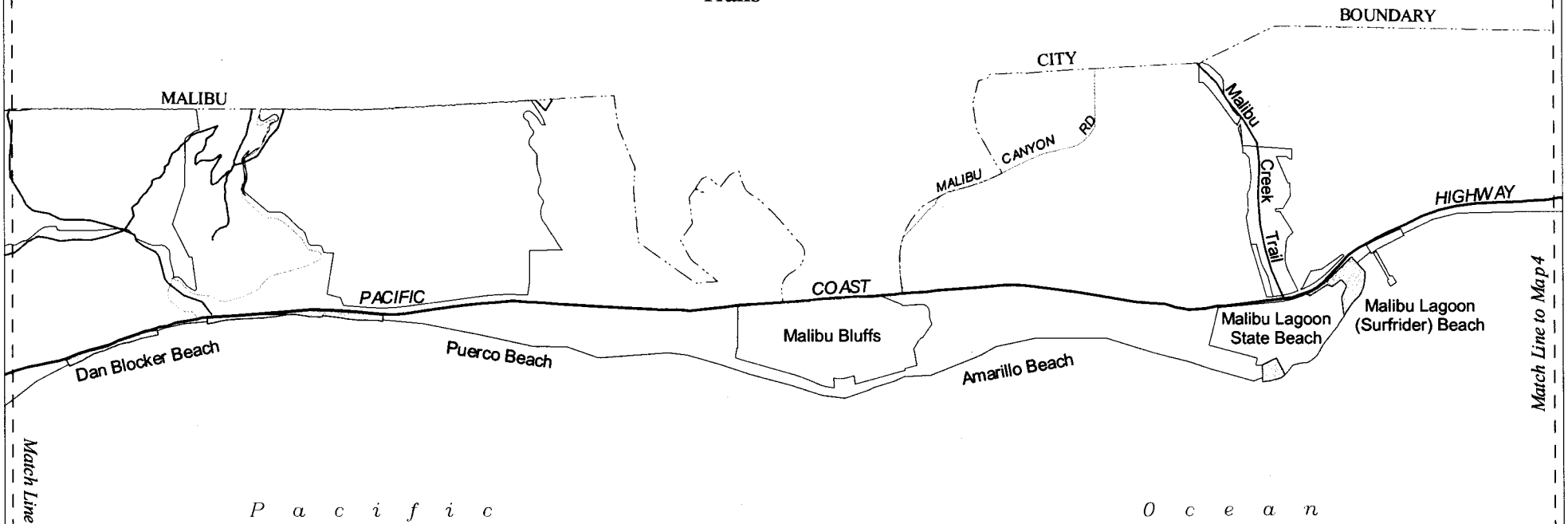
Park Lands Map 3: Dan Blocker to Malibu Pier

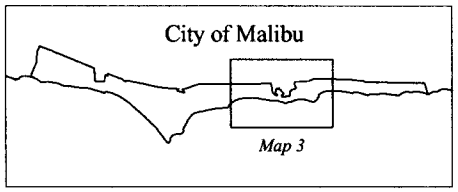
National Parks

State Parks

County or Other Parks

Trails





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California Coastal Commission
Technical Services Division

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

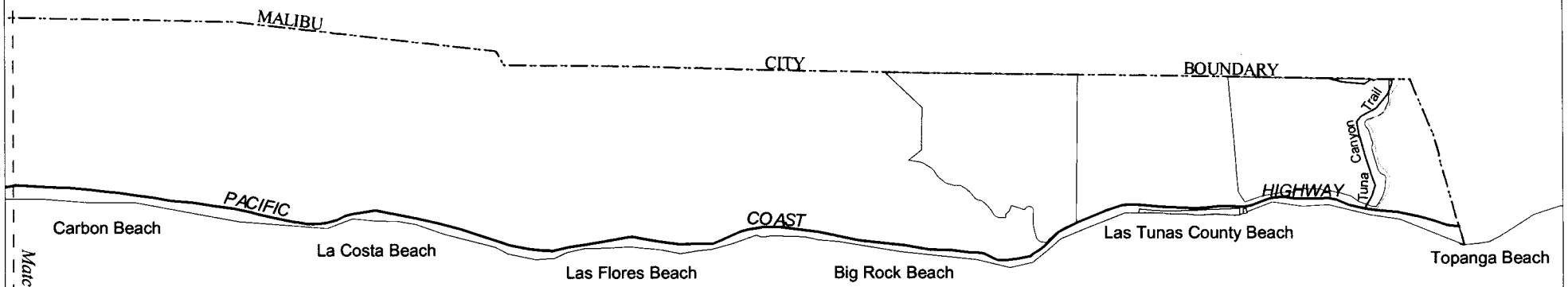
Local Coastal Program - City of Malibu

Park Lands Map 4:
Carbon Beach to Topanga Beach

State Parks

County or Other Parks

Trails



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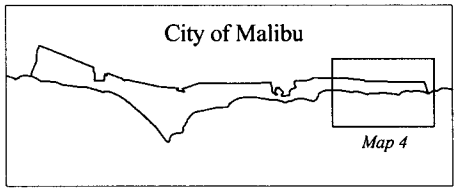

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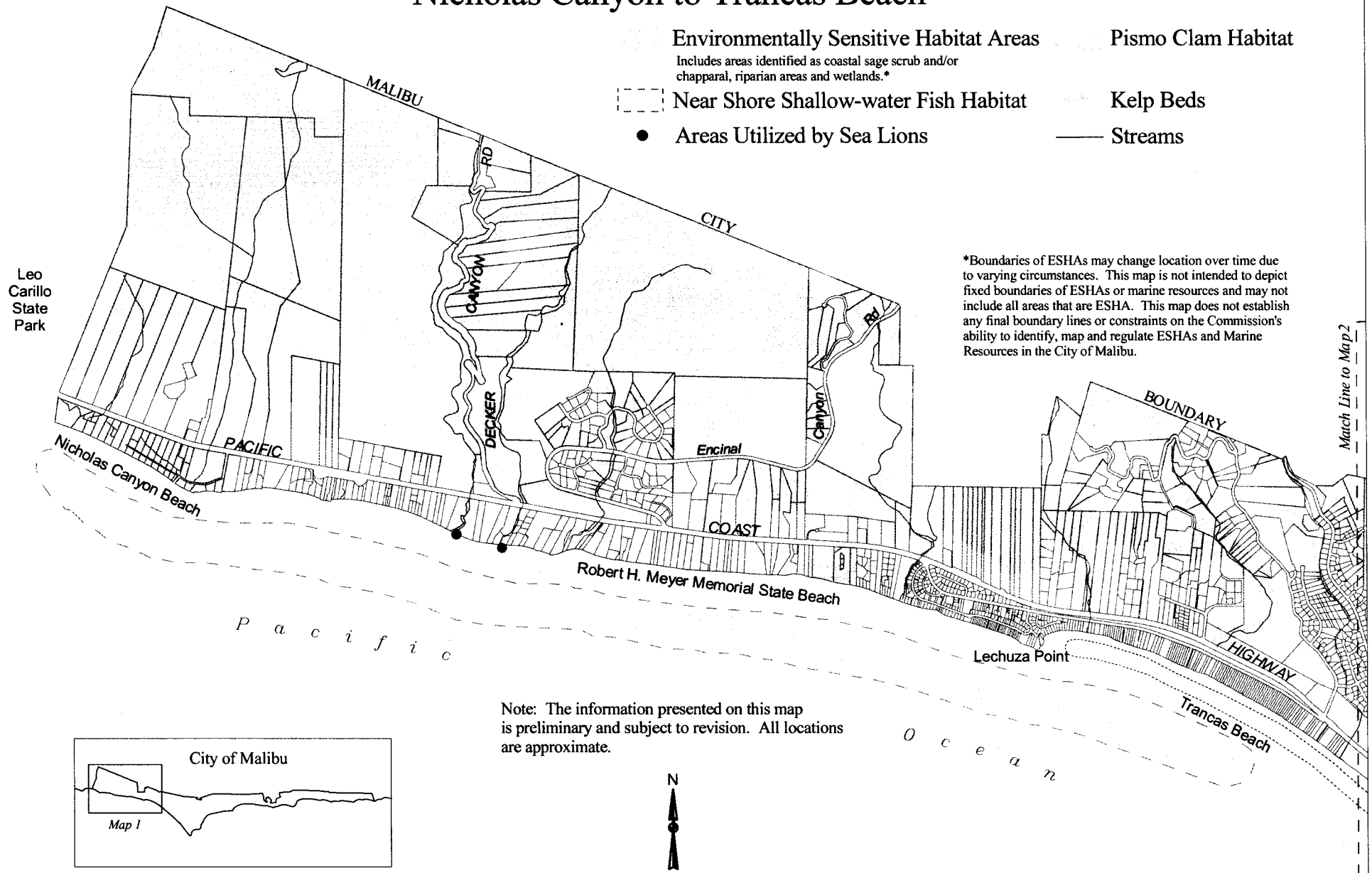
Technical Services Division

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 1: Nicholas Canyon to Trancas Beach



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

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.

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

California Coastal Commission
Technical Services Division

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Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 2: Zuma Beach to Escondido Beach

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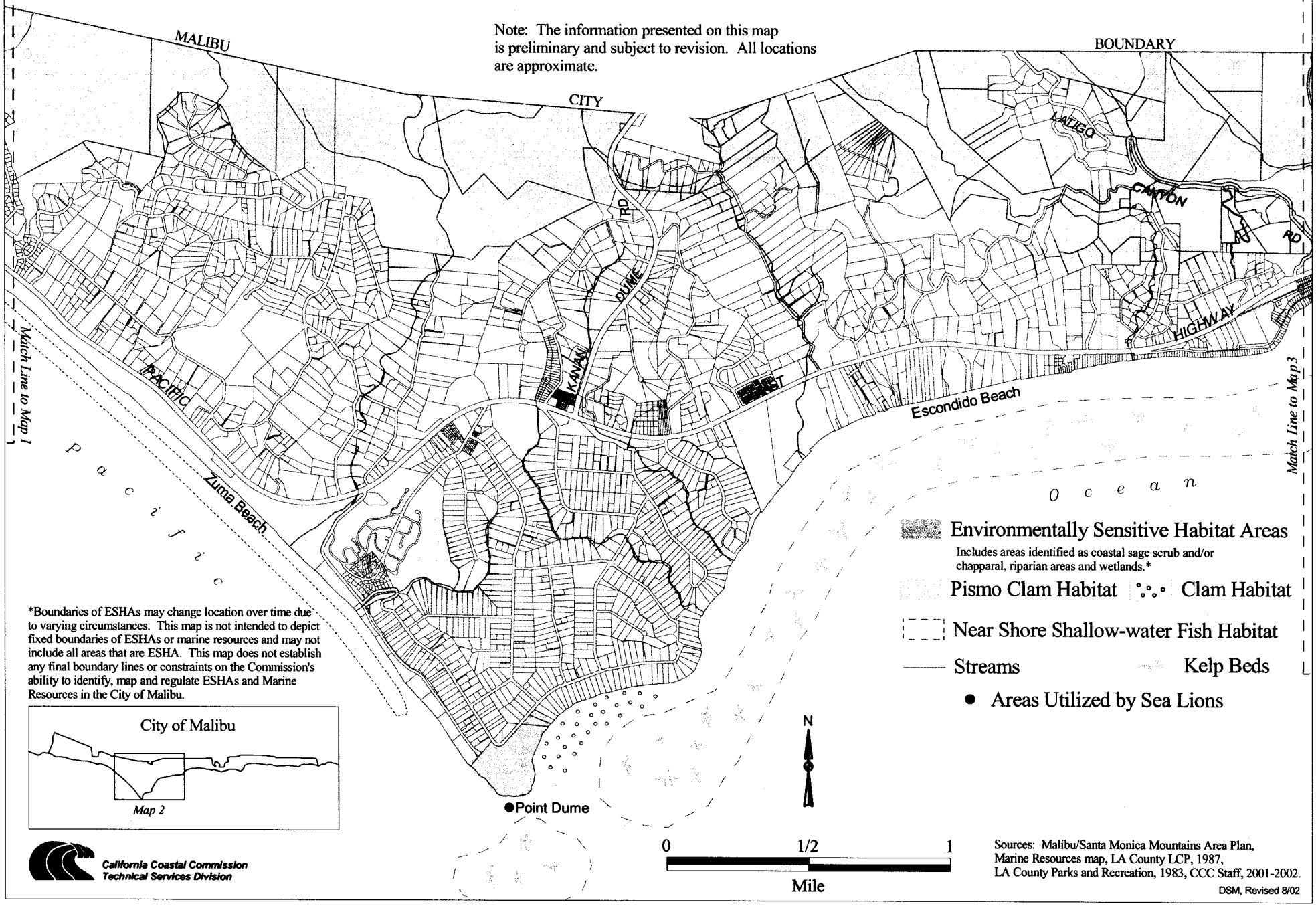

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Technical Services Division

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Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

Environmentally Sensitive Habitat Areas

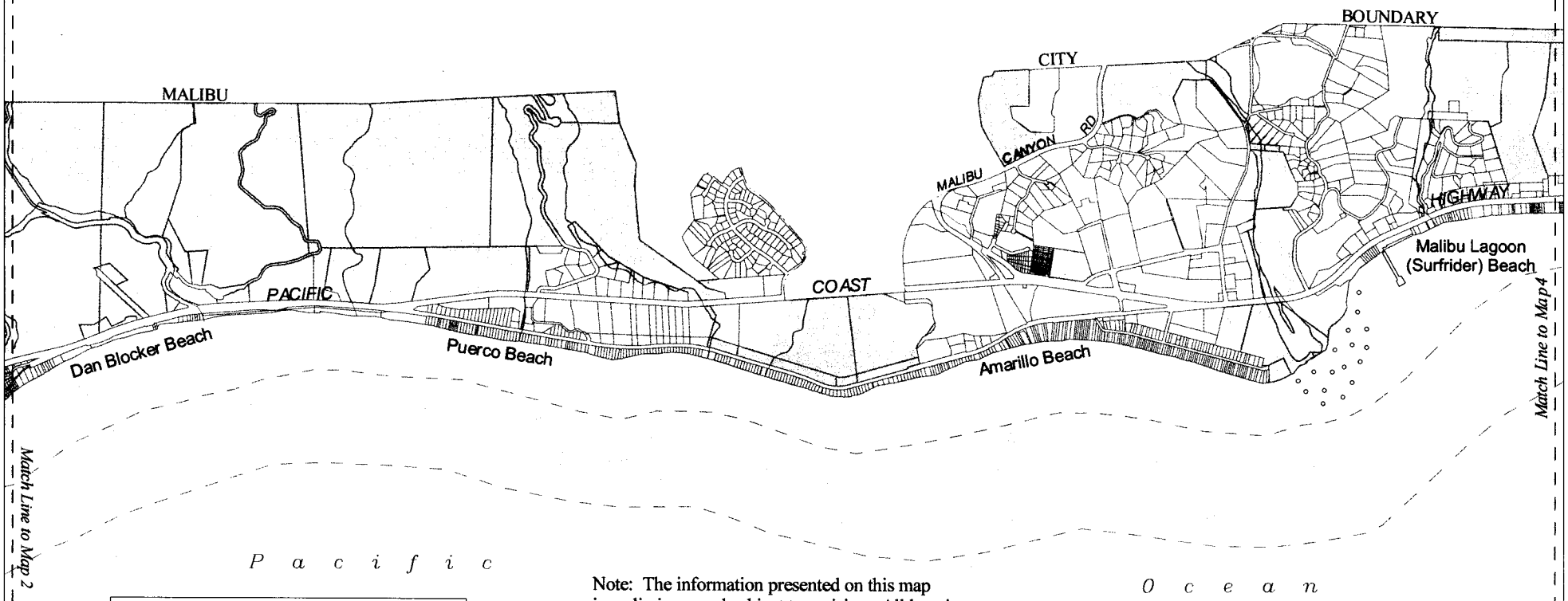
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

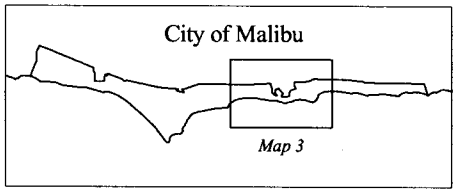
Kelp Beds

Near Shore Shallow-water Fish Habitat

Streams

Clam Habitat





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California Coastal Commission
Technical Services Division

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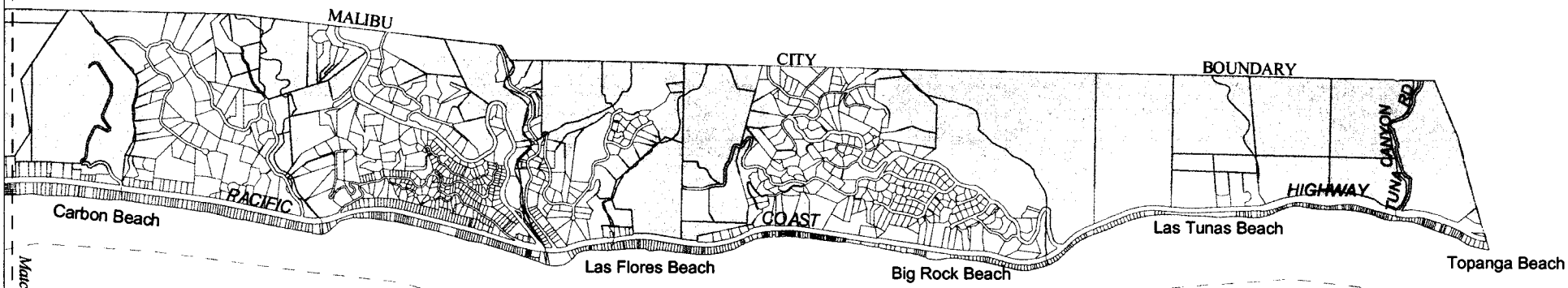
Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 4: Carbon Beach to Topanga Beach

Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

Near Shore Shallow-water Fish Habitat

Streams



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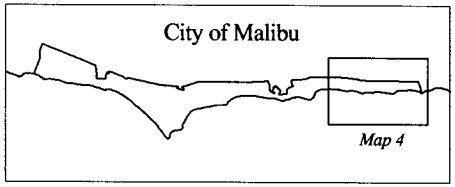

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California Coastal Commission
Technical Services Division

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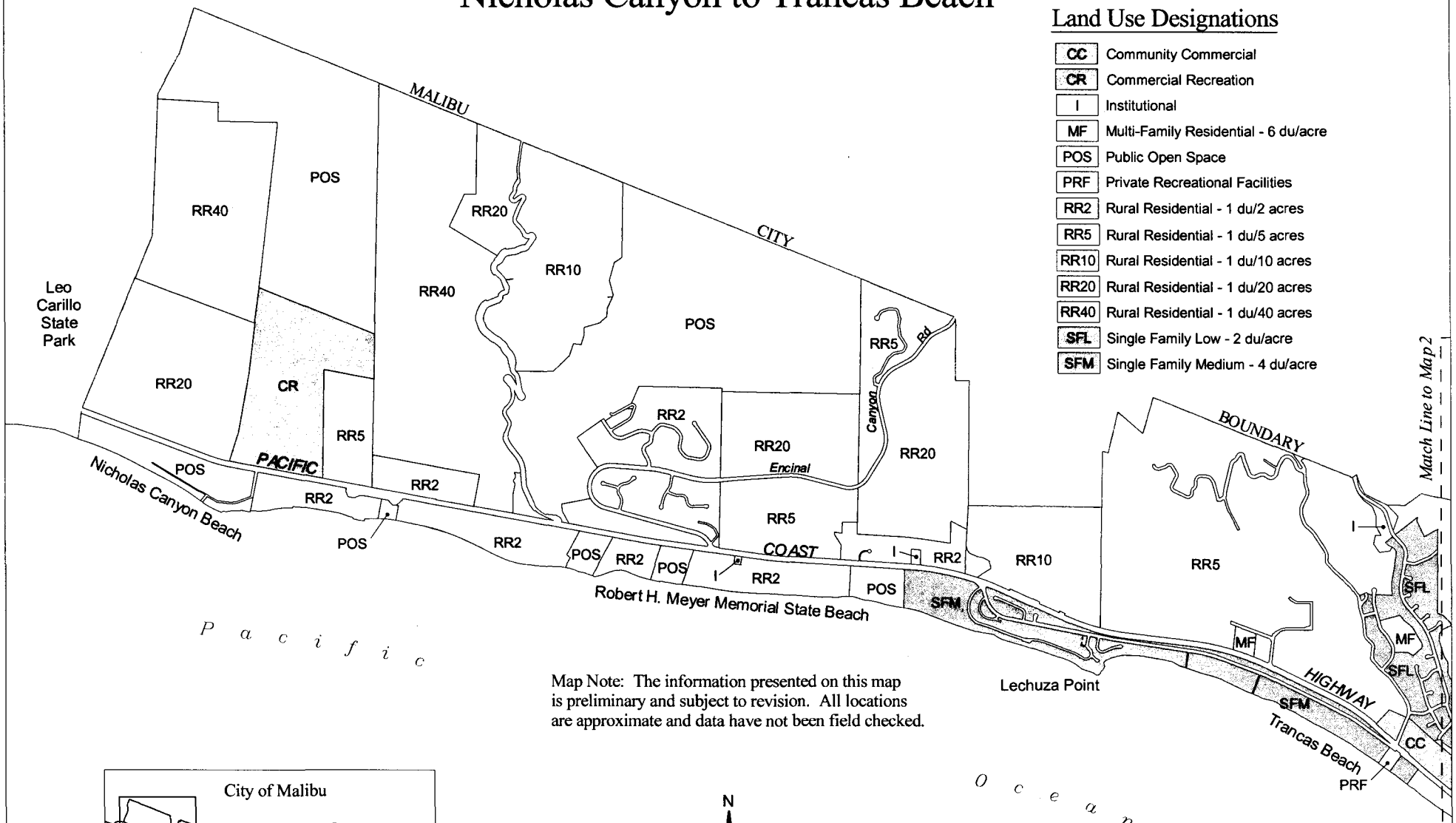
Local Coastal Program - City of Malibu

Land Use Map 1: Nicholas Canyon to Trancas Beach



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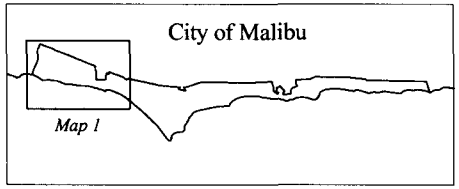

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Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

California Coastal Commission
Technical Services Division

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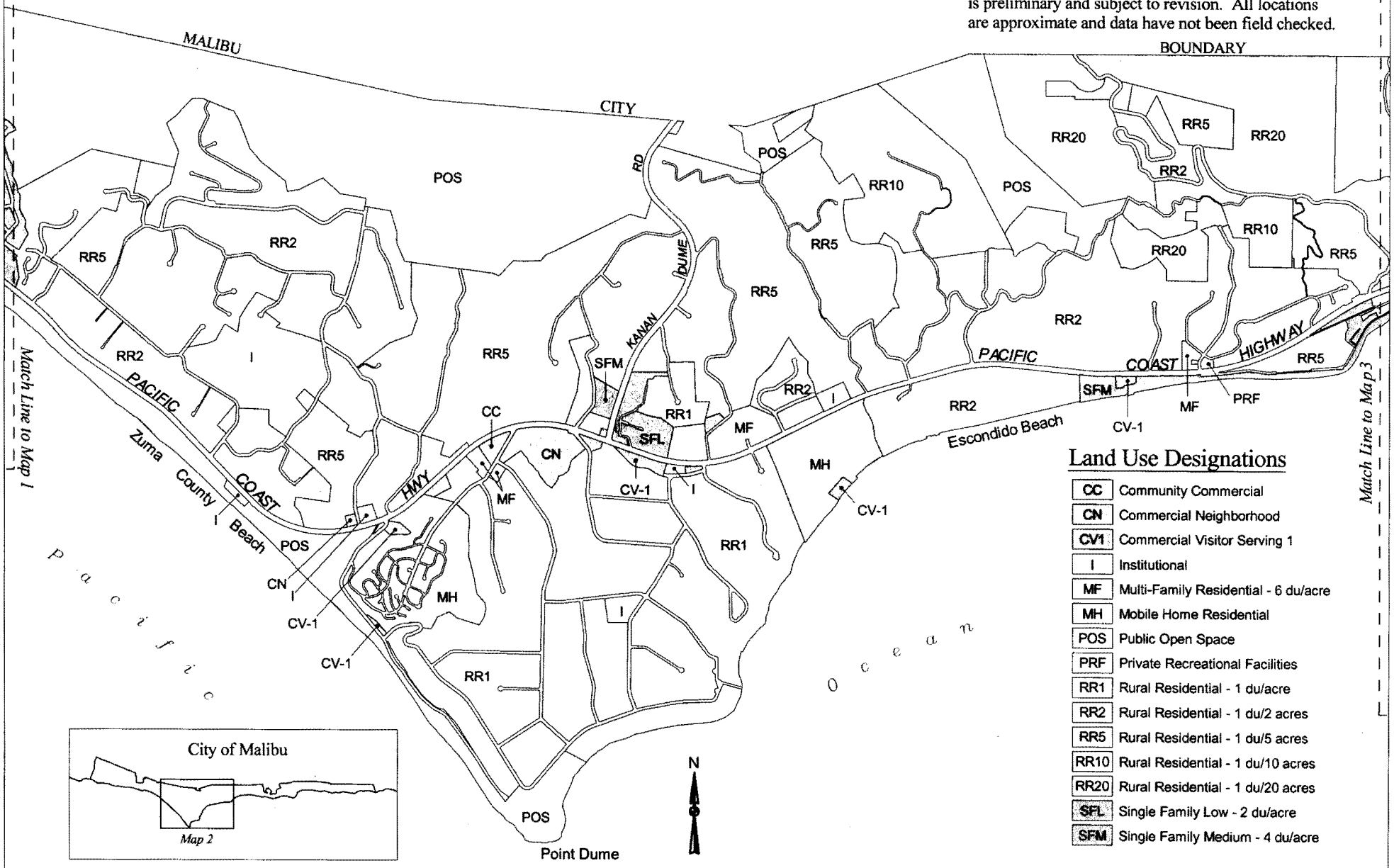
Local Coastal Program - City of Malibu

Land Use Map 2: Zuma Beach to Escondido Beach

Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.



California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

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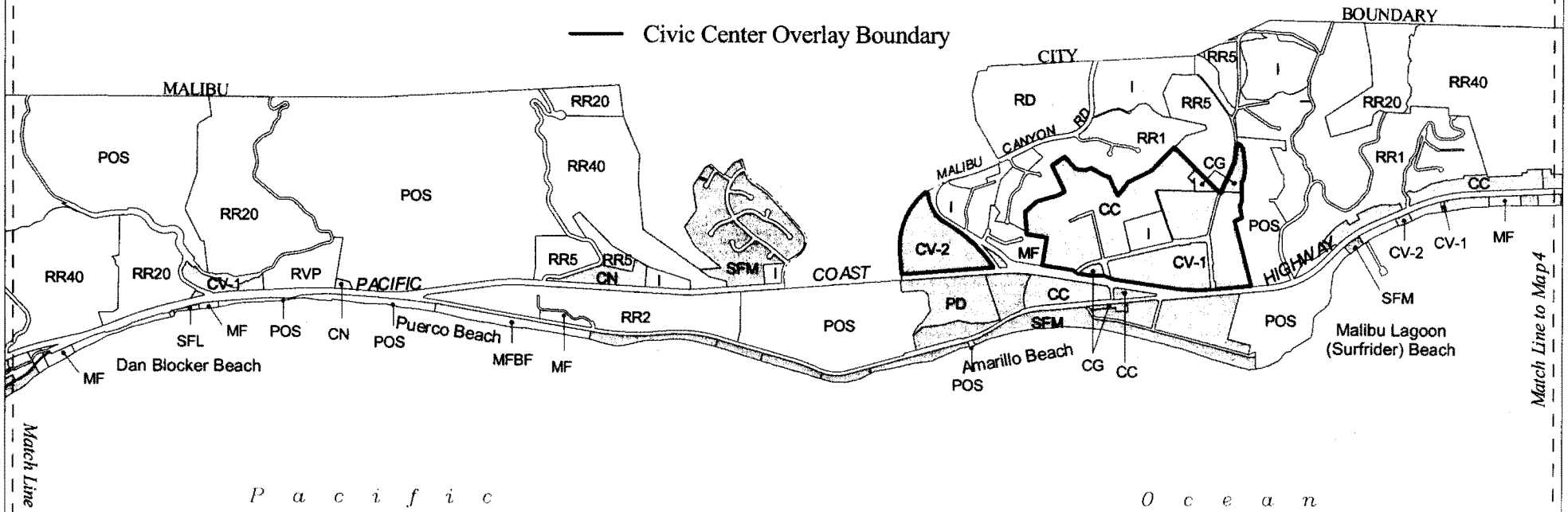
Local Coastal Program - City of Malibu

Land Use Map 3: Dan Blocker to Malibu Pier

Land Use Designations

- CC Community Commercial
- CG Commercial General
- CN Commercial Neighborhood
- CV1 Commercial Visitor Serving 1
- CV2 Commercial Visitor Serving 2
- I Institutional
- PD Planned Development
- MF Multi-Family Residential - 6 du/acre
- MFBF Multi-Family Beach Front
- POS Public Open Space
- RD Industrial/R&D
- RVP Recreational Vehical Park
- RR1 Rural Residential - 1 du/acre
- RR2 Rural Residential - 1 du/2 acres
- RR5 Rural Residential - 1 du/5 acres
- RR20 Rural Residential - 1 du/20 acres
- RR40 Rural Residential - 1 du/40 acres
- SFL Single Family Low - 2 du/acre
- SFM Single Family Medium - 4 du/acre

Civic Center Overlay Boundary



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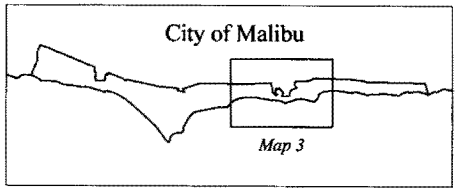

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California Coastal Commission
Technical Services Division

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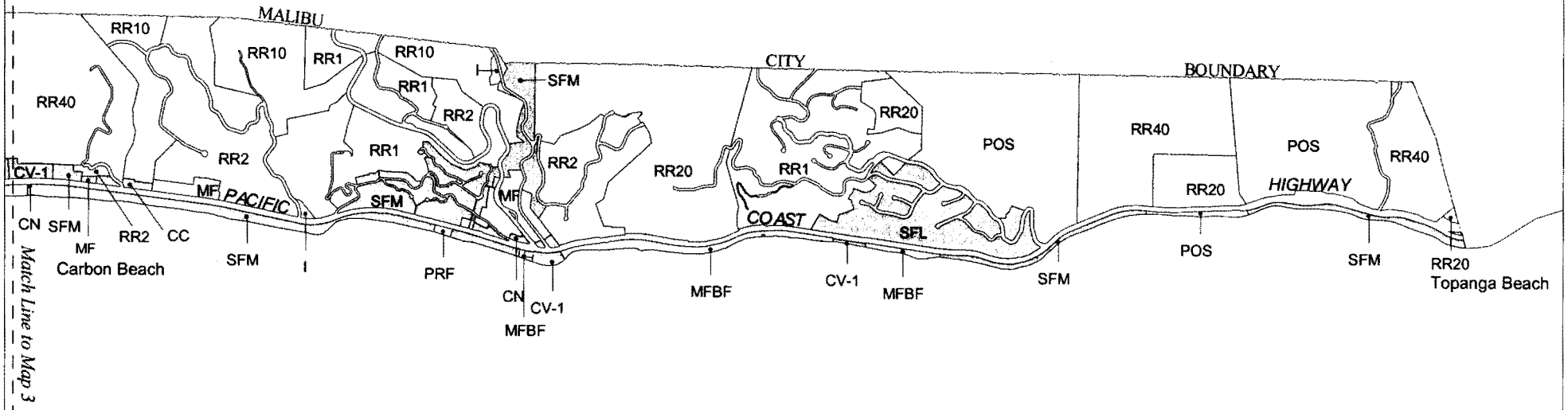
DSM, Revised 8/02

Local Coastal Program - City of Malibu

Land Use Map 4: Carbon Beach to Topanga Beach

Land Use Designations

CC	Community Commercial
CN	Commercial Neighborhood
CV1	Commercial Visitor Serving 1
I	Institutional
MF	Multi-Family Residential - 6 du/acre
MFBF	Multi-Family Beach Front
POS	Public Open Space
PRF	Private Recreational Facilities
RR1	Rural Residential - 1 du/acre
RR2	Rural Residential - 1 du/2 acres
RR5	Rural Residential - 1 du/5 acres
RR10	Rural Residential - 1 du/10 acres
RR20	Rural Residential - 1 du/20 acres
RR40	Rural Residential - 1 du/40 acres
SFL	Single Family Low - 2 du/acre
SFM	Single Family Medium - 4 du/acre



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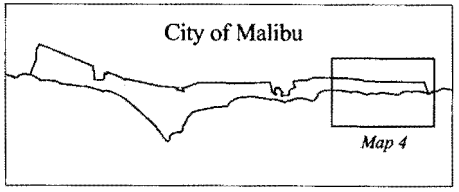

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California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

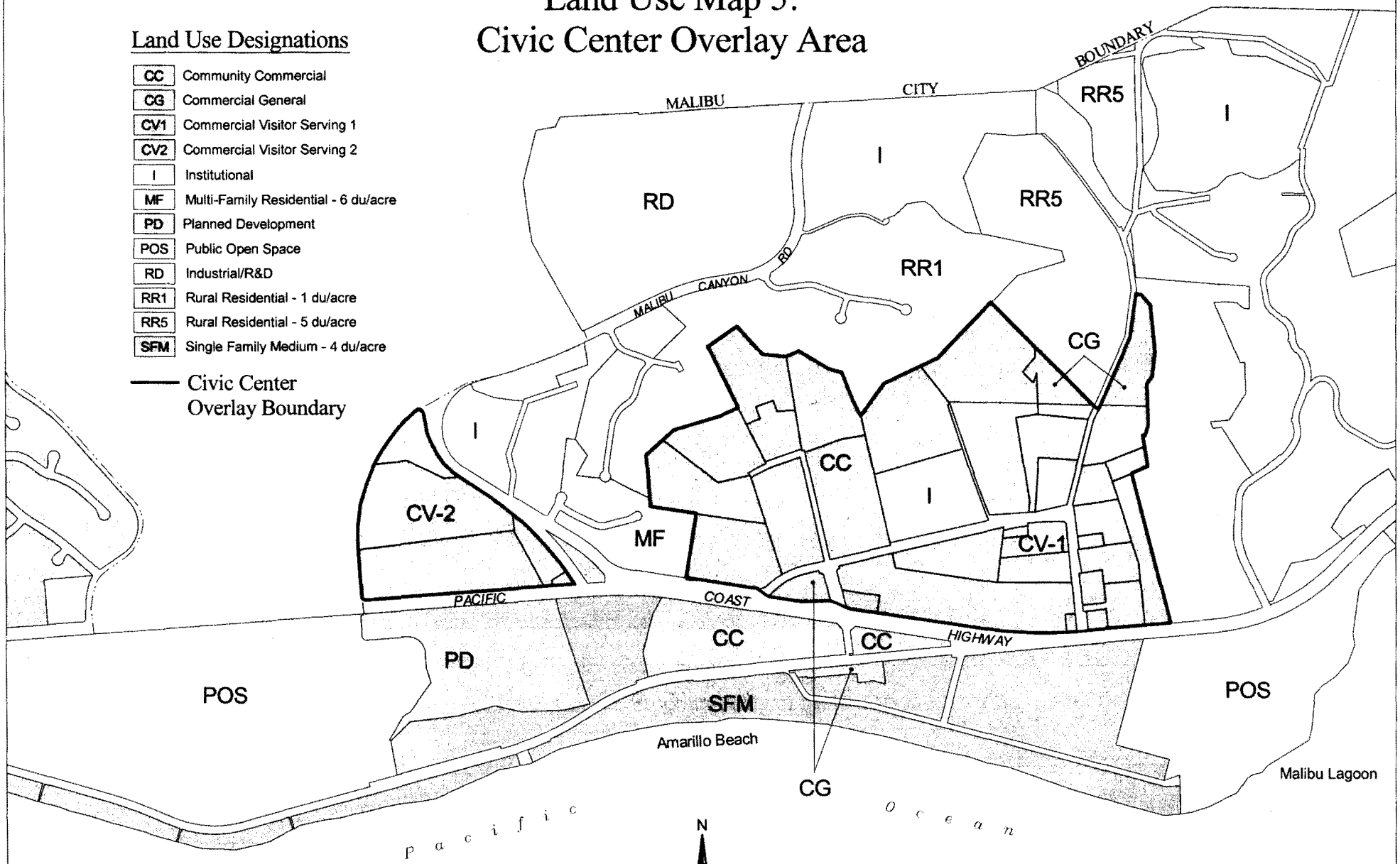
Local Coastal Program - City of Malibu

Land Use Map 5: Civic Center Overlay Area

Land Use Designations

- CC Community Commercial
- CG Commercial General
- CV1 Commercial Visitor Serving 1
- CV2 Commercial Visitor Serving 2
- I Institutional
- MF Multi-Family Residential - 6 du/acre
- PD Planned Development
- POS Public Open Space
- RD Industrial/R&D
- RR1 Rural Residential - 1 du/acre
- RR5 Rural Residential - 5 du/acre
- SFM Single Family Medium - 4 du/acre

Civic Center Overlay Boundary



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California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

FINAL DRAFT
CITY OF MALIBU
LOCAL COASTAL PROGRAM
Local Implementation Plan

Prepared by the Staff of the California Coastal Commission
Pursuant to the Provisions of AB 988 and PRC Section 30166.5

For Public Review and Comment

August 2002

Please Note: This document is annotated to show changes made to the text of the June 2002 Draft LIP. Additions are shown using underline and deletions are shown using ~~strikethrough~~. However, corrections or additions of section or chapter numbers and references to the Malibu LIP have been made to the document without annotation.

This proposed Final DRAFT Local Implementation Plan (LIP) for the City of Malibu was prepared by the staff of the Coastal Commission pursuant to the mandate of AB 988 which added Section 30166.5 to the Coastal Act. This document is being released for public review and comment and will be subject to further refinement and revision in response to input from the City, the public and other interested parties. The Coastal Commission will consider the Final Draft Local Implementation Plan (LIP), and take public comments at its September 12, 2002 hearing at the Westin Hotel-LAX, 5400 West Century Boulevard, Los Angeles. The public, and other interested parties may also submit comments in writing to:

California Coastal Commission
South Central Coast District
89 South California St., Ste. 200
Ventura, CA
Attention: Gary Timm
District Manager

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CHAPTER 1—TITLE, PURPOSE, AND GENERAL PROVISIONS

1.1. TITLE

The regulations contained in this article shall be known as and referred to as the "Local Implementation Plan of the City of Malibu Local Coastal Program".

1.2. PURPOSE

The purpose of this article is to implement the policies of the California Coastal Act of 1976, to carry out the policies of the City of Malibu Land Use Plan, and to:

A. Assure orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of this City and of the State.

B. Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

C. Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

D. Provide a definite plan for development so as to guide the future growth of the City.

E. To protect and enhance the quality of the natural environment.

F. To promote the public health, safety and general welfare

G. To ensure that any development in the coastal zone preserves and enhances coastal resources; and protects coastal views and access; and guides growth, development, and environmental management in a manner consistent with the provisions of the Land Use Plan of the Local Coastal Program.

H. To lessen congestion on the streets and provide for adequate off-street parking.

I. To prevent damage and injury from disasters such as fire, flood, tsunamis, tidal action ocean storms, geologic and seismic hazards and other dangers.

J. To provide adequate light and air, clean ground water, and non-polluting waste disposal.

K. To assure adequate public transportation, utilities, schools, parks, open space, roads and other public facilities and improvements.

L. To protect and preserve the areas, sites and structures of historic, cultural, archaeological and paleontological significance.

1.3. GENERAL PROVISIONS

1.3.1 Conflict with Other Provisions

If there is a conflict between a provision of the Malibu LCP and a provision of the General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

1.3.2 Severability

If any chapter, section, subsection, paragraph, sentence, clause, phrase or other portion of the Malibu Local Implementation Plan is for any reason held to be invalid or unenforceable by a court, such decision shall not affect the validity of the remaining portions of the Local Implementation Plan.

CHAPTER 2—DEFINITIONS

2.1. GENERAL DEFINITIONS

AEROBICS/DANCE STUDIO - a private facility which conducts classes to groups of individuals generally in one room, and does not provide showers, pools, saunas, and other features of a full service health club.

AGGRIEVED PERSON - any person who, in person or through a representative, appeared at a public hearing of the City of Malibu or the California Coastal Commission in connection with the decision or action on a Coastal Development Permit application, or who, by other appropriate means prior to a hearing, informed the City of Malibu or the California Coastal Commission of the nature of his/her concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a Coastal Development Permit.

ALLEY - a public or private right-of-way less than forty (40) feet wide which affords a means of vehicular access to the side or rear of properties abutting a street or highway.

ANCILLARY ROOM - a loft or other room (den, study or library, for example) not used as a bedroom and which:

A. Is substantially open to or overlooks another room (such as a living room, dining room, kitchen or master bedroom);

B. Serves as an extension of that adjoining room;

C. Shall not include a bathroom or any other plumbing, or closets; and

D. Due to its location, layout and/or amenities is not easily usable as an additional bedroom.

APARTMENT UNIT - one or more rooms with private bath and kitchen facilities comprising an independent rental unit.

APPEALABLE COASTAL DEVELOPMENT PERMIT - After certification of the Local Coastal Program an action taken by the City on a Coastal Development Permit application may be appealed to the California Coastal Commission for only the following types of developments:

1. Developments approved by the City between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

2. Developments approved by the City not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

3. Developments approved by the City not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

4. Any development which constitutes a major public works project or a major energy facility as defined in this Chapter. The phrase "major public works" or a "major energy facility" as used in Public Resources Code Sec. 30603(a)(5) and in these regulations shall mean: any proposed public works project or energy facility, as defined by Section 13012 of the Coastal Commission Regulations and the Coastal Act.

ARBOR - a shady garden shelter, typically covered with or formed of vines or other climbing plants.

ARCADE, GAME (PENNY) - any premises where there is maintained five or more games of skill or amusement whereby machines, contests, devices, games, tables, boards or amusements, the operation of which is permitted, controlled, obtained, conducted, allowed, authorized or made possible by the depositing of any coin, plate, disc, slug or key into any slot, crevice or other opening or receptacle, or by the payment of any fee or fees, and where said machine, contest, device, game, table, board or amusement tests, or provides a means for testing, the skill of the operator thereof with reference to its operation or the results thereof.

AREA DENSITY DIAGRAM - see FLOOR AREA RATIO.

AREA, NET - that portion of a lot or parcel of land which is:

1. Not subject to any easement or included as a proposed public or private facility such as an alley, highway or street or other necessary public site within a proposed development project;

2. Subject to an easement where the owner of the underlying fee has the right to use the entire surface except that portion where the owner of the easement may place utility poles or minor utility structures;

3. That portion of a corner lot or corner parcel of land not to exceed five (5%) percent of the net area within a corner cutoff.

Except as above provided, portions of a lot or parcel of land subject to a highway

easement or any other private or public easement shall not be counted as a part of the net area.

ART GALLERY - a retail or wholesale establishment featuring exhibits and sale of art work including but not limited to drawings, paintings, sculptures, ceramics, photographs, and other art media.

ARTIST LOFT/STUDIO - A room or structure in which original works of art are created on site and, if living quarters for the artist are included, the living quarters do not exceed fifty percent (50%) of the square footage of the total studio space.

AUTOMOBILE SERVICE STATION - any premises where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs and carburetors cleaning are conducted. Automobile services stations shall not include premises where heavy automobile maintenance activities such as engine overhauls, automobile painting and body and fender work are conducted.

AWNING - a roof-like cover that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BAR AND COCKTAIL LOUNGE - saloons, bars, cocktail lounges, nightclubs, pubs, discotheques, taverns and similar places used primarily for drinking and designed for social interaction and/or stage show entertainment.

BASEMENT - that portion of a building or structure between floors and ceiling, which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is more than the vertical distance from grade to ceiling.

BED AND BREAKFAST INN - a facility offering transient lodging accommodations to the public and providing kitchen facilities adequate to provide meals to the guests of the facility only and not otherwise open to the public.

BICYCLE PARKING SPACE - any permanently maintained bicycle rack or other similar device which is designed for the secure storage of a standard size bicycle.

BLUFF EDGE - For coastal and canyon bluffs, the bluff edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff, the bluff edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Where a coastal bluff curves landward to become a canyon bluff, the termini of the coastal bluff edge, shall be defined as a point reached by bisecting the angle

formed by a line coinciding with the general trend of the coastal bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the canyon facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

BOOKSTORE - any premises which has a substantial or significant portion of its stock in trade books, magazines, periodicals, pamphlets or newspapers.

BUILDING - any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials or any kind or nature.

BUILDING, ENCLOSED - a structure which is not open to the air for more than forty percent (40%) of its surface.

BULK - is the total interior cubic volume as measured from the exterior surface of the structure.

CALIFORNIA COASTAL ACT OR COASTAL ACT - is the California Coastal Act of 1976, Division 20 of the Public Resources Code, as amended.

CELLAR - that portion of a building between floor and ceiling which is wholly or partly below grade and so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from the grade to ceiling.

CENTERLINE - where reference is made to the 'centerline' of any parkway, major or secondary highway, such centerline is deemed to be the centerline established by the County engineer for any proposed or dedicated public way which, in whole or in part, is included in any such parkway, major or secondary highway. The established centerlines are those shown on a series of maps entitled County Surveyor's Maps or County Surveyor's Field Maps on file in the office of the County engineer, except that where two or more such centerlines are shown on any map in said series of maps, the centerline labeled 'proposed centerline' is deemed to be the centerline of the parkway, major or secondary highway.

CHANGE OF USE - a discontinuance of a use and the substitution of a different use.

CHAPTER THREE POLICIES are those policies of the Coastal Act contained in Chapter Three as amended, commencing with Section 30200, which constitute the standards by which the adequacy of Local Coastal Programs and the permissibility of proposed development subject to the provisions of the Coastal Act are determined.

CITY COUNCIL - refers to the City Council of the City of Malibu.

CLIFF – any high, very steep to perpendicular or overhanging face of rock, a precipice.

CLUB - a group of people organized for a common purpose to pursue common goals, interests or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

COASTAL BLUFF – a high bank or bold headland, 10 feet or more in vertical extent, with a broad, precipitous, sometimes rounded cliff face overlooking a body of water.

COASTAL COMMISSION is the California Coastal Commission.

COASTAL DEPENDENT DEVELOPMENT OR USE - any development or use which requires a site on, or adjacent to, the sea in order to be able to function at all.

COASTAL DEVELOPMENT PERMIT - is a permit for any development or use within the coastal zone that is required pursuant to this Chapter and of subdivision (a) of the Coastal Act Section 30600.

COASTAL RESOURCES - include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

COASTAL ZONE - means the land and water area boundaries established by the State Legislature as defined in Coastal Act Section 30103.

COMMERCIAL PARKING LOT OR BUILDING - a parking area or structure established or operated as a business, providing off street parking for a fee or charge.

COMMISSION - refers to the Planning Commission of the City of Malibu~~, except as provided in Section 9.1.19 of the Malibu Zoning Ordinance~~.

COMMON INTEREST DEVELOPMENT - any residential condominium, residential community apartment house, or residential stock cooperative.

COMMUNICATION EQUIPMENT BUILDING - a building housing operating electrical and mechanical equipment necessary for the conducting of a public utility communications business, with or without personnel.

COMPATIBLE - that which is harmonious with and will not adversely affect surrounding buildings and/or uses.

CONDITIONS OF USE - a development standard determined to be necessary to permit the harmonious introduction of a use in a zone and therefore a prerequisite to place or

maintain such use.

CONDOMINIUM - an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in an apartment building on such real property. A "condominium" may include, in addition, a separate interest in other portions of such real property.

CONDOMINIUM ASSOCIATION - the association which administers and maintains the common property and common elements of a condominium.

CONVENIENCE STORE - any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same and having a gross floor area of less than 5000 square feet.

COUNCIL - refers to the City Council of the City of Malibu.

COUNTY - refers to the County of Los Angeles.

COUNTY ENGINEER - refers to the County Engineer of the County of Los Angeles.

DECK - an open porch or platform which projects more than two (2) feet from the adjacent structure or is freestanding and at least two (2) feet in width.

DEMOLITION - the deliberate removal or destruction of the frame or foundation of any portion of a building or structure for the purpose of preparing the site for new construction or other use.

DEVELOPMENT - on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line and electrical power transmission and distribution line.

DEVELOPMENT AREA – the approved portion of a project site that is developed, including the building pad and all graded slopes, all structures, and parking areas~~, and safety turnarounds~~. The area of one access driveway or roadway not to exceed twenty feet wide, and one hammerhead safety turnaround, as required by the Los Angeles County Fire Department not located within the approved building pad shall be excluded from the total development area. The fuel modification area required by the Los Angeles County Fire Department for approved structures may extend beyond the limits of the approved development area.

DIRECTOR - refers to the Planning Director of the City of Malibu or his/her designated appointee.

DISASTER - means any situation in which the force(s) which destroyed a structure were beyond the control of its owners.

DOMESTIC ANIMAL - an animal which is commonly maintained in residence with humans.

DORMITORY - a building used as group living quarters for a student body in conjunction with a college, university, boarding school, orphanage or other similar institutional use.

DRIPLINE - a vertical line extending from outermost portion of a tree canopy to the ground.

DRY CLEANING ESTABLISHMENT - any premises, equipped to perform the service as defined in the California Business and Professions Code. A 'dry cleaning establishment' may include a dry cleaning agency, a retail or wholesale dry cleaning plant and dry cleaning, self-service or coin operated.

DRY CLEANING PLANT, RETAIL - a plant, the gross sales of which consist of at least fifty-one percent (51%) of direct sales to persons other than licensed dry cleaners.

DRY CLEANING PLANT, WHOLESALE - a plant, the gross sales of which consist of at least fifty-one percent (51%) of sales to licensed dry cleaners.

DWELLING, SINGLE-FAMILY - a building containing one dwelling unit constructed entirely on-site, or a unit constructed and/or assembled off-site, including mobile homes manufactured and certified under the National Mobilehome Construction and Safety Standards Act of 1974 and located on a permanent foundation system approved by the Building Department.

DWELLING UNIT - one or more rooms in a building or portion thereof designed,

intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. 'Dwelling unit' also includes:

A. One or more habitable rooms within a mobile home which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and

B. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a hotel; and

C. Each space or pad designed and allocated to accommodate a mobile home within a mobile home park.

DWELLING UNIT, EFFICIENCY - a dwelling unit consisting of not more than one habitable room together with a kitchen or kitchenette and sanitary facilities.

EASEMENT - a grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

EFFECTIVE DATE OF THE COASTAL ACT - is February 1, 1973 for areas subject to the California Coastal Zone Conservation Act and is January 1, 1977 for those areas identified as the Coastal Zone and subject to the California Coastal Act of 1976.

EFFECTIVE DATE OF THE MALIBU LOCAL IMPLEMENTATION PLAN - is September __ 2002.

EMERGENCY - means a sudden unexpected occurrence demanding, immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.

EMERGENCY COMMUNICATION AND SERVICE FACILITY - A structure whose primary purpose is for communication or communication-related service activity in support of emergency response activities. Such facilities are typically unmanned, and during emergencies are not used as centers for emergency personnel.

ENCROACH - to conduct any development activity within the protected zone of a tree protected under section __ or to intentionally damage any part of a protected tree or its root system, including but not limited to, burning, applying toxic substances, overwatering, operating machinery, paving, changing the natural grade, or excavating.

ENERGY FACILITY - any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal, or other source of energy.

ENVIRONMENTALLY SENSITIVE HABITAT AREA (or ESHA) - is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

EXCLUSIVE USE - means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself.

EXECUTIVE DIRECTOR - is the Executive Director of the California Coastal Commission.

FACADE - the exterior wall of a building exposed to the public view or that wall viewed by persons not within the building.

FAMILY - one or more individuals occupying a dwelling unit and living as a single household.

FEASIBLE – means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

FENCES, WALLS AND HEDGES - artificially constructed barriers of any material or combination of materials erected to enclose or screen an area of land. See also OPEN FENCING.

FILL - any earth or material or substance, including pilings, placed for the purposes of erecting structures thereon, placed in a submerged or upland area.

FIRST PUBLIC ROAD PARALLELING THE SEA or FIRST PUBLIC ROAD - shall mean that road nearest the sea, as defined in this Section, and which meets all of the following criteria:

1. The road is lawfully open and suitable for uninterrupted use by the public;

2. The road is maintained by a public agency;

3. The road contains an improved all-weather surface open to motor vehicle traffic in at least one direction;

4. The road is not subject to any restrictions on use by the public except during an emergency or for military purposes; and

5. The road connects with other public roads providing a continuous access system and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

FLAG, OFFICIAL - an official flag of the United States of America and other nations, states, countries, or municipalities.

FLOOR AREA, GROSS - the sum of the gross horizontal areas of the several floors of a building measured from the interior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, vehicular maneuvering areas, or any space where the floor-to-ceiling height is less than six feet.

FLOOR AREA RATIO - the formula for determining permitted building area as a percentage of lot area; obtained by dividing the above-ground gross floor area of a building or buildings located on a lot or parcel of land by the total area of such lot or parcel of land.

FRONTAGE, BUILDING - the exterior building wall of a ground floor business establishment on the side or sides of the building fronting and/or oriented toward a public street or highway. 'Building Frontage' shall be measured continuously along said building wall for the entire length of the building establishment, including any portion thereof which is other than parallel to the remainder of the wall.

FRONTAGE, PRIMARY COMMERCIAL - the portion of a commercially zoned lot which parallels the block face which contains the greatest amount of commercial zoning.

FRONTAGE, STREET - that portion of a lot or parcel of land which borders a public street. 'Street Frontage' shall be measured along the common lot line separating said lot or parcel of land from the public street, highway or parkway.

GAME ROOM or GAMING AREA - an area designated exclusively for customer participation entertainment providing gaming, pool tables, pinball machines, etc.

GARAGE - a deck, building, structure or part thereof, used or intended to be used for the parking and storage of motor vehicles.

GARAGE SALE - any sale held for the purpose of selling, trading or otherwise disposing of unwanted household furnishings, personal goods or other tangible properties of a resident of the premises on which the sale is conducted in a residential zone.

GARAGE, SEMI-SUBTERRANEAN - a structure used for parking and storage of vehicles located partly underground with the finished floor of the first level of the

structure averaging not more than 50% above the average natural or existing grade of the parcel, except for openings for ingress and egress.

GARAGE, SUBTERRANEAN - a structure used for parking and storage of vehicles which is wholly below grade except for opening for ingress and egress.

GEOTECHNICAL HAZARD – soils or geologic conditions that could adversely affect the safety of the building site in accordance with the current Building Code.

GRADE (ground level) - the natural or finished ground level at all walls of a building, whichever results in a lower building height. In cases where walls are parallel to and within five feet of sidewalks, the above ground level shall be measured at the sidewalks.

GRADING PROJECT, OFF SITE TRANSPORT - any excavation or fill, or combination thereof, necessary and incidental to impending building construction or other lawful development which will require the removal from, or importation to, a lot or parcel of land more than 5,000 cubic yards of dirt, soil, sand, gravel, rock, clay, decomposed granite or other minerals along a transport route having more than ten (10) occupied dwelling units in single or two family residences, apartment houses, mobile homes or any combination thereof, or having a hospital or an accredited public or private school offering instruction required to be taught by the Education Code of the State of California, located within a parallel corridor two hundred (200) feet wide on each side of and measures from the edge of the existing right-of-way for a distance equal to the extent of such route of for a distance of 2640 feet, whichever distance is less. 'Impending building construction or development' shall mean the initiation of such construction or development within one year.

GRADE PROJECT, ON SITE - any excavation or fill, or combination thereof, requiring a grading permit under the provisions of Chapter 1 of Article VIII (Building Code) of this Code which will involve a volume of earth greater than 50,000 cubic yards, whether filed as one permit or the cumulative total of more than one permit on the same lot or parcel of land within a one-year period.

GRAND OPENING - an advertising event which has as its purpose, the promotion of a newly opened use, a change in the orientation of a use or reopening of a use following remodeling or major renovation.

GROUND FLOOR - the first floor of a building other than a cellar or basement.

GUEST HOUSE – attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a

separate dwelling. The maximum living area of a guest house shall not exceed ~~750~~ 900 square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed 400 sq. ft. The square footage of the garage shall not be included in the maximum living area.

HABITABLE FLOOR AREA - see LIVING AREA.

HANDICAPPED ACCESSIBLE UNIT - a building or portion of a building containing one dwelling unit, intended or used for the sole occupancy of not more than two persons at any time, one of whom is physically or mentally disabled.

HEALTH CLUB - means but is not limited to gymnasiums (except public), private clubs (athletic, health or recreational), with full service facilities including but not limited to showers, lockers, pools and saunas.

HEDGES - see FENCES.

HEIGHT, BEACHFRONT LOT – the vertical distance from the lowest recommended finish floor elevation on the ocean side (as defined by a licensed civil engineer, based upon a comprehensive wave action report) and the vertical distance as measured from the centerline of the road on the land side, apportioned such that the height of the portion of the building measured from the centerline of the road is no more than half of the total length (front-to-rear) of the structure.

HEIGHT, NON-BEACHFRONT LOT – the vertical distance between the top of the structure and finished or natural grade, whichever results in a lower building height. (See GRADE)

HELIPORT - any helicopter landing area used, designed or intended to be used for the receiving or discharging of passengers and cargo and shall include any appurtenant facilities for passengers, cargo, or for the servicing, repair, shelter or storage of helicopters.

HELISTOP - any helicopter landing area used, designed or intended to be used for the receiving or discharging of passengers and cargo, but shall not include other appurtenant facilities permitted at a heliport other than a shelter for passengers.

HIGH INTENSITY USE - commercial uses whose activities could adversely impact adjacent residences, schools, or other uses; such as alcohol sales, gasoline stations, automobile and truck repair and parts, 24-hour markets, carry out food establishments, entertainment (nightclubs, concert halls, dance clubs, etc.), video arcades, restaurants and bars, and adult businesses.

HIGH OCCUPANCY FACILITIES - all buildings with assembled occupancies of 100 or

more persons.

HOME OCCUPATION - any activity carried out for gain by a resident conducted as an accessory use in the resident's dwelling unit.

HOSPICE - see RESIDENTIAL CARE FACILITY.

HOSPITAL - any institution, place, building or agency licensed by the Departments of Public Health, or Mental Hygiene of the State of California, which maintains and operates organized facilities for the diagnosis, care and treatment of human illness, including convalescence, and includes sanitarium, sanitorium, convalescent home, nursing home and maternity home.

HOSPITAL, SMALL ANIMAL - any facility providing medical or surgical treatment, clipping, bathing or other services, including incidental boarding to dogs, cats and other animals.

HOTEL - a facility offering transient lodging accommodations to the general public and providing additional services, such as restaurants and meeting rooms.

HOTEL ROOM - a unit or room in a hotel or motel, used for transient purposes and not the principal place of residence of the occupant(s).

HOUSEHOLD - a family living together in a single dwelling unit, with a common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit.

ILLEGAL NONCONFORMING BUILDING OR USE - a building or use that does not conform to one or more of the provisions of the Malibu Zoning Ordinance and did not lawfully exist on the effective date of applicable chapters of the Malibu Zoning Ordinance.

INCIDENTAL USE - a use which is secondary to the primary use of a property and which does not intensify the use.

INFILL LOT, RESIDENTIAL ZONE - lot where at least 80% of the legal lots within a 300 foot radius of the subject lot, but in no event less than 10 lots, are developed with a residential structure. "Infill Development" shall apply to a situation where construction of a single-family dwelling and/or duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beachfront development, this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other

services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protective device.

INTENSIFICATION OF USE - a change of use, degree of use or increase in size (area) of a use.

KENNEL - an establishment in which three or more dogs or domesticated animals more than four months old are housed, groomed, bred, boarded, trained, or sold.

KITCHEN - a room or space within a building intended to be used for the cooking and preparation of food.

LAND DIVISION - includes subdivisions (through parcel map or tract map), lot line adjustments, redivisions, mergers and certificates of compliance except as provided in LUP Policy 5.40).

LIFE OF THE PROJECT - shall be 100 years.

LIMITED DURATION - a period of time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis;

LIMITED EQUITY COOPERATIVE - a corporation organized pursuant to the California Health and Safety Code and the California Business and Professionals Code.

LIVING AREA - the interior habitable area of a dwelling unit, including basements and attics but does not include a garage or accessory structures.

LOFT - see MEZZANINE.

LOT - a designated parcel, tract or area of land consisting of a contiguous quantity of land in one ownership established by plot, subdivision, or as otherwise permitted by law.

LOT AREA - the total area within the lot lines of a lot, excluding any street rights of way.

LOT, CORNER - a lot or parcel of land situated at the intersection of to or more parkways, highways or streets, which parkways, highways or streets have an angle or intersection measured within said lot or parcel of land of not more than 135 degrees.

LOT, FLAG - a lot or parcel of land taking access by a strip, owner of which lot or parcel of land has fee-simple title to said strip extending from the main portion of the lot or parcel of land to the adjoining parkway, highway or street.

LOT, INTERIOR - a lot or parcel of land other than a corner or flag lot.

LOT, KEY - an interior lot adjoining the rear lot line of a reversed corner lot.

LOT LINE - a boundary line of a lot or a parcel of land.

LOT LINE, FRONT - a line separating the front yard from the parkway, highway or street upon which the yard fronts; or, in the case of a flag lot where the front yard is oriented toward an adjoining lot, the line separating such front yard from said adjoining lot.

LOT LINE, REAR - a lot line which is opposite and most distant from the front lot line. For a triangular or gore-shaped lot the rear lot line shall mean a line ten (10) feet in length within the lot which is parallel to the front lot line, or parallel to the chord of a curved front lot line, and at the maximum distance from the front lot line.

LOT LINE, SIDE - any lot boundary line which is not a front lot line, or a rear lot line.

LOT, REVERSED CORNER - a corner lot, the parkway, highway or street side of which is substantially a continuation of the front lot line of a lot or parcel of land which adjoins the rear lot line of said lot.

LOT, THROUGH - a lot having frontage on two parallel or approximately parallel parkways, highways and/or streets.

MAJOR PUBLIC WORKS AND MAJOR ENERGY FACILITIES - facilities that cost more than one hundred thousand dollars ($100,000) with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of Public Resources Code Sections 30610, 30610.5, 30611 or 30624. Notwithstanding the criteria above, "major public works" also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

MANUFACTURING - manufacturing activities include apparel and other garment products, furniture and fixtures, printing both commercial and industrial, leather products, pottery, glass blowing and the measuring, analyzing, and controlling instruments, photographic, medical and optical goods and the like.

MEZZANINE - an intermediate level without walls or partitions, placed in any story or room and open to the space below. When the total of any such mezzanine floor exceeds 33-1/3% of the total floor area in that room, it shall constitute an additional story. The clear height above or below a mezzanine floor shall not be less than seven (7) feet. No

more than one continuous mezzanine may be permitted in any one room. A loft shall be considered a mezzanine.

MOBILE HOME PARK means any area or tract of land where one or more mobile home spaces are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation.

MOBILE HOME SPACE means any area designated, designed or used for the occupancy of one mobile home on a temporary, semi-permanent or permanent basis.

MOTEL - A facility offering transient lodging accommodations to the public in a group of attached or detached buildings containing guest rooms, some or all of which have a separate entrance leading directly from the outside of the building to automobile parking space conveniently located on the lot or parcel of land, does not provide accessory uses such as restaurants or meeting rooms, and not otherwise open to the public.

MOTOR VEHICLE REPAIR FACILITIES - the use of any building, premises or land in which or upon which the maintenance, servicing, repair, or painting of vehicles is conducted or rendered.

MOTOR VEHICLE SALES FACILITIES - the use of any building, premises or land for the display and sale and/or lease of new or used automobiles, light trucks, vans, trailers, or recreational vehicles and including any warranty repair work and other repair service conducted as an accessory use.

MOTOR VEHICLE WASHING FACILITY - any building or premise or portion thereof used for washing motor vehicles.

MULTI-FAMILY RESIDENCE - a building or portion thereof used for occupancy by two or more families living independently of each other and containing three or more dwelling units.

NARROW RESIDENTIAL LOT - any residentially zoned lot with a width of forty feet (40') or less.

NEIGHBORHOOD-SERVING CONSTRUCTION SERVICES - Construction service companies including, but not limited to, paving, electrical, painting and plumbing contractors which provide construction support services primarily to local residents and business owners. Ancillary uses of such businesses may include outdoor storage and maintenance of equipment and materials used in the course of normal business operations.

NIGHTCLUBS - any bar, cocktail lounge, discotheque, restaurant, or similar activity which includes alcoholic beverage service, dancing and/or entertainment, whether such activity is the principal business use or incidental to a primary use.

NON-PERMANENT STRUCTURES - include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, movie/film sets, etc., which do not involve grading or landform alteration for installation

NURSERY SCHOOL - a school of pre-elementary school age children which provides controlled activities and/or instruction.

NURSING HOME - a facility licensed to provide full-time convalescent or chronic illness or infirmity, are unable to care for themselves.

ON-SITE - any activity or item that is located on the lot which is the subject of discussion.

OPEN FENCING - a barrier constructed of material which is transparent, such as glass or plastic panels, or wrought iron or other solid material which is 90 percent open to light and air. See also OPEN/PERMEABLE, NON-VIEW OBSCURING.

OPEN/PERMEABLE, NON-VIEW OBSCURING - fencing constructed of material which is transparent, such as glass or plastic panels, or wrought iron or other solid material which is 90 percent open to light and air.

OUTDOOR DINING – that portion of any restaurant or other eating establishment where seating is provided and food and/or beverages are served, on public or private property, where there is not a roof and walls on all sides of the seating area.

OUTDOOR STORAGE - the keeping in an unroofed area, of any goods, junk, material, merchandise or vehicles in the same place for more than twenty-four (24) hours.

PASSIVE RECREATIONAL USE – any activity normally associated with beach use including, but not limited to, walking, jogging, swimming, sunbathing, picnicking, fishing, and surfing. This does not include use of the beach for organized sports activities, temporary events, or vehicular access, except for emergency or maintenance purposes.

PERMIT - any license, certificate, approval, or other entitlement for use granted or denied by any public agency which is subject to the provisions of this division.

PERMITTED USE - any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

PERSON - any individual, firm, copartnership, partnership of any kind, joint venture, association, social club, fraternal organization, domestic or foreign corporation, estate, trust, business trust, receiver, syndicate, joint stock company, this and any other county,

city and county, municipality, district or other political subdivision, or any other group or combination thereof.

PERSONAL SERVICES - a business which provides a service, such as a beauty salon, a barber shop, hair, nail, massage services and tanning salons.

PHILANTHROPIC, CHARITABLE OR EDUCATIONAL NON-PROFIT ACTIVITY - any activity of a non-commercial, non-political, and non-profit making nature.

PLANNING COMMISSION - refers to the Planning Commission of the City of Malibu~~, except as provided by Section 9.1.19 of the Malibu Zoning Ordinance~~.

PLANNING VERIFICATION - a ministerial verification by the Building or Planning Departments to determine for purposes of reconstruction the physical specifications of a structure destroyed or damaged by fire, earthquake, act of war or other calamity.

PRIMARY BUILDING - the main building or structure in which the principal use of the lot on which it is situated is conducted, as distinguished from a secondary or accessory building or structure.

PRIMARY USE - a principal or dominant use established, or proposed to be established, on a lot or parcel of land, as distinguished from a secondary or accessory use.

PROCESSING - a series of operations, usually in a continuous and regular action or succession of actions, taking place or carried on in a definite manner.

PROFESSIONAL OFFICE - the office of a member of a recognized profession maintained for the conduct of that profession.

PROPERTY LINE - the recorded boundary of a parcel of land.

PROTECTED ZONE of a tree protected under Section 5.2 of the Malibu LIP shall mean that area within the dripline of the tree and extending at least five feet beyond the dripline, or 15 feet from the trunk of the tree, whichever is greater.

PUBLIC TRUST LANDS - all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include: tidelands, submerged lands, beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

PUBLIC UTILITY SERVICE CENTER - any buildings or premises used for the administration of public utility repair, maintenance and installation crews, including parking for vehicles not to exceed two tons rated capacity, but not including warehouses

or storage yards.

PUBLIC UTILITY SERVICE YARD - any building or premises used for the office, warehouse, storage yard or maintenance garage of a public utility, including microwave repeater stations when incorporated as a part of the service yard use.

PUBLIC VIEWING AREA – a location along existing scenic public roads and trails or within public parklands or beaches where there are scenic views of the beach and ocean, coastline, mountains, ridgelines, canyons and other unique natural features or areas.

PUBLIC WORKS - includes the following:

1. All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

2. All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities.

3. All publicly financed recreational facilities, all projects of the State Coastal Conservancy, and any development by a special district.

4. All community college facilities.

RECREATION CLUB, COMMERCIAL - a commercial enterprise offering the use of indoor or outdoor recreational facilities to the public.

RECREATION CLUB, PRIVATE - an association of persons who are bona fide members, paying regular dues, and organized to provide indoor or outdoor recreational facilities for members and their guests, but not including an association organized primarily to render a service customarily carried on as a commercial enterprise.

RECREATION FACILITIES, NEIGHBORHOOD – indoor and outdoor recreation facilities established by an association of persons who are bona fide members and operate as a nonprofit corporation to provide outdoor recreation facilities for residents in the immediate vicinity and their guests. Such facilities may include a clubhouse, changing rooms and similar subordinate facilities in conjunction with the outdoor recreation activity, but shall not include a restaurant or bar.

RELIGIOUS FACILITIES - churches, temples, or other places used exclusively for religious worship, including customary incidental educational, residential and social activities in conjunction therewith.

REMEDIAL GRADING – grading recommended by a geotechnical consultant that is necessary to mitigate a geotechnical hazard on a site (including access drives), such as 1) repair of a landslide, 2) over-excavation of a building site to remediate expansive or compressible soils, and/or 3) altering a building pad to improve site stability (usually by removing materials and lowering finish grade).

REMODEL - the upgrade of the interior or exterior faces of a building or structure without altering the existing foundation, footprint or building envelope. Remodeling may include the replacement of exterior walls within the limitations described herein and according to the requirements of the Building Code provided that such remodeling can meet the standards for zone clearance or plot plan review.

RESEARCH AND EDUCATION – when used as a permitted use, refers to scientific, teaching, and learning activities consistent with preservation of the resources subject to the research and educational purpose.

RESIDENTIAL CARE FACILITY - any family home or group care facility for care of persons in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual, excluding jails and other detention facilities.

RESIDENTIAL CARE FACILITY FOR THE ELDERLY - a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as provided in California Health and Safety Code Section 1569.2, as the same may be amended from time to time.

RESIDENTIAL COMMUNITY APARTMENT HOUSE - a residential complex in which an undivided interest in the land either in fee simple or a term of years, is coupled with the right of exclusive occupancy in an apartment located therein.

RESIDENTIAL CONDOMINIUM - an estate in real property consisting of an undivided interest in common in a parcel of real property together with a separate interest in space in a residential complex located on such real property. A residential condominium may include, in addition, a separate interest in other portions of such real property. Such estate may, with respect to the duration of its enjoyment, be either (i) an estate of inheritance or perpetual estate, (ii) an estate for life, or (iii) an estate for years, such as a leasehold or a subleasehold.

RESIDENTIAL STOCK COOPERATIVE - a residential complex which is owned, or is to be owned, by a corporation ("cooperative housing corporation") which is formed or availed of primarily for the purpose of holding title to, either in fee simply or for a term of years, improved real property, if all or substantially all of the shareholders of such

corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is transferable only concurrently with the transfer of the share of shares of stock or memberships in the corporation held by the person having such right of occupancy.

RESTAURANT - any building, room, space or portion thereof where food is prepared and sold for consumption primarily to persons seated within the building. A restaurant does not include incidental food service.

RESTAURANT, CARRY OUT - any restaurant with prepared food or quickly cooked food for consumption on-site at provided seats and tables or for take out. Such restaurants are characterized generally by a limited menu, disposable wrapping for food and rapid turnover in customers.

RIDGELINE, PRIMARY - a hill, ridge or promontory which drops on either side of the top of this landform feature, and includes at least one of the following conditions: 1) forms a distinct part of the skyline when viewed from a public street or highway; or, 2) is seen as a distinct and prominent edge against a backdrop of land at least 500 feet behind it when viewed from a public street and contains an average slope of at least 3:1.

RIDGELINE, SECONDARY - a hill, ridge, or promontory other than a primary ridgeline, but on which the elevation drops more than 10 feet in 100 feet horizontally on either side of the top of this landform feature.

ROOM - an enclosed area which is designed, used or intended to be used as sleeping accommodations for any person(s), and which does not contain a bar sink and/or gas/electrical or water outlets designed, used or intended to be used for cooking facilities except as otherwise specifically provided by the Malibu Zoning Ordinance.

ROOM, GUEST - one which is designed, used or intended to be used as a temporary sleeping accommodations for any person, and which does not contain a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except as otherwise specifically provided by the Malibu Zoning Ordinance.

SANDY BEACH AREA - includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest.

SCENIC AREA - places on, along, within, or visible from scenic public roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features or areas.

~~SCENIC RESOURCES MAP - those maps designated and certified as a component of the City's LCP/LUP by the California Coastal Commission which identify Scenic Areas, Scenic Roads and Public Viewing Areas within or visible from the City of Malibu.~~

SCENIC ROAD - those public roads within the City that traverse or provide views of areas with outstanding scenic qualities, that contain striking view of natural vegetation, geology, and other unique natural features, including the mountains, canyons, ridgelines, beach and ocean.

SCHOOL - any building or part thereof which is designed, constructed or used for education or instruction, whether public or private, in any branch of knowledge.

SEA - the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to constant or periodic tidal action through any connection with the Pacific Ocean, excluding non-estuarine rivers, streams, tributaries, creeks, and flood control and drainage channels.

SEA CLIFF – a cliff or slope produced by wave action, situated at the seaward edge of the coast or the landward side of the wave-cut platform, and marking the inner limit of beach erosion.

SECOND UNIT - an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family dwelling is situated. The maximum living area of a second unit shall not exceed ~~750~~ 900 square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed 400 sq. ft. The square footage of the garage shall not be included in the maximum living area.

SENSITIVE FACILITIES - those facilities which may by nature of their occupants be inhibited in their rapid evacuation capabilities, such as nursing homes, senior citizens' housing and other low-mobility uses; and commercial and industrial facilities containing hazardous materials or potentially hazardous operations requiring safe shut-down procedures.

SETBACK - the distance between the parcel line and a building not including permitted projections.

SHALLOW RESIDENTIAL LOT - any residentially zoned lot with a depth of one hundred feet (100') or less.

SITE COVERAGE - the horizontal area measured at the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

SPECIAL EVENT - a significant occurrence or happening which is arranged for a particular occasion or purpose.

STAND - a structure for the display and sale of products with no space for customers within the structure itself.

STORY - that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the roof above. A basement shall not be considered a story if the finished first floor does not exceed three (3) feet above the average natural grade of the parcel. An unfinished attic shall not be considered a story. A mezzanine shall be considered a story if it is not open to the floor below, if it contains any enclosed rooms, bathrooms, closets, and the like, or if it contains more than 33-1/3% of the total floor area of the room(s) onto which it opens.

STREAM - is a topographic feature that at least periodically conveys water through a bed or channel having banks. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

STREET - a public or private right-of-way, major or secondary highway or alley, whose function is to carry vehicular traffic and/or provide vehicular access to abutting property.

STRINGLINE RULE - a development standard used to establish beachfront structure setbacks.

STRUCTURE - anything construed or erected which requires a fixed location on the ground, or is attached to a building or other structure having a fixed location on the ground.

SUBMERGED LANDS - all lands that lie below the line of mean low tide.

TEMPORARY EVENT - is (a) an activity or use that constitutes development as defined in Section 30106 of the Coastal Act but which is an activity or function which is or will be of limited duration and involves the placement of non-permanent structures such as bleachers, vendor tents/canopies, portable toilets, stages, film sets, etc., and/or involve exclusive use of sandy beach, parkland, filled tidelands, water, streets, or parking areas in temporary facilities, public or private buildings or open spaces, or outside of buildings which are otherwise open and available for general public use; or (b) an activity as defined in section (a) that involves any commercial component such as: admission fee, renting of facility, charging for valet parking or shuttle service and/or public advertising

TEMPORARY STRUCTURE - a structure without any foundation or footings, and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

THEATER - an enclosed building used for public assembly and/or entertainment, including sports events, theatrical performances, concerts and recitals, circuses, stock shows and conventions. This definition shall include auditorium.

TIDELANDS - all lands which are located between the lines of mean high tide and mean low tide.

TOTAL DEVELOPMENT SQUARE FOOTAGE - the calculation of the interior space of the primary and accessory structures (including interior and exterior walls). Accessory structures shall include, but are not limited to, guest houses, garages, barns, sheds, gazebos, cabanas. Decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides.

TREE - a plant having at least one well defined stem or trunk and normally attaining a mature height of at least fifteen (15) feet, and having a trunk that shall be kept clear of leaves and branches at least six (6) feet above grade at maturity.

TREE, 15-GALLON - a fifteen (15) gallon container tree shall be no less than one inch caliper and at least six (6) feet in height above grade at the time of planting.

TREE, 24-INCH BOX - a twenty-four (24) inch box tree shall be no less than one and three quarters (1-3/4) inch caliper and at least seven (7) feet in height above grade at the time of planting.

TREE REMOVAL - the destruction or displacement of a tree by cutting, bulldozing, or other mechanical or chemical method which results in physical transportation of the tree from its site and/or death of the tree.

TRELLIS – A frame supporting open latticework, typically used for training vines and other climbing plants.

UPLAND LIMIT OF A WETLAND - is 1) the boundary between land with predominately hydrophytic cover and land with predominately mesophytic or xerophytic cover; 2) the boundary between soil that is predominately hydric and soil that is predominately nonhydric; or 3) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

USE - the purpose or activity for which land or a structure is designed, arranged, intended, occupied or maintained.

WALLS - see FENCES.

WAREHOUSING - the storage of materials in a warehouse or terminal, where such materials may be combined, or separated for transshipment or storage purposes but the original material is not chemically or physically changed.

WETLAND – is defined by Section 30121 of the Coastal Act as lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. The definition of wetland is further detailed by Section 13577 (b)(1) of the California Code of Regulations as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to vegetated wetlands or deep-water habitats.

WHEEL STOP - a physical barrier sufficient in size and shape to prevent the movement of automobiles or other vehicles over or past such barrier.

WHOLESALE - establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

YARD - an open space on the same lot or parcel of land, other than a court, unoccupied and unobstructed from the ground upward, except as otherwise permitted by the Malibu Zoning Ordinance.

YARD, FRONT - a yard extending across the full width of the lot or parcel of land. The depth of a required front yard shall be a specified horizontal distance between the highway line of the parkway, highway or street on which the property fronts, and a line parallel thereto on the lot or parcel of land, except as otherwise provided for a flag lot. On corner lots, the front yard shall be located across the narrower frontage of the lot. A yard shall not be deemed a front yard if there is no right of access of any kind, pedestrian or vehicular, from the adjoining street.

YARD, REAR - a yard extending across the full width of the lot or parcel of land. The depth of the required rear yard shall be a specified horizontal distance between the rear lot line and a line parallel thereto on the lot or parcel of land.

YARD, SIDE, CORNER - a yard bounded by a parkway, highway or street, extending from the required front yard, or the highway line on which the property fronts where no

front yard is required, to the required rear yard or to the rear lot line where no rear yard is required. The width of such required side yard shall be a specified horizontal distance between the highway line of the parkway, highway or street on which the property sides, and a line parallel thereto on the lot or parcel of land.

YARD, SIDE, INTERIOR - a yard extending from the required front yard, or the highway line on which the property fronts where no front yard is required, to the required rear yard or to the rear lot line where no rear yard is required on other than a corner side yard. The width of a required interior side yard shall be a specified horizontal distance between each such side lot line parallel thereto on the lot or parcel of land.

ZERO LOT LINE - the location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.

ZONING ORDINANCE – Article IX of the City of Malibu Municipal Code

2.2. WIRELESS TELECOMMUNICATIONS DEFINITIONS

ANSI/IEEE STANDARDS - American National Standards Institute. A private organization that develops widely accepted standards for many pieces of modern day equipment.

ANTENNA - A typically metallic device used for radiating or receiving radio waves.

ANTENNA, BUILDING MOUNTED SITES - Antennae which are located and/or mounted on an existing building's exterior walls.

ANTENNA EQUIPMENT - A cabinet, room, or similar structure which houses the electronic facilities used to operate an antenna.

ANTENNA, GROUND MOUNTED SITES - Antennae which are located and/or mounted on a pole, attached to the ground level and are, otherwise, freestanding. These antennae do not use a building or ancillary structures for mounting purposes.

ANTENNA HEIGHT - The vertical distance from the existing or proposed grade, whichever is lower, to the top of the antenna or its support structure.

ANTENNA, ROOF-MOUNTED - An antenna, and its associated support structure, that is attached to a roof of a building or similar structure.

CO-LOCATION – is the location of two or more wireless communication facilities on a single support structure or otherwise sharing a common location. Co-location shall also include the location of wireless communication facilities with other types of facilities

including, but not limited to, water tanks, light standards, outbuildings and other utility facilities and structures.

EQUIPMENT CABINET – is a cabinet, structure or building used to support equipment associated with a wireless communication facility.

FACI~~T~~LITY – as used in chapters addressing wireless telecommunications antennae and facilities refers to a Wireless Telecommunications Facility.

FEDERAL COMMUNICATION COMMISSION (FCC) - is a United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite and cable.

MONOPOLE – is a single, freestanding pole, post or similar structure over 15 feet in height used to support equipment associated with a wireless communication facility.

PERSONAL COMMUNICATION SERVICES (PCS) - Federal Communication Commission (FCC) terminology describing intelligent, digital wireless, personal two-way communication systems. A broad range of telecommunications services that enable people and devices to communicate independent of location. PCS networks and devices operate over a wide range of frequencies assigned and authorized by the FCC.

RIGHT-OF-WAY - as used in chapters addressing wireless telecommunications antennae and facilities refers to property that is owned and controlled by the City.

SERVICE PROVIDER – as used in chapters addressing wireless telecommunications antennae and facilities means any authorized provider of wireless communications services.

SILHOUETTE – as used in chapters addressing wireless telecommunications antennae and facilities means a representation of the outline or profile of the antenna associated with a telecommunication facility, as seen from an elevation perspective.

WIRELESS TELECOMMUNICATIONS ANTENNAE - A broad range of technologies that enable people and devices to communicate independent of location. This includes, without limitation, the current technologies of cellular communications and Personal Communication Services (PCS). This excludes non-commercial antennae, radio and television signals, and non-commercial satellite dishes.

WIRELESS TELECOMMUNICATIONS FACILITIES - means facilities that transmit and/or receive electromagnetic signals, including, but not limited to the following technologies: cellular, personal communication services (PCS), enhanced specialized mobile radio services and paging systems. It includes antennas and all other types of equipment used in the transmission or receipt of such signals, structures designed and

placed specifically to support this equipment; associated equipment cabinets and/or buildings; and other accessory development. It does not include radio towers for commercial or amateur use; television towers and specialized public safety networks.

2.3. SIGN DEFINITIONS

ADVERTISING DEVICE means any balloon, flag, pennant, or propeller; oscillating, rotating, or pulsating light; or other contrivance except a sign used to attract attention for the purpose of promoting the sale of products.

ADVERTISING DISPLAY means any device, contrivance, statue, structure or sign used as a display, regardless of size or shape, for the purpose of attracting attention or making anything known, the origin or place of sale of which is on the property with such advertising display.

AREA, SIGN means the area of a sign within a single continuous perimeter of not more than eight (8) straight lines enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed. In the case of a sign designed with more than one (1) exterior surface, the area shall be computed as including only the maximum single display surface which is visible from any ground position at any one (1) time. The supports, uprights, or structures on which any such sign is supported shall not be included in determining the sign area unless such supports, uprights, or structures are designed in such a manner as to form an integral background of the display.

BUSINESS SIGN means a sign displaying information pertaining to goods, services, or entertainment offered or produced by the business located on the same property as the business sign, but not including advertising devices or advertising displays.

COMBINATION SIGN means any sign incorporating any combination of the features of freestanding, projecting and roof signs.

CONSTRUCTION SIGN means a temporary sign stating the names of those individuals or firms directly connected with the construction or development project, their addresses and their telephone numbers.

DIRECTIONAL SIGN means an on-site sign on private property, the sole purpose of which is to direct the flow of traffic, transmit parking information or convey similar such information.

EXTERNALLY LIGHTED means the immediate source of illumination is not enclosed by the surface of the sign structure.

THE FACE OR WALL OF A BUILDING means the outer surface of any main exterior wall or foundation of a building, including windows and store fronts.

FREESTANDING POLE SIGN means a sign supported by uprights or braces placed upon or into the ground and detached from any building.

HEIGHT OF A SIGN means the greatest vertical distance measured from the ground level directly beneath the sign to the top of the sign.

IDENTIFICATION SIGN means a sign limited to the identifying name, symbol or insignia, or any combination thereof, of a building, use or persons occupying the premises on which the sign is located.

INFORMATIONAL SIGN means a sign stating the hours of operation of a business, emergency telephone numbers, credit card usage, or other information of a similar nature.

INTERNALLY LIGHTED means the immediate source of illumination is completely enclosed by the surface of the sign structure.

MONUMENT SIGN means a low-profile ground sign incorporating the design and building material of the primary use of the property. No poles for the support of the sign face shall be permitted, and the base of such sign shall be at least fifty (50) percent of the dimension of the width of the sign face.

NAMEPLATE means a sign stating only the name of the occupant and his or her occupation or specialty.

NEON SIGN means an illuminated sign affected by a colorless, odorless light source consisting of a neon or gas tube which is bent to form letters, symbols or other shapes.

NONCONFORMING SIGN means <u>any existing and lawfully established or lawfully authorized</u> ~~a~~ sign <u>that does not conform to the policies and development standards of the certified Malibu LCP, or any subsequent amendments thereto.</u> ~~which lawfully existed prior to the effective date of the Malibu Zoning Ordinance, or any amendment thereto, but which fails by reason of such adoption or amendment to conform to all of the standards and regulations of the adopted or amended Article.~~

OUTDOOR ADVERTISING DISPLAY, STRUCTURE OR SIGN means a sign placed for the purpose of advertising products or services that are not produced, stored, or sold on the property upon which the sign is located. This shall also mean a billboard.

PRICE SIGN means a sign limited to the name or identification of items, products or services offered for sale on the premises and the price of the items or products.

PORTABLE OR MOVABLE SIGN means any sign which is intended to be movable or

capable of being moved, whether or not on wheels or other special supports, including but not limited to "A frame" type signs. Portable or movable signs also include placards, signs, banners or similar devices attached to vehicles for advertising purposes, unless such devices are an integral part of such vehicle used in the normal course of business. This definition does not include real estate advertising signs or political signs.

PROJECTING means a sign other than a wall sign suspended from or supported by a building or structure and projecting outward more than six (6) inches therefrom.

REAL ESTATE SIGN means a temporary sign advertising the sale, lease, or rental of the property upon which it is located, and the identification of the person or firm handling such sale, lease, or rental.

RIGHT-OF-WAY, PRIVATE means an off-street parking area for a business or group of businesses that does not abut a public right-of-way and is not located within two hundred (200) feet of any property zoned for residential uses.

ROOF SIGN means a sign affixed on, above, or over the roof of any building so that it projects more than three (3) feet above the lowest point of the roof of such building.

SUBDIVISION DIRECTIONAL SIGN means an off-site sign used for the purpose of providing travel directions to a subdivision development offered for sale or lease for the first time.

SINGLE PURPOSE BUILDING means a building used by one (1) occupant for an individual business.

VEHICLE-RELATED PORTABLE FREESTANDING SIGN means a portable sign affixed to or inside a vehicle for the purpose of directing people to a business in close proximity to where the vehicle is parked.

WALL SIGN means a sign attached to or erected on the exterior wall of the building or structure or on a canopy marquee or similar overhang with the exposed face of the sign in a plane approximately parallel to the plane of the exterior wall and not extending more than three (3) feet above the lowest point of the roof of such building or structure.

WINDOW SIGN means a sign directing attention to the principal business, profession or industry attached to or within three (3) feet of the inside of the window upon the premises where the sign is displayed, or to the type of products sold, manufactured or assembled, or to services or entertainment offered on said premises.

2.4. CULTURAL RESOURCES DEFINITIONS

CEQA shall mean the California Environmental Quality Act which shall be the statutory

reference for those portions of this Chapter drawn therefrom.

CULTURAL RESOURCE SENSITIVITY MAP shall mean a map developed by the Director showing the location of culturally sensitive areas.

CULTURALLY SENSITIVE AREAS shall mean areas identified on the Cultural Resource Sensitivity Map as an area where important cultural resources exist.

IMPORTANT CULTURAL RESOURCE may include, but not be limited to, the following criteria:

1. Has a special quality such as oldest, best example, largest, or last surviving example of its kind; or

2. Is at least 100 years old; or

3. Significant to Chumash prehistory or history;

4. Contains burial or other significant artifacts;

5. Is an archeologically undisturbed site;

6. Has important archeological significance;

7. Relates to significant events or persons;

8. Listed on Cultural Resources Sensitivity Map;

9. Of specific local importance;

10. Contains traditional sacred ground (including traditional ceremonial material gathering site);

11. Contains burials;

12. Contains sacred and/or significant artifacts

PROJECT shall include any earth moving requiring a planning clearance, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, or grading permit. The term shall include government-initiated or funded works except those projects necessary for emergency purposes.

QUALIFIED ARCHAEOLOGIST shall mean a professional archaeologist included as a person qualified by or on the registry of Professional Archeologist of the Society for American Archeology who has a minimum of three years at the supervisory level.

QUALIFIED CHUMASH CULTURAL RESOURCES MONITOR shall mean a Native American of Chumash descent who

1. Submits verifiable evidence, approved by the Planning Director, that he/she is of Chumash descent or is a Native American member of the Chumash community. Being listed as Chumash "most likely descendent" by the California Native American Heritage Commission may satisfy these criteria.

2. Submits verifiable evidence, approved by the Planning Director, indicating that he/she has a minimum of thirty (30) days of on site experience monitoring Chumash cultural resource sites

REGIONAL HISTORICAL RESOURCES INFORMATION CENTER shall mean the South Central Coastal Information Center, at the Institute of Archaeology, University of California, Los Angeles.

~~2.5.PARKLAND DEVELOPMENT FEE DEFINITIONS~~

This Section is deleted. Definitions in this section are not used or referenced in the Malibu LIP.

CHAPTER 3—ZONING DESIGNATIONS AND PERMITTED USES

3.1. THE LOCAL IMPLEMENTATION PLAN ZONING MAP

The Local Implementation Plan Zoning Map of the City of Malibu shall be the map dated September 2002, as may be amended by ordinance of the City Council and certified by the California Coastal Commission, and divided into Sections 1 through 4, on file with the City Clerk.

3.2. UNCERTAIN ZONING BOUNDARIES

Where uncertainty exists as to the boundaries of any district shown on the Malibu LIP Zoning Map, the following rules shall apply:

1. Where such boundaries are indicated as approximately following street and alley lines or lot lines, such lines shall be construed to be such boundaries.
2. Where a district boundary divides a lot, the location of such boundary, unless indicated by dimension, shall be determined by the use of the scale appearing on the Zoning Map.
3. In case any uncertainty exists, the Director shall determine the location of boundaries.
4. Where any public street or alley is officially vacated or abandoned, the regulations applicable to abutting properties shall apply to such vacated or abandoned street or alley.

3.3. ZONING DISTRICTS

The City of Malibu is hereby divided into the following zoning districts:

TABLE A: City of Malibu Zoning Districts

Zone Code	Zone District
RR	Rural Residential
SF	Single Family Residential
MF	Multi-Family Residential
MFBF	Multi-Family Beach Front
MHR	Mobilehome Residential
CR	Commercial Recreation
CN	Commercial Neighborhood
CC	Community Commercial
CG	Commercial General
BPO	Business-Professional Office
CV-1	Commercial Visitor Serving - 1
CV-2	Commercial Visitor Serving - 2
I	Institutional
OS	Public Open Space
PRF	Private Recreational Facilities
RVP	Recreational Vehicle Park
PD	Planned Development

A. Rural Residential (RR) Zone

1. Purpose

The RR District is intended for sensitively designed, large lot single family residential development, with agricultural uses and animal keeping which respects surrounding residents and the natural environment as accessory uses. This district incorporates a variety of natural resources and amenities.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

a. Minimum Lot Area. The minimum lot area for each parcel located in the RR District shall be based on the corresponding designation found on the Zoning Map as follows:

i. RR-40 40 acre minimum area
ii. RR-20: 20 acre minimum lot area
iii. RR-10: 10 acre minimum lot area
iv. RR-5: 5 acre minimum lot area
v. RR-2: 2 acre minimum lot area
vi. RR-1: 1 acre minimum lot area

The minimum lot area requirements listed above represent the maximum density permitted in each RR designation. Any request to subdivide land within this zoning district will also require compliance with Chapter 15 (Subdivisions) of the Malibu Local Implementation Plan which establishes a slope/density formula for all subdivision applications.

b. Minimum Lot Width: 150 feet

c. Minimum Lot Depth: 250 feet

4. Site Development

~~a. Helipad Standards~~

~~i.Helipads sites shall be located on the same site as the main residence.~~

~~ii.The minimum net site area shall be 10 acres.~~

~~iii.No other private use helipad shall be located within 5 miles~~

~~iv.Fire suppression equipment (i.e. water tank, foam, pumps) shall be maintained on the site, continuously, to the satisfaction of the Fire Department.~~

~~v.Emergency response agencies shall be allowed to use the helipad facility in times of emergency.~~

~~b.Small Community Stage Theater Standards~~

~~i.The minimum net site area for a small community stage theater shall be five (5) acres.~~

~~ii.No more than one hundred (100) seats shall be provided.~~

~~iii.All performances shall be held within the interior of a building and no outdoor performances shall be permitted.~~ **[Moved to Section 3.9 (Page 80)]**

In addition to the regulations contained in this Chapter, all uses in the RR District shall be subject to the applicable standards located in the Malibu LIP.

B. Single Family (SF) Zone

1. Purpose

The SF District will serve the majority of the City's single-family residential parcels. The intent of this District is to enhance the rural characteristics of the community by maintaining low density residential development in a manner which respects surrounding property owners and the natural environment.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

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

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

b. Minimum Lot Width: 80 feet

c. Minimum Lot Depth: 120 feet

4. Site Development

In addition to the regulations contained in this Chapter, all uses in the SF District shall be subject to the applicable standards located in the Malibu LIP.

C. Multiple Family Residential (MF) Zone

1. Purpose

The MF District consists of existing multi-family development in the City and is intended to provide for a variety of residential opportunities ranging from single-family to multiple-family and residential uses at a moderate density range.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

a. Minimum Lot Area: 20,000 sq. ft. per lot unless otherwise provided in Chapter 15 (Subdivisions) of the Malibu Local Implementation Plan

b. Minimum Lot Width: 100 feet

c. Minimum Lot Depth: 150 feet

d. Maximum Density: 6 units per acre

4. Site Development Standards

In addition to the regulations contained in this Chapter, all uses in the MF District shall be subject to the applicable standards located in the Malibu LIP.

D. Multi-Family Beach Front (MFBF) Zone

1. Purpose

The MFBF District provides standards for development on beachfront lots in the City and is intended to provide for a variety of residential opportunities ranging from single-family to multiple-family.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

a. Minimum Lot Area: 5,000 sq. ft. per lot unless otherwise provided in Chapter 15 (Subdivisions) of the Malibu LIP

b. Minimum Lot Width: 50 feet

c. Minimum Lot Depth: 100 feet

d. Units per Lot: 1 unit per 1,885 sq. ft. of lot area, not to exceed 4 units.

B. Site Development Standards

In addition to the regulations contained in this Chapter, all uses in the MFBF District shall be subject to the applicable standards located in located in the Malibu LIP.

E. Mobilehome Residential Zone (MHR)

1. Purpose

The MHR District is intended to accommodate the existing mobilehome parks within the City by establishing a specific zoning district enabling the operation of these sites and recognizing their contribution to the mix of housing types in the City.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Development Standards

a. Any proposed modifications to an existing mobilehome shall comply with all applicable development and building code provisions required by this Code and by State Law.

b. Additional requirements may be imposed as a condition of approval of a Conditional Use Permit.

F. Commercial Recreation (CR) Zone

1. Purpose

The CR District establishes a zone for facilities open to the public that are utilized for low

intensity recreational and athletic activities characterized by large open spaces with limited building coverage; such as, hiking, horseback riding, summer camps, boarding of horses and domestic animals, tennis, swimming, gymnastics, bicycling, and other similar type activities, and open space and facilities utilized for these activities.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Development Standards

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

a. Minimum Lot Size: 1 acre

b. Minimum Lot Width: 100 feet

c. Minimum Lot Depth: 150 feet

d. Structures shall be limited to 18 feet in height, except as otherwise provided for in Section 13.27 of the Malibu LIP.

In addition to the regulations contained in this Chapter, all uses in the CR District shall be subject to the applicable standards located in the Malibu LIP.

G. Business-Professional Office Zone (BPO)

1. Purpose

The BPO District is intended to provide appropriately located areas to be used for the offices needs of the community.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

a. Minimum Lot Area: 2 acres

b. Minimum Lot Width: 200 feet

c. Minimum Lot Depth: 350 feet

In addition to the regulations contained in this Chapter, all uses in the BPO District shall be subject to the applicable standards located in the Malibu LIP.

H. Commercial Neighborhood (CN) Zone

1. Purpose

The CN District is intended to provide for low intensity commercial activity emphasizing service to the residents in the surrounding neighborhoods. This District establishes standards which ensure that the types of uses and development pattern maintain compatibility with nearby and adjacent residential areas.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Development Criteria

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

a. Minimum Lot Area: 2 acres

b. Minimum Lot Width: 200 feet

c. Minimum Lot Depth: 350 feet

In addition to the regulations contained in this Chapter, all uses in the CN District shall be subject to the applicable standards located in the Malibu LIP.

I. Community Commercial (CC) Zone

1. Purpose

The CC District is intended to provide for the resident serving needs of the community similar to the CN District, but on parcels of land more suitable for concentrated commercial activity.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

In addition to the uses permitted in Table B, mobile homes for residential occupancy by the property owner shall be considered a permitted use for a period of not more than two consecutive years where the property owner's primary residence is destroyed or uninhabitable as a result of landslide, fire or other natural disaster. The mobile homes shall comply with all applicable building codes for residential occupancy. This provision shall automatically expire on December 9, 2003.

3. Lot Development Criteria

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

a. Minimum Lot Area: 5 acres

b. Minimum Lot Width: 300 feet

c. Minimum Lot Depth: 500 feet

In addition to the regulations contained in this Chapter, all uses in the CC District shall be subject to the applicable standards specified in the Malibu LIP.

J. Commercial Visitor Serving – 1 Zone (CV-1)

1. Purpose

The CV-1 District is intended to provide for visitor serving uses, including motels and bed and breakfast inns, which serve visitors and residents that are designed to be consistent with the rural character and natural environmental setting.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

All new lots created within the CV-1 District shall comply with the following criteria:

a. Minimum Lot Area: 5 acres

b. Minimum Lot Width: 300 feet

c. Minimum Lot Depth: 500 feet

In addition to the regulations contained in this Chapter, all uses in the CV-1 District shall be subject to the applicable standards specified in the Malibu LIP.

K. Commercial Visitor Serving – 2 Zone (CV-2)

1. Purpose

The CV-2 District is intended to provide for visitor serving uses, including hotels serving visitors and residents, that are designed to be consistent with the rural character and natural environmental setting.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

All new lots created within the CV-2 District shall comply with the following criteria:

a. Minimum Lot Area: 5 acres

b. Minimum Lot Width: 300 feet

c. Minimum Lot Depth: 500 feet

In addition to the regulations contained in this Chapter, all uses in the CV-2 District shall be subject to the applicable standards specified in the Malibu LIP.

L. Commercial General (CG) Zone

1. Purpose

The CG District establishes a zoning district for commercial uses oriented along Pacific Coast Highway (PCH). Uses include a wider range of resident and visitor serving uses.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

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

a. Minimum Lot Area: 5 acres

b. Minimum Lot Width: 300 feet

c. Minimum Lot Depth: 500 feet

In addition to the regulations contained in this Chapter, all uses in the CC District shall be subject to the applicable standards specified in the Malibu LIP.

M. Public Open Space (OS) Zone

1. Purpose

The OS District provides for publicly owned land which is dedicated to recreation or preservation of the City's natural resources, including public beaches, park lands, and preserves.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

N. Institutional (I) Zone

1. Purpose

The I District accommodates existing public and quasi-public facilities in the City. This District includes educational, religious and governmental facilities.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

a. All new lots created within the I District shall comply with the following criteria:

i. Minimum Lot Area: 0.5 acres

ii. Minimum Lot Width: 80 feet

iii. Minimum Lot Depth: 125 feet

b. Proposed non-residential structures within the I Zone shall comply with the provisions of Section 3.6 of the Malibu LIP (Residential Development Standards) except that setbacks, height, and structure size shall comply with the following requirements instead of those in Section 3.6 of the Malibu LIP.

i. Minimum Setbacks. Front side, and rear setbacks shall be not less than the largest of each of those setbacks required for existing development on any abutting parcel.

ii. Maximum Height. Structures shall not exceed a maximum height of 18 feet above natural or finished grade. The maximum height may be increased up to 28 feet if approved through site plan review, pursuant to Section 13.27 of the Malibu LIP. ~~The Director may issue a development permit, pursuant to the section 9.4.23 of the Malibu Zoning Ordinance, to allow structure height up to 28 feet.~~

iii. Structure Size. The gross floor area of all structures on a given parcel shall be limited to a maximum floor area ratio (FAR) of 0.15.

O. Private Recreational Facilities (PRF) Zone

1. Purpose

The PRF District is intended to provide for private recreational facilities whose members receive membership through deeded rights, property rights, or membership.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

All new lots created in the PRF District shall comply with the following criteria:

a. Minimum Lot Area: 0.5 acres

b. Minimum Lot Width: 80 feet

c. Minimum Lot Depth: 125 feet

In addition to the regulations contained in this Chapter, all uses in the PRF District shall be subject to the applicable standards located in the Malibu LIP.

P. Recreational Vehicle Park (RVP) Zone

1. Purpose

The RVP District is intended to provide for recreational vehicle parks.

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

3. Lot Development Criteria

All new lots created in the RVP District shall comply with the following criteria:

a. Minimum Lot Area: 10 acres

b. Minimum Lot Width: 300 feet

c. Minimum Lot Depth: 500 feet

In addition to the regulations contained in this Chapter, all uses in the RVP District shall be subject to the applicable standards located the Malibu LIP.

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.

3.4. OVERLAY ZONES

Overlay zone regulations provide for the establishment of certain overlay zones in areas

where, by reason of location, topography, existing development conditions, or other circumstances, development impacts may be greater or circumstances may necessitate additional site-specific regulation to further the purposes of this ordinance. All uses within the boundaries of an overlay zone shall comply with the provisions of the overlay zone in addition to applicable standards of the underlying zone, other provisions of this ordinance, and other provisions of law.

3.4.1 Overlay Districts Specific to Existing Developments

The following development standards shall replace the Residential Property Development and Design Standards (Section 3.6 of the Malibu LIP) for the areas listed below and identified on the Malibu LIP Zoning Map. All requirements for the Malibu LIP that are not inconsistent with the criteria listed below shall remain in effect for those parcels in the Overlay Districts.

A. Malibu Knolls Overlay District.

1. Structure Size: The structure size formula in Section 3.6 (K) of the Malibu LIP shall apply; however, slopes equal to 1:1 and private roads easements shall be included in the lot size calculations.

2. Setbacks: The following setback requirements shall replace the setback standards in Section 3.6 (F) of the Malibu LIP.

   a. Front yard setbacks shall be 10 feet for garages if the slope in front yard is equal to or exceeds 3:1, and 15 feet for all other structures.

   b. Side yard setbacks shall be 5 feet.

   c. Rear yard shall be 15 feet.

3. Structure Height: No building or structure, including satellite dish antenna, shall exceed 24 feet for flat and 28 feet for pitched roof, as measured as a vertical line from the ground to a line parallel to the slope of the land, except for chimneys and rooftop antenna other than satellite dish antenna. Structures over 18 feet in height shall not be subject to the Site Plan Review process as set forth in Section 13.27 of the Malibu LIP.

4. Ridgeline: The ridgeline development requirements of Section 6.5 (C) of the Malibu LIP shall not apply to development.

5. Impermeable Coverage: The impermeable coverage requirement in Section 3.6 (I) of the Malibu LIP shall apply; however, slopes of equal to 1:1 and private road

easements shall be included in the lot size calculations.

6. Site of construction: The site of construction standard in Section 3.6 (J) of the Malibu LIP shall apply; however, structures may be constructed on slopes equal to 2:1.

B. Malibu La Costa Overlay District.

1. Structure size: The structure size formula in Section 3.6 (K) of the Malibu LIP shall apply; however, slopes steeper than 1:1 and private road easements shall be included in the lot size calculation and on lots 13,559 square feet or less, the total development square footage shall not exceed 3,400 square feet.

2. Multi-Story Floor Area: The requirements of Section 3.6 (K) of the Malibu LIP shall not apply; however, the following requirement shall apply. Flat wall facades along south/ocean-facing elevations shall not extend more than 25 feet horizontally nor 20 feet vertically (excluding gable ends) without a minimum four (4) foot offset. Balconies which project from continuous flat wall facades shall not be considered offsets.

3. Setbacks: The following setback requirements shall replace the setback standards in Section 3.6 (F) of the Malibu LIP.

   a. Front Yard Setback - The least restrictive of the following four methods shall apply:

      i. The average existing front setback between the two adjacent properties or, in the event that there is a vacant adjacent lot, the next contiguous property.

      ii. The average of at least two, but not more than five, contiguous existing front setbacks along the same side of the street.

      iii. For lots with 20 percent slopes (5:1) within the first 20 feet from the street, the minimum front setback for a garage shall be 10 feet from the front property line; and shall be 15 feet front property line for the residence.

      iv. 20% of the lot depth.

   b. Side Yard Setback - 10% of the lot width for lots narrower than 50 feet as measured at the street and 5 feet on each side for lots wider than 50 feet as measured at the street.

   c. Rear yard Setback - 15 feet from the property line.

4. Projections into Yards: The following requirements shall replace the standards in Section 3.5.3 (B) of the Malibu LIP.

   a. Architectural projections, including bay windows, oriels, eaves, awnings, louvers, sills, balconies, cornices, unroofed porches, steps, terraces, and chimneys shall not project closer than 3 feet to the side property lines.

   b. Underground structures, such as swimming pools, may project without limit into any required yards, provided that such structures shall not have a height of more than two and one-half (2 ½) feet above adjacent grade and shall not be located closer than five (feet) to the front and rear yard property lines and conform with the required side yard setbacks.

5. Structure Height: The following structure height requirements shall replace Section 3.6 (E) of the Malibu LIP.

   a. Uphill properties with steep slopes (Identified in type "A" on the Overlay District Map).

      i. Flat roofs shall not exceed 24 feet from the top of the garage sheathing and pitched roofs shall not exceed 28 feet above natural grade.

      ii. Garage height shall not exceed 12 feet above the garage slab.

   b. Uphill properties with shallow slopes (Identified in type "B" on the Overlay District Map).

      i. Shall not exceed 18 feet above natural grade or above the existing building pad; whichever is less restrictive.

   c. Downhill properties with steep slopes (Identified in type "C" on the Overlay District Map).

      i. Shall not exceed 18 feet as measured at the midpoint of the front setback from the property line or 14 feet at the street property line, whichever is higher.

      ii. At no point shall the structure breach the horizontal projection of that 18 foot or 14 foot front-line.

      iii. The maximum height at a downhill elevation shall not exceed 35 feet at the structure's midpoint above natural grade.

iv. The structure shall project laterally into the lot a maximum of 40 feet, any projection past this point shall not exceed 18 feet in height above natural grade.

v. The average height of the structure shall not exceed 32 feet as measured according to the structure height diagram in Exhibit A.

d. Downhill properties with shallow slopes (Identified in type "D"on the Overlay District Map).

i. Shall not exceed 18 feet as measured at the midpoint of the front setback from the property line or 14 feet at the street property line, whichever is higher.

ii. At no point shall the structure breach the horizontal projection of the 18 feet or 14 feet front-line.

iii. The average height of the structure shall not exceed 28 feet, as measured according to the structure height diagram in Exhibit A.

iv. For La Costa Mesa only, the structure shall project laterally into the lot a maximum of 50 feet, any projection past this point shall not exceed 18 feet in height above natural grade.

6. Ridgeline: The ridgeline development requirements of Section 6.5 (C) of the Malibu LIP shall not apply to development.

7. Impermeable Lot Coverage: The impermeable coverage requirement in Section 3.6 (I) of the Malibu LIP shall not apply; however, all lots shall maintain 1,000 square feet of permeable surfaces.

8. Site of Construction: Structures may be constructed on slopes flatter than 1.5:1.

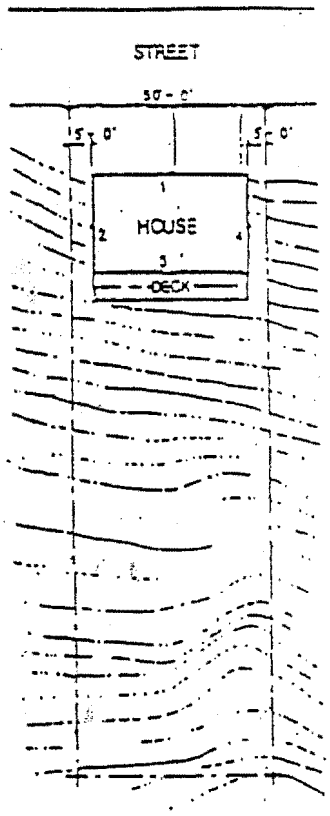
9. Retaining Walls: The requirements of Section 3.5.3 (A) of the Malibu LIP shall apply; however, the maximum wall height shall not exceed 14 feet, for retaining walls and for single cuts (grading), which are an integral part of the structure.

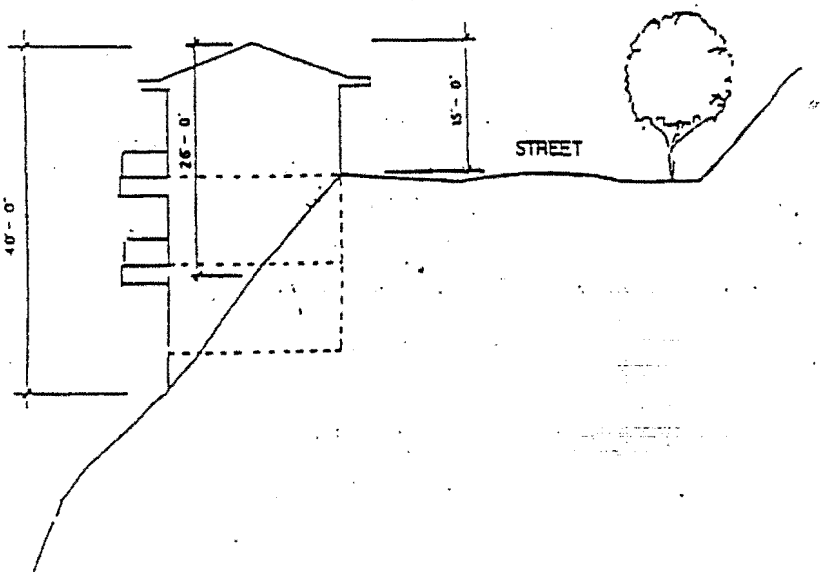
10. Basements: The following definition for basements shall apply. That portion of a building or structure between floors and ceiling, which is partly below and partly above grade but so located that the vertical distance from grade to the floor below is more than the vertical distance from grade to ceiling on three sides of the structure.

DOWN HILL LOT STANDARD

EXAMPLE

POINT #1	15'
POINT #2	26'
POINT #3	40'
POINT #4	28'
TOTAL	111'
AVERAGE HEIGHT	111' / 4 = 27.75'





C. Trancas Beach Overlay District

1. Within the area designated as Area I on the Trancas Beach Overlay District Map, no structure above 30 inches will be permitted, except that a windbreak above 30 inches in height will be permitted provided that it is not more than 9 feet in height and provided further that the entire area above 30 inches in height is constructed of transparent glass except for structural ribbing and topping. Any such windbreak may be L-shaped provided that the "leg" which runs parallel to the northerly line of Area I (i.e., the rear yard building set back line) is no greater in length than 1/3 of the width of the particular lot at that point. Any such windbreak may be roofed or unroofed.

2. Within the area designated as Area II on the Trancas Beach Overlay District Map, no structure above 30 inches will be permitted.

3. For the purposes of paragraphs a and b, above, the height shall be measured from the natural grade.

D. Malibu Country Estates Overlay District

1. Structure Size: All residences shall have a floor area of not less than 2,000 square feet. There shall be no maximum structure size limitation for a primary residence, provided the primary residence complies with all development restrictions of this Overlay District. In determining the square feet contained within any residence, the space contained within covered and uncovered porches, patios or entries, balconies, garages (whether or not they are integral with the house), basements and cellars shall be excluded.

2. Setbacks:

   a. Front yard setbacks shall be at least 26 feet as measured to the face of curb.

   b. Minimum side yard setbacks shall be at least 5 feet and there shall be no cumulative side yard setback limitation.

   c. Rear yard setbacks shall be at least 15 feet

3. Retaining walls: Retaining walls adjacent to and parallel with either side of a driveway shall not exceed 3 feet in height within the required front yard setback area.

4. Heights Within Required Setback Areas:

a. No walls, fences, or hedges in excess of 6 feet in height shall be allowed within the required rear and side yard setback areas.

b. No walls, fences, or hedges in excess of 5 feet in height shall be allowed within the required front yard setback areas.

5. Structure Height:

   a. No building or structure shall exceed one story and 18 feet in height to the highest point on the roof, except for chimneys, for those parcels located in Area "A" of this Overlay District as designated on the Zoning Map.

   b. No building or structure shall exceed two stories and 28 feet in height to the highest point on the roof, except for chimneys, for those parcels located in Area "B" of this Overlay District as designated on the Zoning Map.

   c. No building or structure shall exceed 18 feet in height to the highest point on the roof, except for chimneys, for the portion of the structure within 34 feet of the front property line and shall not exceed two stories and 28 feet in height to the highest point on the roof for the remaining portions of the building for those parcels located in Area "C" of this Overlay District as designated on the Zoning Map.

   d. The reference point for structure height measurements described in subsections a, b and c above shall be as follows:

      i. For an addition or remodel of an existing structure, the height shall be measured from the finished first floor except that the new structure height shall not exceed that of the existing structure at its highest point on the roof, excluding chimneys.

      ii. For the case where no structure exists or when an existing structure is removed to rebuild or replace, the height shall be measured from the control point set forth in the chart below.

      iii. The finished first floor level of any part of any building shall not be more than 3 feet above the control point shown in the chart below.

      iv. The finished floor level of any garage shall not be more than 8 feet below the control point set forth in the chart below.

      v. Except for review of satellite or communication devices and antennas in accordance with Section 3.4 (D)(13) of the Malibu LIP, the provisions of

Section 13.27 of the Malibu LIP (Site Plan Review) shall not be available to increase structure heights as set forth in this Overlay District.

6. Site of Construction: There shall be no site of construction requirement, except for the following requirements:

   a. All development, excluding walls and fences, shall be limited to the existing building pad.

   b. There shall be no more than one building pad per lot.

   c. No structure, excluding walls and fences, shall extend beyond, or be cantilevered over, any downhill slope extending from the existing building pad.

   d. For the purposes of this Overlay District, a building pad shall be defined as a single, continuous, graded area, not exceeding 3 percent in slope, designed to accommodate development.

7. Impermeable Coverage: There shall be no maximum impermeable coverage limitation. However, including any structures, impermeable surfaces shall only be permitted on the existing building pad except for the following:

   a. A single driveway per lot not exceeding the width of the existing driveway apron, provided existing driveways are not relocated.

   b. An uncovered parking area in front of the garage at the garage door opening provided its width does not exceed that of the garage and does not extend more than 20 feet toward the street as measured from the garage door.

   c. Walkways, including stairs, leading from the street to the building pad, provided such walkways do not exceed 10 feet in width and provided that no more than one walkway, including stairs, is permitted per lot. Corner lots may have one walkway, including stairs, from each street.

   d. Stairs and pathways, not exceeding 4 feet in width, required for maintenance of slopes.

   e. Drainage ditches and swales.

8. Grading:

   a. Grading shall not be permitted except for the excavation for export of no more than 500 cubic yards for the construction of swimming pools and spas and as

Malibu Country Estates Overlay District

Control Point Chart for Determining Structure Height Measurements

The following schedule has been established to set a control point for each lot (which control point represents the height of the approximate center of each building pad) from which the maximum roof height and the maximum finished first floor level shall be measured. The control point for each building pad is above or below the highest point of the curb of each respective lot, as follows:

Lot No.	Number feet above or below high point of curb	*Lot No.*	Number feet above or below high point of curb	*Lot No.*	Number feet above or below high point of curb	*Lot No.*	Number feet above or below high point of curb	*Lot No.*	Number feet above or below high point of curb	*Lot No.*	Number feet above or below high point of curb
1	-1.6	*19*	-14.4	*37*	-3.3	*55*	+7.0	*73*	+0.6	*91*	-3.9
2	+14.2	*20*	+15.7	*38*	+3.1	*56*	+6.1	*74*	+0.8	*92*	-1.6
3	+26.7	*21*	+1.5	*39*	+24.8	*57*	+0.5	*75*	+10.8	*93*	-0.6
4	+20.1	*22*	-2.1	*40*	+22.9	*58*	+3.4	*76*	+15.1	*94*	-0.8
5	-12.9	*23*	-0.3	*41*	-0.4	*59*	+2.2	*77*	+13.8	*95*	+2.4
6	-3.2	*24*	+0.2	*42*	+2.6	*60*	+0.3	*78*	+1.0	*96*	-0.7
7	-5.0	*25*	-1.3	*43*	+0.8	*61*	+1.0	*79*	-2.1	*97*	-0.5
8	-5.1	*26*	-1.5	*44*	+0.7	*62*	+1.2	*80*	-13.1	*98*	-14.5
9	-6.6	*27*	-9.7	*45*	-14.9	*63*	+0.8	*81*	-3.3	*99*	-3.2
10	-6.0	*28*	-5.7	*46*	-5.2	*64*	+0.4	*82*	-4.4	*100*	-4.4
11	-0.6	*29*	+1.5	*47*	-2.4	*65*	+0.9	*83*	-3.3	*101*	-2.5
12	-1.9	*30*	+1.4	*48*	-0.6	*66*	+1.8	*84*	-0.7	*102*	-6.4
13	-3.9	*31*	+3.4	*49*	+0.4	*67*	+2.2	*85*	+0.4	*103*	-7.6
14	-1.2	*32*	+3.1	*50*	+4.3	*68*	+1.7	*86*	+1.5	*104*	-2.9
15	+15.2	*33*	+1.1	*51*	+4.4	*69*	+1.3	*87*	+1.3	*105*	+0.9
16	+11.2	*34*	-0.2	*52*	+8.3	*70*	+1.4	*88*	+1.0	*106*	+4.1
17	+12.4	*35*	+0.5	*53*	+3.1	*71*	-11.6	*89*	+0.7	*107*	-2.6
18	+4.7	*36*	+1.8	*54*	-6.4	*72*	-4.5	*90*	-0.1		

Note: In the case of a corner lot, the highest point of the curb (from which the above measurement has been made) may be located on the primary or secondary street. In the case of Lot 56, the measurement has been made from the highest point of the curb on Malibu Country Drive.

The above control points for each lot are intended to represent the height of the approximate center of each-building pad as originally graded. If a subsequent certified survey indicates that the approximate center of any of the above lots as originally graded is different from the control point so designated, said control point to be used for the respective lot shall be adjusted to the correct control point.

may be permitted pursuant to Section c below.

b. No grading shall be permitted for the purpose of extending the existing building pad.

c. The following grading may be permitted pursuant to Section 13.27 of the Malibu LIP (Site Plan Review).

i. Grading not exceeding a maximum of 100 cubic yards total cut and fill.

ii.Remedial grading as defined in Section 8.3 (G) of the Malibu LIP.

9. Ridgelines: There shall be no requirement regarding the placement of structures in relation to ridgelines.

10. Roofs.

a. Flat roofs shall not exceed 20% of the total roof area. For the purposes of this Section a flat roof shall include any roofs with a pitch of 8:1 or flatter or any roofs partially or completely covered by parapet walls.

b. Roof materials shall be limited to clay tile, concrete tile or similar material.

c. Roof mounted air conditioning units shall be prohibited.

11. Exterior Maintenance:

a. All facades made of stucco or wood shall be painted or stained.

b. All walls and fences made of stucco, iron, or wood shall be painted or stained.

12. Carports: Carports are prohibited.

13. Satellite or Communication Devices and Antennas: Satellite or communication devices and antennas which exceed one meter in diameter shall not project above rooflines and shall not be visible from public streets or sidewalks. Pursuant to the provisions of Section 13.27 of the Malibu LIP (Site Plan Review), the Director may approve a location or size not strictly in conformance with this Overlay District where necessary to accommodate the technical requirements of the equipment.

E. Malibu Colony Overlay District.

1. Height: The following height requirements shall replace Section 3.6 (E) of the Malibu LIP.

a. Beachfront Lots

i. The structure shall not exceed 20 feet in height for a horizontal distance of 15 feet from the front yard setback on the landward side of the parcel.

ii. The structure shall not exceed 22 feet in height for the entire horizontal distance between the first floor and second floor stringlines on the seaward side of the parcel.

iii. The maximum structure height shall not exceed 24 feet for flat roofs, or 30 feet for pitched roofs, for the remaining building envelope. For the purposes of this section, a pitched roof shall be defined as any roof with a slope of 3:12 or steeper and a flat roof shall be defined as any roof with a slope flatter than 3:12.

b. Nonbeachfront lots

i. The structure shall not exceed 20 feet in height for a horizontal distance of 15 feet from the front yard setback.

ii. The structure shall not exceed 15 feet in height for a horizontal distance of 15 feet from the rear yard setback.

iii. The maximum structure height shall not exceed 24 feet for flat roofs, or 30 feet for pitched roofs, for the remaining building envelope. For the purposes of this section, a pitched roof shall be defined as any roof with a slope of 3:12 or steeper and a flat roof shall be defined as any roof with a slope flatter than 3:12.

c. All structure heights shall be measured from one foot above the centerline of Malibu Colony Drive to the highest point on the roof.

d. In no event shall the maximum number of stories above grade be greater than three.

e. The provisions of Section 13.27 of the Malibu LIP , Site Plan Review, shall not apply.

2. Setbacks: The following setback requirements shall replace Sections 3.6 (F) and 3.6 (G) of the Malibu LIP.

   a. Beachfront lots

      i. Front: 4 feet as measured from the edge of the Malibu Colony Drive road easement to the wall of the structure.

      ii. Sides: The provisions of Section 3.6 (G)(2) of the Malibu LIP shall apply.

      iii. Rear: The stringline rule as defined in Section 3.6 (G)(3) of the Malibu LIP shall apply; however, separate stringlines shall be drawn for each floor for both enclosed living spaces and decks. Existing teahouse or cabana structures shall not be used to establish the stringline for enclosed living space.

   b. Nonbeachfront lots

      i. Front: 15 feet as measured from the edge of the Malibu Colony Drive road easement to the wall of the structure.

      ii. Sides: The provisions of Section 3.6 (F)(2) of the Malibu LIP shall apply.

      iii. Rear: 20 feet as measured from the property line to the wall of the structure.

3. Ridgelines: The provisions of Section 6.5(C) of the Malibu LIP shall not apply.

4. Development Area: The provisions of Section 3.6 (H) of the Malibu LIP shall not apply.

5. Impermeable Coverage: The provisions of Section 3.6 (I) of the Malibu LIP shall not apply.

6. Site of Construction: The provisions of Section 3.6 (J) of the Malibu LIP shall not apply.

7. Structure Size: The provisions of Section 3.6 (K) of the Malibu LIP shall not apply.

8. Neighborhood Standards: The provisions of Section 3.6 (M) of the Malibu LIP shall not apply.

F. De Ville Way Overlay District

1. Height. The following requirements shall replace the height requirements of Section 3.6 (E) of the Malibu LIP:

a. Maximum Height. Maximum of 24 feet for flat roofs and 28 feet for pitched roofs, as measured from the first floor finished pad, excluding basement garages. Basement garage heights shall not exceed 10 feet from the finished pad. For the purposes of this section, a pitched roof shall be defined as any roof with a slope of 3:12 or steeper and a flat roof shall be defined as any roof with a slope flatter than 3:12.

c. Maximum Number of Stories. 2, excluding basement garages.

2. Setbacks. The following requirements shall replace the setback requirements of Section 3.6 (F) of the Malibu LIP:

a. Front Yard Setback. A minimum of 30 feet from the property line.

b. Side Yard Setback. Cumulatively, a minimum of 160 feet from the property line with a minimum of 70 feet from either side.

d. Rear Yard Setback. A minimum of 30 feet from the property line except that up to 20% may be not less than 10 feet from the property line.

3. Grading. The following requirement shall replace the grading requirements in Chapter 8 of the Malibu LIP: Notwithstanding other provisions of this Code, grading (total cut and fill) is limited to 18,000 cubic yards as follows. In conjunction with grading, so that the maximum is not greater than 18,000 cubic yards (exclusive of remedial grading) cut and fill may be allocated as follows:

a. balanced cut and full up to 18,000 cubic yards; or

b. export of no more than 18,000 cubic yards; or

c. import of no more than 9,000 cubic yards, where additional grading on site does not exceed 9,000 cubic yards in conjunction with any landform alteration so that the maximum is no greater than 18,000 cubic yards; or

e. any combination of the above that does not exceed 18,000 cubic yards.

4. Impermeable Lot Coverage. The following requirements shall replace the

impermeable lot coverage requirements of Section 3.6 (I) of the Malibu LIP. Use of permeable surfaces is encouraged, especially for driveways. However, including the primary structures, impermeable surfaces are permitted up to a maximum of 40% of the total lot area for structures, plus a maximum of 30% of the total lot area for driveways, outdoor guest parking and other hardscape (excluding any required, paved fire access road).

5. Structure Size. The following requirements shall replace the structure size requirements of Section 3.6 (K) of the Malibu LIP: The total development square footage shall not exceed 70,000 square feet.

6. Parking. The following requirements shall replace the parking requirements of Section 3.12 of the Malibu LIP: A minimum of 4.2 parking spaces per unit shall be provided of which a minimum of 2 shall be enclosed.

3.5. GENERAL REGULATIONS/DEVELOPMENT STANDARDS

3.5.1 Purpose

The following Standards are intended to ensure that new or modified uses and development conform to the policies of the City's Local Coastal Program Land Use Plan.

3.5.2 Applicability

Any development requiring a Coastal Development Permit which authorizes new construction or modifications to an existing structure, shall be subject to all of the applicable property development and design standards set forth below.

3.5.3 General Development Standards

The following standards shall apply in all zoning districts:

A. Fences and Walls. Fences and walls may be erected and maintained in required yards subject to the requirements specified herein:

1. Front Yards: Fences and walls within a required front yard shall not exceed a height of 42 inches with the exception of open/permeable, non-view-obscuring fencing which may extend to a maximum height of 6 feet.

2. Corner Side Yards: Fences and walls within a required corner side yard shall not exceed 42 inches in height where closer than 5 feet to the right-of-way line, nor exceed 6 feet in height where 5 feet or more from said right-of-way line.

3. Interior Side and Rear Yards: Fences, walls and hedges forming a barrier and

serving the same purpose as a fence or wall within a required interior side or rear yard shall not exceed 6 feet in height; provided, however, that on the street or highway side of a corner lot such hedge, fence or wall shall be subject to the same requirements as for a corner side yard.

4. Retaining Walls: Retaining walls shall not exceed 6 feet in height for any one wall, nor 12 feet for any combination of walls (including required freeboard), and which shall be separated by at least 3 feet, are permitted in all yards.

5. Retaining Walls Topped with Walls or Fences.

   a. Where a retaining wall protects a cut below the natural grade and is located on a front, side, or rear lot line, such retaining wall may be topped by a fence or wall of the same height that would, otherwise, be permitted at the location if no retaining wall existed. Where such retaining wall contains a fill, the height of the retaining wall built to retain the fill shall be considered as contributed to the permissible height of a fence or wall; providing, however, that in any event an open/permeable, non-view-obscuring fence of 42 inches may be erected at the top of the retaining wall for safety protection.

   b. Where a wall or fence is located in the required yard adjacent to a retaining wall containing a fill, such wall or fence shall be set back from said retaining wall a distance of 1 foot for each 1 foot in height, to a maximum distance of 6 feet; provided, however, that this does not permit a wall or fence in required yards higher than permitted by this section. The area between such wall or fence and said retaining wall shall be landscaped and continuously maintained in good condition.

6. Fences and Walls Exempted: Where a fence or wall exceeding the heights specified is required by any law or regulation of the State of California, a fence or wall not exceeding such required height is permitted.

7. Measurement of Fences and Wall Height: The height of a fence or wall shall be measured at the highest ground level within 3 feet of either side of said wall or fence. In order to allow for variation in topography, the height of a required fence or wall may vary an amount not to exceed 6 inches; provided, however, that in no event shall the height of such fence or wall exceed the maximum height specified.

8. Notwithstanding the other provisions of this section, the Director may permit fences or walls within any required yard on flag lots to a height not to exceed 6 feet, pursuant to the provisions of Section 13.26 of the Malibu LIP (Variances and Modifications).

9. All fencing enclosing more than a half acre of a residentially zoned parcel shall be open/permeable, non-view-obscuring.

10. All sports court fencing within required yards shall be subject to the provisions of this Chapter. Such fencing, or other freestanding walls or fencing outside of the required yards, shall not exceed 12 feet in height. Fences shall be visually permeable unless non-permeable fences are approved pursuant to Section 13.27 of the Malibu LIP (Site Plan Review).

B. Projections into Yards:

1. Architectural projections including eaves, awnings, louvers, and similar shading devices; sills, belt courses, cornices, and similar features, may not project more than six (6) feet into a required yard, provided that the distance between an architectural projection and a property line shall not be less than 3 feet.

2. Oriel or bay windows and chimneys may not project more than three (3) feet into a required yard, provided that the projection does not extend closer than 3 feet to the property line and provided that the total width of oriel or bay windows shall not exceed fifty percent of the length of the wall on which they are located or ten (10) feet, whichever is less.

3. Unroofed porches, steps, and terraces may project into a required yard up to a point not closer than three (3) feet to a property line, provided, that the height including railings shall not exceed six (6) feet above the grade of the ground at the property line.

4. Balconies, decks, terraces which are at least eight (8) feet above grade, may project more than six (6) feet into a required yard, provided that at least three (3) feet of required yard remains. Such structures shall be cantilevered or supported only by columns. A balcony or deck projecting from a higher story may extend over a lower balcony or deck but shall not in such case be deemed a roof for the lower balcony or deck.

5. Open, unenclosed fire escapes and fireproof outside stairways may project into any required yard a maximum of four (4) feet; provided, that no yard shall be reduced to less than three (3) feet.

6. Underground structures, such as swimming pools, may project without limit into any required yards; provided, that such structures shall not have a height of more than two and one-half (2 ½) feet above adjacent grade and shall not be located closer than five (5) feet to any property line, or main structure.

7. Arbors and trellises having a supporting structure with beams less than 4 inches thick may extend into any yard area up to a point no closer than 3 feet to any property line.

8. Accessory Structures and Equipment located in the rear and side yards subject to the following limitations:

   a. Ground-mounted pool equipment, air conditioners and built-in barbecues, provided that the equipment shall not be located closer than three (3) feet to the property line. Ground mounted pool and air conditioning equipment must be screened by a solid wall or fence on all sides, except in cases where the equipment is located next to a dwelling, in which case the equipment must be screened on the three sides not adjacent to the dwelling.

   b. Rain conductors, spouts, utility-service risers, and shut-off valves, may project a maximum distance of one (1) foot into any required yard.

   c. Water heaters, water softeners and gas or electric meters, including service conduits and pipes, adequately screened, may project a maximum distance of two and one-half (2 ½) feet, provided that such structures or equipment are not closer than three (3) feet to any lot line.

   d. Wall and window mounted air conditioners, coolers and fans may be used in any required yard, provided that such equipment is not closer than three (3) feet to any lot line.

   e. Guard railings or fences for safety protection around depressed ramps may be placed in any yard provided such railing or fence does not exceed a height of three and one-half (3 ½) feet.

   f. Driveways, walkways, patio slabs and other areas constructed of concrete, asphalt or similar materials and wooden decks may be used in any required yard provided that such structures do not exceed one foot above ground level. Decks over one (1) foot high shall be regulated by Section 3.5.3 (B)(3) of the Malibu LIP. This provision shall not exclude the use of steps providing access between areas of different elevation on the same property.

C. Accessory Uses: Accessory uses identified as being permitted within any zone may be established only if they are accessory and clearly indicated to a primary permitted or conditionally permitted use established concurrent with or prior to establishment of accessory use.

3.6. RESIDENTIAL DEVELOPMENT STANDARDS

All single-family and multiple family residences shall be subject to the following development standards:

A. Every residence shall have a roof constructed with roofing material in compliance

with a rating as specified by Section 1603 (Fire Zone 4) of Title 26 (Building Code) of Municipal Code;

B. Every residence shall have an exterior siding of brick, wood, stucco, metal, concrete or other similar material, except that reflective, glossy, polished and/or roll-formed type metal siding is prohibited;

C. Except as specifically provided herein, every residence shall be not less than 20 feet in width. A single-family residence need only be a minimum of 18 feet wide when it is to be located on a lot or parcel of land less than 26 feet in width. In order to allow for flexibility and creativity of design, a single-family residence may be less than 20 feet wide, but not less than 12 feet, if the floor area, exclusive of appurtenant structures, is at least 900 square feet and the side or sides oriented toward a public street, highway or parkway have a dimension of at least 20 feet. Additions to single-family residences are not restricted as to width;

D. The minimum floor area of a residential unit shall be as follows:

1. For a single family residence, not less than 800 square feet, exclusive of any appurtenant structures.

2. For each multi-family dwelling unit, not less than 750 square feet, exclusive of any appurtenant structures.

E. Height.

1. Non-beachfront lots. Every residence and every other building or structure associated with a residential development, including satellite dish antenna, shall not be higher than 18 feet above natural or finished grade, including rooftop, parapet and deck walls and railings, whichever results in a lower building height, except for chimneys and rooftop antenna other than satellite dish antenna.

2. Notwithstanding any provision of this section, the Director may issue a development permit, pursuant to Section 13.27 of the Malibu LIP (Site Plan Review), to allow heights up to 24 feet for flat roofs and 28 feet for pitched or sloped roofs. In no event shall the maximum number of stories above grade be greater than two.

3. Beachfront lots. For new construction on a beachfront lot, no residence or structure, including satellite dish antenna, shall exceed 24 feet for flat roof including solid rooftop, parapet and deck walls, and 28 feet for pitched roof, as measured from the lowest recommended finish floor elevation on the ocean side, as defined by a licensed Civil Engineer, based upon a Comprehensive Wave Action Report, and 24 feet for a flat roof and 28 feet for pitched roof as measured from center line of the road on the land side. Building height shall be apportioned such that the portion of

the building which height is measured from the centerline of the road shall not exceed half of the total length (front to rear) of the structure. Open railings for rooftop decks on structures with a flat roof may extend 25 feet in height.

For an addition to an existing structure, the height shall be measured from the bottom of the first floor diaphragm on the ocean side, or the lowest recommended finish floor elevation, whichever is lower, and the center line of the road on the land side.

F. Non-Beachfront Yards/Setbacks. The following yard/setback requirements apply to all lots, except beachfront lots:

1. Front yard setbacks shall be at least 20% of the total depth of the lot, or 65 feet, whichever is less.

2. Side yard setbacks shall be cumulatively at least 25% of the total width of the lot but, in no event, shall a single side yard setback be less than 10% of the width of the lot or 5 feet, whichever is greater.

3. Rear yard setbacks shall be at least 15% of the lot depth or 15 feet whichever is greater.

4. For the purpose of calculating yards, slopes equal to or greater than 1:1 shall not be included in the lot dimensions.

5. Modifications to required yards/setbacks standards shall be permitted where necessary to avoid or minimize impacts to sensitive resources.

6. Setbacks from parklands. New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a sufficient size to prevent impacts to parkland resources, but in no case shall they be less than 100 feet in width.

a. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.

b. Variances or modifications to park buffer standards shall not be granted except where there is no other feasible alternative for siting the primary structure. In such cases, one primary structure shall be the only permitted development on the site, and the structure shall be restricted in size and designed to maximize the buffer standard to the maximum extent feasible.

c. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.

8. Setbacks shall also be in compliance with Article VIII of the Malibu Municipal Code (Building Code).

G. Beachfront Yards/Setbacks. Notwithstanding the above requirements, the following yard requirements apply to beachfront lots:

1. Front. 20 feet maximum or the average of the two immediate neighbors, whichever is less.

2. Side. 10% of lot width on each side, with a 3 feet minimum and 5 feet maximum, except as required for view corridors under Section 6.5 (E)(2) of the Malibu LIP.

3. Rear. Setbacks for infill development are determined by the stringline rule. Separate setback standards apply to dwellings and decks, as indicated below. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.

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

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

c. All infill development shall be set back a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel.

4. ~~Minor Modification~~Variance. Where the application of the ~~General R~~stringline rule results in a stringline substantially inconsistent with adjacent development, the applicant may apply for a variance pursuant to Section 13.26 of the Malibu LIP~~Minor Modification pursuant to Municipal Code Section 9.4.69C~~.

5. Accessory structures. No accessory structure (including, without limitation, a gazebo, cabana) may project seaward of the dwelling stringline.

6. Swimming pools and spas. Pools and spas may project seaward of the dwelling stringline, but in no case may they project seaward of the deck stringline.

7. Stairways. Stairways from decks to the beach may not project seaward of the deck stringline.

8. Fences. Fences, shall not project seaward of the structure stringline, with the exception of any required safety railing around decks that is a maximum of 42 inches in height, and fencing constructed of transparent material such as plexi-glass.

9. Shoreline protective devices. A shoreline protective device shall be permitted only if the Planning Director and the Building Official determine that the device is necessary to protect an existing structure as defined in paragraphs L. and M. of Section 10.4 of the LIP or an existing or new sewage disposal system. A shoreline protective device shall be located as far landward as possible, consistent with the provisions of Chapter 10 of the Malibu LIP.

10. Bluffs. Setbacks shall be consistent with the requirements of Chapter 10 of the Malibu LIP.

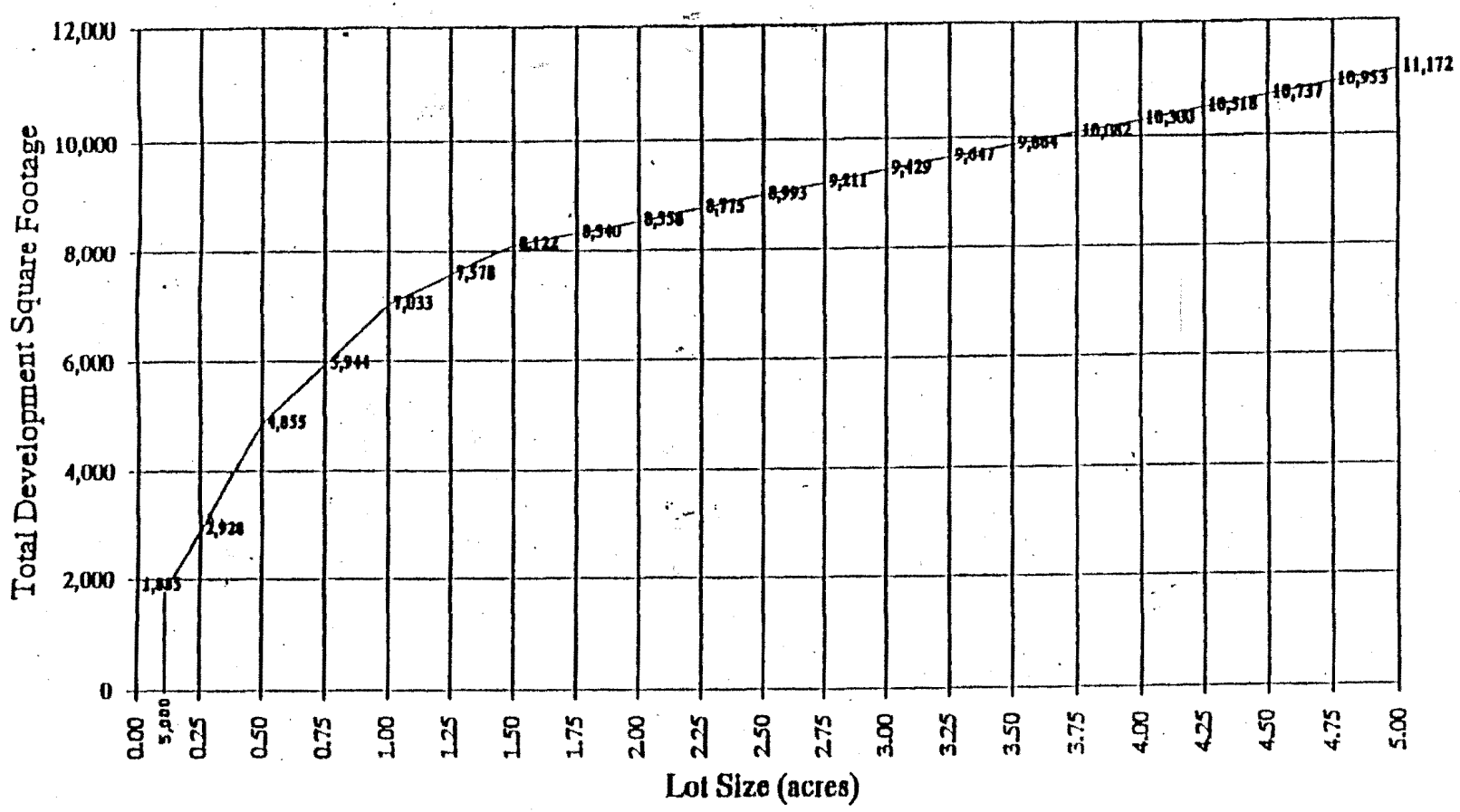
H. Development Area. Every residential development shall be contained within a convex-shaped enclosure that shall not exceed 2 acres, except where otherwise restricted by provisions of the ESHA Overlay Ordinance (Chapter 4), Scenic and Visual Resources Ordinance (Chapter 6), or Grading Ordinance (Chapter 8) of the Malibu LIP.

I. Impermeable Coverage. Use of permeable surfaces is encouraged, especially for driveways. However, including the primary structure, impermeable surfaces are permitted for residential lot areas (excluding slopes equal to or greater than 1:1), up to 1/4 acre at 45%; for lot areas greater than 1/4 acre but a ½ acre or less, at 35% and for lots greater than ½ acre at 30% up to a maximum of 25,000 square feet. Beachfront lots shall not be subject to this Paragraph.

J. Site of Construction. Structures may be constructed on slopes greater than 3:1 but less than 2 1/2:1 subject to the provisions of Section 13.27 of the Malibu LIP (Site Plan Review).

K. Residential Structure Size. Except as specifically provided herein and where otherwise restricted by provisions of the ESHA Overlay Ordinance (Chapter 4), ~~Scenic and Visual Resources Ordinance (Chapter 6)~~ of the Malibu LIP, and as indicated on the Total Development Square Footage Structure Size Chart, the total

Total Development Square Footage
Structure Size Chart



development square footage associated with the construction of a single-family or multiple-family residence on a legal lot equal to or greater than 5 acres shall not exceed a total of 11,172 square feet. On lots 5,000 square feet or less, the total development square footage shall not exceed 1,885 square feet. Total development square footage shall be determined based on the following formula (slopes equal to or greater than 1:1 shall be excluded from the lot area calculation): for lot areas up to ½ acre, total square footage shall be 17.7% of lot area plus 1,000 square feet; for lot areas greater than ½ acre and up to 1 acre, total development square footage shall be increased by 10% of the amount of lot area exceeding ½ acre; for lot areas greater than 1 acre and up to 1 ½ acre, total development square footage shall be increased by 5% of the amount of lot area exceeding 1 acre; for lot areas greater than 1 ½ acres and up to 5 acres, total development square footage shall be increased by 2% of the amount of the lot area exceeding 1 ½ acres. For the purposes of this subsection, arbors or trellis open to the sky shall not be calculated as part of the total development square footage. Beachfront lots shall be exempt from the provisions of this paragraph.

1. Single-Story Floor Area. Notwithstanding any other provision of this Chapter, the total development square footage for single-story structures at or below 18 feet is determined according to the above formula.

2. Multi-Story or Single Floor Area, Structures Greater Than 18 Feet In Height. Notwithstanding any other provision of this Chapter, the total development square footage for a structure greater than 18 feet in height shall not be greater than permitted for single-story construction. Any portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.

3. Basements. For the purposes of this subsection, a basement is an area enclosed by walls where the mid-point of all walls are below grade. The square footage of a basement shall not count in structure size. Any volume of a basement above grade shall be included in volume calculation.

L. Neighborhood Standards. Notwithstanding any other provision of this Section, upon application and pursuant to Section 13.27 of the Malibu LIP , the Planning Commission may approve or conditionally approve increased height, structure size and/or development area and/or decreased setbacks, except in the case of ESHA buffers or setbacks, bluff setbacks, view corridors, or height restrictions to minimize impacts to visual resources, where such modifications do not exceed the neighborhood standards, and where the Planning Commission affirmatively makes all the findings set forth in Section 13.27.5 of the Malibu LIP .

1. Neighborhood Standards apply where there are at least 10 developed lots within a 500-foot radius of the subject site located in the same neighborhood. A neighborhood is defined by the presence of such features as common access, beachfront or landside

orientation or by being a part of the same subdivision or development, or by being within the same proximate area of the City with no intervening major natural or man made physical features such as major roads or flood control channels, canyons, watercourses, hills, ridges or mountains, and sharing similar zoning and other development characteristics such as lot and house size.

2. For the purpose of this Section, "neighborhood standards" means the average structure size and/or development, setback, or height, of at least 80 percent of all the legal lots developed with a single-family residence within a 500-foot radius of the subject site located in the same neighborhood. In such cases the 80 percent shall be determined by excluding the smallest 10 percent and the largest 10 percent of lots in terms of structure size and/or development area and height, and the smallest 20 percent of lots in terms of yard setbacks.

M. Temporary Mobilehomes or Trailers. Mobilehomes or trailers used as a residence during construction or in anticipation of reconstruction of residences destroyed due to natural disaster, shall comply with the following conditions:

1. No more than one dwelling unit shall be permitted.

2. The mobilehome or trailer shall not exceed 24 feet in width.

3. No additional grading shall be allowed beyond that permitted as part of the development plan.

4. The mobilehome incorporates compatible colors with the neighborhood and includes skirting along the base of the mobilehome.

5. The mobilehome does not include any structural attachments.

6. The mobilehome or trailer shall be occupied by the property owner and connected to a temporary power pole with owner authorization to the City to terminate utilities upon expiration of permit period.

7. The mobilehome or trailer shall be permitted for an initial period of two years and shall be renewable for six month increments at the discretion of the Planning Director.

N. Accessory Structures

Accessory structures identified as being permitted within any zone may be established only if they are clearly accessory to a primary permitted or conditionally permitted use established concurrent with or prior to establishment of accessory use.

1. Second Residential Units

a. Second residential unit includes a guest house or a second unit, as defined in Section 2.1 of the Malibu LIP.

b. A maximum of one second residential unit may be permitted as an accessory to a permitted or existing single family dwelling. Development of a second residential unit shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.

c. Development Standards

i. Siting

Any permitted second residential unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

ii. Maximum Living Area

The maximum living area of a second residential unit shall not exceed ~~750~~ 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the second residential unit.

iii. Parking

a) A minimum of one on-site parking space shall be provided for the exclusive use of a second residential unit.

b) One garage not to exceed 400 square feet in size may be permitted as part of a second residential unit.

2. Other Accessory Structures

a. Accessory structures customarily ancillary to single family dwellings including, but not limited to, a stable, workshop, gym, studio, pool cabana, office, sport court, pool, or spa may be permitted as an accessory to a permitted or existing single family dwelling.

b. Any permitted accessory structure shall be located within the approved development area for the project site and shall be clustered with the primary

dwelling unit and any other approved structures to minimize required fuel modification.

O. Home Occupations.

1. Purpose. The purpose of the following regulations is to allow reasonable non-residential uses of residential structures, so long as the non-residential use is ancillary to the residential use, conducted by a resident of the structure, and does not cause an impact which is substantially different from the impact of a residential use.

2. Uses permitted without a Permit. The following uses are allowed, provided they operate in compliance with the City's ordinances and the requirements of home occupations.

a. Educational uses. A use involving the teaching of students, including, but not limited to music lessons, academic tutoring, religious instruction, swimming lessons, equestrian riding lessons provided that there be no more than six (6) non-resident persons whether students or employees, present at any one time.

b. Home-Based Office or Home-Based Studio. An office used for business, consultation, computer/internet related use or a recording studio, artist studio, or other reasonably similar use determined by the Planning Director, provided that there be no more than six (6) non-resident persons whether employees or clients, present at any one time.

3. Uses That Require A Permit. The Planning Director (Director) may allow any reasonable use as determined by the Director pursuant to a home occupation permit. The home occupation must operate in compliance with City Ordinances and the general requirements set forth below.

a. The applicant shall submit a complete written description of the proposed home occupation including but not be limited to, anticipated hours of operation, anticipated storage of materials and supplies, amount of pedestrian and/or vehicular traffic generated by the home occupation, and a graphic representation of the location of the proposed home occupation within structures on the property.

b. An application for home occupation permit shall be completed on forms provided by the City and include such plans as are reasonably required by the Director for a complete understanding of the application. The application shall be accompanied by a filing fee in an amount set by resolution of the City Council.

c. When the Director determines that the application is complete, the Director shall give written notice of the application to all owners and residents of all properties within 500 feet of the proposed home occupation, but in no event shall

less than 10 nearest developed properties be notified. Where there are less than 10 properties within 500 feet of the proposed home occupation, the Director shall give written notice to the owners and residents of the 10 properties nearest the proposed home occupation. The written notice shall include a brief description of the proposed home occupation, the address of the proposed occupation, the date, time and location of any public meeting or hearing about the application. No sooner than 10 calendar days after the owners and residents are notified and no later than 30 calendar days after receipt of the complete application, the Director will conduct a meeting to consider the application and all written and oral comments.

d. The Planning Director shall grant, deny, or conditionally grant the home occupation permit and issue a written decision.

e. The Director shall impose conditions where required to assure that the home occupation does not cause an impact that is substantially different from the impact of a solely residential use.

f. A home occupation permit shall be effective ten (10) calendar days after its issuance, unless a written appeal to the Planning Commission is filed with the Director within the ten (10) calendar days after the Director approved or denied the application. Any aggrieved person may appeal the Director's decision. The Director shall notice a hearing on the appeal in the same manner as the initial hearing regarding the home occupation application. The decision of the Planning Commission shall be final.

4. All home occupations shall comply with the requirements listed below:

a. No flammable, hazardous or toxic materials other than those materials normally found in a dwelling and only in the quantities normally found in a dwelling, shall be stored on-site.

b. The hours of operation for a home occupation shall begin no earlier than 8:00 a.m. and end no later than 9:00 p.m. daily. Any activity relating to the home occupation held outdoors will be required to cease at sunset.

c. With the exception of newspaper, magazine or other similar advertising, the home occupation shall not be apparent. The posting of flyers, or signs to advertise a home occupation, is prohibited except as permitted in Section 3.13 of the Malibu LIP.

d. No home occupation shall create objectionable noise, dust, vibration, odor, smoke, glare, electrical interference, fire hazard, radiation, or other hazard or nuisance in excess of what is normally found in the neighborhood in which the

home occupation is located.

e. All noise shall comply with the Article IV, Public Peace, Chapter 2, Noise of the Malibu Municipal Code.

f. A home occupation shall comply with Section 3.13 of the Malibu LIP.

g. Except for those uses identified as requiring or not requiring permits, above, no one other than residents of the dwelling shall be on-site employees of the home occupation or report to work at the site in the conduct of a home occupation.

h. No vehicle, with signage identifying the existence of the home occupation shall be parked on the property or in the right of way such as to advertise the existence of the home occupation.

i. Required enclosed parking shall be maintained in compliance with Section 3.12 of the Malibu LIP.

j. Materials and goods shall not be stored and no permanent work area, work bench, or structures shall be built within the required enclosed parking area in such a manner as to prevent the use of the area for vehicle parking. In addition, no supplies or equipment or equipment used for, or in any way related to, the home occupation may be stored outside the dwelling unit except for those items necessary for outdoor instruction permitted for uses not requiring a permit.

k. Pedestrian and/or vehicular traffic shall not be in excess of the normal amount in the zone in which the home occupation is located.

l. With the exception of newspaper deliveries, delivery or pick-up of materials, goods, or products to and from the home occupation shall only occur from 8:00 a.m. to 5:00 p.m., Monday through Friday. The delivery vehicles used in conjunction with the delivery of materials, goods, or products to and from the location of a home occupation shall be limited to a single unit truck with a maximum of 28 foot length and a maximum gross vehicle weight of 24,000 pounds.

m. Motor vehicle repair businesses, and day care facilities are prohibited.

n. The home occupation shall not occupy more than twenty (20%) percent of the total floor area of all structures on the property, or 2,000 square feet, whichever is less. Any construction, structural alterations or addition(s) to any structure on the property in which the home occupation may be conducted, shall conform with requirements for residential structures within the Zoning Ordinance.

P. Determinations regarding lot widths and depths for irregularly shaped parcels, permitted driveway paths, building area and total development square footage, infill lots and yards shall be made by the Director.

Q. Residential buildings located within floodplains, liquefaction or earthquake fault zones shall comply with any other site specific hydrologic, geologic and seismic conditions based on the required hydrology soils and geotechnical reports and final recommendations from the City Geologist or City Engineer.

R. Distance Between Buildings

1. Where more than one building is placed on a lot or parcel of land, the following minimum distances shall apply.

a. Distance Between Main Buildings. A minimum distance of 10 feet shall be required between all main residential buildings established on the same lot or parcel of land.

b. Distance Between Accessory and Main Buildings. A minimum distance of six feet shall be required between any main residential building and an accessory building established on the same lot or parcel of land.

c. Projections Permitted Between Buildings on the Same Lot or Parcel of Land. The following projections are permitted within the required distance between buildings, provided they are developed subject to the same standards as and not closer to a line midway between such buildings than is permitted in relation to a side lot line within a required interior side yard:

i. Eaves and cantilevered roofs;
ii. Fireplace structures, buttresses and wing walls;
iii. Rain conductors and spouts, water tables, sills, capitals, cornices, and belt courses;
iv. Awnings and canopies;
v. Water heaters, water softeners, gas or electric meters, including service conductors and pipes;
vi. Stairways and balconies above the level of the first floor.

2. Uncovered porches, platforms, landings and decks, including access stairs thereto, which do not extend above the first floor are permitted within the required distance between buildings without distance restriction.

3.7. RESIDENTIAL DENSITY BONUS ORDINANCE

3.7.1. Purpose and Intent

The purpose of this section is to implement the incentive program provided in the Government Code that allows developers of certain types of residential projects that comply with all standards set forth in Government Code Section 65915, to build no more than 25 percent more units than a property's zoning would ordinarily allow. In exchange for this density bonus, the owners must make the units affordable for 30 years if an incentive is utilized in addition to the density bonus specified in Government Code Section 65915(b) or for 10 years if an incentive or concession (identified in 65915(h)) is not utilized in addition to the density bonus. This section insures that, to the maximum extent feasible, the provisions of Government Code section 65915 are implemented in a manner that is consistent with the policies of Chapter 3 of the Coastal Act and is most protective of coastal resources.

3.7.2 Applicability

This section applies to a "housing development", as defined in Government Code section 65915(g), when the development is for the type of housing specified in Government Code section 65915(b)(1), (b)(2) or (b)(3). This section also applies only to projects where the land use designations in the LCP allow development of at least five residential units on the parcel or parcels where the project is located.

3.7.3 Filing Requirements

In addition to other filing requirements in the LCP, an applicant who, pursuant to Government Code section 65915, is seeking approval of a density bonus or both a density bonus and an incentive or concession identified in Government Code section 65915(h), must provide:

A. The information required to demonstrate that the project meets all requirements of section 65915;

B. Information demonstrating that any requested incentive or concession is necessary in order to provide for affordable housing costs, as defined in Health and Safety Code section 50052.5, or for rents for the targeted units to be set as specified in Government Code section 65915(c);

C. A discussion of whether the method proposed by the applicant for accommodating the requested density bonus will have an adverse effect on coastal resources. If the applicant indicates, or if the City determines, that the method proposed for accommodating a requested density bonus will have an adverse

effect on coastal resources, the applicant must submit an evaluation of: all feasible methods of accommodating the 25 percent density increase, the effects of each method on coastal resources, and the method that is most protective of significant coastal resources;

D. A discussion of whether any incentive or concession requested by the applicant will have an adverse effect on coastal resources. If the applicant indicates, or if the City determines, that an incentive or concession that is requested will have an adverse effect on coastal resources, the applicant must submit an evaluation of all feasible alternative incentives or concessions and their effects on coastal resources, and which of the feasible incentives or concessions is most protective of significant coastal resources.

3.7.4 Procedures for Approval

A. When required by Government Code section 65915, the City shall grant a density bonus that allows the applicant to build no more than 25 percent more units than a property's zoning would ordinarily allow, if the City finds:

1. The project is for any one of the types of residential projects described in Government Code Section 65915(b);
2. The project complies with all standards set forth in Government Code Section 65915;
3. The project is a housing development consisting of five or more units.

B. In accordance with Government Code Section 65915(f), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. The "otherwise maximum allowable residential density" shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the coastal zoning ordinances and land use plan certified by the Coastal Commission.

C. Any housing development approved pursuant to Government Code Section 65915 shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all otherwise applicable certified local coastal program policies and development standards. If the City approves development with a density bonus, the City must find that the development, if it had been proposed without the 25 percent density increase, would have been fully consistent with the policies and development standards of the certified local coastal program. If the City determines that the means of accommodating the density increase proposed by the applicant do not have an adverse effect on coastal resources, the City shall require that the density increase be accommodated by those means. If, however, the City determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, before approving a 25 percent density increase, the City shall

identify all feasible means of accommodating the 25 percent density increase and consider the effects of such means on coastal resources. The City shall require implementation of the means that are most protective of significant coastal resources.

D. In addition to a 25 percent density bonus, the City shall grant to a housing development that complies with the provisions of Section A. above, one of the incentives or concessions identified in Government Code Section 65915(h), unless the City finds that an incentive or concession is not required in order to provide for affordable housing costs or rents. If the City determines that the development incentive or concession requested by an applicant pursuant to this section will not have any adverse effects on coastal resources, the City may grant the requested incentive or concession. If the City determines that the requested incentive or concession will have an adverse effect on coastal resources, the City shall consider all feasible alternative incentives and concessions and their effects on coastal resources. The City may grant one or more of those incentives or concessions that do not have an adverse effect on coastal resources. If all feasible incentives or concessions would have an adverse effect on coastal resources, the City shall grant only that one incentive or concession that is most protective of significant coastal resources.

E. For the purposes of this section, "coastal resources" means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code section 30200 *et seq.*, including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, and the visual quality of coastal areas.

F. For any housing development where the City approves a density bonus, prior to issuing the coastal development permit, the owners must record an affordable housing agreement, in the form of a deed restriction or other recorded document, that provides that the affordable units in the development must remain affordable (as defined in Government Code section 65915) for either: (a) 30 years if an incentive or concession identified in 65915(h) was granted in addition to the density bonus specified in Government Code Section 65915(b); or (b) 10 years if an incentive or concession was not granted in addition to the density bonus.

3.8. COMMERCIAL DEVELOPMENT STANDARDS

A. All commercial development shall be subject to the following development standards:

1. Height

a. Non-Beachfront lots. Every building or structure, including satellite dish antenna, shall not be higher than 18 feet above natural or finished grade, whichever results in a lower building height, except for chimneys and rooftop antenna other than satellite dish antenna.

b. Notwithstanding any provision of this section, the Planning Commission, pursuant to Section 13.27 of the Malibu LIP , may allow heights up to 24 feet for flat roofs and 28 feet for pitched or sloped roofs. In no event shall the maximum number of stories above grade be greater than two.

c. Beachfront lots. No building or structure, including satellite dish antenna, shall exceed 24 feet for flat roof and 28 feet for pitched roof, as measured from the lowest recommended finish floor elevation on the ocean side, as defined by a licensed Civil Engineer, based upon a Comprehensive Wave Action Report, and 24 feet for a flat roof and 28 feet for pitched roof as measured from center line of the road on the land side. Building height shall be apportioned such that the portion of the building which height is measured from the center line of the road shall not exceed half of the total length (front to rear) of the structure.

d. For an addition to an existing structure, the height shall be measured from the bottom of the first floor diaphragm on the ocean side, or the lowest recommended finish floor elevation, whichever is lower, and the center line of the road on the land side.

2. Non-Beachfront Yards/Setbacks. The following yard/setback requirements apply to all lots, except beachfront lots:

a. Front yard setbacks shall be at least 20% of the total depth of the lot.

b. Side yard setbacks shall be cumulatively at least 25% of the total width of the lot but, in no event, shall a single side yard setback be less than 10% of the width of the lot or 5 feet, whichever is greater.

c. Rear yard setbacks shall be at least 15 feet whichever is greater.

d. For the purpose of calculating yards, slopes equal to or greater than 1:1 shall not be included in the lot dimensions.

3. Setbacks from parklands. New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a sufficient size to prevent impacts to parkland resources, but in no case shall they be less than 100 feet in width.

a. New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in

required park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values.

b. Variances or modifications to park buffer standards shall not be granted except where there is no other feasible alternative for siting the primary structure. In such cases, one primary structure shall be the only permitted development on the site, and the structure shall be restricted in size and designed to maximize the buffer standard to the maximum extent feasible.

c. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.

4. Beachfront Yards/Setbacks. Notwithstanding the above requirements, the following yard requirements apply to beachfront lots:

a. Front. 20 feet maximum or the average of the two immediate commercial neighbors neighboring commercial properties, whichever is less.

b. Side. 10% of lot width on each side, with a 3 feet minimum and 5 feet maximum.

c. Rear. Determined by the stringline rule as described in Section 3.6 (G)(3) of the Malibu LIP.

d. Bluffs. Shall be consistent with the requirements of Chapter 10 of the Malibu LIP.

<u>5</u>4. Site Development Criteria. All proposed commercial construction shall comply with the following site development standards:

a. The gross square footage of all buildings on a given parcel shall be limited to a maximum Floor Area Ratio (F.A.R.) of 0.15, or 15% of the lot area (excluding any street rights of way). Additional gross square footage may be approved, up to the maximum allowed for the parcel under the Land Use Plan provided the increase complies with the provisions of Section <u>e and/or</u> f below<u>, where applicable</u>. Additional square footage for commercial development located in the Civic Center area may be approved, up to the maximum allowed for the parcel under the Land Use Plan, only if it is included as part of a <u>specific plan,</u> planned development or other comprehensive plan approved as a Local Coastal Program amendment certified by the California Coastal Commission <u>in compliance with the provisions of Section e below</u>.

b. 40% of the lot area shall be devoted to landscaping. An additional 25% of the

lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.

c. Commercial buildings located within floodplains, liquefaction or earthquake fault zones shall comply with any other site specific hydrologic, geologic and seismic conditions based on the required hydrology soils and geotechnical reports and final recommendations from the City Geologist or City Engineer.

d. The applicant shall provide appropriate graphic information and calculations on the site plan to satisfy compliance with this subsection.

e. Civic Center Development Criteria. Lands within the Civic Center Overlay ~~a~~Area for which a Civic Center ~~development guidelines have~~Specific Plan, planned development, development agreement, or other comprehensive plan has been approved pursuant to the requirements of the Land Use Plan shall be developed in accordance with ~~those guidelines~~said plan or agreement. Any specific plan, planned development, development agreement, or other comprehensive plan shall not be effective until adopted by the City and certified by the Coastal Commission as an amendment to the LCP. This section does not apply to improvements to existing development in the Civic Center or development already approved by the Coastal Commission and the City.

If a specific plan or other comprehensive plan is adopted by the City and certified by the Coastal Commission, commercial development shall be allowed in the Civic Center Overlay area up to the maximum Floor Area Ratio (FAR) allowed for the specific commercial use designation under the Land Use Plan.

Subsequent to September 15, 2004, if no specific plan or other comprehensive plan has been approved by the Coastal Commission as an LCP amendment, commercial uses shall be allowed on individual parcels located in the Civic Center Overlay area as designated by the Land Use Plan Map, consistent with all policies of the LCP. A maximum FAR of 0.15 is permitted, except that the FAR may be increased to no greater than a maximum of 0.20 if public benefits and amenities, including public open space and, where applicable, habitat restoration or enhancement, are provided and the project site is included as part of a planned development or development agreement for multiple parcels, approved under a LCP amendment by the Coastal Commission.

Subsequent to September 15, 2004, if no specific plan or other comprehensive plan has been approved by the Coastal Commission as an LCP amendment, applications for new commercial development, other than improvements to existing uses, on individual parcels located in the Civic Center Overlay area shall be subject to a wetland delineation determination in accordance with policy

4.4.3(B) of the Malibu LIP prior to approval of any new development on the site.

f. Additional Square Footage. The City Council shall have the authority to approve additional square footage for commercial development, except within the Civic Center area, as provided in Section 3.8 (A)(5) of the Malibu LIP, where the applicant has offered to the City public benefits and amenities in connection with a project subject to a Development Agreement processed pursuant to Section 13.28 of the Malibu LIP . In considering a request for additional square footage, the City Council shall apply one of the following Guidelines:

The Increase in Land Value Model - The economic value of the public benefits and amenities offered by the applicant should be at least 50% of the Increase in Land Value attributable to the additional square footage, determined as follows: The lot area needed to build the proposed square footage is determined, using 15% F.A.R. ("needed lot area"). The actual area of the applicant's property is subtracted from the needed lot area (the result is the "imputed additional lot area"). The fair market value of the applicant's property is determined, without considering the additional square footage, and converted to a per square foot figure. The land value is multiplied by the imputed additional lot area. The result is the Increase in Land Value.

The Avoided Cost of Development Model - The economic value of the public benefits and amenities offered by the applicant should be at least 50% of the Avoided Site Improvement Costs, determined as follows: The lot area needed to build the proposed square footage is determined, using 15% F.A.R. ("needed lot area"). The actual area of the applicant's property is subtracted from the needed lot area (the result is the "imputed additional lot area"). The cost to prepare the imputed additional lot area is calculated, including such items as grading, drainage, ingress/egress/circulation, parking, landscaping, on site utilities, design and construction management costs (but not the costs of the buildings). This sum is the applicant's Avoided Site Improvement Costs.

The Increase in Total Project Value Model - The economic value of the public benefits and amenities offered by the applicant, calculated over the life of those benefits and amenities, should be at least 50% of the Increase in Total Project Value, determined as follows: The City will engage a consultant to calculate the increase in Total Project Value over the life of the project attributable to the additional square footage, which calculation shall consider the following factors:

Annual Rent is per square foot (this would vary based on the type of project).
Average occupancy over the life of the project. Cost to Build/Sq. Ft. This is the cost for the building only (this would vary based on the type of

project).
Total Cost is cost per square foot (x) total square footage.
Annual Debt Payment @ current rate % for 30 years (this assumes 100% bank financing).
Taxes (assumes a property tax rate, including bonds and assessments).
Insurance (assumes an all risk policy in the Malibu area based on the size of the building).
Utilities and maintenance (assume a cost per square foot per year respectively).
Depreciation (assumes a 35 year schedule for the Total Cost of the building).
Income Taxes, based on the current state and federal corporate rates (the federal rate is progressive and could change depending on the amount of net income before taxes, the state rate is proportional, not progressive).
Net Income After Taxes is the net profit to the landowner.
Total Net Profit after taxes over economic life is the net profit times 35 years.

B. Determinations regarding lot widths and depths for irregularly shaped parcels, permitted driveway paths, building area and total development square footage, infill lots and yards shall be made by the Director.

3.9. DEVELOPMENT STANDARDS FOR SPECIAL USES

3.9.1 Service Station Requirements

The following standards shall apply to any service station development proposal in addition to all other commercial development standards set forth in this Chapter.

A. Location. All service station sites shall front on streets designated as through streets, unless the sites are part of commercial developments such as shopping centers.

B. Site Size. The site of the service station shall be of sufficient size and configuration to satisfy all requirements for off-street parking, setbacks, curb cuts, walls, landscaping and storage as provided in the Malibu LIP .

C. Setbacks. All buildings shall be set back from interior property lines a minimum of eighteen feet and exterior property lines a minimum of twenty feet except that pump islands may be located a minimum of twenty feet from all exterior property lines, and pump island canopies may project to within fifteen feet of exterior property lines.

D. Access. Driveways shall be so designed and located as to ensure a safe and efficient movement of traffic on and off the site to and from the lane of traffic nearest the curb.

E. Noise. Buzzers and amplified signaling bells are to be located within the service station proper and shall not generate noise beyond that of a normal residential telephone ring when the service station site abuts residential property or property used for residential purposes.

F. Lighting. All lighting fixtures shall be located so as to shield direct rays from adjoining properties. Luminaries shall be of a low level, indirect diffused type and shall not exceed the height of the building.

G. Wall or Hedge. A five-foot masonry wall or hedge shall be required along all interior property lines.

H. Drainage. All service stations shall comply with the requirements of Chapter 17 of the Malibu LIP (Water Quality Protection Ordinance).

3.9.2 Drive-Up Windows

The following provisions shall apply to drive-up windows and remote tellers located on the same parcel as the principal use permitted in the Commercial Districts.

A. Design Requirements. The following shall be the minimum requirements for all drive-up windows and remote tellers.

1. Drive-up windows and remote tellers shall provide at least 180 feet of reservoir space for each facility, as measured from the service windows or unit to the entry point into the drive-up lane;

2. Entrances to drive-up lanes shall be at least 25 feet from driveways entering a public street;

3. Drive-up windows or remote tellers shall not be considered as justification for reducing the number of parking spaces which are otherwise required;

4. Any permit authorizing such facility is revocable if congestion attributable to the facility regularly occurs on public streets or within the parking lot, and the management cannot alleviate such situation.

B. Findings. Such facilities shall not be approved unless the City finds that:

1. The design and location of the facility and lane will not contribute to increased

congestion on public or private streets adjacent to the subject property.

2. The design and location of the facility and lane will not impede access to or exit from the parking lot serving the facility, nor impair normal circulation within the parking lot.

3.9.3 Helipad Standards

A. Helipads sites shall be located on the same site as the main residence.

B. The minimum net site area shall be 10 acres.

C. No other private use helipad shall be located within 5 miles

D. Fire suppression equipment (i.e. water tank, foam, pumps) shall be maintained on the site, continuously, to the satisfaction of the Fire Department.

E. Emergency response agencies shall be allowed to use the helipad facility in times of emergency.

3.9.4 Small Community Stage Theater Standards

A. The minimum net site area for a small community stage theater shall be five (5) acres.

B. No more than one hundred (100) seats shall be provided.

C. All performances shall be held within the interior of a building and no outdoor performances shall be permitted.

3.10. LANDSCAPING AND FUEL MODIFICATION

All new development shall minimize the removal of natural vegetation, including native trees and plants in order to minimize erosion and sedimentation, impacts to scenic and visual resources, and impacts to sensitive resources.

3.10.1 Landscaping

Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated.

A. Plant Species

1. Plantings shall be ~~primarily~~ native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in Section 3.10.1 (A)(3) of the Malibu LIP. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.

2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

3. Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone (Zone A) required for fuel modification nearest approved residential structures. Irrigated lawn, turf and ground cover shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B. Timing of Landscaping

1. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

2. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence.

C. Landscaping Coverage Standards.

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for revegetation.

D. Landscaping Monitoring.

Required landscaping that is within ESHA or ESHA buffer shall be monitored in accordance with the provisions of this section.

1. Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be

implemented if necessary.

2. Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that the on-site landscaping is in conformance with the approved landscape plan. The monitoring report shall include photographic documentation of plant species and plant coverage.

3. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.

E. Landscape Plans

Landscape plans shall be prepared by a licensed landscape architect or qualified resource specialist for all graded or disturbed areas on the project site. The landscape plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in the site landscaping. The landscape plans shall be designed to meet the standards in Sections 3.10.1 (A) through (D) of the Malibu LIP.

3.10.2 Fuel Modification and Brush Clearance

A. All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety.

B. Development shall utilize fire resistant materials and incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified.

3.11. AGRICULTURAL USE AND CONFINED ANIMAL FACILITIES

3.11.1 Agricultural Uses

A. The conversion of vacant land in ESHA, ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard, or other agricultural use shall be prohibited, except as otherwise provided in Section 4.7 of the Malibu LIP.

B. Crop, orchard, or vineyard uses as an accessory use and in conjunction with an existing or new single family residence may be permitted only within the irrigated fuel modification area (Zones A & B, if required) required by an approved fuel modification plan for the approved structure(s). Such uses shall not result in any expansion to the fuel modification area required for the approved residential structure(s).

C. Greenhouses shall only occur on a lot or parcel of land having an area of at least one acre.

D. The use of reclaimed water for any approved agricultural use is required where feasible.

E. Any approved agricultural use shall include measures to minimize impacts to water quality, as provided in Chapter 17 of the Malibu LIP.

3.11.2 Confined Animal Facilities

A. New confined animal facilities for the keeping of horses or other ungulates for personal recreational use shall be prohibited in ESHA, or ESHA buffer except as otherwise provided in Section 4.7 of the Malibu LIP.

B. Accessory structures used for confined animal facilities may be permitted in conjunction with an existing or new single family residence ~~within the approved development area. Corrals may also be permitted within the development area or the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s)~~ if such use is not located on a slope greater than 4:1~~, does not require additional grading,~~and does not result in any expansion to the required fuel modification area into ESHA or ESHA buffer~~, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides~~.

C. Equestrian riding and training facilities and activities including boarding of horses and domestic animals, tournaments, shows and contests for low intensity commercial recreational and athletic purposes only occur on appropriate sized parcels for activities proposed.

D. Raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals, shall only occur on a parcel having an area of not less than one acre and provided that not more than eight such animals per acre of the total ground area be kept or maintained in conjunction with such use.

E. The grazing of cattle, horses, sheep or goats shall only occur on a parcel with an area of not less than five acres. No buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock shall be used on the premises for such grazing other than racks for supplementary feeding, troughs for watering, or incidental fencing.

F. Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature shall only occur on a parcel that is a minimum of one acre in size.

G. Raising of horses, sheep, goats, donkeys, mules and other ungulates for personal use by residents on the premises, are subject to the following conditions:

1. The subject property is a minimum of 15,000-sq. ft. in size.

2. The maximum number of animals listed above does not exceed one animal (over 6 months of age) for every 14,500~~5,000~~-sq. ft. of lot area (3 confined animals per acre maximum).

3. The animals shall be maintained in an area a minimum of 50 ft. from any building used for human habitation.

4. The boarding of horses as a commercial use shall be subject to the same standards as for personal use, except that the minimum area required shall be five acres.

H. Any approved confined animal use shall include measures to minimize impacts to water quality, as provided in Chapter 17 of the Malibu LIP.

3.12. PARKING REGULATIONS,

3.12.1 Purpose and Intent

A. This chapter assures the provision of adequate off-street parking facilities in conjunction with any residential, commercial or other use or development. These standards should be considered the minimum required to preserve the public health, safety, and welfare, and more extensive parking provisions may be warranted in particular circumstances.

B. New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal

access and recreation. Adequate parking should be provided to serve coastal access and recreation uses to the extent feasible.

C. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided.

D. 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.

3.12.2 District parking requirements

The number of spaces noted in the zone district development standards shall be the minimum requirement for uses and developments in the respective district.

3.12.3 Specific parking requirements

Parking shall be provided in accordance with the list of uses under this section. Where the standards result in a fraction, the next larger whole number shall be the number of spaces required. For additions to existing developments, the increased parking requirement shall be based only on the addition. A minimum of two spaces shall be provided for any use or development regardless of the size or scope of the use or development. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide. If the specific use is not listed in the following table, the parking requirements listed in each zone district shall apply:

PARKING STANDARDS

Residential Units

Single family units	For each unit, 2 enclosed and 2 unenclosed spaces

Multi-family units	For each efficiency dwelling unit, two spaces which shall be either enclosed or covered For each one-bedroom or two-bedroom unit, 3 spaces, two of which shall be enclosed For each additional bedroom above two, one space which shall be enclosed or covered Guest parking for each 4 units or fraction thereof, 1 space
Mobile home parks	For each mobile home space, 2 spaces Guest parking for each 4 units or fraction thereof, 1 space
Home Occupations	1 parking space for each employee and one parking space for each client shall be provided

Visitor-Serving Commercial Uses

Hotel	2 spaces for each room, plus 1 space for the average, per-shift number of employees, plus 1 space for each 100 square feet of gross floor area used for consumption of food or beverages, or public recreation areas, plus 1 space for each 5 fixed seats, or for every 35 square feet of assembly area where there are no fixed seats in meeting rooms or other assembly areas.
Motel or motor hotel	1 space for each keyed room, plus 1 space for the average, per-shift number of employees.
Boarding/lodging houses, student housing, dormitories, and fraternity/sorority houses	2 spaces for each 3 guest rooms, plus 2 spaces for each dwelling unit. In dormitories, each 100 square feet of gross floor area shall be considered equivalent to one guest room.

Educational and Cultural Uses

Elementary and junior high	2 spaces for each classroom
High school, including auditoriums and stadiums on the site	7 spaces for each teaching station.

College or university, including auditoriums and stadiums on the site	.85 spaces for each full-time equivalent, less the number of spaces provided to serve on-campus housing facilities in accord with this schedule.
Business, professional or trade schools	1 space for each faculty member or employee, plus 1 space for each 3 students based upon the maximum number of students attending classes at any one time during any 24-hour period
Day nurseries and preschools	1 space for each employee, plus 1 space for each 5 children or 1 space for each 10 children where a circular driveway is provided for the continuous flow of passenger vehicles (for the purpose of loading and unloading children) and which accommodates at least 2 such vehicles.
Libraries, museums, and art galleries	1 space for each 250 square feet of gross floor area.

Places of Assembly and Recreational Uses

Theater, auditorium, arena or stadium, except when part or a school or institutional	1 space for each 3 fixed seats or for every 21 square feet of seating area where there are not fixed seats, plus 1 space for each 2 employees.
Churches	1 space for each 3 fixed seats or for every 21 square feet of seating area where there are no fixed seats.
Chapels, mortuaries or funeral homes	1 space for each 3 fixed seats or for every 21 square feet of seating area where there are no fixed seats in the main chapel, plus 1 space for each 350 square feet of gross floor area outside the main chapel.
Dance halls, pool and billiard parlors, skating rinks, exhibition and assembly halls without fixed seats, community centers, health clubs, lodge and union halls	1 space for each 3 persons allowed with the maximum occupancy load as established by local building code, or 1 space for each 72 square feet of gross floor area, whichever is greater, plus 1 space for each employee
Bowling alley	5 spaces for each lane.
Golf driving range, public	1 ½ spaces for each 10 linear feet of driving range or 1 space per tee, whichever is greater.

Golf course, regulation, public	8 spaces for each hole, plus 1 space for each employee.
Golf course, miniature or 3 par, public	2 spaces for each hole, plus 1 space for each employee.
Swimming pool, commercial	1 space for each 100 square feet of water surface, plus 1 space for each employee, but not less than 10 spaces for any such use.
Tennis, handball, and racquetball courts, public	2 spaces for each court.
Private golf course, country club, swim club, tennis club, recreation center and other similar uses	1 space for each 4 persons allowed within the maximum occupancy load as established by building code, plus 1 space for each 2 employees.
Stables	1 space for every 5 horses.

Medical and Health Uses

Convalescent and nursing homes, homes for the aged, resthomes and sanitariums	1 space for every four beds or 1 space for every dwelling unit, whichever is greater, plus 1 space for each employee.
Hospitals	1 space for each two patient beds, plus 1 space for each employee.
Dental and medical offices or other similar uses	1 space for each 150 square feet of gross floor area.
Veterinary hospitals and clinics	1 space for each 300 square feet of gross floor area.

Offices Uses

Commercial bank, savings and loan offices, other floor financial institutions, public or private utility office, mutual ticket agency, other similar window service offices.	1 space for each 225 sq. ft. of gross floor area of the main Non-bank uses within a bank structure shall provide parking pursuant to specific use guidelines.
General office and other business, technical service, administrative, or professional offices.	1 space for each 250 sq. ft. of gross floor area.

Business and Commercial Uses

Beauty shop or barber shop	3 spaces for each of the first 2 beauty or barber chairs, plus 1 ½ spaces for each additional chair.
Other personal service establishments, including cleaning or laundry agency of similar use	1 space for each 250 sq. ft of gross floor area.
Restaurants, night clubs, bars and similar establishments for the sale and consumption of food or beverages on the premises	1 space for each 50 sq. ft of service area.
General retail stores, except as otherwise provided	1 space for each 225 sq. ft of gross floor area.
Shopping Centers	5 spaces for each 1000 sq. ft of gross floor area within the center; or spaces as required for each individual use within the center. To qualify for the "shopping center" criteria (5/1000) a well balanced mixture of uses within the center must be demonstrated. Where there is an imbalance of high intensity uses, restaurants, theater, bowling alleys, billiard parlors, beauty schools and other such uses and/or long-term parking uses, parking calculations will be based totally or in part on an individual basis.

Food store, grocery store, supermarket, or similar use	1 space for each 225 sq. ft of gross floor area.
Drive-in and window service restaurants providing outdoor eating area or walk-up or drive-up window service	1 space for each 50 sq. ft of gross floor area, but not less than 10 spaces for any such use. The above may be modified for walk-up facilities with no seating area (and beach-front walk-up seating) depending upon the particulars of the individual case.
Laundromats and coin operated cleaners	1 space for each 2 machines.
Automobile service stations	2 spaces for each lubrication stall, rack, or pit, plus 1 space for each gasoline pump outlet.
Auto wash, except self-service	Reservoir (line-up) parking equal; to 5 times the capacity of the auto wash. In determining capacity, each 20 linear ft. of wash line shall equal one car length.
Auto wash, self-service	5 spaces for each 2 wash stalls.
Furniture store, appliance store, machinery rental or sales store (excluding motor vehicle rental or sales), and similar establishments which handle only bulky merchandise	1 space for each 500 sq. ft of gross floor area, except floor area used exclusively for storage of loading, plus 1 space for each 500 sq. ft of outdoor sales, display or service area.
Commercial service establishments, repair shops, motor vehicle repair garages, and similar establishments	1 space for each 500 sq. ft of gross floor area, except floor area used exclusively for storage or loading, plus 1 space for each 500 sq. ft of outdoor sales, display or service area.
Automobile, truck, boat, trailer or similar vehicle shops, motor vehicle sales or rental establishment	1 space for each 500 sq. ft of gross floor area, except floor area used exclusively for storage or loading, plus 1 space for each 1000 sq. ft. of outdoor sales, display or service area.

Wholesale establishments, mail order houses, printing and publishing establishments, and cartage or express facilities	1 space for each 500 sq. ft of gross floor area, but not less than 5 spaces, plus 1 space for each employee.
Lumber yard	1 space for each 500 sq. ft of gross floor area, plus 1 space for each 1000 sq. ft of outdoor sales, display or service area, plus 1 space for each 2 employees.
Contractor's storage yard, salvage yard, junk yard, automobile wrecking yard	5 spaces, plus 1 space for each employee.
Retail plant nursery, garden shop including greenhouses or lathhouses, or similar outdoor sales and display	5 spaces, plus 1 space for each 500 sq. ft. of outdoor sales, display or service area.

Manufacturing and Related Uses

Manufacturing or industrial establishment, including offices and other incidental operations on the same site	1 space for each 350 sq. ft of gross floor area, but not less than 3 spaces for each 4 employees.
Laboratories and research establishments	1 space for each 300 sq. ft of gross floor area, but not less than 3 spaces for each 4 employees.
Warehouses or storage building	1 space for each 1000 sq. ft of gross floor area, but not less than 1 space for each employee.
Public utility facilities, including electric, gas, water, telephone, and telegraph, facilities not having business offices on the premises	1 space for each employee, but not less than 2 spaces for each such facility.

3.12.4 Joint Use and Common Parking Facilities

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

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

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

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

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

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

3.12.5 Development standards

The following development standards shall apply to all parking areas with six or more spaces:

A. Location

1. Required parking facilities shall be on the same lot as the structure they are intended to serve, except that with proper legal agreement, the planning commission may approve parking on a separate lot. In no event shall required

parking be farther than 300 feet from the use it is required to serve. This distance shall be measured along a legal and safe pedestrian path from the parking space to the nearest entrance of the building or use for which the parking is required.

2. The required parking spaces may be located in interior side and rear setbacks. No parking space, either required or otherwise, shall be located in any required front or street-side setback area, unless regulations provide otherwise.

B. Access. There shall be a minimum ten-foot wide, three-inch thick, asphaltic or cement concrete, paved, vehicular accessway from a public street or alley to off-street parking facilities.

C. Screening

1. Where a parking area abuts or is across the street from a residential district, it shall be separated therefrom by a solid masonry wall not less than 42 inches in height. The planning commission may waive this wall requirement if additional setback and screening planting, or landscaped berms are to be provided.

2. Where a parking area is across the street from a residential district, there shall be a border of appropriate landscaping not less than five feet in depth, measured from the street right-of-way line, along the street frontage.

3. Parking areas shall be screened from view from all designated highways.

D. Layout and Paving

1. Parking areas shall provide for a twenty-five foot outside turning radius within the facility and a thirty-foot outside turning radius into public alleys.

2. Except in residential parking facilities with less than six spaces, parking spaces shall be arranged so that vehicles need not back onto or across any public sidewalk.

3. Off-street parking facilities shall be designed so that a vehicle within the parking facility shall not be required to enter a street to move from one location to any other location within that parking facility. Separate non- contiguous parking facilities may be provided with independent entrances for employee and visitor parking, provided the use of each lot is clearly identified on proposed plans and at the entrances to each lot.

4. No dead end parking aisles serving more than five stalls shall be permitted unless the aisle is provided with a turnaround area installed in a manner meeting the approval of the Director.

5. Tire stops shall be provided within all parking areas.

6. All parking areas shall be surfaced with asphaltic or cement concrete paving which is at least three inches thick or permeable paving of comparable load-carrying capacity and durability.

7. Parking stalls shall be at least nine feet by twenty feet minimum, and shall be marked with lines or indicated with special paving materials. The access lanes shall be clearly defined and shall include directional arrows to guide internal movement traffic. Compact parking spaces are permitted, but shall not exceed twenty percent of the total number of required spaces. Compact stalls shall be a minimum of eight feet by fifteen feet six inches and shall be marked for compact use only.

8. Off street parking facilities shall be designed so that provision is made, to the satisfaction of the Director, for the accommodation of vans, motorcycles, and bicycles.

E. Landscaping

1. A landscaped planter bed of at least five feet in width with a 6-inch high cement concrete berm shall be installed along the entire perimeter except for those areas devoted to perpendicular accessways.

2. A minimum of five percent of the paved parking area shall be devoted to interior planting areas. Extensive use of trees is encouraged. All planting areas shall be at least three feet wide. Perimeter planting shall not be considered part of this required interior planting.

3. Where topography and gradient allow, parking lots should be depressed and/or screened from view by landscaped berms and hedges.

4. Where trees already exist on the property, the design should make the best use of this growth and shade. Such trees shall be protected by a tree well with a diameter sufficient to insure their continued growth.

5. Planting areas should be distributed throughout the lot as evenly as possible, but variations from this pattern may be granted by the director when a different pattern would result in the overall aesthetic improvement of the project. Innovation in design and materials is encouraged.

6. Wherever a center divider separates parking stalls facing each other, tree wells shall be established not more than fifty feet apart for large trees (exceeding twenty feet spread at maturity), or not more than thirty feet for small and medium-sized trees.

7. All plantings shall be permanently and regularly maintained free of debris and in conformity with the accepted practices for landscape maintenance.

8. Required landscaping shall be irrigated with greywater, where feasible.

F. Lighting

Lighting, where provided to illuminate a parking area, shall be hooded and so arranged and controlled so as not to cause a nuisance either to highway traffic or to adjacent properties.

G. Usability

The required off-street parking facilities and driveways shall not be used for any purpose other than as required by this chapter. Unless otherwise provided by an approved use permit, no owner or tenant shall lease, rent or otherwise make such required parking available to any person who does not occupy the premises for which the parking is required.

H. Seasonal or Peak Parking Areas.

With the approval of the planning commission, the above development standards may be waived or conditionally waived for a portion of the required parking spaces where the applicant can show that such spaces are required only on a periodic basis.

3.12.6 Loading

A. The following off-street loading spaces shall be provided and continuously maintained and shall be not less than ten feet in width, twenty feet in length, and with fourteen feet of vertical clearance:

Total Square Feet of Building Space	Loading Spaces Required
Commercial Buildings (gross floor area)	
3,000 -- 15,000	1
15,001 -- 45,000	2
45,001 -- 75,000	3
75,001 -- 105,000	4
105,001 -- and over	5

Total Square Feet of Building Space	Loading Spaces Required
Commercial Outdoor Sales (gross area)	
0 -- 5,000	1

5,001 -- 45,000	2
45,001 -- 105,000	3
105,001 -- and over	4
Institutional (gross floor area)	
3,000 -- 20,000	1
20,001 -- 50,000	2
50,001 -- 80,000	3
80,001 -- 110,000	4
110,001 -- and over	5

B. When the lot upon which the loading spaces are located abuts an alley, such loading spaces shall adjoin or have access from the alley. The length of the loading space may be measured perpendicular to or parallel with the alley. Where such loading area is parallel with the alley and the lot is fifty feet or less in width, the loading area shall extend across the full width of the lot. The length of a loading area need not exceed fifty feet for any two spaces.

C. Loading space required by this section may occupy a required rear or interior side setback, but not a required front or street side setback. Where the loading is permitted in a setback, the setback may be used in calculating the area required for loading, providing that there be no more than one entry or exit for each sixty feet of lot frontage or fraction thereof.

D. All loading spaces shall be separate, striped spaces in addition to the required parking spaces not within a required parking lot drive, backout space or aisle; except, that for commercial buildings with a gross floor area of less than fifteen thousand square feet, the loading space may be within a parking lot drive, backout space or aisle.

E. No loading space shall be located on a dead end driveway, accessway, aisle, or alley unless a turn-around circle with a minimum radius of ninety feet is provided adjacent to the loading space.

3.13. SIGNS

3.13.1 Purpose

These sections are intended to implement the City's land use and environmental goals, policies and objectives, with particular regard to maintaining a city that is visually attractive and to preserving and enhancing public access to the shoreline, inland trails and public parks, and the visual qualities of the community's scenic areas, streets and highways. Standards are provided to safeguard the life, health, property, and public welfare by regulating the design, quality of materials and construction, illumination, location and maintenance of all signs, sign structures and billboards, while attempting to provide functional flexibility and create an incentive to promote good design.

3.13.2 Goals

This Chapter shall apply to all signs within the City. The goals of these regulations include the following:

A. To preserve and enhance the unique character and visual appearance of the City.

B. To assure proper expression through visual communications involving signs that are compatible with the character and environment of this community.

C. To promote fairness in competition and retain identity in the business community while recognizing the importance of well designed business signs.

D. To enhance the visual quality of the City's scenic area, roads, and streets.

E. To recognize the integral part played by signs in the overall appearance of the City.

F. To reduce possible traffic and safety hazards by prohibiting signs that are distracting to motorists.

G. To recognize the functions and importance of signs for businesses and the benefit of well designed business signs to the community as a whole.

H. To provide guidance and direction for sign users and sign designers as to what constitutes appropriate signs in the City.

I. To establish standards that will encourage business signs to be used for the purpose of business identification.

J. To protect and provide for public access to and along the shoreline, inland trails and public parklands.

K. To develop a uniform signage program to assist the public in locating and recognizing shoreline and trail access points. In areas containing environmentally sensitive habitat or safety hazards, signs may be posted in English and in Spanish describing the habitat or safety hazard once the accessway or trail is opened by a public agency or private association.

3.13.3 Prohibited signs

Except for those signs allowed under the provisions of Section 3.13.4 (E) of the Malibu LIP, "Special permits," the following signs are prohibited:

A. Outdoor advertising displays, structures or signs.

B. Portable signs.

C. Exposed neon, flashing or scintillating signs, except for public service time and temperature signs, which shall not be flashing, animated or revolving in nature.

D. Revolving signs.

E. Devices dispensing bubbles and free floating particles of matter.

F. Any notice, placard, bill, card, poster, sticker, banner, sign, advertising or other device affixed or attached to or upon any public street, walkway, crosswalk, other rights-of-way, curb, lamppost, hydrant, tree, telephone booth or pole, lighting system or any fixture of the police or fire alarm system.

G. Devices projecting or otherwise producing the image of an advertising sign or message on any surface or object.

H. Projecting signs.

I. Signs which project or encroach into any existing or future street right-of-way.

J. Automatic changing signs or electronic message center signs, except for public service time and temperature signs.

K. Streamers, banners, balloons, flares, flags (other than national, state, or local government flags), pennants, propellers, twirlers, and similar attention-getting display or device with the exception of the following:

~~1. One (1) each national, state, and local governmental flag properly displayed upon a maximum of one (1) flagpole per flag not to exceed twenty-eight (28) feet in height.~~

2. Holiday decorations, in season, displayed for an aggregate period not exceeding sixty (60) days in any one (1) calendar year, except no advertising of the business or products shall be permitted.

3. Grand opening and special event displays approved by the director in the manner hereinafter provided.

L. Except as hereinafter provided, freestanding or pole signs, except for on-site directional signs.

M. A vehicle related portable freestanding sign or any sign placed within, affixed or

attached to any vehicle or trailer on a public right-of-way, or on public or private property, for the purpose of advertising an event or attracting people to a place of business, unless the vehicles or trailer is used in its normal business capacity and not for the primary purpose of advertising an event or attracting people to a place of business.

N. Signs or sign structures which by color, wording or locations resemble or conflict with traffic control signs or devices.

O. Signs that create a safety hazard by obstructing the view of pedestrian or vehicular traffic.

P. Sign structures and supports no longer in use, for a period of sixty (60) days by the owner, tenant, or lessee.

Q. Signs painted directly on an exterior wall, fence, fascia or parapet.

R. Signs that display a message or graphic representation that is lewd, indecent, or offensive to public morals.

S. Signs for the purpose of commercial advertising created by the arrangement of vegetation, rocks, or other objects such as on a hillside visible to pedestrians or motorists.

T. Roof signs.

U. Combination signs.

V. Signs which are enacted after this date that do not conform to the provisions of these section are prohibited.

W. Signs advertising off-site non-coastal related uses or services shall be prohibited in public beaches and parks.

X. Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.

Y. Signs which obstruct or degrade public views to scenic areas from public viewing areas and scenic roads are prohibited.

Z. New billboards.

3.13.4 Permit requirements and procedure

A. Application.

No person shall place, erect, modify, alter or repaint, or permit the placement, erection, modification, alteration or repainting of any sign, unless otherwise specifically exempted by this Chapter, without first obtaining a sign permit in accordance with the provisions of this section. The application for such sign permit shall be made on the form provided by the Planning Department and shall be accompanied by the required fee. Such application shall set forth and contain the following information and materials:

1. The location and size of any existing or proposed buildings or structures on the property, which are or will be under the ownership or control of the applicant.

2. The location of off-street parking facilities, including major points of entry and exit for motor vehicles where directional signs are proposed.

3. The position of the proposed sign and its relationship to existing or proposed adjacent buildings and structures which are or will be under the ownership or control of the applicant.

4. The proposed design, size, exact colors, materials and location of the sign or sign structure.

5. The method of attachment to any structure.

6. A statement showing sizes and dimensions of all other signs existing on the property under the ownership or control of the applicant.

7. A statement showing the size and color relationships of such sign or sign structure to the appearance and design of existing or proposed buildings and structures on the property.

8. Photographs of all sides of any building or renderings of proposed buildings.

9. Such other information as the Planning Department may require to secure compliance with this Chapter.

B. Review.

An application for a sign permit for the placement or erection of a new sign or the modification, alteration or repainting of an existing sign shall be reviewed by the Director. The Director shall approve the application if the Director finds that such application satisfies the criteria set forth in subsection C of this Chapter. Any decision

made by the Director may be appealed in accordance with the provisions of the Malibu Zoning Ordinance.

C. Criteria.

The following criteria shall be used in reviewing an application for a sign permit:

1. That any business sign is necessary for the applicant's enjoyment of substantial trade and property rights;

2. That the sign is consistent with the certified Local Coastal Program, general plan and the provisions of the Municipal Code;

3. That the sign is not detrimental to the public health, safety, or welfare.

4. That the size, shape, color, and placement of the sign is compatible with the building it identifies;

5. That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;

6. That both the location of the proposed sign and the design of its visual elements (lettering, words, figures, colors, decorative motifs, spacing, and proportions are legible under normal viewing conditions prevailing where the sign is to be installed;

7. That the location and design of the proposed sign does not obscure from view or unduly detract from existing or adjacent signs;

8. That the location and design of the proposed sign, its size, shape, illumination, and color are compatible with the visual characteristics of the surrounding area so as not to detract from or cause depreciation of the value or quality of adjacent properties; and

9. That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.

10. Signs shall be designed and located to minimize impacts to scenic areas from scenic roads and public viewing areas.

11. Signs approved as part of commercial development shall be incorporated into the design of the project and shall be subject to height and width limitations to ensure that signs are visually compatible with surrounding areas.

D. Exemptions to sign permit requirement.

1. The following signs, if not illuminated, shall be permitted without the requirement of a sign permit in all land use zones:

a. One (1) identification sign not exceeding two (2) square feet in area displaying only the name and/or address of the owner, occupant or use, except that agricultural uses may have one (1) identification sign not exceeding six (6) square feet in area.

b. Directional or safety signs required by law.

c. One (1) each national, state, and local governmental flag properly displayed upon a maximum of one (1) per pole, not to exceed twenty-eight (28) feet in height.

d. Holiday decorations, in season, displayed for an aggregate period not exceeding sixty (60) days in any one (1) calendar year.

e. Religious, charitable, civic, homeowners association, educational or cultural posters, affixed to a building wall or window area, not exceeding sixteen (16) square feet in area which are installed in a temporary condition.

f. Utility and telephone pay station signs.

g. Official traffic, fire and police related signs, temporary traffic control signs used during construction, utility facilities and substructure location and identification signs and markers required to protect said facilities, and other signs and markers required or authorized by the City of Malibu, the State Department of Transportation, or any other public agency.

h. Notices required to be posted by law.

i. Signs for public or quasi-public uses. Directional and public convenience signs for public and quasi-public uses may be permitted on public property. The design of such signs shall conform to standard directional sign specifications promulgated by the Director and approved by the planning commission. The total number of signs allowed shall be based on the minimum number necessary for adequate public identification as determined by the Director.

<u>j. Signs indicating the location of or directions to public access to the shoreline, trails or parklands.</u>

2. Residential land use districts.

a. Nameplates. Each residential dwelling is permitted one (1) nameplate per street frontage indicating the names of the residence/occupants and/or the street address of the residence. The sign shall not exceed two (2) square feet in area.

b. Agricultural uses. Each agricultural use is permitted one (1) unilluminated sign indicating the name and address of such use. Such sign shall not exceed six (6) square feet in area and if located on a fence or stake, shall not be more than six (6) feet in height.

c. Real estate advertising signs. One (1) unilluminated, double-faced real estate advertising sign is permitted, not to exceed six (6) square feet in area and six (6) feet in height. Such sign shall contain information restricted to the sale or rental of the premises on which located. Such sign shall be situated no less than five (5) feet from the inside line of the sidewalk, or if there is no sidewalk, from the property line. Such sign shall remain on the premises only during the period of time that the premises are being offered for sale and in any event shall be removed seven (7) days after the property is sold or rented or the offer for sale or rent is terminated.

d. Open house signs. During the period when real estate is offered for sale or rent and while a salesperson is physically present on the premises, a sign indicating that an open house is being conducted is permitted. the sign shall not exceed three (3) square feet in area; and if located on a stake, no part of the sign shall exceed four (4) feet above ground level. Off-site directional signs may be permitted for an open house, subject to the following provisions:

   i. Such signs shall not exceed three (3) square feet in area;

   ii. No more than two pole flags not exceeding two square feet or five feet in height shall be used;

   iii. Such signs shall be located on private property only;

   iv. Such signs shall be allowed only during daylight hours;

   v. Such signs shall be located not less than five (5) feet from the inside line of the sidewalk or, if there is no sidewalk, from the property line.

e. Signs for special events <u>including temporary events exempt from CDP requirements</u>. Temporary signs not exceeding sixteen (16) square feet in area pertaining to events of civic, philanthropic, educational or religious organizations may be permitted provided that such signs are posted for no more than thirty (30) days prior to and seven (7) days after such event.

f. Garage sale signs. One (1) non illuminated double-faced sign is permitted during the time of a garage sale. Such sign shall not exceed six (6) square feet in area and, if located on a fence or stake, shall not be more than six (6) feet in height. In addition, off-site directional signs may be permitted during the same period subject to the following provisions:

i. Such signs shall not exceed three(3) square feet in area.

ii. Such signs shall be located on private property only; and

iii. Such signs shall be limited to four (4) in number.

3. Multiple residential districts

a. Purpose. In authorizing signs for this zone, it is recognized that larger residential complexes and other permitted uses require identification as separate identities. The intent of these regulations is to strive for a single sign per complex or use to eliminate clutter and to promote compatibility, proportion, simplicity and sign effectiveness.

b. Signs - Apartments. One (1) monument identification sign not exceeding forty-eight (48) square feet in area, including the base, and six (6) feet in height may be erected on the public street frontage upon which the apartment complex has access. Such sign shall be set back a minimum of five (5) feet from any property line. In addition, a directory sign not exceeding one (1) square foot of sign area per apartment and five (5) feet in height may be installed on each building wall facing a public street upon which the apartment complex has access.

c. Signs - Condominiums. One (1) monument identification sign not exceeding forty-eight (48) square feet in area, including the base, and six (6) feet in height may be erected on each public street frontage upon which the complex has public access. Such signs shall be set back from any property line at least five (5) feet. In addition, interior directional signs which are visible from any public right-of-way, may be approved by the director to identify special elements of such complexes such as clubhouses and other common area facilities provided that such signs do not exceed six (6) square feet in area and four (4) feet in height. Interior directional signs not visible from any public right-of-way shall not be subject to the requirements of this paragraph.

d. Other permitted uses. For each nonresidential use not more than one (1) monument identification sign per public street frontage upon which such use has public access may be erected to identify the use provided that such sign does not exceed forty-eight (48) square feet in area, including the base, and

six (6) feet in height. Such signs shall be set back a minimum of five (5) feet from any property line.

e. Real estate advertising signs. One (1) real estate sign is permitted per unit being offered for sale, lease or rent. Such signs shall not exceed six (6) square feet in area and six (6) feet in height, and shall be designed and located in a manner approved by the director. Such sign shall be removed with seven (7) days after the property is sold or rented or the offer for sale or rent is terminated. Property shall be deemed to be sold upon the close of escrow.

f. Signs for special events. Temporary signs not exceeding sixteen (16) square feet in area pertaining to events of civic, philanthropic, educational or religious organizations may be permitted provided that such signs are posted for no more than thirty (30) days prior to and seven (7) days after the event.

E. Special permits. Nothing contained in this Chapter shall prohibit the City from granting a temporary special permit or otherwise permitting, on such terms as it deems proper, sign or like advertising pertaining to any civic, patriotic or special event of general public interest provided that the council finds that such signs or advertising will not be materially detrimental to the public health, safety or welfare, nor harmful to adjacent properties or uses. The Director may grant minor special permits. Said signs shall be limited to a maximum of two (2) per parcel and shall not exceed sixteen (16) square feet in size. Said signs shall be located a minimum of ten (10) feet from any public right-of-way.

3.13.5 General provisions

A. Entitlements strictly construed. Since the regulations provided by this Chapter are established to protect and promote the public health, safety, and general welfare, any sign entitlement authorized hereunder shall be strictly construed to further the purposes of this Chapter.

B. Sign integration requirement. All signs shall be designed as an integral part of the total building design.

C. Sign orientation. All signs shall face a public or private right-of-way, either on or abutting the property upon which such signs are located.

D. Number of colors. All permanent signs shall contain no more than four (4) different colors. For the purposes of this provision, white and black shall be considered colors. Different shades shall be considered separate colors. A logo is not subject to the four color limitation.

1. Shopping Center Signs. All signs in shopping centers shall comply with

each of the following.

a. Each sign shall contain one or two of the same four (4) colors as every other sign throughout the center.

b. All sign components shall have the same, subdued and uniform background in terms of color, illumination and material.

c. All lettering shall be the same style and color as other signs in the center.

d. A logo shall not be larger than 25 percent of the sign area and is not subject to the four-color limitation.

e. The sign structure and any related supports shall be the same color and material throughout the center.

E. Sign copy. Not more than twenty-five (25) percent of the total area of any sign shall include descriptive wording which is not a part of the name of the business.

F. Types of materials. The types of materials for sign structures shall, if possible and practicable, be similar to or the same as materials used in the related buildings.

G. Illumination of signs. Unless otherwise prohibited by this Chapter, signs may be illuminated subject to the approval of the Director to ensure that such illumination does not interfere with the use and enjoyment of adjacent properties or create any public safety hazards. The approval of any illuminated sign shall not be final until thirty (30) days after installation during which period the director may order the dimming of any illumination found to be excessively brilliant, and no sign approval shall be valid until such order has been carried out to the satisfaction of the director. Illumination shall be considered when it prevents perception of objects or building beyond or in the vicinity of the sign. In no case shall an illuminated sign or lighting device be so placed or directed as to permit the beams and/or illumination therefrom to be directed or beamed upon a public street, walkway, or adjacent properties so as to cause glare or reflection that may constitute a traffic or safety hazard or interfere with the use and enjoyment of adjacent properties. Except for automated teller machines, no sign shall be illuminated after 11:30 p.m. or close of business, whichever occurs last.

1. In no event shall the following limits be exceeded:

a. Four (4) 430-milliamp tubes for fluorescent internal lighting,

b. 30-milliamp for neon internal lighting,

c. Two (2) 40-watt floods for external lighting.

H. Obstruction of public passage. No signs shall be installed so as to obstruct any window, door, fire escape or other emergency exit of any building.

I. Required information on signs. All permanent signs approved under these regulation shall have the name of the maker, the date of installation and the city sign permit number legibly placed on the lower right hand corner of the face of the sign in a conspicuous place. As an alternative, such information may be placed on the base of the sign at a location visible and readable from the adjacent public or private right-of-way.

J. Maintenance of signs. All signs shall be maintained in a neat and attractive, well-repaired condition.

3.13.6 Signs Subject to Permit

The sign entitlements provided by this section shall be considered the maximum permitted sign entitlements under the Malibu LIP. Such sign entitlements may be reduced as a condition of approval for the sign permit for a particular sign or signs if necessary to satisfy the sign criteria set forth in the Malibu LIP.

A. Commercial land use districts.

1. Purpose. The purpose of sign regulation in the commercial and business land use zones is to limit the number of signs per complex to eliminate clutter and to promote compatibility, proportion, simplicity and sign effectiveness.

2. Basic sign entitlement- Business park and retail uses. Each separate business shall be limited to one (1) primary sign integrated into the design of the building. Accessory signs shall be used only to improve the effectiveness of the sign program in relationship to the mass of the building or to indicate legitimate accessory uses. The signs permitted under this paragraph 2 shall be referred to as the "basic sign entitlement." Except as other provided by this Chapter, the following sign area limitations shall apply:

    a. The total aggregate area of a primary sign and accessory signs for any business in a building located within one hundred (100) feet of any public or private right-of-way shall not exceed one (1) square foot of sign area for each foot of primary building frontage. In no event, however, shall sign area exceed fifty (50) square feet and such sign shall be located on primary frontage. In the event that one side of the building does not abut a street and exceeds one hundred twenty-five (125) feet in length, there shall be permitted a total of one (1) secondary sign on the building which shall not exceed twenty-five (25) square feet in sign area. The secondary sign

may be increased up to fifty (50) square feet in lieu of a primary sign. Such sign shall advertise solely the name of the business center or primary tenant. No secondary sign shall be illuminated. Unless otherwise approved by the Planning Commission, no signs shall be closer than six (6) feet from any other sign permitted under this Chapter. The maximum of any one dimension shall not exceed twenty (20) percent of the building wall, or thirty (30) feet, whichever is less.

b. The total aggregate area of a primary sign and accessory signs for any business in a building located more than one hundred (100) feet of any public or private right-of-way shall not exceed one (1) square foot of sign area for each foot of primary building frontage. In no event, however, shall such sign area exceed seventy (70) square feet and such sign shall be located on the primary frontage. In the event that one (1) side of the building does not abut a street and exceeds one hundred twenty-five (125) feet in length, there shall be permitted a total of one (1) secondary sign on the building which shall not exceed thirty-five (35) square feet in sign area. The secondary sign may be increased up to seventy (70) square feet in lieu of a primary sign. Such sign shall advertise solely the name of the business center or primary tenant. No secondary sign shall be illuminated.

c. Unless otherwise approved by the Planning Commission, no signs shall be closer than six (6) feet from any other sign permitted under this Chapter. The maximum of any one dimension shall not exceed twenty (20) percent of the building wall, or thirty (30) feet, whichever is less.

d. For a single business totally occupying a commercial building, which is not part of a larger complex, project, center or park, or an outdoor display; and within the limitations of the provisions of subparagraphs a and b, above, a freestanding monument sign is permitted, subject to the following standards:

    i. The sign shall be a maximum of forty-eight (48) square feet in area, including the base.

    ii. The sign shall have a maximum height of six (6) feet.

    iii. The sign shall be located a minimum of five (5) feet from any public or private right-of-way.

    iv. The maximum length of any side of the sign shall not exceed two (2) times the dimension of any other side.

e. Major tenants in shopping centers which have a frontage greater than one hundred (100) feet are permitted to have a maximum sign area of two

hundred (200) square feet.

f. Business maintained exclusively on the second floor of a two (2) story building may be allowed up to ten (10) square feet of sign area adjacent to the first floor entrance. Second floor businesses sharing a common entrance with one (1) or more first floor businesses shall be limited to a ten-square-foot directory sign at the first floor entrance.

3. Basic sign entitlement-Office Uses. Office buildings shall be limited to one (1) primary sign solely to identify the name of the building, integrated into the design of the building. The signs permitted under this paragraph 3 shall be referred to as the "basic sign entitlement." Except as otherwise provided by this Chapter, the following sign area limitations shall apply.

   a. The total aggregate area of a primary sign for any office building located within one hundred (100) feet of any public or private right-of-way shall not exceed one (1) square foot of sign area for each foot of primary building frontage. In no event, however, shall such sign area exceed fifty (50) square feet and such sign shall be located on the primary frontage. In the event that one side of the building does not abut a street and exceeds one hundred twenty-five (125) feet in length, there shall be permitted a total of one secondary sign on the building which shall not exceed twenty-five (25) square feet in sign area. The secondary sign may be increased up to fifty (50) square feet in lieu of a primary sign. Such sign shall advertise solely the name of the office center or primary tenant. No secondary sign shall be illuminated. Unless otherwise approved by the planning commission, no signs shall be closer than six (6) feet from any other sign permitted under this Chapter. The maximum of any one dimension shall not exceed twenty (20) percent of the building wall, or thirty (30) feet, whichever is less. The maximum height of the sign shall be determined by the Director.

   b. The total aggregate area of a primary sign and accessory signs for a building located more than one hundred (100) feet of any public or private right-of-way shall not exceed one (1) square foot of sign area for each foot of primary building frontage. In no event, however, shall such sign area exceed seventy (70) square feet and such sign shall be located on the primary frontage. In the event that one side of the building does not abut a street and exceeds one hundred twenty-five (125) feet in length, there shall be permitted a total of one (1) secondary sign on the building which shall not exceed thirty-five (35) square feet in sign area. The secondary sign may be increased up to seventy (70) square feet in-lieu of a primary sign. Such sign shall advertise solely the name of the office center or primary tenant. No secondary sign shall be illuminated. Unless otherwise approved by the planning commission, no signs shall be closer than six (6)

feet from any other sign permitted under this Chapter. The maximum of any one dimension shall not exceed twenty (20) percent of the building wall, or thirty (30) feet, whichever is less. The maximum height of the sign shall be determined by the Director.

c. In lieu of a sign on the building as specified in (a) and (b) above, an office building is permitted to have a freestanding monument sign. Said sign shall be a monument sign not exceeding forty-eight (48) square feet in area, including the base, and a maximum of six (6) feet from any public right-of-way and shall be used solely to identify the name of the office building.

4. Frontage on two or more streets. A business located in a building having frontage on more than one (1) public right-of-way may use the basic sign entitlement on one (1) frontage, and one-half of the allowance on the second public frontage. Said allowance shall only be utilized on the frontage on which the allowance is based. For the purposes of this paragraph, frontage shall include any entrance or exit to the premises upon which the subject business is located from a public right-of-way even though the subject business does not actually front such right-of-way. In addition, a business with a public entrance on a secondary frontage on a private right-of-way may have a sign located on such frontage which does not exceed ten (10) square feet in area.

5. Commercial and business complex, center or park. In addition to the basic sign entitlement, any commercial and business complex, center or park which has a common name and is in excess of two (2) acres in area is permitted one (1) complex identification sign per one thousand (1,000) feet of public right-of-way. Said sign shall be a monument sign not exceeding forty-eight (48) square feet in area, including the base, and a maximum of six (6) feet in height. Such signs shall be set back a minimum of five (5) feet from any public right-of-way and shall be used solely to identify the complex, center or park. Any commercial and business complex, center or park, in which buildings are located fifty (50) feet or more from public right-of-way, shall be allowed one (1) address monument sign, identifying solely the address of the property, per main driveway, not to exceed a total of one (1) sign per five hundred (500) feet of public right-of-way. Address monument signs shall not exceed a total of one (1) sign per five hundred (500) feet of public right-of-way. Address monument signs shall not exceed sixteen (16) square feet in area, including the base, and shall not exceed five (5) feet in height, and shall be set back a minimum of five (5) feet from any public right-of-way. Complex identification signs and address monument signs may be combined, provided that the combined complex/address sign not exceed sixteen (16) square feet in area, including the base, and shall not exceed five (5) feet in height, and shall be set back a minimum distance of five (5) feet from any public right-of-way.

6. Early review. An application for the first new sign in a commercial or business

complex, center or park shall be accompanied by a sign program for the entire complex, center or park in order that all future signs are uniform and consistent with the requirements of this Chapter.

7. Prohibited locations. No signs shall be located in such a manner as to face in the direction of or be visible to property in a residential district when such sign would be less than two hundred (200) feet from such residential property unless such sign faces and is parallel to a public right-of-way.

8. Second-story businesses. Businesses maintained exclusively on the second floor of a two-story building may be allowed up to ten (10) square feet of the sign area adjacent to the first floor entrance.

9. Signs for pedestrian traffic. Where the principal sign for a business is located so that it cannot be seen by pedestrian traffic, an identification sign, in addition to that otherwise allowed under this Chapter, is permitted. Such sign shall be no larger than three (3) square feet per side and shall be designed and located so as to not distract from the appearance of the building or violate the purposes of this Chapter.

10. Signs within window areas. Informational signs not to exceed a maximum of five (5) square feet of the window area of a business may be used. Such signs shall be located on the inside of the window and shall not require a sign permit, and shall not be used for the name of the business in excess of twenty (20) percent of said area.

a. Sale/special event signs. During the period of time that a sale of goods or services is being conducted, one (1) sale sign per window located on the inside of such window is allowed on each public street frontage. Such sign shall be in addition to the total authorized sign area but shall not exceed twenty-five (25) percent of the total window area. Said sign shall be compatible in terms of colors with the permanent signs, except fluorescent color shall be prohibited. Said sale/special event sign shall be limited to a maximum fourteen-day period, not to exceed a total of four (4) said events per year.

b. Listing of business associates. In addition to the basic sign entitlement, each separate business shall be allowed, without a sign permit, lettering on or behind windows facing the public view indicating the owners, operators, or business associates exercising the use, provided that such lettering shall be enclosed within a single area and shall not exceed a total of three (3) square feet.

c. Use of attraction boards by theaters. In addition to the basic sign entitlement, one (1) attraction board to advertise theater, or restaurant entertainment is permitted. The maximum permitted size for an attraction board shall be fifty (50) square feet if placed on a building wall facing a public street or twenty-five (25) square feet on each side if such board is incorporated into a monument sign otherwise permitted in this Chapter. The advertising on the attraction board shall be limited

to coming and current entertainment only.

14. Gasoline service stations. In addition to the basic sign entitlement, gasoline service stations are allowed the following:

a. One (1) gasoline or fuel price sign per street frontage, placed either on the ground or on a pole, not to exceed twenty (20) square feet in area and six (6) feet in height, advertising the actual price per gallon or liter including all taxes at which regular, premium, and unleaded gasoline, are sold.

Any special conditions required for sale at such price including but not limited to "cash," "credit," "full-service," "mini-service," or "self-service," shall also be indicated.

b. One (1) wall sign advertising the company name and/or logo; the operator; and accessory uses, including but not limited to, "mini-mart," "car wash," not to exceed fifteen (15) square feet in area; or a monument sign advertising the information listed above, which does not exceed forty-eight (48) square feet in area, and complies with the provisions governing monument signs.

c. The restrictions imposed by this Chapter shall not be applicable to displays located on or above the actual fuel pumps, nor shall they apply to stand-up or other type displays of service related products such as motor oil, windshield wipers, credit card applications and similar items.

d. One (1) informational sign located on a building wall not to exceed ten (10) square feet in area.

15. Fast service restaurants. In addition to the basic sign entitlement, fast service restaurants with drive-up or walk through facilities are permitted two (2) menu or reader boards with a maximum area of twenty five (25) square feet each. For the purposes of determining this maximum area, any pictures or photographs of food products on the perimeter of the board shall not be included within the computation of the maximum area for such board.

16. Automated or manual service facilities. Signs for drive-up or walk-up service windows or machines, whether freestanding or incorporated into a building, require special consideration which, because of their unlimited variety and character, a uniform sign entitlement cannot be established. Therefore, the sign allowance for such facilities shall be determined when the sign permit application is being reviewed on the basis of their function and use and such signs shall not be allowed as a method for increasing the basic sign entitlement for the principal use or to function as off-site advertising of the principal use. Examples of such facilities are drive-up or walk-up windows for banks, restaurants, liquor and grocery stores, and film processors.

17. Sale, lease and rental signs. Commercial and industrial properties may have sale, lease or rental signs on the following basis:

a. Under two and one-half (2 ½) acres, one (1) sign;

b. Over two and one-half (2 ½) acres, but less than five (5) acres, two (2) signs;

c. Over five (5) acres, one (1) sign per street frontage.

Such permitted signs shall not exceed fifteen (15) square feet in area or six (6) feet in height and shall be designed and located in a manner satisfactory to the Director. Such signs shall be removed within seven (7) days after the property is sold or rented or the offer for sale or rent is terminated. The property shall be deemed to be sold upon the close of escrow.

B. Special purpose signs.

1. Trade construction signs. One (1) non-illuminated sign per street frontage advertising the various construction trades is permitted on construction sites during the period that valid building permit approval exists. Such signs shall not exceed three (3) square feet per twenty thousand (20,000) square feet of land area with a maximum of thirty-two (32) square feet in sign area and shall be removed before a notice of completion is issued for the building being constructed. No trade construction sign shall exceed six (6) feet in height.

2. "No trespassing" signs. "No trespassing " or "no dumping" signs per one hundred (100) feet of street frontage not exceeding three (3) square feet in area or six (6) feet in height are permitted for each parcel of land. Such signs shall be designed and located on such parcel in a manner approved by the Director.

3. Any sign which purport to restrict public access to State tidelands or public vertical and lateral easement areas, trails or parklands or to identify the boundary between State tidelands and private property shall not be permitted.

~~3.~~4. Land subdivision signs. Signs advertising land subdivisions shall be limited to one (1) double-faced sign of thirty-two (32) square feet per side, placed at a right angle to the street or two (2) thirty-two-square-foot signs facing the street. The maximum height shall be ten (10) feet. Such signs shall be at least two hundred (200) feet apart and shall be located within the subdivision. Such signs shall be removed within twelve (12) months or when all lots within the subdivision are initially sold, whichever is sooner. Such signs shall not be illuminated.

~~4.~~5. Lease potential signs. One (1) sign advertising lease potential for future development, not to exceed thirty-two (32) square feet in area and located a minimum of five (5) feet from any property line, is permitted for a single-parcel multiple-unit development. However, such sign shall not be erected until the architectural review approval is received for the proposed project, and all such signs shall be removed before a notice of completion for the development or upon expiration of the architectural review approval. Such signs shall face a public right-of-way and shall not be illuminated.

~~5.~~6. Community and neighborhood identification signs. For identifiable communities or neighborhoods, a forty-eight (48) square foot sign may be permitted for each public street entrance. Such sign may be placed on property line walls for a maximum of one (1) sign on each side of the entrance, or, as an alternative thereto such sign may consist of one (1) monument sign with a maximum height of six (6) feet.

~~6.~~7. Signs on awnings. Painted, non illuminated signs may be permitted on the borders of marquees, canopies, awnings, arcades, or similar structures or attachments, if located and erected in a manner satisfactory to the Director. Such signs shall be included in the basic sign area entitlement. Externally lighted signs shall be permitted on the upper or lower surface of fixed marquees and similar structures, the front face of which faces the public right-of-way; provided that the outer dimensions of such signs shall not exceed sixteen (16) inches in height; and provided further that each letter or image on such a sign does not exceed twelve (12) inches in height. The location and design of such signs shall be approved by the Director. Such signs shall be included in the total basic sign area entitlement.

~~7.~~8. Grand opening signs. During an authorized grand opening event, temporary signs, not exceeding twenty (20) square feat in area may be approved by the Director. Such signs may consist of one (1) banner on the exterior wall of the building within which the subject business is located. Such signs shall not be displayed more than thirty (30) days from the issuance of the sign permit.

In addition, during the first four (4) days of a grand opening event, captive balloons, without regard to number, may be permitted provided that such balloons do not extend beyond the lowest point of the roof line of the business, obstruct other business in the vicinity or interfere with pedestrian or vehicle traffic.

These restrictions shall not in anyway prohibit any person from handing out or giving away balloons as part of the normal activities of a business as long as such balloons are not in a captive state attached to a structure.

8. Directional signs. Directional signs shall be limited in number to the greater of

five (5) signs or four (4) signs per frontage for any business premises that has more than one (1) frontage. The maximum area for such signs shall be three (3) square feet, and such signs shall not exceed three (3) feet in height. A directional sign may display a logo of a business located on the subject property as well as an arrow or other directional symbol and/or words, including but not limited to "parking," "enter," "exit," "do not enter," "drive-thru," "welcome" and other similar messages.

3.13.7 Administration

A. Duty to enforce. The Director shall have the duty to enforce the provisions of this Chapter.

B. Ambiguity. Whenever any ambiguity arises as to the interpretation of the provisions of this Chapter, the applicant for a sign permit may request that the planning commission make a determination as to the meaning and application of the ambiguous provision.

C. Minor modifications. The planning commission may approve minor modifications to the regulations relating to the size, height, number and location of new or existing signs after a public hearing in those cases where an applicant is faced with exceptional circumstances related to the type or location of its business, or is trying to achieve a special design. The applicant shall have the burden of proving that:

1. The sign is or will be integrated into the architecture of the building;

2. The sign is or will not be detrimental to surrounding uses or properties or the community in general; and

3. The approval of such modification is consistent with the purposes of the ~~general plan~~ Malibu Local Coastal Program and this Chapter.

Notwithstanding the foregoing, the size or height entitlement of a sign shall not be increased by more than thirty (30) percent.

D. Discontinuance of a business. Within thirty (30) days after the discontinuance of a business in any commercial zone or before a new business occupies the premises, whichever comes first, all nonconforming signs and support structures shall be removed and the working or advertising relating to the discontinued business shall be removed from all conforming signs. This section shall not be applicable to the assignment, lease or sublease of an existing business which continues to conduct the same business on the same premises.

E. Nonconforming sign maintenance. Except for normal repair or maintenance not exceeding fifty (50) percent of the replacement cost of the sign, as determined by the building official, no nonconforming sign shall be modified or moved unless it complies

fully with the provisions of this Chapter.

F. Removal of illegal signs on public property. The Director shall remove or cause to be removed any temporary sign unlawfully place or located on public property. The Director shall notify in writing the owner of such sign, if such owner is know, that its sign is being held at city hall and that it will be destroyed if not claimed by the owner within then (10) days after the date of such notice. In the event that the owner does not claim such sign within said ten-day period, the Director may destroy or otherwise dispose of such sign.

3.14. WIRELESS TELECOMMUNICATIONS ANTENNAE AND FACILITIES

3.14.1 Wireless Telecommunication Antennae and Facilities and Private Property

A. Purpose

The following standards are intended to ensure that the development of wireless telecommunications facilities and antennae occur in a manner which respects the environment and neighboring properties, complies with the City's land use policies and goals, and will not impair the integrity and character of the zoned district.

B. Site Plan Review

A site plan review permit, pursuant to Section 13.27 of the Malibu LIP , shall be obtained prior to erecting a wireless telecommunications antenna and/or facility in any non-residential zoning district (except for the public open space and recreational vehicle park zoning districts), if such wireless telecommunications antenna and/or facility complies with the General Requirements set forth in Section and the Most Restrictive Design Standards set forth in Section .

C. Conditional Use Permit

A conditional use permit, pursuant to Chapter 9.4.40 of the Malibu Zoning Ordinance, shall be obtained prior to erecting a wireless telecommunications antenna and/or facility within any rural residential, public open space, or recreational vehicle park zoning districts, or within any other non-residential zoning district if the proposed wireless telecommunications antenna and/or facility does not comply with the Most Restrictive Design Standards set forth in Section 3.14.1 (F) of the Malibu LIP. Any wireless telecommunications antenna and/or facility conditionally approved pursuant to this Section shall comply with the General Requirements set forth in Section 13.4.1 (E) of the Malibu LIP.

D. Health and Safety

Every wireless telecommunications facility in the City shall be placed, constructed, operated, and maintained in a manner which fully complies with the current regulations of the Federal Communications Commission (FCC) with regard to radio frequency emissions.

E. General Requirements. Every wireless telecommunications facility and antenna shall comply with the following development standards.

1. The maximum height of ground or building-mounted antennae shall not exceed 28 feet. However, building-mounted antennae elements, mounted flush on the I of an existing structure which exceeds 28 feet, may have a height equal to the height of the building. Roof-mounted antennae may extend no more than 3 feet above the roof from which they are attached.

2. Not more than one (1) ground-mounted antenna site, excluding licensed amateur radio station antennae, shall be permitted on each site.

3. Wherever feasible, wireless telecommunications facilities and antennae shall be co-located on existing poles or other facilities. No permittee shall unreasonably restrict access to an existing antenna location if required to co-locate by the City, and if feasible to do so.

4. All electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view with lattice, vegetation, grading or other appropriate screening. Roof-mounted electrical support equipment shall, as much as possible, be discouraged. Ground-mounted electrical support equipment shall be encouraged.

5. Antennae may be located on existing utility poles provided the antennae do not exceed the height of the utility poles.

6. All antennae shall meet the minimum siting distances to habitable structures required for compliance with Federal Communications Commission (FCC) regulations and standards governing the environmental effects of radio frequency emissions.

7. All antennae shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade which is a minimum of eight and one-half feet below the transmitting surface.

8. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications

Commission (FCC) or the Federal Aviation Administration (FAA).

F. Most Restrictive Design Criteria. Every wireless telecommunications facility and antenna shall comply with the following design criteria.

1. All building-mounted antennae shall be located as close as possible to the building.

2. All building and roof-mounted wireless telecommunications facilities and antennae shall be designed to appear as an integral part of the structure and located to minimize visual impacts.

3. Ground-mounted antennae shall be located near existing structures or trees at similar heights for screening purposes where feasible.

4. All antennae and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located. If ground mounted, the antenna and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment.

5. All antennae shall be designed to prevent unauthorized climbing.

6. The placement of new antennae and facilities shall not be physically obstructive or visually intrusive.

7. All ground-mounted antennae and facilities shall be designed to be consistent with the visual resources in the area where they are located to mitigate visual impacts.

G. Standard Conditions of Approval. Each wireless telecommunications antenna and/or facility which is approved through either the site plan review process or a conditional use permit shall be subject to the following standard conditions of approval, in addition to any other condition deemed appropriate by the reviewing authority:

1. The wireless telecommunications antenna and/or facility shall be erected, operated, and maintained in compliance with the General Requirements of Section 13.4.1 (E) of the Malibu LIP and, if applicable, with the Most Restrictive Design Standards set forth in Section 13.4.1 (F) of the Malibu LIP of the Malibu Zoning Ordinance.

2. Within thirty (30) calendar days following the installation of any wireless telecommunications antenna and/or facility, the applicant shall provide FCC documentation to the Planning Director that the unit has been inspected and tested in compliance with FCC standards. Such documentation shall include the make

and model (or other identifying information) of the unit tested, the date and time of the inspection, and a certification that the unit is properly installed and working within applicable FCC standards.

3. The installation of any wireless telecommunications antenna and/or facility shall be in compliance with all applicable state and local building, electrical, and mechanical codes.

4. Any substantial change in the type of antenna and/or facility installed in a particular location shall require the prior approval of the Planning Director.

5. The applicant shall pay to the City a Permit Compliance Fee in an amount to be established by resolution of the City Council.

6. Co-location of wireless telecommunications antennae and facilities pursuant to Section 13.4.1 (H) of the Malibu LIP shall be required whenever it is feasible to do so.

H. Locating Antennae at Existing Sites

An effort should be made to locate new wireless telecommunications antennae and facilities on existing grandfathered or conforming facilities when feasible. Requests for new facilities should provide a coverage/interference analysis and capacity analysis which should indicate that the location and quantity of the antennae as proposed is necessary to meet the frequency re-use and spacing needs of the system and to provide adequate wireless telecommunications coverage and capacity to areas which cannot be adequately served by locating the antennae elsewhere.

3.14.2 Wireless Telecommunications Antennae and Facilities within Public Rights-of-Way

A. Purpose

The purpose of this Section is to provide locational, design and screening criteria to minimize the potential health, safety and aesthetic impacts of wireless communications facilities within public rights-of-way. The criteria establish standards and permit requirements to facilitate the installation of wireless communications systems while remaining consistent with the scenic character of the City. This chapter seeks to minimize any adverse visual impact created by wireless communications facilities while providing adequate service to the citizens of the City and to accommodate the need for a connection of such services to wireless facilities in adjacent and surrounding communities. Utilities regulated by the state Public Utility Commission are not subject to this Chapter.

B. General Requirements. The following general design guidelines shall be considered

for regulating the location, design, and aesthetics for a Wireless Telecommunication Facility:

1. Site Selection. All new wireless communication facilities within public rights-of-way shall be co-located with existing and with other planned new facilities whenever feasible. Service providers are encouraged to co-locate with other facilities such as light standards and other utility structures where the co-location is found to minimize the overall visual impact. Future undergrounding of utility poles is to be considered when planning these facilities.

2. Prior to the processing of the encroachment permit, the applicant is to have an approved five- (5) year Master Plan of Facilities. (This plan is proprietary, not a public document and for use by City staff only.)

C. Site Development

1. Facilities shall be designed to be as visually unobtrusive as possible. Colors and designs must be integrated and compatible with existing on-site and surrounding buildings and/or used in the area. Facilities shall be sited to avoid or minimize obstruction of views from adjacent properties.

2. Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the sit on the surrounding area.

3. Facilities shall not impede the use of the parkway by pedestrians and equestrians.

D. Design

1. All wireless communications facilities shall be unlit.

2. Equipment facilities on site shall be limited to the housing of radio, electronic and related equipment necessary to that site and not used for storage equipment. If feasible, the base station and all wires and cables necessary for the operation of the facility shall be placed underground so that the antenna is the only portion of the facility that is above-ground.

3. All wireless communication facilities shall be screened to the fullest extent possible and located to minimize visibility from surrounding areas and right-of-way.

4. The use of colors and facility designs shall be compatible with surrounding buildings and uses in the area and shall prevent the facility from dominating the

surrounding area.

5. All equipment, antennas, poles or towers shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual impacts.

6. The maximum antenna height of any facility shall not exceed the maximum height limit of the underlying zone or the maximum height of an existing building (including any rooftop parapet walls, mechanical rooms, etc.).

7. Radiation by wireless operations shall be kept to levels that do not affect the health of the public.

8. All wireless communication facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions which would result in hazardous conditions, visual blight, or attractive nuisances.

E. Application Process

1. An encroachment permit shall be obtained prior to implementation of a plan for a wireless telecommunications antenna and/or facility.

2. A site plan review permit shall be obtained prior to approving an encroachment permit.

3. Notice Requirements: At least thirty (30) days prior to issuing the permit, written notice of the application shall be sent to all property owners within a five hundred foot (500') radius of the proposed facility.

4. All applications for a permit for the installation of a telecommunications wireless facility, shall contain the following information:

    a. A visual impact analysis: The applicant shall submit a visual impact analysis, which may include photomontage, field mock-up, or other techniques, which demonstrates the visual impacts of the proposed facility. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. The analysis shall also consider the potential of future utility undergrounding construction. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

b. A Five-Year Master Plan of all existing facilities and planned future facilities within the City. The Master Plan shall consist of the following components:

- A written description of the type of technology each company/carrier will provide to its customers over the next five years (i.e. Cellular, PCS, etc) and a description of consumer services to be offered (i.e. voice, video and data transmission)
- A description of the radio frequencies to be used for each technology.
- A map of the City showing the five year plan cell sites and planned coverage;
- A written list of existing, proposed and anticipated cell sites of the service provider over a five year period;
- A description of the location of the cells and the types of installations, including antennas and equipment.

c. A radius map and a certified list of the names and addresses of all property owners within five hundred feet (500') of the exterior boundaries of the property involved, as shown on the latest assessment roll of the county assessor.

d. A plot plan of the lot, right-of-way, premises or parcel of land, showing the exact location of the proposed facility (including all related equipment and cables), exact location and dimensions of all buildings, parking lots, walkways, trash enclosures, and property lines.

e. Co-location/Height Justification: The applicant must provide justification as to why the proposed height is necessary and why co-location on an existing site is not feasible or desirable (if applicable)

f. Building elevations and roof plan (for building and/or rooftop-mounted facilities) indicating exact location and dimensions of equipment proposed. For freestanding facilities, indicate surrounding grades, structures, and landscaping from all sides.

g. Proposed landscaping and/or non-vegetative screening (including required safety fencing) plan for all aspects of the facility.

h. FCC Standards: Certified documentation by a licensed Engineer stating that the facility meets standards set by the Federal Communication Commission (FCC)

i. Licenses: Documentation certifying the applicant has obtained all

applicable licenses or other approvals required by the Federal Communication Commission to provide the services proposed in connection with the application.

F. Permit Renewal

The Facility permit must be renewed every two years. The site must be inspected by the Public Works Director to insure that the facility is still in operation, that it has been properly maintained, and that the original conditions of approval have been adhered to and whether they are to remain the same or need to be modified.

G. Maintenance

All wireless telecommunications facilities shall be maintained on a regular basis. Maintenance shall include painting and the care and replacement of dead or diseased landscaping.

1. Abandonment

a. Notice: At such time that an owner or operator plans to abandon, or is required to discontinue operation of a wireless service facility or portion thereof, the owner or operator will notify the City by certified US mail of the proposed date of abandonment or discontinuation of operations and the date the facility shall be removed. The notice should be given no less than 30 days prior to abandonment. Failure to give notice shall not affect the owner or operator obligation to remove an abandoned facility.

b. Removal: Upon abandonment, the owner or operator shall physically remove the facility or abandoned elements within ninety (90) days from the date of abandonment or discontinuation of use. " Physically remove" shall include, but not be limited to:

c. Removal of antennas, mounts, equipment cabinets and security barriers from the subject property.

CHAPTER 4—ENVIRONMENTALLY SENSITIVE HABITAT AREA OVERLAY

4.1. PURPOSE

The purpose of the environmentally sensitive habitat overlay zone or "ESHA" overlay zone is to protect and preserve areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. The environmentally sensitive habitat overlay zone shall extend not only over an ESHA area itself but shall also include buffers necessary to ensure continued protection of the habitat areas. Only uses dependent on the environmentally sensitive habitat areas ~~resources~~ and which do not result in significant disruption of habitat values shall be permitted in the ESHA overlay zone.

4.2. DESCRIPTION OF AREA SUBJECT TO OVERLAY

The ESHA overlay provisions shall apply to those areas designated environmentally sensitive habitat area on the Malibu LIP ESHA overlay map ~~(Exhibit ___)~~ and those areas within 200 feet of designated ESHA. Additionally, those areas not mapped as ESHA, but found to be ESHA under the provisions of Section 4.3 of the Malibu LIP shall also be subject to these provisions.

4.3. ESHA DETERMINATION

A. Any area not designated on the ESHA Overlay Map that meets the "environmentally sensitive area" definition (Chapter 2 of the Malibu LIP) is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The City shall determine the physical extent of habitat meeting the definition of "environmentally sensitive area" on the project site, based on the applicant's site-specific biological study, as well as available independent evidence.

B. Unless there is site-specific evidence that establishes otherwise, the following habitat areas shall be considered to be ESHA:

1. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis
2. Any habitat area that ~~supports~~contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law

3. Any habitat area that contributes to the viability of species that are designated "fully protected" or "species of special concern" under State law or regulations.
~~3~~4. Any habitat area that ~~supports~~contributes to the viability of ~~significant populations~~ species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation ~~designated~~ as "1b" (Rare or endangered in California and elsewhere) or designation as "2" (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society,
~~4~~5. Any designated Area of Special Biological Significance, or Marine Protected Area.
~~5~~6. Streams.

C. If the applicant's site-specific biological study or other independent information contains substantial evidence that an area previously shown on the ESHA overlay does not contain habitat that meets the definition of "environmentally sensitive area", the City shall determine the physical extent of habitat that does meet the definition of "environmentally sensitive area" on the project site.

1. Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem ~~of concern~~ have been eliminated.
2. If the City finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the Malibu LUP ESHA Map and the Malibu LIP ESHA overlay map. Such a modification shall be considered an LCP amendment, subject to approval by the Coastal Commission.
3. If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be permitted (consistent with all other LCP requirements) even if the LUP ESHA Map and ESHA Overlay Map have not yet been amended.

D. In addition to the findings required in Section 13.9 of the Malibu LIP, the City shall make findings as to the physical extent of habitat meeting the definition of environmentally sensitive habitat on the project site, based on the applicant's site specific biological study, available independent evidence, and review by the City biologist and the Eenvironmental Rreview Bboard~~, City biologist, or other qualified resource specialist~~.

4.4. SUPPLEMENTAL APPLICATION REQUIREMENTS

4.4.1. California Department of Fish and Game

Applications for new development on sites containing or adjacent to a stream or wetland shall include evidence of preliminary approval from the California Department of Fish and Game.

4.4.2. Biological Study

Applications for new development on property that is 1) within identified ESHA; 2) adjacent to identified ESHA (where the proposed development area is within 200 feet of identified ESHA); or 3) where the initial site inventory (required by Section 13.6 of the Malibu LIP) indicates the presence or potential for sensitive species or habitat, shall include a detailed biological study of the site, prepared by a qualified biologist, or resource expert, that includes the following:

A. An ~~inventory~~study identifying ~~of~~ biological resources, both existing on the site and potential or expected resources.~~,~~ Where trees suitable for nesting or roosting or significant foraging habitat is present, a formal raptor survey will be conducted as part of the biological study. The biological study will account~~ing~~ for seasonal variations in presence and abundance and will follow standard protocols developed by state or federal resource agencies when available. In the absence of standard protocols for raptors, for nesting raptor surveys (March 1-June 15) or for wintering raptor surveys (December 1-March 15), at a minimum, the area will be surveyed for 2 hours between dawn and 10:00 a.m. on five occasions with at least one week between surveys. If there is appropriate habitat for owls on site, on at least three of the surveys observations will also be made during the period immediately before nightfall.
B. Photographs of the site.
C. A discussion of the physical characteristics of the site, including, but not limited to, topography, soil types, microclimate, and migration corridors.
D. An analysis of the frequency of wildfire affecting the site and the length of time since wildfire has last burned the site vegetation.
E. A map depicting the location of biological resources.
F. An identification of rare, threatened, or endangered species, that are designated or are candidates for listing under State or Federal Law, ~~and~~ identification of rare plants designated "1B" or "2" by the California Native Plant Society, and identification of "fully protected" species and/or "species of special concern" that are present or expected on the project site.
G. An analysis of the potential impacts of the proposed development on the identified habitat or species.

H. An analysis of any unauthorized development, including grading or vegetation removal that may have contributed to the degradation or elimination of habitat area or species that would otherwise be present on the site in a healthy condition.
I. Project alternatives designed to avoid and minimize impacts to sensitive resources.
J. Mitigation measures that would minimize or mitigate residual impacts that cannot be avoided through project alternatives.

4.4.3. Wetlands

A. Where the biological study, or the initial site inventory (required by Section 13.6 of the Malibu LIP) indicates the presence or potential for wetland species or indicators, the applicant shall additionally submit a delineation of all wetland areas on the project site. Wetland delineations shall be based on the definitions contained in Section 13577(b) of Title 14 of the California Code of Regulations.

B. Wetland delineations will be conducted according to the definitions of wetland boundaries contained in section 13577(b) of the California Code of Regulation. A preponderance of hydric soils or a preponderance of wetland indicator species will be considered presumptive evidence of wetland conditions. The delineation report will include at a mimimum a (1) a map at a scale of 1":200' or larger with polygons delineating all wetland areas, polygons delineating all areas of vegetation with a preponderance of wetland indicator species, and the location of sampling points, and (2) a description of the surface indicators used for delineating the wetland polygons. Paired sample points will be placed inside and outside of vegetation polygons and wetland polygons identified by the consultant doing the delineation.

4.4.4. Exceptions

The following types of development shall not be subject to the provisions of Section 4.4.2 of the Malibu LIP with regard to the supplemental application requirement of a detailed biological study of the site:

A. Remodeling an existing structure that does not extend the existing structure footprint.

B. Additions to existing structures that are within the lawfully established graded pad area, or the existing developed/landscaped area if there is no graded pad, and that do not require additional fuel modification.

C. Demolition of an existing structure and construction of a new structure within the existing building pad area where no additional fuel modification is required.

D. New structures and landscaping proposed within the permitted graded pad or permitted development area if there is no graded pad, authorized in a previously approved coastal development permit.

E. New structures within existing, developed neighborhoods where the parcel is not within 200 feet of an ESHA, as shown on the ESHA overlay map.

4.5. ~~CONDITIONALLY~~ PERMITTED USES

Development in ESHA is limited to the uses listed below.

4.5.1. Wetlands

A. Aquaculture, wetlands-related scientific research and wetlands-related educational uses.

B. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines, where it has been demonstrated that there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

C. Wetland restoration projects where the primary purpose is restoration of the habitat.

4.5.2. Streams

A. Necessary water supply projects

B. Flood protection where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development. Flood control measures shall not diminish or change stream capacity, percolation rates or habitat values. Channel redirection or hardening may be permitted only if all less intrusive flood control efforts have been considered and have been found to be technically infeasible. Such less intrusive measures shall include, but not be limited to biostructures, vegetation, and soil bioengineering.

C. Developments and restoration projects which have as the primary function the improvement of fish and wildlife habitat.

4.5.3. Other types of environmentally sensitive habitat

A. Public accessways and trails, including directional signs

B. Interpretive signage designed to provide information about the value and protection of the resources

C. Restoration projects where the primary purpose is restoration of the habitat.

D. Invasive plant eradication projects if they are designed to protect and enhance habitat values.

4.5.4 Environmentally Sensitive Habitat Buffers

A. Public accessways and trails, including directional signs

B. Interpretive signage designed to provide information about the value and protection of the resources

C. Restoration projects where the primary purpose is restoration of the habitat.

D. Invasive plant eradication projects if they are designed to protect and enhance habitat values.

4.6. DEVELOPMENT STANDARDS

4.6.1. Buffers

New development adjacent to ESHA shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers <u>except as provided in Section 4.6.1 (E), (F), or (G) of the Malibu LIP</u>. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

B. Wetlands

New development shall provide a buffer of no less than 100 feet in width from the upland limit of the wetland.

C. Woodlands

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the tree canopy for oak or other native woodland

D. Coastal Bluff

New development shall provide a buffer of no less than 100 feet from the bluff edge.

~~E. Other ESHA~~

~~For other ESHA areas not listed above, the buffer recommended by the Environmental Review Board, City biologist, or other qualified resource expert as necessary to avoid adverse impacts to the ESHA shall be required.~~

~~**4.6.2. Development Setbacks**~~

~~New development adjacent to the following types of ESHA shall provide development setback areas to provide distance and physical barriers to human intrusion, and to avoid or minimize impacts to ESHA from required fuel modification.~~

~~A~~E. Canyons (Point Dume)

New development shall provide a buffer ~~setback~~ of sufficient width to ensure that ~~all of the required irrigated fuel modification area (Zone A and Zone B, if required) is located above the top of slope and that~~ all structures are setback a minimum of 25 feet from the top of slope. Patios, swimming pools and other similar accessory uses may be constructed within the area 25 feet from the top of slope, if such use does not result in any expansion to the required fuel modification area.

~~B~~F. Coastal Sage Scrub

New development shall provide a buffer ~~setback~~ of sufficient width to ensure that no required fuel modification area (Zones A, B, and C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the coastal sage scrub plant community.

~~C~~G. Chaparral

New development shall provide a buffer ~~setback~~ of sufficient width to ensure that no required fuel modification area (Zones A, B, and C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the chaparral plant community.

H. Other ESHA

For other ESHA areas not listed above, the buffer recommended by the Environmental Review Board or City biologist as necessary to avoid adverse impacts to the ESHA shall be required.

4.6.2. Lighting

Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity features, shielded, and directed away from ESHA to minimize impacts on wildlife. Night lighting for sports courts or other private recreational facilities in ESHA, ESHA buffer, or where night lighting would increase illumination in ESHA shall be prohibited. Permitted lighting shall conform to the following standards:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Planning Director.

2. Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.

3. The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

4. A light, not to exceed 60 watts or the equivalent, at the entrance to the (identify non-residential accessory structures).

5. No lighting around the perimeter of the site, no lighting for sports courts or other private recreational facilities, and no lighting for aesthetic purposes is allowed.

6. Prior to issuance of Coastal Development Permit, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.

4.6.3. Fencing

A. Fencing or walls shall be prohibited within ESHA, except where necessary for public safety or habitat protection or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor.

B. Development adjacent to, but not within ESHA, may include fencing, if necessary for security, that is limited to the area around the clustered development area.

4.6.4. Variances

A. Variances that modify ~~setback,~~ buffers~~,~~ or ESHA ~~other sensitive resource~~ protection standards shall not be granted except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

B. Modifications to required development standards that are not related to ESHA ~~sensitive resource~~ protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA ~~sensitive resources~~.

C. Protection of ESHA ~~sensitive resources~~ and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA ~~sensitive resource~~ and/or public access protection, the standards that are most protective of ESHA ~~sensitive resources~~ and public access shall take precedence.

4.7. ECONOMICALLY VIABLE USE

Any coastal development permit application for a use other than one permitted in the ESHA overlay district, in which the ~~applicant contends that the~~ uses permitted in this district would preclude construction of a residence on an undeveloped legal parcel ~~will not provide an economically viable use of his or her property~~, shall be subject to the provisions of this section. The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. Where all feasible building sites are ESHA or ESHA buffer, the City may only permit development~~only the minimum amount of development necessary to provide the applicant with an economically viable use of the property,~~ as specified below in sections 4.7.1 through 4.7.4 of the Malibu LIP in order to provide the owner with an economically viable use of the property. In no case shall the approved development exceed the following maximum standards.

4.7.1. Development Area

No development shall be allowed in wetlands unless it is a permitted use identified in Section 4.5.1 of the Malibu LIP. In other ESHA areas, the allowable development area (as defined in Chapter 2 of the Malibu LIP~~including the building pad and all graded slopes, if any, as well any permitted structures~~) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre over 40 acres in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size. The development must be sited to avoid

destruction of riparian habitat to the maximum extent feasible. The development area shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance.

4.7.2. Fencing

Development permitted within coastal sage scrub or chaparral ESHA may include fencing, if necessary for security, that is limited to the area around the clustered development area. Fencing or walls shall be prohibited within the following ESHA types: riparian, bluff, canyons in Point Dume ~~canyon~~ or coastal dunes ~~ESHA~~, except where necessary for public safety or habitat protection or restoration.

4.7.3. Agricultural Uses

Development permitted within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater than 3:1 (horizontal:vertical), does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides.

4.7.4. Confined Animal Facilities

Development permitted within coastal sage scrub or chaparral ESHA may include accessory confined animal structures such as stables, barns, or tack rooms, as well as corrals within the approved development area. Confined animal facilities or corrals may be included within the ~~irrigated~~ fuel modification area required by the Los Angeles County Fire Department (Zones A, B, and/or ~~B~~C if required) for the ~~approved~~ structure(s) approved within the development area, only if such use is not located on slopes greater than 4:1 (horizontal:vertical), does not require additional grading other than minimal grading for foundations, is constructed of non-flammable materials, and does not result in any expansion to the required fuel modification area.

4.7.5. Consolidated Projects on Multiple Parcels

The allowable development area may be increased for projects that comprise two or more legal lots, if the existing lots are merged into one lot and one consolidated development area is provided with one access road or driveway . The allowable development area shall not exceed the total of the development areas allowed for each individual parcel, according to Section 4.7.1 of the Malibu LIP.

4.7.6. Supplemental Findings

A coastal development permit for a use other than those conditionally permitted in the ESHA overlay ordinance may be approved or conditionally approved only if the planning commission makes the following supplemental findings in addition to the findings required in Section 13.9 of the Malibu LIP:

A. Application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel ~~property~~.

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

C. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ordinance and it complies with the provisions of Section 4.7 ~~of the ESHA Overlay ordinance~~ of the Malibu LIP.

4.8. MITIGATION

A. New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Residual adverse impacts to ESHA ~~sensitive resources~~ shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community conservation Plan that is certified by the Coastal Commission as an amendment to the Malibu LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA ~~sensitive resources~~. The permit shall include conditions that require implementation of all feasible mitigation measures that would significantly reduce adverse impacts of the project.

B. When ~~M~~mitigation measures are required by Section 4.8 (A) of the Malibu LIP for ~~unavoidable~~ impacts to ESHA, such measures including habitat restoration and/or enhancement shall be monitored for a period of no less than five years following completion. Specific mitigation objectives and performance standards shall be designed to measure the success of the restoration and/or enhancement. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the five-year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met. The restoration will be considered successful after the success criteria have been met for a period of at least 2 years without any maintenance or remediation activities other than exotic species control. At the City's discretion, final performance monitoring will be

conducted by an independent monitor supervised by the city biologist and paid for by the applicant. If success criteria are not met within 10 years, the applicant shall submit an amendment proposing alternative mitigation. The permit shall include conditions that impose these requirements.

4.8.1. Habitat Impact Mitigation

All new development shall include mitigation for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance, except as provided in Section 4.8.2 of the Malibu LIP for impacts to wetlands . The acreage of habitat impacted shall be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site, and required brush clearance, if any, on adjacent properties.

One of the following three Habitat Impact Mitigation methods shall be required: 1) habitat restoration; 2) habitat conservation; or 3) in-lieu fee for habitat conservation. The permit shall include conditions setting forth the requirements for habitat mitigation.

A. Habitat Restoration

1. This method includes mitigation of habitat impacts through the restoration of an area of degraded habitat equivalent to the affected habitat (based on the final approved project). Prior to issuance of the coastal development permit, the applicant shall identify the area of disturbed or degraded habitat that is proposed to be restored. The applicant shall also submit a habitat restoration plan, prepared by a qualified biologist or resource specialist, designed to restore the area in question for habitat function, species diversity, and vegetation cover. The restoration plan shall include provisions for monitoring the restoration site for a period of no less than five years, including criteria for determining restoration success, and mid-course corrective measures. The restoration will be considered successful after the success criteria have been met for a period of at least 2 years without any maintenance or remediation activities other than exotic species control. At the City's discretion, final performance monitoring will be conducted by an independent monitor supervised by the city biologist and paid for by the applicant. If success criteria are not met within 10 years, the applicant shall submit an amendment proposing alternative mitigation. The City shall determine that the proposed restoration site is of equivalent type and acreage to the impacted habitat. The area of habitat to be restored shall be permanently preserved through the recordation of an open space deed restriction that applies to the entire restored area. The open space deed restriction shall be recorded prior to issuance of the coastal development permit. The habitat restoration shall be carried out prior to or concurrently with construction of the development project. In any case, the

restoration project shall be complete prior to the issuance of certificates of occupancy for any structures approved in the coastal development permit.

2. Performance bonds shall be required prior to the issuance of the coastal development permit to guarantee the compliance with the restoration of the habitat mitigation area prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City may collect the security and complete the work on the property.

B. Habitat Conservation

This method includes the mitigation through the conservation of an area of intact habitat equivalent to the affected habitat (based on the final approved project). Prior to issuance of the coastal development permit, the applicant shall identify the parcel(s) containing the area of intact habitat of equivalent type and acreage to the impacted habitat that will be permanently preserved for habitat impact mitigation. The mitigation parcel shall be restricted from future development and permanently preserved through the recordation of an open space deed restriction or open space easement. The open space deed restriction shall be recorded prior to issuance of the coastal development permits. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact ESHA.

1. Implementation of Conservation Measures

The Planning Director's determination that the habitat impact mitigation conditions of development on a coastal development permit have been met prior to the issuance of the permit through habitat conservation shall be based on submittal of all of the following (in addition to those requirements noted above):

a. Evidence of the purchase of development rights on a donor site and recordation of ~~an~~ dedication to the City of Malibu of a permanent, irrevocable open space easement in favor of the City on the retired lot(s) that need not allow public use of the lot(s) but which conveys an interest in the lot(s) that insures that the future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Coastal Permit Procedures Section 13.19 of the Malibu LIP (recorded legal documents); and

~~b. Evidence of a recorded deed restriction that reflects that the retired lots used to provide habitat impact mitigation are combined with one or more~~

~~adjacent, unrestricted lot(s) through a process outlined in section 4.8.1(B2) of the Malibu LIP; and~~

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

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

~~2. Combining of Donor Lots~~

~~a. Upon recordation of an easement, a retired parcel that has qualified for habitat impact mitigation shall be combined with an adjacent lot or lots that are not subject to development restrictions. The donor site and adjacent parcel(s) shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance.~~

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

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

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

~~i. Merger of lots pursuant to the Subdivision Ordinance Chapter 15 of the Malibu LIP~~
~~ii. Reversion to acreage pursuant to the Subdivision Ordinance Chapter 16 or Government Code Section 66410 et.seq.~~
~~iii. Recorded Declaration of Restrictions pursuant to Government Code 66499.11.~~

C. In-lieu Fee for Habitat Conservation

1. Prior to issuance of the coastal development permit, the applicant shall provide evidence that compensatory mitigation, in the form of an in-lieu fee, has been paid to mitigate habitat impacts. The fee shall be based on the habitat type, the cost per acre to restore or create comparable habitat type, and the acreage of habitat affected (based on the final approved project).

2. The fee shall be paid into the Habitat Impact Mitigation Fund, administered by the Santa Monica Mountains Conservancy. The accumulated fees shall be used for the acquisition or permanent preservation of natural habitat areas within the Santa Monica Mountains Coastal Zone. Fees paid to mitigate impacts of development approved within the City may be used to acquire or preserve habitat anywhere within this area. Priority shall be given to acquisition or permanent preservation of properties containing areas designated ESHA, and to properties contiguous with existing parklands containing natural habitat.

4.8.2. Wetlands

A. Any new development that includes dike or fill development in wetlands for a use permitted under the Coastal Act and the LCP shall include mitigation for unavoidable impacts to wetland habitat. Wetland impact mitigation shall include, at a minimum, creation or substantial restoration of wetlands of the same type as the affected wetland or similar type. The acreage of wetland habitat impacted shall be determined based on the approved project.

B. Prior to issuance of the coastal development permit, the applicant shall identify an area of disturbed or degraded wetland habitat of equivalent type and acreage sufficient to provide mitigation of the wetland impacts according to the following ratios (number of acres of created or restored habitat required for each acre of wetland habitat impacted), as applicable:

Seasonal wetlands	3 to 1
Freshwater marsh	3 to 1
Riparian areas	3 to 1
Vernal pools	4 to 1
Saltmarsh	4 to 1

C. These mitigation ratios shall be minimum standards unless the applicant provides evidence establishing, and the City finds, that creation or restoration of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event will the mitigation ratio be less than 2:1 unless, prior to the development impacts, the wetland creation or restoration proposed as project mitigation is completed and is empirically demonstrated, based upon a report provided by the applicant from a qualified biologist or resource specialist, to meet performance criteria that establish that the created or restored wetlands are functionally equivalent or superior to the impacted wetlands.

D. Prior to issuance of the coastal development permit, the applicant shall submit wetland habitat creation, restoration, management, maintenance and monitoring plans for the proposed wetland mitigation area prepared by a qualified biologist and/or resource specialist. The plans shall provide a 100 foot restored buffer as measured from the upland limit of the wetland area, and at a minimum include ecological assessment of the mitigation site and surrounding ecology; goals, objectives and performance standards; procedures and technical specifications for wetland and upland planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years. The City shall determine that the proposed restoration site is of equivalent type and acreage to the impacted wetland habitat.

E. The area of wetland habitat to be restored shall be restricted from future development and permanently preserved through the recordation of an open space deed restriction that applies to the entire restored area and buffer. The open space deed restriction shall be recorded prior to issuance of the coastal development permit. The habitat restoration shall be carried out prior to or concurrently with construction of the development project. In any case, the wetland restoration or creation project shall be complete prior to the issuance of certificates of occupancy for any structures approved in the coastal development permit.

F. Performance bonds shall be required prior to the issuance of the coastal development permit to guarantee compliance with the restoration of wetland habitat prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 10 years for the restoration of wetland habitat. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City may collect the security and complete the work on the property. The permit shall contain conditions that set forth the above requirements.

CHAPTER 5--NATIVE TREE PROTECTION ORDINANCE

5.1. PURPOSE

The purpose of the Native Tree Protection Ordinance is to 1) recognize the importance of native oak, walnut, sycamore, alder and toyon trees in preventing the erosion of hillsides and stream banks, moderating water temperatures in streams through shading, contributing nutrients to streams, ~~and~~ supporting a wide variety of wildlife species through the provision of food, nesting, and roosting cover, and contributing to the scenic quality of the community and 2) to provide for the protection and preservation of these native trees.

5.2. DESCRIPTION OF AREA SUBJECT TO ORDINANCE

The provisions of this ordinance shall apply to those areas containing one or more native oak (*Quercus* species), California Walnut (*Juglans californica*), Western Sycamore (*Platanus racemosa*), Alder (*Alnus rhombifolia*), or Toyon (*Heteromeles arbutifolia*) tree, that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, measured at four and one-half feet above natural grade.

5.3. SUPPLEMENTAL APPLICATION REQUIREMENTS

Coastal development permit applications for development on sites containing oak, walnut, sycamore, alder, or toyon trees subject to this ordinance shall include a tree protection plan, prepared by a qualified biologist or resource expert that provides:

A. An inventory and assessment of the health of native trees on the site by type, size (both trunk circumference and extent of canopy).
B. Photographs of the site showing location of all native trees.
C. A site map depicting the location of all such trees, including a scale drawing of trunk, canopy location and extent.
D. An analysis of all potential construction and post-construction impacts on the identified native trees.
E. Project alternatives designed to avoid removal of trees and to avoid and minimize impacts to protected trees.
F. Identification of trees proposed to be removed by the project.
G. On-site mitigation measures necessary to minimize or mitigate residual impacts that cannot be avoided through project alternatives, including the provision of replacement trees.

H. A long-term maintenance and monitoring program designed to assure long-term protection and health for all native trees.

5.4. DEVELOPMENT STANDARDS

A. New development shall be sited and designed to preserve oak, walnut, sycamore, alder, and toyon, ~~or other native trees~~, as identified by Section 5.2 of the Malibu LIP above, to the maximum extent feasible.

B. Removal of native trees subject to this ordinance shall be prohibited except where no other feasible alternative exists. ~~for the construction of one primary structure permitted under the applicable zoning. Removal shall be prohibited for the construction of accessory structures.~~ Mitigation shall be required for the removal of trees as described in section 5.5 of the Malibu LIP below.

C. Structures, including roads or driveways, shall be sited to prevent any encroachment into the protected zone and to provide an adequate buffer outside of the protected zone of individual native trees in order to allow for future growth, except where no other feasible alternative exists ~~for the construction of one primary structure permitted under the applicable zoning~~. Coastal development permits for development subject to this chapter shall include provisions or be conditioned to require that if approved encroachments result in the death or worsened health or vigor of the affected tree as a result of the proposed development, mitigation as described in Section 5.5 of the Malibu LIP below shall be required.

D. Drainage shall be directed away from all root zones of all native trees.

E. Project Construction Measures

1. Protective fencing shall be used around the outermost limits of the protected zones of the native trees within or adjacent to the construction area that may be disturbed during construction or grading activities. Before the commencement of any clearing, grading, or other construction activities, protective fencing shall be placed around each applicable tree. Fencing shall be maintained in place for the duration of all construction. No construction, grading, staging, or materials storage shall be allowed within the fenced exclusion areas, or within the protected zones of any on site native trees.

2. Any approved development, including grading or excavation, that encroaches into the protected zone of a native tree shall be constructed using only hand-held tools.

3. The applicants shall retain the services of a qualified independent biological consultant or arborist, approved by the Planning Director to monitor native trees that are within or adjacent to the construction area. ~~The biological consultant or arborist shall be present on site during all grading and construction activity. This monitor shall have the authority to require the applicants to temporarily cease work should any breach in permit compliance occur.~~ If any breach in the protective fencing occurs, all work shall be suspended until the fence is repaired or replaced. ~~The monitor shall report the suspension of construction immediately to the Planning Director. The Planning Department staff shall conduct a site visit within 48 hours to determine permit compliance.~~

4. The permit shall include these requirements as conditions of approval.

5.5. MITIGATION

New development shall be sited and designed to avoid impacts to native trees to the maximum extent feasible. If there is no feasible alternative that can prevent tree removal or encroachment, then the alternative that would result in the fewest or least significant impacts shall be selected. Adverse impacts to native trees shall be fully mitigated, with priority given to on-site mitigation. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to sensitive resources. The permit shall include the mitigation requirements as conditions of approval.

5.5.1. Tree Replacement

A. Prior to the issuance of the coastal development permit that includes native tree removal or the loss or worsened health of native trees resulting from encroachment, the applicant shall submit a native tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, tree or seedling size, planting specifications, and a monitoring program to ensure that the replacement planting program is successful, including performance standards for determining whether replacement trees are healthy and growing normally, and procedures for periodic monitoring and implementation of corrective measures in the event that the health of replacement trees declines.

B. Where the removal of native trees cannot be avoided or where development encroachments into the protected zone of native trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees on-site, if suitable area exists on the project site, at a ratio of no less than 10 replacement trees for every 1 tree removed. The applicant shall plant seedlings, less than one year old on an area of the project site where there is suitable habitat. In the case of oak trees, the seedlings shall be grown from acorns collected in the area.

5.5.2. Alternative Mitigation ~~In-lieu Fee~~

~~A.~~ Where on-site mitigation through planting replacement trees is not feasible, ~~compensatory~~ mitigation shall be provided by one of the following methods:

a. Off-site mitigation shall be provided by planting no less than 10 replacement trees for every 1 tree removed, at a suitable site that is restricted from development or is public parkland. The applicant shall plant seedlings, less than one year old in an area where there is suitable habitat. In the case of oak trees, the seedlings shall be grown from acorns collected in the area; or

b. ~~, in the form of a~~An in-lieu fee, shall be provided for the unavoidable impacts of the loss of native tree habitat. The fee shall be based on the type, size and age of the tree(s) removed.

~~B.~~ The fee shall be paid into the Native Tree Impact Mitigation Fund, administered by the Santa Monica Mountains Conservancy. The accumulated fees shall be used for the restoration or creation of native tree woodland or savanna habitat areas within the Santa Monica Mountains Coastal Zone. Fees paid to mitigate impacts of development approved within the City may be used to restore native tree habitat anywhere within this area. Priority shall be given to restoration or creation on properties containing areas designated ESHA, and to properties contiguous with existing parklands containing suitable native tree habitat.

5.6. MONITORING

The permit shall include the monitoring requirements set forth below as conditions of approval. The permit conditions shall specify the performance standards for on-site tree replacement.

5.6.1. Trees with Encroachments

Where approved development encroaches into the root zone of native trees, each affected tree shall be monitored annually for a period of not less than ten years. An annual monitoring report shall be submitted for review by the City for each of the ten years. Should any of these trees be lost or suffer worsened health or vigor as a result of the proposed development, the applicant shall mitigate the impacts as required in section 5.5 of the Malibu LIP. If replacement plantings are required as mitigation, monitoring of the replacement trees shall be provided as required by Section 5.6.2 of the Malibu LIP.

5.6.2. Replacement Trees

Where the planting of replacement trees is required as mitigation, as required by Section 5.5 of the Malibu LIP above, each replacement tree shall be monitored annually for a period of not less than ten years. An annual monitoring report shall be submitted for the review and approval of the City for each of the ten years. The monitoring report shall identify the size and health of each replacement tree, comparing this information with the criteria provided in the native tree replacement planting program required in Section 5.5.1 (A) of the Malibu LIP for determining that replacement trees are healthy and growing normally. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the ten-year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of ten years, the monitoring period shall be extended until the standards are met.

5.7. Supplemental Findings.

A coastal development permit that includes the removal of one or more native tree(s) and/or the encroachment of development within the protected zone of one or more native tree(s) may be approved or conditionally approved only if the planning commission makes the following supplemental findings in addition to the findings required in Section 14.9 of the Malibu LIP:

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

B. The adverse impact of tree removal and/or encroachment cannot be avoided ~~is unavoidable~~ because there is no other feasible alternative ~~for the construction of one primary structure permitted under the applicable zoning~~.

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

CHAPTER 6 – SCENIC, VISUAL, AND HILLSIDE RESOURCE PROTECTION ORDINANCE

6.1. PURPOSE AND INTENT

The purpose of the Scenic, Visual, and Hillside Resource Protection Ordinance is to enhance and protect the scenic and visual qualities of coastal and mountain areas within the City of Malibu as a resource of public importance in accordance with the policies of the City's Local Coastal Plan (LCP) and the California Coastal Act. To implement the certified Land Use Plan (LUP), development standards, permit and application requirements, and other measures are provided to ensure 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.

6.2. APPLICABILITY

All Coastal Development Permit Applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area shall be governed by the policies, standards and provisions of this chapter in addition to any other policies or standards contained elsewhere in the certified LCP which may apply. The hillside development standards of this chapter shall apply to properties where the project site includes any area of slope over 20 percent.

Where applicable, Coastal Development Permits shall be conditioned to require compliance with any policy, standard or provision contained herein.

6.3. STANDARDS FOR DETERMINATION

All applications for a Coastal Development Permit shall be subject to an on-site investigation in order to determine whether the proposed project has ~~causes~~ the potential to cause ~~create~~ adverse impacts upon Scenic Areas from or along Scenic Roads or Public Viewing Areas. Where applicable, ~~prior to filing the application as legally complete,~~ proposed structures shall be accurately indicated as to footprint, height and rooflines by story poles with flags. All proposed grading and the proposed location of access roads or driveways, including the centerline top of cut and toe of fill, shall be accurately indicated by stakes. Both poles and stakes shall remain in place for the duration of the approval process. The applicant may also be required to provide other visual aides such as photographs with superimposed structures. These requirements may be waived by the Planning Director where it is determined through on-site investigation, evaluation of

topographic maps or photographic evidence, or by other means that there is no possibility that the proposed development will create or contribute to adverse impacts upon Scenic Areas.

6.4. REQUIRED FINDINGS AND ANALYSIS

A. Written findings of fact, analysis and conclusions addressing scenic or visual resources must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon Scenic Areas from or along Scenic Roads and Public Viewing Areas. Such findings shall address the specific project impacts relative to the applicable development standards identified in Section 6.5 of the Malibu LIP. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. Findings for approval or conditional approval shall conclude that the project as proposed, or as conditioned, conforms to the certified Local Coastal Program. A Coastal Development Permit for the proposed development shall only be granted if the City's decision-making body is able to find that:

1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

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

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

4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

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

B. If found to be necessary to conform to the development standards contained in this chapter or any other applicable policy or standard of the certified LCP the proposed development shall be modified, by special condition, relative to height, size, design, or location on the site and may be required to incorporate landscaping or other methods to avoid or minimize the adverse scenic impacts of the proposed development. If special conditions of approval are required in order to bring the project into conformance with

the certified LCP, the findings shall explain how the special condition(s) alleviate or mitigate the adverse effects which have been identified. Mitigation shall not be permitted to substitute for implementation of a feasible project alternative that would lessen or avoid impacts to scenic and visual resources.

6.5. DEVELOPMENT STANDARDS

A. Development Siting

1. New development shall ~~not be visible from~~ be sited and designed to minimize adverse impacts on scenic areas~~,~~ 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 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.

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. ~~and in no case shall the maximum development area (including the building pad and all graded slopes, if any, as well as any permitted structures) for residential development exceed 10,000 sq. ft. or 25 percent of the parcel size, whichever is less. All permitted structures shall be located within the approved development area. The maximum allowable development area for commercial development shall be restricted by the maximum floor area ratio. This policy shall not apply to new development on parcels located on the ocean side of Pacific Coast Highway as provided in Section 6.5.E of the Malibu LIP (Ocean Views).~~

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 ~~or other sensitive~~ resources or ESHA.

B. Development Design

1. 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, pursuant to Section 13.27 of the Malibu LIP 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.

2. The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual ~~or other sensitive~~ resources or ESHA. Driveway slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic highway, a beach, a public viewing area, or public hiking trail shall be a neutral color that blends with the surrounding landforms and vegetation.

3. Retaining walls visible from scenic highways, public viewing areas, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.

4. Fences, walls, and landscaping shall not block views ~~from~~ of scenic areas~~,~~ from scenic roads, parks, beaches, and other public view areas.

5. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.

a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.

b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.

c. All windows shall be comprised of non-glare glass.

6. New water tanks in scenic areas visible from scenic roads or public viewing areas shall be designed to be partially below grade, where feasible. Water tanks shall incorporate colors that are compatible with the surrounding landscape and landscape screening to minimize visual impacts.

C. Hillside Development

1. Ridgelines

a. New development shall be sited and designed to prohibit construction of structures on a primary or secondary ridgeline. Any structures shall be located a minimum of 300 feet (measured horizontally) or 100 feet (measured vertically) from the top of a primary ridgeline, and shall maintain the roof or top of structure below a primary ridgeline when viewed from a public street or highway.

b. Where there are no feasible building site that can conform to the requirements of Section a, or where the only feasible building site would result in unavoidable adverse impacts to environmentally sensitive habitat areas, then a variance may be approved for a building site that does not conform to these standards, with design measures that minimize the visual resource impacts. Any structures approved on such a building site shall be limited to one-story in height.

2. Drainage Devices

Drainage devices, including but not limited to, terrace drains, bench drains, downdrains, should be placed in locations of least visibility on slopes. The side of a drain should be bermed to conceal it. Visible concrete drains should be colored to match the natural soils and screened with landscaping to be less visually intrusive.

3. Roads

a. In hillside areas, new development shall be located as close to existing roads as feasible to minimize the length of on-site roads except where a longer road would would allow for an alternative building site location that would be more protective of visual ~~or other sensitive~~ resources or ESHA.

b. Driveway slopes shall be designed to follow the natural topography.

c. New development shall include no more than one driveway or access road to clustered structures.

d. The turnaround required to provide adequate access for emergency service vehicles shall be of a design that minimizes grading and landform alteration, such as a "hammerhead"

e. Private driveways to multiple project sites shall be shared where feasible.

4. Structures

a. Structures, terraces, and yards in hillside areas shall be designed to incorporate varying levels, or split-levels. Where feasible, retaining walls shall be incorporated into building foundations.

b. The taller elements of a structure shall be located near the center or uphill portion of the structure.

c. The roofline of hillside structures shall be of varying height to reduce the mass.

D. Bluff Development

1. In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on blufftops 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 risk from geologic hazards are minimized for the life of the structure ~~unless application of the required setback would deny all reasonable use of the property. In such case the minimum amount of development necessary to avoid a taking shall be permitted~~.

2. No permanent structures shall be permitted on a bluff face, except for engineered stairways to accessways to provide public beach access ~~where no feasible alternative means of public access exists~~. Such structures shall be designed and constructed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

3. Landscaping permitted on a bluff face or hillside for restoration, revegetation or erosion control purposes shall consist of native, drought-tolerant plant species endemic to the area.

E. Ocean Views

New development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views.

1. Where the topography of the project site descends from the roadway, new development shall be sited and designed to preserve bluewater ocean views over the approved structures by incorporating the following measures.

a. Structures shall extend no higher than the road grade adjacent to the project site, where feasible.
b. Structures shall not exceed one story in height, as necessary, to ensure bluewater views are maintained over the entire site.
c. Fences shall be located away from the road edge and fences or walls shall be no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.
d. The project site shall be landscaped with native vegetation types that have a maximum growth height at maturity and are located such that landscaping will not extend above road grade.

2. Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.
c. No portion of any structure shall extend into the view corridor.
d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.

3. Except for replacement of structures destroyed by disaster in accordance with Section 13.4.6 of the Malibu LIP, redevelopment of sites involving substantial remodels (the replacement of 50 percent or more of the structure) or demolition and reconstruction where existing landscaping or development blocks or obscures public views of the ocean or other scenic ~~views~~areas, the existing landscaping or development shall be removed and where appropriate replaced with landscaping and development that is sited and designed to provide maximum views, as required by Section 6.5 (E) (1) or Section 6.5 (E) (2) of the Malibu LIP, as applicable.

4. New development on properties visible from and inland of Pacific Coast Highway shall be sited and designed to protect public views of the ridgelines and natural features of the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height limits, clustering development, incorporating landscape elements, and, where appropriate, berming.

5. New Commercial development within the Civic Center shall be sited and designed to not obstruct public views of the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.

F. Public Works

Public works projects along scenic roads that include hardscape elements such as retaining walls, cut-off walls, abutments, bridges, or culverts shall incorporate veneers, texturing, and colors that blend with the surrounding earth materials or landscape. The design of new bridges on scenic roads shall be compatible with the rural character of the Santa Monica Mountains and designed to protect public scenic views to the maximum feasible extent.

G. Lighting

~~The quality of the night skies and visibility of stars shall be preserved by controlling outdoor lighting, thereby reducing visual intrusion.~~ Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity features, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited. Permitted lighting shall conform to the following standards:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Planning Director.

2. Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.

3. The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

4. A light, not to exceed 60 watts or the equivalent, at the entrance to the (identify non-residential accessory structures).

5. No lighting around the perimeter of the site, no lighting for sports courts or other private recreational facilities, and no lighting for aesthetic purposes is allowed.

6. Prior to issuance of Coastal Development Permit, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.

H. Pacific Coast Highway

1. The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed by requiring that development conform to the following standards.

   a. Landscape improvements, including median plantings, may be permitted along Pacific Coast Highway. Any proposed landscaping shall be comprised primarily of native and drought tolerant plant species. Landscaping shall be designed and maintained to be subordinate to the character of the area, and not block ocean or mountain views at maturity. Any such improvements permitted west of Malibu Canyon Road shall be required to maintain the rural character of that area.

   b. New commercial development that includes a parking lot visible from Pacific Coast Highway shall include landscaping and/or berming to screen the view, so long as such measures do not obscure or block views of the ocean.

   c. Any telecommunications facilities approved along Pacific Coast Highway shall place support facilities underground, where feasible. New transmission lines shall be sited and designed to be located underground, except where it would present or contribute to geologic hazards. Existing transmission lines should be relocated underground when they are replaced or when funding for undergrounding is available.

6.6. FUTURE DEVELOPMENT

Where necessary to insure the protection of scenic and visual resources in accordance with the policies and standards provided herein, a Coastal Development Permit shall be conditioned to require the recordation of a deed restriction or other legal document which provides that any or all future development beyond that authorized by the CDP, including that which would ordinarily be exempt from a CDP, shall be subject to a new CDP or permit amendment.

6.7. APPLICATION SUBMITTAL REQUIREMENTS

A. Applications for new development <u>in scenic areas</u> visible from public viewing areas, public trails, beaches, ~~scenic areas~~ or scenic roads shall include a visual analysis that includes:

1. Grading plan, if any grading is proposed.
2. Cross sections of the project site showing the proposed grading and structures.
3. Line of sight analysis showing the view of the project site from public viewing areas.
4. Photos of the project site from public viewing areas and/or scenic roads, with story poles placed on the site to indicate the proposed location and maximum height of all structures and stakes placed on the site to indicate the extent of all proposed grading.
5. An analysis of the potential impacts of the proposed development on the identified public views.
6. Project alternatives designed to avoid and minimize impacts to visual resources.
7. Mitigation measures necessary to minimize or mitigate residual impacts that cannot be avoided through project siting and design alternatives.

B. Applications for land divisions shall include a grading plan, drainage/polluted runoff control plan, landscape plan, conceptual fuel modification plan (based on anticipated location of future structures), line of sight analysis showing the view of the project site from public viewing areas, and landscaping plans for any proposed slopes. These plans shall depict the proposed building pad or building area (if future structures will be built to the slope) and access road/driveway to each proposed parcel. If deemed necessary the visual analysis shall include the placement of story poles and stakes to indicate the location and extent of building pads and grading necessary to develop the site.

6.8. EXCEPTIONS

The following types of development shall comply with the policies and standards provided herein to the maximum feasible extent but shall not be prohibited by application of said policies or standards:

A. Public Beach or trailhead parking;
B. Public Beach or Park restrooms or minor maintenance buildings;
C. Public accessways and trails;
D. Signs indicating location of or directions to public beach or trail access.
E. Temporary events where upon conclusion of said event the site shall be left in the same physical condition as existed prior to the event;
F. Siting development in only feasible location to avoid Environmentally Sensitive Habitat Areas, existing public accessways or trails or areas of historic public use.

CHAPTER 7--TRANSFER OF DEVELOPMENT CREDITS

7.1. PURPOSE AND INTENT

The purpose of this Chapter is to set forth procedures for implementing a program to mitigate the cumulative impacts of development given the large numbers of undeveloped parcels, the natural resource constraints and the limited availability of urban services in the Santa Monica Mountains Area coastal zone. Buildout of existing lots will have cumulative impacts on environmentally sensitive habitat, scenic and visual resources, natural landforms and potential future recreational use of the mountains and beaches. Development on new parcels will also cause an increase in risks to life and property due to high geologic, flood and fire hazards common to the region and would increase the amount of erosion due to grading for roads, utilities and building pads.

The intent of this Chapter is to ensure that density increased through new land divisions and new multi family unit development in the City , excluding affordable housing units, will not be approved unless Transfer of Development Credits are purchased to retire development rights on existing donor lots in the Santa Monica Mountains Area. A lot from which development rights have been transferred is "retired", and loses its building potential through recordation of a permanent open space easement.

7.2. APPLICABILITY

A. The regulations requiring TDCs apply to:
   1) any action to authorize a coastal development permit for a land division in the City of Malibu; and
   2) to any action to authorize a coastal development permit for Multi Family Residential Development in the MF or MFBF zones or PD including land divisions associated with the multifamily residential development in the certified LCP except for units constructed for lower income households (defined in Health and Safety Code section 50079.5), very low income households (defined in Health and Safety Code section 50105), extremely low income households (defined in Health and Safety Code section 50106) or qualifying residents or senior citizens (defined in Civil Code section . 51.3(b)(1)). ~~The regulations requiring TDCs apply to any action to authorize a coastal development permit for a land division in the City of Malibu and to any action to authorize a coastal development permit for Multi Family Residential Development in the MF or MFBF Zones or PD in the certified LCP.~~

B. The responsibility for initiation of a transfer of a development credit is placed on the applicant for a coastal development permit for a residential land division or multi-family development.

C. TDC Credits may be obtained through purchase of development rights on donor sites throughout the Santa Monica Mountains Area coastal zone as defined herein from private property owners.

7.3. DEFINITIONS

Definitions provided in this chapter are specifically adopted to implement the City of Malibu LCP TDC Program. In addition to the other definitions made elsewhere in the LCP Implementing Ordinances, the following terms are defined for the purposes of this chapter:

"Buildable Parcel" is any parcel which, regardless of size, contains a site which can be accessed and upon which at least one single family residence can be constructed in conformity with all of the City's LCP policies and regulations and City health and safety codes in effect at time of application for a development or building permit.

"Credit Area" is the area of one or more legal donor sites that is used to determine the number of development credits to be transferred.

"Development Rights" means the rights that are commonly associated with real property ownership. Development rights, subject to local, state, and federal regulations, provide the legal basis for property development.

"Donor Lot" is the same as Donor Site.

"Donor Site" is a buildable parcel within the Santa Monica Mountains Area that has been designated as a parcel on which development rights may be purchased in order to generate transferable development credits (TDCs).

"Donor Area" is a designated area from which density could be removed by extinguishing development potential of existing, constrained lots.

"Environmentally sensitive habitat area " means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

"Receiver Site" is a residentially zoned parcel in the City where additional density can be accommodated through subdivision or new multifamily development consistent with policies of the LCP.

"Receiver Area" means residentially zoned lands within the City of Malibu coastal zone.

"Residential building site" is a location within a buildable parcel upon which one single-family residence can be constructed consistent with all policies of the certified LCP.

"Santa Monica Mountains Area" means the Santa Monica Mountains within the coastal zones of the City of Malibu and the County of Los Angeles.

"Significant Watershed" means large, relatively undisturbed natural drainage basins that contain exceptional riparian and oak woodlands and provide habitat for various declining, restricted rare or endangered species.

"Transfer" is the set of actions which result in an increase in density through authorization of subdivisions or multiunit development on one parcel by reducing the allowable development on another parcel-"donor lot"-by a like amount. In a typical transaction, a person wishing to subdivide a parcel will contract to purchase development rights from the owner of a qualifying donor lot to their mutual financial advantage. The transfer of development is officially validated at the time the applicant for a coastal development permit to subdivide or develop multifamily units is issued a coastal development permit and the donor lot(s) has been encumbered by documents permanently restricting its development potential. A parcel from which development credits have been transferred may be retained by the owner or transferred subject to any restrictions encumbering the parcel.

"Transferable Development Credit (TDC)" is the right to transfer development on a residential site from a donor site to a receiver site where new lots or units are proposed to be created by subdivisions or multifamily unit development within the Malibu Santa Monica Mountains coastal zone of the City of Malibu and Los Angeles County.

7.4. OBJECTIVES OF THE TRANSFER OF DEVELOPMENT CREDIT REGULATIONS.

The Malibu Transfer of Development Credit program is intended to carry out the following objectives:

A. Implement regulations that establish a voluntary program to transfer development rights for owners of property proposed for subdivision or multi-family developments and for owners of small lots in small lot subdivisions or lots with significant resource constraints.

B. Implement regulations that will mitigate cumulative impacts by ensuring that no net increase of density will result through creation of new buildable parcels or new multifamily units by retiring development rights on other buildable parcels.

C. Establish regulations to allow the transfer of development credit from buildable parcels with resource constraints in the Santa Monica Mountains Area coastal

zone where development would result in individual and cumulative impacts inconsistent with Coastal Act policies, to other sites within the City of Malibu where subdivision and multifamily unit development can occur consistent with policies of the certified LCP.

D. To mitigate the cumulative impacts of the development of existing buildable parcels in the Santa Monica Mountains Area on natural resources, coastal access roads, recreational facilities and beaches by ensuring that even if land divisions or multifamily units are approved consistent with the certified LCP, that the overall number of lots and multi family units in the Santa Monica Mountains Area will not increase.

E. To create an incentive program for owners of donor lots with significant resource contraints to not develop the parcel.

7.5. TDCS REQUIRED-CONDITIONS.

A. Any coastal development permit authorizing a land division or multifamily residential development in the receiver area as required by other Chapters of the LCP Implementing Ordinances shall be conditioned on submitting evidence that TDC Credits consistent with Sections 7.7 and 7.8 of the Malibu LIP (Procedures) have been obtained prior to issuance of the coastal development permit. The burden for satisfying the procedures herein is on the applicant for the applicable coastal development permit.

B. Purchase of development rights and recordation of legal documents to retire lots in designated donor areas as part of implementing the TDC requirements does not require a coastal development permit.

7.6. DESIGNATION OF RECEIVER AREAS.

The areas within the City of Malibu where new development lots may be created through land divisions in any residential zoning category or multifamily projects in the MF Residential and MFBF Multifamily beachfront Residential Zones are designated as receiver areas.

7.7. DESIGNATION OF DONOR AREAS.

The following areas are designated as donor areas where applicants with coastal development permits authorized subject to conditions to provide TDCs prior to issuance of the permit shall seek TDCs through purchase of development rights to retire lots:

A. Existing lots within the following small lot subdivisions within the Los Angeles County coastal zone:

1. Topanga Oaks
2. Malibu Vista
3. Malibu Bowl
4. Topanga Woods
5. Monte Nido
6. Vera Canyon
7. Fernwood

B. Existing lots within the following small lot subdivisions within Los Angeles County where the lots contain environmentally sensitive habitat area and are contiguous to each other or to other retired lots:

1. Malibu Lake
2. Malibu Mar Vista
3. Las Flores Heights
4. El Nido

C. Parcels not located in small lot subdivisions identified in Section 7.6 (A) or (B) of the Malibu LIP and identified as consisting predominately of environmentally sensitive habitat in the certified LCP;

D. Parcels located within the following Significant Watersheds in the Santa Monica Mountains Area as defined herein:

1. Arroyo Sequit
2. Solstice Canyon
3. Cold Creek Canyon
4. Tuna Canyon
5. Zuma Canyon
6. Malibu Canyon
7. Corral Canyon
8. Trancas Canyon

E. Parcels immediately adjacent to existing public parkland in the Santa Monica Mountains Area where development cannot be sited to avoid encroachment of fire abatement requirements onto public parklands.

F. Parcels in wildlife corridors as designated in the Santa Monica Mountains Area coastal zone.

7.8. PROCEDURES TO TRANSFER DEVELOPMENT CREDITS.

7.8.1 Donor Credits Required

Any coastal development permit subject to this Chapter shall be conditioned to transfer the following credits:

A. Land Divisions, applicant shall be required to retire sufficient donor lots to provide one (1) TDC credit for each newly subdivided lot authorized.

B. Multi-Family Projects, excluding affordable housing projects pursuant to Section 7.2(A)(2) of the Malibu LIP, that exceed 2500 square feet of gross structural area (GSA), applicant shall be required to retire sufficient donor lots to provide one (1) TDC credit for each new unit authorized, minus the number of existing parcels within the project site (e.g. a six-unit project to be sited on two existing parcels requires 4 development credits).

C. Multi-Family Projects, excluding affordable housing projects pursuant to Section 7.2(A)(2) of the Malibu LIP, of less than 2500 square feet of gross structural area (GSA), applicant shall be required to retire sufficient donor lots to provide TDC credits proportionate to the size of the units at a rate of 1 development credit for each 2500 sq. ft. of GSA.

7.8.2 Donor Credits Calculated

The Planning Director, as part of condition compliance on any coastal development permit subject to this Chapter, shall generate the amount of credits for each donor site submitted by the applicant according to the following procedures:

A. Evidence must be submitted that all lots proposed for retirement in order to qualify for TDC credits are legally created buildable lots.

B. The number of development credits to be transferred shall be determined by using the following formula: Credit Area = (A/5) X (50-S)/35, where A= the area of the small lot in square feet and S= the average slope of the small lot in percent and all slope calculations are based on natural (not graded) conditions.

C. In small lot subdivisions Section 7.7 (B) of the Malibu LIP above, lots shall be qualified for TDCs only if all of the following criteria are met:

1. A minimum of three lots are retired; and
2. Lots are adjacent to each other or to other retired lots; and

3. All lots to be retired have a significant amount of habitat designated as environmentally sensitive habitat area.

D. In all small lot subdivisions as defined in Section 7.7 (A) and (B) of the Malibu LIP above, lots shall be qualified according to the following procedures:

1. One (1) Development Credit for

   a. retiring one or more small lots which are served by existing road and water mains and are not located in an area of landslide or other geologic hazard with a sum total credit area of at least 1,500 square feet as determined by the Credit Area formula (see Section 7.8.2 of the Malibu LIP); or

   b. retiring a total 1,500 square foot credit area that may be calculated on the basis of 500 square feet of credit area per small lot, provided that each small lot exceeds 4,000 square feet in area and is served by existing roads or water mains within 300 feet of the property and is not located in an area of landslide or other geologic hazard; or

   c. One (1) Development Credit for retiring any combination of one or more acres of small lots, regardless of the current availability of road and water service to such lots.

   d. Additional credit is not given for lots in small lot subdivisions due to the presence of environmentally sensitive habitat area. ~~as noted in Section 7.7 (H) below.~~

2. In the Monte Nido small lot subdivision, One (1) Development Credit for retiring any two parcels that are contiguous and have road access and water availability.

3. In the Monte Nido small lot subdivision, One (1) Development Credit for retiring any five parcels which are not contiguous or do not have road access or water availability.

E. Lots outside of small lot subdivisions in A and B above but ~~A~~adjacent to Parklands, where proposed building sites are within 200 feet of public parkland such that fuel management will extend onto public lands, defined as lands available for public use and controlled by a public park agency, one (1) Development Credit per lot, up to 20 acres. For lots exceeding 20 acres, one (1) Development Credit for each 20 acres; fractional TDCs can be allowed.

F. For lots within a significant watershed, designated wildlife corridor, or identified as having environmentally sensitive habitat area habitat in Sections 7.7 (C), (D), or (F) of the Malibu LIP, one (1) Development Credit for each parcel, up to 20 acres. For lots over 20 acres, one (1) Development Credit for each 20 acres; fractional TDCs can be allowed.

7.8.3. DONOR CREDITS IMPLEMENTED.

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

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

2. Evidence of a voluntary merger or of a recorded deed restriction reflecting that the retired lots used to generate the credit(s) are combined with one or more adjacent, unrestricted lot(s) through a process outlined in section 7.8.4 of the Malibu LIP; and

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

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

7.8.4 Combining of Donor Lots

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

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

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

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

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

2. Recorded Declaration of Restrictions ~~pursuant to Government Code 66499.11~~.

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

7.9. REQUIRED FINDINGS.

To authorize a coastal development permit for land division or multi-family residential development pursuant to requirements of this Chapter, the approving authority under Chapter 13 of the Malibu LIP must make the following written findings:

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

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

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

7.10. RECORD OF TDCS.

The Planning Director shall maintain a record of all those developments within the coastal zone that have been authorized pursuant to requirements for obtaining TDCs pursuant to this Chapter. The Record of TDCs shall include the following:

1. permit number
2. name of the applicant,
3. location of the project
4. brief project description
5. number of TDC credits required
6. number of lots retired through the TDC transaction
7. location of lots retired through the TDC transaction, including assessor parcel number(s) and copy of parcel map showing location of open space easements

This record shall be available for review by members of the public and representatives of Los Angeles County and the California Coastal Commission.

CHAPTER 8—GRADING ORDINANCE

8.1. PURPOSE

The purpose of the Grading Ordinance is to ensure that new development minimizes the visual and resource impacts of grading and landform alteration.

8.2. APPLICABILITY

All development requiring a Coastal Development Permit that includes grading shall be governed by the policies, standards, and provisions of this chapter in addition to any other policies or standards elsewhere in the certified Malibu LCP that may apply.

8.3. DEVELOPMENT STANDARDS

A. Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.

B. Maximum Quantity of Grading.

Notwithstanding any other provisions of the Malibu LIP, grading within a residential lot or per acre of commercial development (total cut and fill) is limited to 1,000 cubic yards as follows.

1. In conjunction with any grading, so that the maximum is not greater than 1,000 cubic yards (exclusive of remedial grading) cut and fill may be allocated as follows:

   a. Balanced cut and fill up to 1,000 cubic yards; or
   b. Export of no more than 1,000 cubic yards; or
   c. Import of no more than 500 cubic yards, where additional grading on site does not exceed 500 cubic yards in conjunction with any landform alteration so that the maximum is no greater than 1,000 cubic yards; or
   d. Any combination of the above that does not exceed 1,000 cubic yards.

2. The export of cut material may be required to preserve the natural topography of the project site. Cut material may only be exported to an appropriate landfill or a site permitted to accept material.

C. Maximum Height of Cuts and Fills with Retaining Walls.

6 feet in height for any one wall, or 12 feet for any combination of walls, where a minimum 3-foot separation exists between walls, except single cuts up to 12 feet in height which are an integral part of the structure are permitted. Retaining walls shall be designed with smooth, continuous lines that conform to the topography.

D. Maximum Grade Cut Or Fill.

3:1 for areas created for development of structures and open yard areas. Transition slopes may not exceed 2:1 and shall not exceed the maximum height permitted for cuts or fills.

E. Design of Grading

Grading shall be designed to minimize the alteration of landforms by incorporating measures including, but not limited to the following.

1. Conforming to the natural topography. Contour grading shall be used to reflect original landform and result in minimum disturbance to natural terrain.

2. Avoiding a manufactured appearance of slopes by creating smooth flowing contours of varying gradients with slopes of 2:1 or less. Avoid sharp cuts and fills as well as long linear slopes that have uniform grade.

3. Essential grading shall complement the natural landforms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.

4. Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split-level or stepped-pad designs to notch development into hillsides, where feasible.

5. Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.

F. Grading Plans

Grading plans shall be submitted for approval with building plans. No grading permits shall be issued until a building permit is approved.

G. Remedial Grading.

Notwithstanding the limitations of this subsection, the Director may permit remedial grading pursuant to Site Plan Review, Section 13.27 of the Malibu LIP. For the purposes of this Section, remedial grading is defined as grading recommended by a full site geotechnical report approved by the Director and City Geologist, except that no such remedial grading will be allowed when it could be avoided by changing the position or location of the proposed development. Remedial grading that would result in substantial landform alteration shall not be permitted where project alternatives, including but not limited to, deepened foundations, caissons, soldier piles could be utilized to provide equivalent geologic stability.

H. Grading for the Construction of Best Management Practices

Notwithstanding the limitations of this subsection, the City may approve grading not to exceed 500 cu. yds. total for the purpose of implementing Best Management Practices (BMPs) designed to minimize or prevent erosion, sedimentation and polluted runoff, such as detention basins, infiltration basins and bioswales.

~~H~~ I. Exceptions.

Excavation for foundations and other understructure excavation and incremental excavation for basements and safety purposes shall be excluded from grading limitations.

~~I~~ J. Grading Operations

The area of soil to be disturbed at any one time and the duration of its exposure shall be limited. Erosion and sediment control measures shall be installed as soon as possible following the disturbance of the soils. Construction equipment shall be limited to the actual area to be disturbed according to the approved development plans

8.4. SEASONAL RESTRICTIONS ON GRADING

A. Earthmoving during the rainy ~~wet~~ season (extending from November 1 to March 31) shall be prohibited for development that is included in one or both of the following categories.

1. The project site is within or adjacent to an Environmentally Sensitive Habitat Area.

2. The project includes grading on slopes greater than 4:1.

B. Grading operations approved for development included in one of these categories shall not be undertaken unless there is sufficient time to complete grading operations before the rainy ~~wet~~ season.

C. If grading operations are not completed before the rainy ~~wet~~ season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the Planning Director determines that completion of grading would be more protective of resources.

D. Grading during the rainy ~~wet~~ season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.

CHAPTER 9 --HAZARDS

9.1. Purpose and Intent

The purpose and intent of this chapter is to implement the policies of the City's certified Local Coastal Program (LCP) Land Use Plan (LUP) to insure that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. To implement the certified LUP, development standards, permit and application requirements, and other measures are provided to ensure that permitted development is sited and designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along canyons, hillsides, bluffs and cliffs.

9.2. Applicability

A. The City of Malibu and the Santa Monica Mountains coastal zone contains areas subject to hazards that present substantial risks to life and property. These areas require additional development controls to minimize risks, and include, but shall not be limited to, the following:

1. Low Slope Stability and/or high potential for landslide, rockfall, or debris flow, and hillside areas that have the potential to slide, fail, or collapse. Some areas potentially subject to earthquake-induced landslides are identified on the official Seismic Hazard Zone maps released by the California Geological Survey, but areas not shown on these maps may also be subject to earthquake-induced landslides.
2. Faulting: the Malibu Coast-Santa Monica Fault Zone. Areas for which special fault hazard studies are required are identified on the official maps of Alquist-Priolo earthquake fault zones released by the California Geological Survey.
3. Floodprone: areas most likely to flood during major storms. Such areas are designated on FEMA Flood Insurance Rate Maps.
4. Liquefaction: areas where water-saturated ~~materials (including soil, sediment, and certain types of volcanic deposits)~~ cohesionless soils can potentially lose strength, subside, and/or spread laterally during strong ground shaking. Some areas potentially subject to liquefaction are identified on the official Seismic Hazard Zone maps released by the California Geological Survey, but areas not shown on these maps may also be subject to liquefaction.
5. Wave Action: shoreline areas subject to damage from wave activity during storms.

6. Tsunamis: areas that are subject to inundation during tsunamis, whether seismically or landslide induced.
7. Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.

B. All development requiring a Coastal Development Permit on any parcel of land that is located on or near any area subject to hazards cited above shall be governed by the policies, standards and provisions of this chapter in addition to any other policies or standards contained elsewhere in the certified Malibu LCP that may apply. Where any policy or standard provided in this chapter conflicts with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified Local Coastal Plan, and it is not possible for the development to comply with both the Malibu LCP and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall take precedence.

C. Where applicable, Coastal Development Permits shall be conditioned to require compliance with any policy, standard, or provision contained herein.

9.3. Required Findings and Analysis

A. Written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Such findings shall address the specific project impacts relative to the applicable development standards identified in Section 9.4 of the Malibu LIP. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. Findings for approval or conditional approval shall conclude that the project as proposed, or as conditioned, conforms to the certified Local Coastal Program. A Coastal Development Permit for the proposed development shall only be granted if the City's decision making body is able to find that:

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

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

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

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

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

B. If found to be necessary to conform to the development standards contained in this chapter or any other applicable policy or standard of the certified Malibu LCP the proposed development shall be modified, by special condition, relative to height, size, design, or location on the site and may be required to incorporate other methods to avoid or minimize the adverse impacts on site stability or structural integrity of the proposed development. If special conditions of approval are required in order to bring the project into conformance with the certified Malibu LCP, the findings shall explain how the special condition(s) alleviate or mitigate the adverse effects which have been identified. Mitigation shall not be permitted to substitute for implementation of a feasible project alternative that would lessen or avoid impacts to site stability or structural integrity.

9.4. Development Standards

A. All proposed new development located in or near an area subject to geologic hazards shall be required to submit a geologic/soils/geotechnical study report prepared by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that adheres to the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002, and identifies any geologic hazards affecting the proposed development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a statement by the consulting CEG or GE that the project site is suitable for the proposed development, that the development will be safe from geologic hazard, and that the development will in no way contribute to instability on or off the subject site. Such reports shall be subject to the review and approval of the City geotechnical staff.

B. All recommendations of the consulting CEG or GE and/or the City geotechnical staff shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans must be reviewed and approved for compliance with geologic recommendations by the consulting CEG or GE and the City geotechnical staff.

C. Final plans approved by the consulting CEG or GE and the City geotechnical staff shall be in substantial conformance with the plans approved by the final City decision making body relative to construction, grading, sewage disposal and drainage. Any substantial changes in the proposed development approved by the City which may be

required by the project consultants or City geotechnical staff shall require an amendment to the permit or a new Coastal Permit.

~~A~~D. New development proposed on landslides, steep slopes, unstable or ~~expansive~~ weak soils or any other identified geologic hazard area, shall be permitted only where a factor of safety of 1.5 (static) and a factor of safety of 1.1 (pseudostatic) can be provided~~,~~, ~~consistent with the applicable provisions of the City/County building code.~~ Such analysis shall adhere to all provisions of the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002. ~~For~~ In addition, for the purpose of this section, quantitative slope stability analyses shall be undertaken as follows:

1. The analyses shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition. Seismic analyses may be performed by the pseudostatic method, but in any case shall demonstrate a permanent displacement of less than 50 mm.~~.~~

2. Slope stability analyses shall be undertaken through cross-sections ~~oriented perpendicular to the slope~~modeling worst case geologic and slope gradient conditions. Analyses shall include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units is examined.

3. The effects of earthquakes on slope stability (seismic stability) ~~may be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.15g.~~should be evaluated in conformance with the guidelines published by the American Society of Civil Engineers, Los Angeles Section (ASCE/SCEC), "Recommended Practices for Implementation of DMS Special Publication 117, Conditions for Analyzing and Mitigating Landslide Hazards in California."

4. All slope analyses shall be performed using shear strength parameters (friction angle and ~~,~~cohesion), and unit weights determined from relatively undisturbed samples collected at the site. The choice of shear strength parameters ~~for each geologic unit examined~~ shall be supported by direct shear tests, triaxial shear test, or literature references.

5. All slope stability analyses shall be undertaken with water table or potentiometric surfaces for the highest potential ground water conditions.

6. If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and shear strength parameters for each orientation shall be supported by reference to pertinent direct sheer tests, triaxial shear test, or literature.

7. When planes of weakness are oriented normal to the slope or dip into the slope, or when the strength of materials is considered homogenous, circular failure surfaces shall be sought through a search routine to analyze the factor of safety along postulated critical failure surfaces. In general, methods that satisfy both force and moment equilibrium (e.g., Spencer, Morgenstern-Price, and General Limit Equilibrium) are preferred. Methods based on moment equilibrium alone (e.g., Bishop's Method) also are acceptable. In general, methods that solve only for force equilibrium (e.g., Janbu's method) are discouraged due to their sensitivity to the ratio of normal to shear forces between slices.

8. If anisotropic conditions are assumed for units containing critical failure surfaces determined above, and when planes of weakness are inclined at angles ranging from nearly parallel to the slope to dipping out of slope, ~~dip out of the slope,~~ factors of safety for translational failure surfaces shall also ~~shall~~ be calculated. The use of a block failure model shall be supported by geologic evidence for anisotropy in rock or soil strength. Shear strength parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.

9. The selection of shear strength values is a critical component to the evluation of slope stability. Reference should be made to the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002, and to the ASCE/SCEC guidelines (see Section 9.4.D.3 of the Malibu LIP) when selecting shear strength parameters and the selection should be based on these guidelines.

~~B. All proposed new development located in or near an area subject to geologic hazards shall be required to submit a geologic/soils/geotechnical study report prepared by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that identifies any geologic hazards affecting the proposed development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a statement by the consulting CEG or GE that the project site is suitable for the proposed development, that the development will be safe from geologic hazard, and that the development will in no way contribute to instability on or off the subject site. Such reports shall be subject to the review and approval of the City Geologist.~~

~~C. All recommendations of the consulting CEG or GE and/or the City geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans must be reviewed and approved for compliance with geologic recommendations by the consulting CEG or GE and the City Geologist.~~

~~D. Final plans approved by the consulting CEG or GE and the City Geologist shall be in substantial conformance with the plans approved by the final City decision making body relative to construction, grading, sewage disposal and drainage. Any substantial changes~~

~~in the proposed development approved by the City which may be required by the project consultants or City Geologist shall require an amendment to the permit or a new Coastal Permit.~~

E. Measures to remediate or stabilize landslides or unstable slopes that endanger existing structures or threaten public health shall be designed to be the least environmentally damaging alternative, to minimize landform alteration, and to be visually compatible with the surrounding natural environment to the maximum feasible extent. Maximum feasible mitigation measures shall be incorporated into the design and construction of slope stabilization projects to minimize adverse impacts to sensitive resources to the maximum feasible extent.

F. New development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of stormwater runoff in compliance with all requirements contained in Chapter 17 of the Malibu LIP, Water Quality Protection Ordinance.

G. Floodway zones are defined as areas subject to relatively deep and high velocity floodwater, and designated "Floodway Areas in Zone AE" on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) released by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA). The following uses are allowed in a floodway zone:

1. Open recreation uses, such as public parks

2. Other uses such that:

    a. Said use does not constitute an unreasonable, unnecessary, undesirable or dangerous impediment to the flow of floodwaters, or cause a cumulative increase in the water surface elevation of the base flood of more than one foot at any point, where base flood shall mean a flood having a one percent chance of being equaled or exceeded in every year (a 100-year flood)

    b. Said use does not increase the need for construction of flood control facilities

    c. Said use does not interfere with the protection of the health, safety, and general welfare of persons and property located within and adjacent to the floodway.

3. Bridges, such that their construction is consistent with Section 9.4.G.2 of the Malibu LIP. Such bridges shall be the preferred alternative over at-grade crossings (including fords and "Arizona Crossings") of streams and floodways.

H. Where feasible, development shall be sited outside of special flood hazard areas. Special flood hazard areas are defined as areas identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) as having special flood or flood-related erosion hazards, and designated on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) as Zones A, A0, AE, A99, AH, V, VE, or V. If it is not feasible to site development outside of flood hazard areas new development shall conform to all aspects of the City of Malibu Municipal Code, Article III, Chapter 8. In addition, all new development shall adhere to the following requirements:

1. New development shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. New development shall be constructed with materials and utility equipment resistant to flood damage.

3. New development shall use methods and practices that minimize flood damage.

4. For residential structures in Zones A, AE, or AH, the lowest floor (including basement) shall be elevated at or above the base flood elevation, where base flood shall mean a flood having a one percent chance of being equaled or exceeded in every year (a 100-year flood).

5. For mobile or manufactures homes, the structure shall be elevated on a permanent foundation such that the lowest floor is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.

6. For nonresidential structures, the lowest floor (including basement) shall be elevated to or above the base flood level or, together with attendant utility and sanitary facilities, shall be floodproofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect.

7. For structures in an area of shallow flooding (Zone A0 on a FIRM), the lowest floor (including basement) shall be elevated at or above the depth number indicated on the most current FIRM; or if there is no depth number on the most current FIRM, the structure shall be elevated at least three feet above the highest

adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be floodproofed to that level as specified in (9) below.

8. For structures in Zones A0 and AH on a FIRM, adequate drainage paths shall exist around structures situated on sloping ground, to guide floodwaters around and away from said structures.

9. Floodproofing of a nonresidential structure shall use a design and/or methods of construction that are in accordance with accepted standards of practice for floodproofing or which will extend the floodproofing to an elevation that is required pursuant to the provisions of this chapter.

10. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.

11. All on-site waste disposal systems shall be located to avoid impairment to them, or contamination from them, during flooding.

12. All electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during flooding.

13. All fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters with designs certified by a registered professional engineer or architect; or will have at least two openings no more than one foot above grade with a total net area of at least one square inch per square foot of flooded area.

14. New development shall not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been established. For purposes of this section, "adversely affects" shall mean that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood elevation more than one foot at any point.

15. New development shall not be sited and designed so as to require the construction or installation of flood protective works, <u>including bank protection or channelization</u>.

<u>16. Channelizations, dams, or other substantial alterations of rivers and streams shall be limited to (1) necessary water supply projects, (2) flood control projects</u>

where no other method for protecting existing principal structures constructed in the floodplain prior to certification of the LCP is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. All such substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible.

~~16~~17. Construction or substantial improvement shall not involve the use of fill for structural support of buildings.

~~17~~18. New construction or substantial improvements shall be elevated on pilings or columns such that:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding piling or columns) is elevated at or above the base flood elevation; or

b. The pile of column foundation and the attached structure is anchored to resist flotation, collapse, or lateral movement due to the effect of wind and water loads having a one percent chance of being equaled or exceeded in any given year, acting simultaneously on all building components.

~~18~~19. New construction or substantial improvement shall have the space below the lowest floor, if said floor is elevated above grade, free of obstruction or constructed with non-supporting breakaway walls, open wood lattice work or insect screening intended to collapse under wind and water load without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such enclosed space is not useable for other than parking of vehicles, building access, or storage.

~~19~~20. The following restrictions shall apply for properties located in areas designated as being located within a Special Flood Hazard Area pursuant to the provisions of this Chapter:

a. It shall be prohibited to store or process materials that, in a time of flooding, may become buoyant, flammable, explosive, or could be injurious to human, animal, or plant life.

b. The storage of other material or equipment may be allowed if the storage area will not be subject to major damage by floods and if the stored material is firmly anchored to prevent flotation or is readily removable from the area within the time available after a flood warning.

I. Where feasible, development shall be sited outside of potential tsunami inundation zones. Tsunami inundation zones shall be defined as those areas identified as such on maps released by the California Office of Emergency Services, as they become available. If no such map is available, a Registered Civil Engineer with coastal experience shall make a determination, through wave run-up analysis, whether the site may reasonably be expected to be subject to inundation during a tsunami. If it is not feasible to site development outside of a tsunami inundation zone, new development shall be in conformance with all of the provisions set forth in this chapter with regard to Special Flood Hazard Zones. In addition, development shall be constructed to resist lateral movement due to the effect of water loading from the maximum expected tsunami, to the greatest extent feasible.

J. All development that lies within, or partially within, a designated Earthquake Fault Zone as identified by the Alquist-Priolo Earthquake Fault Zoning Act for protection from fault rupture hazard shall demonstrate compliance with all requirements of the Act prior to issuance of any use permit, building permit, or other entitlement.

K. All development that lies within, or partially within, a zone of required investigation for liquefaction or earthquake-induced landslides as identified by the Seismic Hazard Zone Mapping Act for protection from liquefaction and earthquake induced-landslide hazard shall demonstrate compliance with all requirements of the Act prior to issuance of any use permit, building permit, or other entitlement.

L. All swimming pools shall contain double wall construction with drains and leak detection systems capable of sensing a leak of the inner wall.

M. New development shall be prohibited on property or in areas where such development would present an extraordinary risk to life and property due to an existing or demonstrated potential public health and safety hazard.

N. Land divisions, including lot line adjustments, shall be prohibited unless it can be demonstrated that a safe, legal, all-weather access road can be constructed in conformance with all applicable policies of the Malibu Local Coastal Plan and all proposed parcels and access roads are found to comply with all applicable fire safety regulations.

O. Land divisions, including lot line adjustments, shall be prohibited unless all proposed parcels can be demonstrated to be safe from flooding, erosion, geologic and extreme fire hazards.

P. New development shall be required to utilize design and construction techniques and materials that minimize risks to life and property from fire hazard in compliance with the City ~~building code~~Municipal Code, Article III, Chapter 1.

Q. New development shall incorporate fuel modification and brush clearance techniques in compliance with applicable City and County fire safety requirements and shall be designed and carried out to minimize clearance of natural vegetation and reduce impacts to sensitive natural habitat to the maximum feasible extent.

R. Landscaping shall utilize fire-retardant, native plant species in compliance with the requirements of ~~the City's Landscaping Ordinance~~Section 3.10 of the Malibu LIP.

S. New development shall provide for emergency vehicle access and adequate fire-flow water supply in compliance with applicable fire safety regulations.

T. Prior to approval all new development shall demonstrate the availability of an adequate water supply for fire protection in compliance with applicable fire safety regulations.

U. Where applicable, property owners shall comply with fire safety regulations for management of combustible vegetative materials (controlled burns) in fire hazard areas.

V. Emergency actions to repair, replace or protect damaged or threatened development including public works facilities shall be the minimum needed to alleviate the emergency and shall, to the maximum feasible extent, be the least environmentally damaging alternative. A regular permit application shall be required as follow-up to all emergency protection devices or measures in compliance with the Coastal Development Permitting Ordinance. All emergency protection devices shall be designed to facilitate removal and replacement with the alternative found to be consistent with all policies and standards of the LCP through the regular permit process.

W. All emergency permits shall be conditioned and tracked to insure that all authorized development is either removed or approved pursuant to a Coastal Development Permit within 180 days of issuance of the emergency permit.

X. As a condition of approval of new development within or adjacent to an area subject to flooding, land or mudslide, or other high geologic hazard, prior to issuance of the Coastal Development Permit, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the City and agrees to indemnify the City against any liability, claims, damages, or expenses arising from any injury or damage due to such hazards.

Y. As a condition of approval of new development within or adjacent to an area subject to high wildfire hazards, prior to issuance of the Coastal Development Permit, the property owner shall be required to submit a signed document which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design,

construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

Z. All new development shall be reasonably safe from mudslide hazards, consistent with the City of Malibu Municipal Code, Article III, Chapter 8, Section 15.

CHAPTER 10— SHORELINE AND BLUFF DEVELOPMENT ORDINANCE

10.1 PURPOSE AND INTENT

To minimize adverse impacts to coastal resources including public access and shoreline sand supply and from hazards in accordance with the policies of the City's certified Local Coastal Plan (LCP) and the California Coastal Act. To implement the certified Land Use Plan (LUP), development standards, permit and application requirements, and other measures are provided to ensure that development permitted on or along beaches and bluffs within the City of Malibu is (1) sited and designed to minimize risks, assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access or shoreline sand supply, (2) that new development is sited and designed to not require the construction of protective devices that would create or contribute to shoreline erosion or alter natural landforms and, (3) that shoreline protective devices required to protect existing structures or public beaches in danger from erosion are sited and designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

10.2 APPLICABILITY

A. All development requiring a Coastal Development Permit, including but not limited to residential structures, commercial buildings, and shoreline protective devices (seawall, revetment, retaining wall, bulkhead, tieback anchor system, or similar structure) on any parcel of land that is located on or along the shoreline, a coastal bluff or bluff-top fronting the shoreline shall be governed by the policies, standards and provisions of this chapter in addition to any other policies or standards contained elsewhere in the certified LCP which may apply. Where any policy or standard provided in this chapter conflict with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified Local Coastal Plan, and it is not possible for the development to comply with both the LCP and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall take precedence.

B. Where applicable, Coastal Development Permits shall be conditioned to require compliance with any policy, standard, or provision contained herein.

10.3 REQUIRED FINDINGS AND ANALYSIS

A. Written findings of fact, analysis and conclusions addressing coastal resources including public access and shoreline sand supply must be included in support of all

approvals, denials or conditional approvals of development located on a site along the shoreline or a coastal bluff where it is determined that the proposed project causes the potential to create adverse impacts upon said resources. Such findings shall address the specific project impacts relative to the applicable development standards identified in Section 10.4 of the Malibu LIP. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. Findings for approval or conditional approval shall conclude that the project as proposed, or as conditioned, conforms to the certified Local Coastal Program. A Coastal Development Permit for the proposed development shall be granted only if the City's decision making body is able to find that:

1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons;

2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions;

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

4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources;

5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.

B. If found to be necessary to conform to the development standards contained in this chapter or any other applicable policy or standard of the certified LCP the proposed development shall be modified, by special condition, relative to height, setback, size, design, or location on the site and may be required to incorporate other methods to avoid or minimize the adverse impacts of the proposed development. If special conditions of approval are required in order to bring the project into conformance with the certified LCP, the findings shall explain how the special condition(s) alleviate or mitigate the adverse effects which have been identified. Mitigation shall not be permitted to substitute for implementation of a feasible project alternative that would lessen or avoid impacts to coastal resources or public access.

10.4 DEVELOPMENT STANDARDS

A. Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered and its potential impact on beach erosion, shoreline retreat, and bluff erosion rates shall be evaluated. Development shall be set back a sufficient distance landward and elevated to a sufficient ~~foundation~~ finished floor height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

B. New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100 year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

C. Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:

1. No stockpiling of dirt or construction materials shall occur on the beach;
2. All grading shall be properly covered and sandbags, ditches, or other Best Management Practices (BMPs) shall be used to prevent runoff and siltation;
3. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work;
4. No machinery shall be allowed in the intertidal zone at any time unless authorized in the Coastal Development Permit;
5. All construction debris shall be removed from the beach daily and at the completion of development.

Such measures shall be implemented as conditions of approval for a Coastal Development Permit.

D. All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure ~~plus an added geologic stability factor of 1.5~~. In no case shall development be set back less than 100 feet. ~~which~~ This distance may be reduced to 50 feet if the City ~~geologist~~ geotechnical staff determines that either of the conditions below can be met with a ~~lower~~lesser setback. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc.

Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist~~, a registered Civil Engineer or~~ and/or Geotechnical Engineer, or a Civil Engineer with experience in soil engineering. Generally, one of two conditions will exist:

1. If the bluff exhibits a factor of safety of less than 1.5 for either gross ~~global~~ or surficial ~~factor of safety against~~ landsliding ~~of less than 1.5~~, then the location on the bluff top at which a 1.5 factor of safety exists shall be determined. Development shall be set back a minimum distance equal to the distance from the bluff edge to the 1.5 factor-of-safety-line, plus the distance that the bluff might reasonably be expected to erode over 100 years. These determinations, to be made by a state-licensed ~~certified~~ Certified ~~engineer~~ Engineer ~~geologist~~Geologist, ~~r~~Registered ~~civil~~ Civil Engineer, or ~~geotechnical~~ Geotechnical ~~engineer~~Engineer, shall be based on a site-specific evaluation of the long-term bluff retreat rate at this site and shall include an allowance for possible acceleration of historic bluff retreat rates due to sea level rise.

2. If the bluff exhibits both a ~~global~~ gross and surficial factor of safety against landsliding of greater than 1.5, then development shall be set back a minimum distance equal to the distance that the bluff might reasonably be expected to erode over 100 years plus a ten foot buffer to ensure that foundation elements are not actually undermined at the end of this period. The determination of the distance that the bluff might be expected to erode over 100 years is to be made by a state-licensed ~~certified~~ Certified ~~engineer~~ Engineer ~~geologist~~Geologist, ~~registered~~ Registered ~~civil~~ Civil ~~engineer~~ Engineer or ~~geotechnical~~ Geotechnical ~~engineer~~Engineer, and shall be based on a site-specific evaluation of the long-term bluff retreat rate at the site and shall include an allowance for possible acceleration of historic bluff retreat rates due to sea level rise.

For the purpose of this section, quantitative slope stability analyses shall be undertaken as follows:

1. The analyses shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition. Seismic analyses may be performed by the pseudostatic method, but in any case shall demonstrate a permanent displacement of less than 50 mm.

2. Slope stability analyses shall be undertaken through cross-sections modeling worst case geologic and slope gradient conditions. Analyses shall include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units is examined.

3. The effects of earthquakes on slope stability (seismic stability) should be evaluated in conformance with the guidelines published by the American Society of Civil Engineers, Los Angeles Section (ASCE/SCEC), "Recommended Practices for Implementation of DMS Special Publication 117, Conditions for Analyzing and Mitigating Landslide Hazards in California."

4. All slope analyses shall be performed using shear strength parameters (friction angle and cohesion), and unit weights determined from relatively undisturbed samples collected at the site. The choice of shear strength parameters shall be supported by direct shear tests, triaxial shear test, or literature references.

5. All slope stability analyses shall be undertaken with water table or potentiometric surfaces for the highest potential ground water conditions.

6. If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and shear strength parameters for each orientation shall be supported by reference to pertinent direct sheer tests, triaxial shear test, or literature.

7. When planes of weakness are oriented normal to the slope or dip into the slope, or when the strength of materials is considered homogenous, circular failure surfaces shall be sought through a search routine to analyze the factor of safety along postulated critical failure surfaces. In general, methods that satisfy both force and moment equilibrium (e.g., Spencer, Morgenstern-Price, and General Limit Equilibrium) are preferred. Methods based on moment equilibrium alone (e.g., Bishop's Method) also are acceptable. In general, methods that solve only for force equilibrium (e.g., Janbu's method) are discouraged due to their sensitivity to the ratio of normal to shear forces between slices.

8. If anisotropic conditions are assumed for units containing critical failure surfaces determined above, and when planes of weakness are inclined at angles ranging from nearly parallel to the slope to dipping out of slope, ~~dip out of the slope,~~ factors of safety for translational failure surfaces shall also be calculated. The use of a block failure model shall be supported by geologic evidence for anisotropy in rock or soil strength. Shear strength parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.

9. The selection of shear strength values is a critical component to the evluation of slope stability. Reference should be made to the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002, and to the ASCE/SCEC guidelines (see Section 9.4.D.3) when selecting shear strength parameters and the selection should be based on these guidelines.

~~a. The analyses shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition. Seismic analyses may be performed by the pseudostatic method. If these factors of safety cannot be demonstrated, then the location on the bluff top where these values are attained shall be determined.~~

~~b. These factors of safety shall be demonstrable for the useful economic life of the structure, 100 years. Not only shall the setback line corresponding to a 1.5 factor of safety be established for the present condition, but a similar line shall be established representing the location behind which a 1.5 factor of safety can be assured following 100 years of bluff erosion and retreat.~~

~~c. Slope stability analyses shall be undertaken through cross-sections oriented perpendicular to the slope. Analyses shall include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units is examined.~~

~~d. The effects of earthquakes on slope stability may be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.15g.~~

~~e. All slope analyses shall be performed using shear strength parameters (friction angle, cohesion), and unit weights determined from relatively undisturbed samples collected at the site. The choice of shear strength parameters for each geologic unit examined shall be supported by direct shear tests, triaxial shear test, or literature references.~~

~~f. All slope stability analyses shall be undertaken with water table or potentiometric surfaces for the highest potential ground water conditions.~~

~~g. If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and shear strength parameters for each orientation shall be supported by reference to pertinent direct sheer tests, triaxial shear test, or literature.~~

~~h. When planes of weakness are oriented normal to the slope or dip into the slope, or when the strength of materials is considered homogenous, circular failure surfaces shall be sought through a search routine to analyze the factor of safety along postulated critical failure surfaces. In general, methods that satisfy both force and moment equilibrium (e.g., Spencer, Morgenstern-Price, and General Limit Equilibrium) are preferred. Methods based on moment equilibrium alone (e.g., Bishop's Method) also are acceptable. In general, methods that solve only for force equilibrium (e.g., Janbu's method) are discouraged due to their sensitivity to the ratio of normal to shear forces between slices.~~

~~i. If anisotropic conditions are assumed for units containing critical failure surfaces determined above, and when planes of weakness dip out of the slope, factors of safety for translational failure surfaces also shall be calculated. The use of a block failure model shall be supported by geologic evidence for anisotropy in rock or soil strength. Shear strength parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.~~

For the purpose of this section, the long-term average bluff retreat rate shall be determined by the examination of historic records, surveys, aerial photographs, published or unpublished studies, or other evidence that unequivocally show the location of the bluff edge, as defined in Chapter 2 of the Malibu LIP, through time. The long-term bluff retreat rate is an historic average that accounts both for periods of exceptionally high bluff retreat, such as during extreme storm events, and for long periods of relatively little or no bluff retreat. Accordingly, the time span used to calculate a site-specific long-term bluff retreat rate shall be as long as possible, but in no case less than 50 years. Further, the time interval examined shall include the strong El Niño winters of 1982-1983, 1994-1995 and 1997-1998.

E. Swimming pools shall be constructed in accordance with the pool/spa submittal requirements outlined in Plate F of the City of Malibu "Guidelines for the Preparation of Geologic and Geotechnical Engineering Reports," dated February 2002. In addition, swimming pools and spas shall be located landward of the structural setback requirements as outlined in Section 10.4.D of the Malibu LIP ~~to the bluff edge setback requirements a~~. In addition, all swimming pools and spas shall ~~contain~~ be of double wall construction with subdrains between the walls and leak detection systems.

F. No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists. Drainage devices constructed to conform to applicable Best Management Practices shall be installed in such cases. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

G. In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development

and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.

H. "Infill Development" shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beach front development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protection device.

I. All new beachfront and bluff-top development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.

J. All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.

K. New development shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.

L. Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the Malibu LCP only when it can be demonstrated that existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply and public access. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing structures" for purposes of this policy shall consist only of enclosed buildings used for living space or required parking, e.g. residential dwelling, guesthouse, or garage, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

M. No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is

determined that the structure is in danger from erosion, flooding or wave run-up. Such structures shall be considered threatened if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures, including but not limited to, patios, stairs, recreational facilities, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.

N. All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.

O. Where it is determined by a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering to be necessary to provide shoreline protection for an existing residential structure built at sand level, a "vertical" seawall or bulkhead shall be the preferred means of protection. Rock revetments may be permitted to protect existing structures where they can be constructed entirely underneath raised foundations or where they are determined to be the preferred alternative.

P. On any beach found to be appropriate, alternative "soft solutions" to the placement of shoreline protection structures shall be required to protect new or existing development. Soft solutions shall include dune restoration, sand nourishment, and design criteria emphasizing maximum landward setbacks and raised foundations.

Q. The placement of sediments removed from erosion control or flood control facilities at appropriate points along the shoreline shall be permitted for the purpose of beach nourishment, provided that they meet the U.S. Army Corps of Engineers criteria for grain size, color, and contamination. Any beach nourishment program for sediment deposition shall be designed to minimize adverse impacts to beach, intertidal and offshore resources, shall incorporate appropriate mitigation measures, and shall consider the method, location and timing of placement. Sediment removed from catchment basins may be disposed of in the littoral system if it is tested and is found to be of suitable grain size and type. Any program shall identify and designate appropriate beaches or offshore feeder sites in the littoral system for placement of suitable materials from catchment basins.

R. Land divisions, including subdivisions, lot splits, lot line adjustments, and certificates of compliance which create new beachfront or blufftop lots, shall not be permitted unless the subdivision can be shown to create lots which can be developed without requiring a bluff or shoreline protection structure. No new lots shall be created that could require shoreline protection or bluff stabilization structures at any time during the full 100 year economic life of the development.

10.5 APPLICATION SUBMITTAL REQUIREMENTS

A. All applications for new development on a beach, beachfront or bluff-top property shall include an analysis of beach erosion, wave run-up, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering. All applications for bluff-top development shall include a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils. These reports shall address and analyze the effects of said development in relation to the following:

1. The profile of the beach;
2. Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
3. The availability of public access to the beach;
4. The area of the project site subject to design wave run-up, based on design conditions;
5. Foundation design requirements;
6. The need for a shoreline protection structure over the life of the project;
7. Alternatives for protection of the septic system;
8. The long-term effects of proposed development of sand supply;
9. The FEMA Base Flood Elevation and other mapped areas (A,B, or V zones);
10. Future projections in sea level rise;
11. Project alternatives designed to avoid or minimize impacts to public access;
12. Slope stability and bluff erosion rate determination performed as outlined in Section 10.4.D of the Malibu LIP.

B. Applications for new beachfront or bluff-top development, including but not limited to shoreline protective structures, shall include a site map that shows all easements, deed restrictions, or ~~OTD~~ "Offers to Dedicate" ~~'s~~ and/or other dedications for public access or open space and provides documentation for said easements or dedications. The approved development shall be located outside of and consistent with the provisions of such easement or offers.

C. All applications for proposed development on a beach or along the shoreline, including a shoreline protection structure, shall contain written evidence of a review and determination from the State Lands Commission relative to the proposed project's location to or impact upon the boundary between public tidelands and private property. Such determination shall be a filing requirement for a Coastal Development Permit and any application filed without such determination shall be determined to be incomplete.

D. Applications for development on a beach or along the shoreline ~~may~~ shall not be approved if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.

E. For beachfront development that will be subject to wave action periodically, unless the State Lands Commission determines that there is no evidence that the proposed development will encroach on tidelands or other public trust interests, the City shall reject the application on the ground that it is within the original permit jurisdiction of the Coastal Commission, and shall direct the applicant to file his or her application with the Coastal Commission.

10.6 REQUIREMENTS FOR RECORDED DOCUMENTS AND DEED RESTRICTIONS

A. As a condition of approval of development on a coastal bluff, beach or shoreline that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

B. As a condition of approval of a shoreline protection structure, or repairs or additions to a shoreline protection structure, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. The restrictions also shall ~~also~~ acknowledge that the intended purpose of the subject structure is solely to protect ~~existing~~ structures currently existing ~~located on~~at the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure.

C. As a condition of approval of new development on a vacant beachfront or bluff-top lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources de Section 30235.

CHAPTER 11—ARCHAEOLOGICAL/CULTURAL RESOURCES

11.1. PURPOSE

The intent of these provisions is to avoid the damage to or destruction of important cultural resources within the City of Malibu.

11.2. APPLICABILITY

A Cultural Resource Review pursuant to this Section shall be required for all projects prior to the issuance of a planning approval, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, grading permit, or prior to the commencement of government-initiated or funded works except those projects necessary for emergency purposes.

11.3. CULTURAL RESOURCE REVIEW

In each phase of the Cultural Resource Review required under Sections 11.3 (A), (B), (C), (F), and (G), the Planning Director shall consult verbally and in writing with the Native American Heritage Commission, State Historic Preservation Officer, and the City Native American Cultural Resources Advisory Committee. Comments received shall be considered in the review of coastal development permits for new development.

A. Preliminary Review. The Director shall conduct a preliminary review of all projects to determine whether the project may have an adverse impact (or "substantial adverse change" as defined by CEQA) on an important cultural resource. The Planning Director shall utilize the criteria contained in the definition of "Important Cultural Resource" (Chapter 2 of the Malibu LIP) in determining an important cultural resource. It shall be determined if the project will result in earth disturbance. The Cultural Resources Sensitivity Map will be reviewed to determine if an earth-disturbing project requires archeological review. Where the Planning Director determines that the project will not have an adverse impact or result in a substantial adverse change to an important cultural resource, no further Cultural Resources Review shall be required.

B. Initial Evaluation. Where, following the Preliminary Review, the Director determines that the project may have an adverse impact on an important cultural resource, the project applicant shall submit an Initial Evaluation. An Initial Evaluation shall include a review of relevant documents and a field survey of the project site to verify the presence and condition of previously recorded cultural resources and to identify previously unrecorded resources. The Initial Evaluation shall be prepared by a qualified archaeologist hired by the project applicant or by the City Archaeologist if requested by the project applicant. Where the Initial

Evaluation reveals that the project will not have an adverse impact on an important cultural resource or cause substantial adverse changes as defined by CEQA, no further Cultural Resources Review shall be required.

C. Phase I Inventory. Where, following the Initial Evaluation, the Director determines that the project may have an adverse impact on or result in a substantial adverse change to cultural resources; the Director shall require that a Phase I Inventory of cultural resources be prepared. The project applicant shall submit a Phase I Inventory conducted by a qualified archaeologist hired by the project applicant. All Phase I Inventories that involve any excavation or monitoring shall be conducted in consultation with a qualified Chumash Cultural Resources Monitor.

D. Phase I Inventories shall include:

1. A records search through the regional historical resources information center;
2. An archival search of historic records;
3. A field survey described in Subsection B; and
4. A written report which describes how the survey was conducted and the result of the survey.

E. If on the basis of the Phase I Inventory described above, one or more significant cultural resources is found, a Phase I Inventory may be required to include:

1. An evaluation of limited shovel test pits to determine whether a subsurface deposit is present and a negative declaration shall be prepared;

2. Recommendations for Phase II. Evaluations and a negative declaration, mitigated negative declaration, focused environmental impact report or an environmental impact report shall be prepared; or

3. Monitoring programs pursuant to Section 11.3 (F)(4)(b) of the Malibu LIP and a mitigated negative declaration shall be prepared.

F. Phase II Evaluation.

1. Applicability. Where, as a result of the Phase I Inventory, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required and a negative declaration, mitigated negative declaration, focused environmental impact report, or an environmental impact report shall be prepared. All Phase II Evaluations shall be conducted by a qualified archaeologist and, where the Phase I Inventory indicates the presence of prehistoric or ethnohistoric Chumash cultural resources, the evaluation shall also be conducted in consultation with a qualified Chumash cultural resources monitor.

2. Definition. Phase II Evaluations are investigations intended to gather any additional data necessary to assess the importance of the cultural resources identified in Phase I Inventories, to define site boundaries of the cultural resources, to assess the site's integrity, to evaluate the project's potential adverse impacts on cultural resources, and to develop measures to mitigate potential adverse impacts. Phase II Evaluation proposals shall be designed on a project-specific basis and must be guided by a research design/work plan that clearly identifies the study goals and articulates the proposed methods of data collection and analysis with the goals. Data collection methods may include a number of subsurface exploration techniques, including excavation of auger holes, test pits, or trenches.

3. City Review and Approval. The Planning Director shall review and approve all Phase II design/work plans prior to any testing or excavations. The Planning Director shall also review and approve all reports resulting from Phase II Evaluations. Where, as a result of the Phase II Evaluation, the Planning Director determines that the project will not have an adverse impact on important cultural resources, no further cultural resource review of the project shall be required.

4. Exceptions. Notwithstanding the foregoing provisions, the Planning Director may waive the preparation of a Phase II Evaluation and prepare a mitigated negative declaration where the Phase I Inventory indicates the following conditions:

    a. Based upon substantial evidence, the Planning Director determines that there is the presence of prehistoric or ethnohistoric Chumash cultural resources and it appears unlikely that the project site will contain important cultural resources (as for example, where the site is in an area of low density of artifacts or other remains, the suspected amount of the site deposit to be disturbed is small, or where it appears the artifacts or other remains have been historically redeposited); and

    b. Project applicant agrees to provide monitoring of all excavation or trenching by a qualified Chumash cultural resource monitor, chosen in consultation with the Native American Heritage Commission, State Historic Preservation Officer, and the City Native American Cultural Resources Advisory Committee.

    In the event that any potentially important cultural resources are found in the course of excavation or trenching, work shall immediately cease until the qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be

required pursuant to Section 11.3 (F) of the Malibu LIP. The limitations on mitigation as described in Section 11.3 (H) of the Malibu LIP shall not be applicable to monitoring programs described in Section 11.3 (F)(4)(b) of the Malibu LIP.

G. Phase III Mitigation Programs

1. Applicability. Where, as a result of the Phase II Evaluation the Planning Director determines that the project may adversely affect important cultural resources, a Phase III Mitigation Program shall be required. All Phase III Mitigation Programs shall be conducted by a qualified archaeologist and, where the Phase II Evaluation indicates the presence of important prehistoric cultural resources or ethnohistoric Chumash cultural resources, the evaluation shall also be conducted in consultation with a qualified Chumash cultural resource monitor.

2. Purpose. Phase III Mitigation Programs are intended to mitigate adverse impacts upon important cultural resources. These programs shall be designed on a project-specific basis to meet the particular needs of each project and shall be guided by a research design/work plan that clearly articulates the scope of mitigation based on the recommendations developed in the prior Phase II Evaluation of the affected site.

3. Cultural Resource Impact Mitigation. Measures to mitigate potential impacts may include, but shall not be limited to, the following:

    a. In-situ preservation of the important cultural resource site <u>(This is the preferred mitigation measure where feasible)</u>.

    b. Avoiding damage to the important cultural resource site through the following approaches:

        i. Planning construction to miss important cultural resource sites.

        ii. Planning parks or other open space to incorporate important cultural resource sites.

        iii. "Capping" or covering important cultural resource sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be utilized if all the following conditions are satisfied:

            (a) The soils to be covered will not suffer serious compaction;

            (b) The covering materials are not chemically active;

(c) The site is one in which the natural processes of deterioration have been effectively arrested; and

(d) The site has been recorded.

iv. Deeding important cultural resource sites into permanent conservation easements.

v. Scientific data recovery of an appropriate sample of the important cultural resource(s) via surface collection and archaeological excavation as provided for under this Section, where in-situ preservation is not feasible.

H. Limitations on Mitigation. The limitations on mitigating adverse impacts on important cultural resources shall apply as provided in California Environmental Quality Act as may be amended from time to time.

I. Review and Approval. The Planning Director shall review and approve all design/work plans for Phase III Mitigation Programs and reports which detail the evaluative techniques and results.

J. Cost. The maximum fees for Cultural Resource Reviews required by this Chapter shall be set by Resolution of the City Council, and as amended from time to time, except where limited by the California Environmental Quality Act.

11.4. CATALOGING AND FILING OF INFORMATION

A. All reports resulting from the conduct of any cultural resource review described in this Chapter shall be filed with the Regional Historical Resources Information Center.

B. All artifacts discovered in connection with any cultural resource review shall be recorded in the manner required by the State of California. All site records, field notes, maps, photographs, notes by Native American monitors, reports by consulting archaeologists, and other records resulting from the conduct of any cultural resource review described in this Chapter shall be cataloged in accordance with the United States Department of the Interior Guidelines.

11.5. ARCHAEOLOGICAL DISCOVERIES

Any person who discovers important cultural resources during the course of construction for a project shall notify the Planning Director of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without approval of the Planning Director.

CHAPTER 12--PUBLIC ACCESS ORDINANCE

12.1. PURPOSE

A. The purpose of the Public Access Ordinance is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act codified at sections 30000 through 30900 of the California Public Resources Code (PRC). PRC Section 30001.5(c) states that public access both to and along the shoreline shall be maximized consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

B. To implement the public access and recreation policies of Chapter 3 of the Coastal Act (Sections 30210-30255).

C. To implement the certified land use plan of the City's Local Coastal Program which is required by Section 30500(a) of the Act to include a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.

D. In achieving these purposes, this ordinance shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives, and policies of the California Coastal Act and Article X, Section 4, of the California Constitution.

12.2. DEFINITIONS

12.2.1 Development

"Development" means, on land, in or under water, the placement or erection of a solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; change in density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water; or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private or public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section structure includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

12.2.2 New Development

For purposes of implementing the public access requirements of Public Resources Code Section 30212 and of this ordinance, "new development" includes "development" as defined above except for the following:

(a) Structures destroyed by natural disaster: The replacement of any structure, other than a public works facility, destroyed by a disaster; provided that the replacement structure conforms to applicable existing zoning requirements, is for the same use as the destroyed structure, does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%, is sited in the same location on the affected property as the destroyed structure and does not extend the replacement structure seaward on a sandy beach or beachfronting bluff lot. As used in this section, "disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of the owners.

(b) Demolition and reconstruction: The demolition and reconstruction of a single-family residence; provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, that the reconstructed residence shall be sited in the same location on the affected property as the former structure, that the reconstructed residence does not block or impede public access, that the reconstructed residence does not extend seaward of the demolished residence on a sandy beach or beachfronting bluff lot and that the reconstructed residence does not include or necessitate a shoreline protective device.

(c) Improvements: Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede access, which do not result in a seaward encroachment by the structure and which do not include or necessitate a new or enlarged shoreline protective device.

(d) Repair and maintenance: Repair or maintenance activity which, pursuant to Public Resources Code Section 30610(d) and California Code of Regulations Section 13252, requires no permit unless the activity will have an adverse impact on lateral public access along the beach.

(e) Reconstruction and/or repair of a seawall, revetment, retaining wall or other shoreline protective device: The reconstruction or repair of any shoreline protective device; provided that the reconstructed or repaired shoreline protective device does not substantially alter the foundation of the protective device, does not result in the

replacement of 20 percent or more of the materials of the existing structure with materials of a different kind, does not extend the protective device seaward of the location of the former structure. As used in this section, "reconstruction or repair" of a seawall shall not include replacement by a different type of structure or other modification in design or construction which results in different or greater impacts to public access or other shoreline resources than those of the existing structure.

12.2.3 Sea

"Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks and flood control and drainage channels.

12.3. TYPES OF PUBLIC ACCESS AND RECREATION

A. Lateral public access provides public access and use along or parallel to the sea or shoreline.

B. Bluff top access provides public access and coastal viewing along a coastal bluff top area.

C. Vertical access provides a public access connection between the first public road, trail, or public use area nearest the sea and the publicly owned shoreline, tidelands or established lateral access.

D. Trail access provides public access (i.e. hiking and equestrian) along a coastal or mountain recreational path, including to and along canyons, rivers, streams, wetlands, lagoons, freshwater marshes, significant habitat and open space areas or similar resource areas, and which also may link inland trails or recreational facilities to the shoreline.

E. Recreational access provides public access to coastal recreational resources through means other than those listed above, including but not limited to parking facilities, viewing platforms and blufftop parks.

12.4. CHARACTER OF ACCESSWAY USE

A. Pass and repass refers to the right of the public to walk and run along an accessway. Because this use limitation can substantially restrict the public's ability to enjoy adjacent publicly owned tidelands by restricting the potential use of lateral accessways, it will be applied only in connection with vertical access or other types of access where the findings required by Section 12.8.3 of the Malibu LIP establish that the limitation is necessary to protect natural habitat values, topographic features (such as eroding bluffs),

or privacy of the landowner. This subsection shall not apply to lateral public access requirements or dedications along the shoreline.

B. Passive recreational use refers to the right of the public to conduct activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, picnicking, but not including organized sports, campfires, or vehicular access other than for emergencies or maintenance.

C. Active recreational use refers to the right of the public to conduct the full range of beach-oriented activities, not including horseback riding and use of motorized vehicles unless specifically authorized.

12.5. ACCESS REQUIRED

As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in A through D of this section, except as provided in Section 12.6 of the Malibu LIP, an offer to dedicate an easement or a grant of easement (or other legal mechanism pursuant to Section 12.8.1(b) of the Malibu LIP) for one or more of the types of access identified in Section 12.3 (a-e) of the Malibu LIP shall be required and shall be supported by findings required by Sections 12.8.3-12.10 of the Malibu LIP; provided that no such condition of approval shall be imposed if the analysis required by Sections 12.8.3 (a) through (d) of the Malibu LIP establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified.

A. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing an historically used or suitable public access trail or pathway.

B. New development between the nearest public roadway and the sea.

C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland trail acquired through use or a public right of access through legislative authorization.

D. New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

12.6. EXCEPTIONS

Section 12.5 of the Malibu LIP shall apply except in the following instances:

A. Projects excepted from the definition of "new development" at Section 12.2.2 of the Malibu LIP.

B. Where findings required by Sections 12.8.3 and 12.9.1 of the Malibu LIP establish any of the following:

1. Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources.

2. Adequate access exists nearby.

C. Exceptions identified in (b) shall be supported by written findings required by Section 12.10 of the Malibu LIP of this ordinance.

12.7. STANDARDS FOR APPLICATION OF ACCESS CONDITIONS

12.7.1 Lateral Public Access

The public access required pursuant to Section 12.5 of the Malibu LIP shall conform to the standards and requirements set forth in Sections 12.7 through 12.8.2 of the Malibu LIP.

A. Minimum requirements. [Also to be used for blufftop access or trail access, as applicable.] A condition to require lateral access 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 lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases controls on the time, place and manner of uses, such as limiting access to pass and repass or restricting hours of use, may be justified by site characteristics including sensitive habitat values or fragile topographic features or by the need to protect the privacy of residential development. To protect marine mammal haul out areas and seabird nesting and roosting sites at Point Dume, ~~and~~ Paradise Cove, or other area documented by evidence, a limited period, during which public access should be controlled may be necessary such as during nesting and breeding seasons if recommended by the City biologist, Environmental Review Board or other qualified professional. Any limitation on access shall be for the minimum period necessary, shall be evaluated periodically to

determine the need for continued limited use and, where applicable to Sections 12.2.1 and 12.2.2 of the Malibu LIP, shall require a Coastal Development Permit.

Active recreational use may be appropriate in many cases where the development is determined to be especially burdensome on public access. Examples include cases where the burdens of the proposed project would severely impact public recreational use of the shoreline, where the proposed development is not one of the priority uses specified in Public Resources Code Section 30222, where active recreational uses reflect the historic public use of the site, where active recreational uses would be consistent with the use of the proposed project, and where such uses would not significantly interfere with the privacy of the landowner. In determining the appropriate character of public use, findings shall be made on the specific factors enumerated in Section 12.9.1 of the Malibu LIP. Lateral access shall be legally described as required in Section 12.7.7 of the Malibu LIP.

12.7.2 Vertical public access

A. Minimum requirements. A condition to require vertical public access 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 access, (1) located in specific locations identified in the certified Local Coastal Program for future vertical access, or (2) located in a site for which the local government has reviewed an application for a development permit and has determined a vertical accessway is required pursuant to the access and recreation policies of the Coastal Act or the applicable provisions of the Malibu Local Coastal Program.

B. A condition to require vertical access 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 vertical access and be limited to the public right of passive recreational use unless another character of use is specified as a condition of the development. In determining whether another character of use is appropriate, findings shall be made on the specific factors identified in Section 12.9.1 of the Malibu LIP.

C. Each vertical accessway shall extend from the public road to the shoreline (or bluff edge) and shall be legally described as required in Section 12.7.7 of the Malibu LIP. The access easement shall be a minimum of 10 feet wide wherever feasible. If a residential structure is proposed, the accessway should be sited along the border or side property line of the project site or away from existing or proposed development and should not be sited closer than 10 feet to the structure wherever feasible. Exceptions to siting a vertical accessway along a border or side property line or not closer than 10 feet to a structure may be required where topographical, physical or other constraints exist on the site. To protect marine mammal haul out areas and seabird nesting and roosting sites at Point Dume, ~~and~~ Paradise Cove, or other area documented by evidence, a limited period, during which public access should be controlled may be necessary such as during nesting

and breeding seasons if recommended by the City biologist, Environmental Review Board or other qualified professional. Any limitation on access shall be for the minimum period necessary, shall be evaluated periodically to determine the need for continued limited use and, where applicable pursuant to Sections 12.21 and 12.2.2 of the Malibu LIP, shall require a Coastal Development Permit.

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."

12.7.4 Trail Access

Minimum requirements. A condition to require public access as a condition of approval of a coastal development permit (or other authorization to proceed with development) required pursuant to Section 12.5 of the Malibu LIP shall provide the public with the permanent right of access and active recreational use, (1) along a designated alignment of a coastal recreational path or trail in specific locations identified in the LCP for implementation of trail access, or (2) in locations where it has been determined that a trail access is required to link recreational areas to the shoreline or provide alternative recreation and access opportunities pursuant to the access and recreation policies of the LCP and Coastal Act, consistent with other provisions of this chapter. In determining if another character of use is appropriate, findings shall be made on the specific factors enumerated in Section 12.9.1 of the Malibu LIP. The trail access shall be legally described as required by Section 12.7.7 of the Malibu LIP.

12.7.5 Recreational access

Minimum requirements. A condition to require public recreational access as a condition of approval of a coastal development permit (or some other authorization to proceed with development) required pursuant to Section 12.5 of the Malibu LIP shall provide the public with the permanent right of access and use within a designated recreational access area. Conditions required pursuant to this section shall specify the location and extent of the public access area. The form and content should take the form of requirements in Sections 12.7.1 through 12.7.4 of the Malibu LIP as applicable. The accessway shall be legally described as required in Section 12.7.7 of the Malibu LIP.

12.7.6 Protection of historic public use

A. Substantial evidence determination. Substantial evidence that the area used by the public has been impliedly dedicated shall be determined based on evidence of all of the following:

1. The public must have used the land for a period of five years or more as if it were public land.

2. Without asking for or receiving permission from the owner.

3. With the actual or presumed knowledge of the owner.

4. Without significant objection or bona fide attempts by the owner to prevent or halt the use.

5. The use must be substantial, rather than minimal.

6. The applicant must not have demonstrated that the law has prevented the property from being impliedly dedicated.

B. Findings. Where an issue as to the existence of public prescriptive rights has been raised during the course of reviewing a coastal development permit application, one of the following findings shall be made:

1. Substantial evidence does not warrant the conclusion that public prescriptive rights exist.

2. There is substantial evidence of the existence of public prescriptive rights, but development will not interfere with those rights.

3. There is substantial evidence of the existence of public prescriptive rights which requires denial of a coastal development permit because of interference with those rights.

4. There is substantial evidence of the existence of public prescriptive rights, but a condition requiring dedication of public access protects the rights of the public and is equivalent in time, place and manner to any prescriptive rights which may exist.

5. There is substantial evidence of the existence of public prescriptive rights, but a condition requiring siting development away from the area used by the public protects the rights of the public.

C. Siting and design requirements. Development shall be sited and designed in a manner which does not interfere with or diminish any public right of access which may exist based on substantial evidence of historic public use. Only when site constraints are so severe that siting of the accessway or recreational use area in its historic location would significantly impair the proposed development and alternative development siting is not feasible, development may be sited in the area of public right of access based on historic use provided that the applicant provides an equivalent area of public access or recreation to and along the same destination and including the same type and intensity of public use as previously existed on the site. Mechanisms for guaranteeing the continued public use of the area or equivalent area shall be required in accordance with Sections 12.7.1 through 12.7.5 above of the Malibu LIP. 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.

D. Minimum requirements. An access condition shall not serve to extinguish or waive public prescriptive rights that may exist. The following language shall be included in any access condition required in a permit:

"The terms and conditions of this permit do not authorize any interference with prescriptive rights in the areas subject to the easement prior to acceptance of the offer."

12.7.7 Legal description of an accessway: recordation

A. An access dedication (offer to dedicate or grant of easement) required pursuant to Section 12.5 of the Malibu LIP shall be described, in the condition of approval of the permit or other authorization for development in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows: (1) for lateral access: along the entire width of the property from the mean high tide line landward to a point fixed at the most seaward extent of development (as applicable): the toe of the bluff, the intersection of sand with toe of revetment, the vertical face of seawall, or other appropriate boundary such as dripline of deck. On beachfront property containing dune ESHA the required easement for lateral public access shall be located along the entire width of the property from the mean high tide line landward to the ambulatory seawardmost limit of dune vegetation; (2) for blufftop access or trail access: extending inland from the bluff edge or along the alignment of a recreational trail; (3) for vertical access: extending from the road to the mean high tide line (or bluff edge).

B. Prior to the issuance of the coastal development permit or other authorization for development, the landowner shall execute and record a document in a form and content acceptable to the Coastal Commission [or local agency authorized pursuant to 14 Cal. Code of Regulations Section 13574(b)], consistent with provisions of Section 12.9.1 of the Malibu LIP of this ordinance, irrevocably offering to dedicate (or grant an easement) to a public agency or private association approved by the Coastal Commission [or local agency authorized by the Commission pursuant to 14 Cal. Admin. Code Section 13574(b)] an easement for a specific type of access as described in Section 12.3 and a specific character of use as described in Section 12.4 of the Malibu LIP, as applicable to the particular condition.

C. The recorded document shall provide that: (1) the terms and conditions of the permit do not authorize any interference with prescriptive rights in the area subject to the easement prior to acceptance of the offer and, (2) development or obstruction in the accessway prior to acceptance of the offer is prohibited.

D. The recorded document shall include legal descriptions and a map drawn to scale of both the applicant's entire parcel and the easement area. The offer or grant shall be recorded free of prior liens and any other encumbrances which the Coastal Commission

[or local agency authorized by the Commission pursuant to 14 Cal. Admin. Code Section 13574(b)] determines may affect the interest being conveyed. The offer to dedicate or grant of easement shall run with the land in favor of the People of the State of California, binding all successors and assignees, and the offer shall be irrevocable for a period of 21 years, such period running from the date of recording.

12.7.8 Implementation

A. For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.

B. A dedicated accessway shall not be required to be opened to public use until a public agency or private association approved in accordance with Section 12.7.7 of the Malibu LIP agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction. New offers to dedicate public beach or trail access easements shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.

C. Access facilities constructed on access easements (e.g., walkways, paved paths, boardwalks, etc.) shall be as wide as necessary to accommodate the numbers and types of users that can reasonably be expected. Width of facilities can vary for ramps or paved walkways, depending on site factors.

D. For all offers to dedicate or to grant of an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer or the grant of easement. Any government agency may accept an offer to dedicate or grant of an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate or grant the easement. For all offers to dedicate or grant of an easement that were required as conditions of Coastal Development Permits approved by the Coastal Commission, the Executive Director of the Commission retains the authority to approve a government agency or private association that seeks to accept the offer or grant of easement.

E. The appropriate agency or organization to accept and develop trail dedication offers or grants of easement resulting from City issued CDPs shall be determined through coordination, where applicable, with the National Park Service, the State Department of

Parks and Recreation, the State Coastal Conservancy, Los Angeles County, the Santa Monica Mountains Conservancy, and the Santa Monica Mountains Trails Council, and nonprofit land trusts or associations. Public agencies and private associations which may be appropriate to accept offers to dedicate include, but shall not be limited to, the State Coastal Conservancy, the State Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.

F. Offers to dedicate or grants of public access easements shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within five (5) years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within six (6) months of the written request. A Coastal Development Permit that includes an offer to dedicate or grant an easement for public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within five (5) years of accepting the offer.

G. Facilities to complement public access to and along the shoreline and trails shall be permitted where feasible and appropriate. This may include parking areas, restrooms, picnic tables, or other improvements. No facilities or amenities, including, but not limited to, those referenced above, shall be required as a prerequisite to the approval of any lateral or vertical accessway or trail OTD or grant of easement or as a precondition to the opening or construction of the accessway or trail. Where there is an existing, but unaccepted and/or unopened public access OTD, easement, or deed restriction for lateral, vertical, bluff or trail access or related support facilities, necessary access improvements shall be permitted to be constructed, opened and operated for the intended public use.

H. Any accessway which the managing agency or organization determines cannot be maintained or operated in a condition suitable for public use shall be offered to another public agency or qualified private association that agrees to open and maintain the accessway in a condition suitable for public use.

I. All public access mitigation conditions or terms required by a CDP shall include, as a compliance component, a requirement that the permittee submit a detailed and surveyed map, drawn to scale, locating any proposed or required easements or deed restricted areas.

12.7.9 Title information

As a requirement for any public access condition, prior to the issuance of the permit or other authorization for development, the applicant shall be required to furnish a title report and all necessary subordination agreements. All offers or grants shall be made free of all encumbrances which the approving authority pursuant to Section 12.7.7 of the Malibu LIP determines may affect the interest being conveyed. If any such interest exists which could extinguish the access easement, it must be subordinated through a written and recorded agreement.

12.8. REQUIRED FINDINGS AND SUPPORTING ANALYSIS FOR PUBLIC ACCESS DEDICATIONS

12.8.1 Required Overall Findings

A. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development). Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 12.8.2 of the Malibu LIP and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 12.8.2 of the Malibu LIP. The type of affected public access and recreation opportunities shall be clearly described.

2. An analysis based on applicable factors identified in Section 12.9.1 of the Malibu LIP of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.

3. A description of the legitimate governmental interest furthered by any access condition required.

4. An explanation of how imposition of an access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

12.8.2 Required Project-Specific Findings

In determining any requirement for public access, including the type of access and character of use, the City shall evaluate and document in written findings the factors identified in subsections A through E, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning requirements or regulations.

A. Project effects on demand for access and recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

B. Shoreline processes. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of existing or proposed shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development, Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project -- alone or in combination with other

anticipated changes -will have upon the ability of the public to use public tidelands and shoreline recreation areas.

C. Historic public use. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal).

Evidence of the type and character of use made by the public (vertical, Lateral, blufftop, etc. and for passive and/or active recreational use, etc. Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use).

D. Physical obstructions. Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

E. Other adverse impacts on access and recreation. Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

12.8.3 Required Findings for Public Access Exceptions

Any determination that one of the exceptions of Section 12.6 of the Malibu LIP applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

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

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

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

12.9. REVIEW OF RECORDED ACCESS DOCUMENTS

12.9.1 Standards and Procedures

Upon final approval of a coastal development permit or other authorization for development, and where issuance of the permit or authorization is conditioned upon the applicant recording a legal document which restricts the use of real property or which offers to dedicate or grant an interest or easement in land for public use, a copy of the permit conditions, findings of approval and drafts of any legal documents proposed to implement the conditions shall be forwarded to the California Coastal Commission for review and approval prior to the issuance of the permit consistent with Section 13.19 of the Coastal Development Permit Ordinance of the Malibu LIP and California Code of Regulations Section 13574.

12.10. CDP PERMITTING AND APPLICATION

In addition to permit and application submittal requirements established elsewhere in this LCP New Development pursuant to Sections 12.2.1 and 12.2.2 of the Malibu LIP shall be subject to the following additional permit and/or application requirements.

A. In order to maximize public access and recreation opportunities at existing public beaches or parks limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a Coastal Development Permit.

B. The City shall not close, abandon, or render unusable by the public any existing accessway which the City owns, operates, maintains, or is otherwise responsible for unless determined to be necessary for public safety without first obtaining a Coastal Development Permit.

C. Any limitation on existing public access to or along a beach, trail, or bluff located in a sensitive habitat area determined to be necessary for temporary protection of habitat, restoration, repair and/or maintenance shall be for the minimum period necessary but shall not exceed the nesting season for shorebird habitat or be greater than 90 days for habitat restoration or 30 days for repair and maintenance, and shall require a Coastal Development Permit. Any limitation for purposes of protecting or restoring habitat shall be subject to review and approval, where required, from the Department of Fish & Game and U.S. Fish and Wildlife, shall be restricted to the minimum area necessary to protect the habitat and shall be supported by the review and approval of the City biologist, Environmental Review Board or other designated qualified professional. Access to or

along public tidelands or areas subject to an accepted and opened Offer to Dedicate or grant of easement shall not be fully restricted.

D. No signs shall be posted on a beachfront or on public beach unless authorized by a Coastal Development Permit. Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral or vertical access easement areas is restricted shall not be permitted.

E. Improvements and/or opening of accessways already in public ownership or that are accepted pursuant to an offer to dedicate required by a Coastal Development Permit shall be permitted regardless of the distance from the nearest available vertical accessway.

F. No new structures or reconstruction, except for routine repair and maintenance or to replace a structure destroyed by natural disaster in accordance with PRC Section 30610(d) and (g), shall be permitted on a bluff face, except for engineered staircases or accessways to provide public shoreline access where no feasible alternative means of public access exists.

G. All applications for new development located along the shoreline or fronting a beach shall include the submittal of a review and/or determination in writing from the State Lands Commission that addresses the proposed project relative to its location or proximity to, or impact upon, the boundary between public tidelands and private property. Any application for development on or along the shoreline filed without such determination shall be determined to be incomplete for filing.

H. Coastal Development Permit application filing requirements shall include the submittal of mapped documentation identifying the location of any existing recorded shoreline or inland trail OTDs, deed restrictions, or easements on the subject parcel(s).

12.11. NEW LUXURY OVERNIGHT ACCOMMODATIONS

A. The City may approve new luxury overnight visitor accommodations if the evidence shows and the City finds, that the project provides a component of lower cost overnight visitor accommodations, such as a campground, RV park, hostel, or lower cost hotel or motel rooms. The lower cost overnight accommodations may be provided, either on-site, offsite, or through payment of an in-lieu fee to the City for deposit into a fund to subsidize the construction of lower cost overnight facilites in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower cost overnight accommodations consisting of fifteen (15) percent of the number of luxury overnight accommodations that are approved. <u>Luxury overnight accommodations shall be defined as the point at which the cost of an overnight room or unit rental exceeds 120 percent of the median cost of an</u>

overnight room or unit rental for all overnight accommodations in the City of Malibu.

B. If the applicant chooses the in-lieu fee option, the project approval shall be conditioned to require that, prior to issuance of the coastal development permit, the applicant shall pay the rquired in-lieu fee to the City. The amount of the in-lieu fee shall be $10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation from January 2000 to the date of approval of the coastal development permit.

C. The City may transfer any funds paid as an in-lieu fee under this section to a public agency, non-profit organization or private entity after entering a Memorandum of Understanding or other contractural agreement that requires use of the funds for construction of lower cost overnight visitor accommodations in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County and requires that the accommodations remain lower cost, unless an LCP amendment is certified that allows modification:

CHAPTER 13--COASTAL DEVELOPMENT PERMITS

13.1. PURPOSE AND INTENT

The purpose and intent of this Chapter is to establish the process for the review of all development within the coastal zone of the City of Malibu to ensure that it will be consistent with the provisions of the City of Malibu Local Coastal Program, the California Coastal Act and the California Code of Regulations Title 14 Division 5.5.

13.2. APPLICABILITY

All properties within the City of Malibu are located within the coastal zone as defined in the California Coastal Act and are subject to the provisions of this Chapter. Where the standards or procedures described in this Chapter for issuing Coastal Development Permits conflict with any other permit procedures in the City's General Plan or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and other plans, resolutions or ordinances, the standards or procedures described herein shall take precedence.

13.3. PERMIT REQUIRED.

A. Except as otherwise provided in this Chapter, any person wishing to perform or undertake any development in the coastal zone, other than a facility subject to Public Resources Code Section 25500, shall obtain a coastal development permit in accordance with the provisions of this Chapter. Development undertaken pursuant to a coastal development permit shall conform to the plans, specification, terms and conditions of the permit. The requirements for obtaining a coastal development permit shall be in addition to requirements to obtain any other permits or approvals required by other city ordinances or codes or from any state, regional or local agency. Subsequent to the certification of the LCP, the City shall immediately assume coastal development permitting authority and no application for a coastal development permit shall be deemed approved if the City fails to take timely action to approve or deny the application for a coastal development permit.

B. A person undertaking development included in a public works plan or long range development plan approved by the Coastal Commission is not required to obtain a coastal development permit from the City. Other City permits may be required.

C. The review of a Coastal Development Permit application may be combined with and/or processed concurrently with the review of any other discretionary permit application required by other City ordinances. <u>When an application for a Planned Development is proposed, the City shall not grant any discretionary approval of a planned development that conflicts with any policy or standard of the LCP, including the land use designations. The City may request certification of an LCP amendment to accommodate</u>

a proposed planned development in accordance with the procedures in Chapter 19 of the Malibu LIP (LCP amendment procedures). Neither the Preliminary Development Plan nor the Final Development Plan shall be effective until or unless a coastal development permit is approved that authorizes the development included in the Plan.

D. All development proposed or undertaken on tidelands, submerged lands or on public trust lands, whether filled or unfilled, or within any state university or college within the coastal zone shall require a permit issued by the California Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City.

E. Where a proposed project straddles the boundaries of the City of Malibu and another local jurisdiction or where a proposed project straddles the boundaries of the City's Coastal Development Permit jurisdiction area and the Coastal Commission's retained jurisdiction area, the applicant shall obtain separate Coastal Development Permits from each jurisdiction.

F. Development that occurred after the effective date of the Coastal Act or its predecessor, the Coastal Zone Conservation Act, if applicable, that was not authorized in a coastal development permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development. No improvements, repair, modification or additions to such existing development may be approved, unless the City also approves a coastal development permit that authorizes the existing development. The coastal development permit shall only be approved if the existing and proposed development, with any applicable conditions of approval, is consistent with the policies and standards of the LCP.

13.4. EXEMPTIONS.

The following projects are exempt from the requirement to obtain a Coastal Development Permit.

13.4.1 Improvements to existing single-family residences.

A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms "Improvements to existing single-family residences" includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units.

B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, ~~in an area designated as highly scenic in a certified land use plan,~~ or within 50 feet of the edge of a coastal bluff.

2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas;

3. The expansion or construction of water wells or septic systems;

4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the City or Coastal Commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to this section or Public Resources Code section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

5. In areas which the City or Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

6. Any improvement to a single-family residence where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or City indicated that any future improvements would require a development permit.

13.4.2 Repair and Maintenance Activities.

A. Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities.

B. The exemption in Section 13.4.2 (A) of ~~this section~~ the Malibu LIP shall not apply to the following extraordinary methods of repair and maintenance which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective works;

c. The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

2. Any method of routine maintenance dredging that involves:

a. The dredging of 100,000 cubic yards or more within a twelve (12) month period;

b. The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

c. The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the City or the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of

a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

C. All repair and maintenance activities governed by Section 13.4.2 (B) shall be subject to the LCP permit regulations, including but not limited to the regulations governing administrative and emergency permits. The provisions of Section 13.4.2 (B) shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

D. Unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, (as measured by 50% of the exterior walls), seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance but instead constitutes a replacement structure requiring a coastal development permit.

13.4.3 Other Improvements.

A. Improvements to any structure other than a single-family residence or a public works facility except as noted below in Section 13.4.3 (B) of the Malibu LIP. For purposes of this section, where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

1. All fixtures and other structures directly attached to the structure.
2. Landscaping on the lot.

B. The exemption in 13.4.3 (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policies of the LCP.

1. Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; ~~in an area designated as highly scenic in the certified land use plan;~~ or within 50 feet of the edge of a coastal bluff;

2. Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, ~~in a highly scenic area,~~ or in an environmentally sensitive habitat area;

3. The expansion or construction of water wells or septic systems;

4. On property not included in subsection 13.4.3 (B)(1) of the Malibu LIP above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the LUP, an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to section (A) above or Public Resources Code section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

5. In areas which the City or the Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;

6. Any improvement to a structure where the coastal development permit issued for the original structure by the City or the Coastal Commission indicated that any future improvements would require a development permit;

7. Any improvement to a structure which changes the intensity of use of the structure;

8. Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

13.4.4 Categorically Excluded Development.

Projects pursuant to a Categorical Exclusion Order as certified by the California Coastal Commission pursuant to Public Resources Code 30610(e).

13.4.5 Utility Connections.

The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development which has been granted a valid Coastal Development Permit; provided, however, that the City may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

13.4.6 Structures Destroyed by Natural Disaster.

The replacement of any structure, other than a public works facility, destroyed by a disaster provided that the replacement structure meets all the of the following criteria:

~~A. It conforms to applicable existing zoning requirements;~~
~~B.~~A. It is for the same use as the destroyed structure;
~~C.~~B. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and
~~D.~~C. It is sited in the same location on the affected property as the destroyed structure.

As used in this section, "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

13.4.7 Time Share Conversions.

Any activity anywhere in the City's coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this ordinance, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this ordinance. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

13.4.8 Repair, Maintenance and Utility Hook-Up Exclusions.

Repair and maintenance activities, specifically described in the document adopted by the Coastal Commission on September 5, 1978 titled "Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements" unless the proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands or public views to the ocean. The following activity has been determined

by the certified LUP to have a risk of substantial adverse impacts and is therefore not exempt:

> The removal of vegetation from, or other minor road improvements, to a lawfully established public or private road on private property which has not been maintained for a period of 5 years.

13.4.9 Temporary Event.

Temporary events as defined in this ordinance and which meet all of the ~~following~~ criteria in (A)-(D):

A. The event will not occur between Memorial Day weekend and Labor Day or if proposed in this period will be of less than one day in duration including set-up and take-down; and

B. The event will not occupy any portion of a publicly or privately owned sandy beach or park area; public pier, public beach parking areas or the location is remote with minimal demand for public use, and there is no potential for adverse effect of sensitive coastal resources; and

C. A fee will not be charged for general public admission and/or seating where no fee is currently charged for use of the same area (not including booth or entry fees); or, if a fee is charged, it is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use.

D. ~~Temporary events other than (A)-(C) where the~~ The proposed event has been reviewed in advance by the Planning Director and the Director determined that it meets the following criteria:

1. The event will result in no adverse impact on opportunities for public use of or access to the area due to the proposed location and or timing of the event either individually or together with other temporary events scheduled before or after the particular event; ~~and~~
2. There will be no direct or indirect impacts from the event and its associated activities or access requirements on environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in this ordinance; ~~or~~
3. The event has not previously required a coastal development permit to address and monitor associated impacts to coastal resources.

For all other proposed temporary events, a coastal development permit must be obtained prior to the event.

E. Signs Associated with Exempt Temporary Events. Any temporary signs associated with any temporary event shall be consistent with provisions of Section 3.13 of the Malibu LIP.

13.4.10 Record of Permit Exemptions

The Planning Director shall maintain a record of all those developments within the Coastal Zone that have been authorized as being exempt from the requirement for a Coastal Development Permit pursuant to this Chapter. This record shall be available for review by members of the public and and representatives of the California Coastal Commission. The Record of Exemption shall include the name of the applicant, the location of the project, and a brief description of the project.

13.5. NON-CONFORMING USE OR STRUCTURES.

A. This section (13.5) shall apply to the following: (1) any existing and lawfully established or lawfully authorized use of land or to any existing and lawfully established or lawfully authorized buildings and other structures that do not conform to the policies and development standards of the certified LCP, or any subsequent amendments thereto and (2) development that is not exempt from the coastal development permit requirements pursuant to Section 13.4 of the Malibu LIP (Exemptions). Development that occurred after the effective date of the Coastal Act or its predecessor, the Coastal Zone Conservation Act, if applicable, that was not authorized in a coastal development permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development, is not subject to the provisions of Section 13.5, but is subject to the provisions of Section 13.3 (F) of the Malibu LIP.

B. Non-conforming uses as defined by 13.5(A) of the Malibu LIP shall not be intensified, or expanded into additional locations or structures.

C. Non-conforming structures as defined by 13.5(A) of the Malibu LIP may be repaired and maintained if it does not result in enlargement or expansion of the structure. However, demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including all~~ny~~ demolition and/or reconstruction that was ~~previously~~ undertaken after certification of the LCP, is not permitted unless such structures are brought into conformance with the policies and standards of the LCP.

D. ~~No additions to non-conforming structures are permitted that further reduce or lessen conformance of the use or structure with any current policy or standard of the LCP.~~

E. ~~Except as provided below, a~~Additions and/or improvements to non-conforming structures may be authorized, provided that the additions and/or improvements themselves ~~they do not increase the degree of non-conformity and~~ comply with the current policies and standards of the LCP, except as provided in Section 13.5 (F) of the Malibu LIP.

F. For non-conforming structures located on a blufftop or on the beach that do not comply with the setbacks required for new development on a blufftop or beach, additions that increase the size of the structure by 50 percent or more, including all~~ny~~ additions that were ~~previously~~ undertaken after certification of the LCP, shall not be authorized unless such structures are brought into conformance with the policies and standards of the LCP.

G. If a nonconforming use or structure as defined by 13.5(A) of the Malibu LIP is damaged or destroyed by natural disaster, replacement shall be subject to provisions of 13.4.6 of the Malibu LIP (Structures Destroyed by Natural Disaster)

H. If any non conforming use as defined by 13.5 (A) of the Malibu LIP is abandoned for a continuous period of not less than 6 months, any subsequent use of such land or the structure in which the use was located shall be in conformity with the regulations specified by the LCP for the district in which such land is located.

13.6. APPLICATION REQUIREMENTS AND FEES

13.6.1 Filing Procedures.

A. Application for a coastal development permit and amendments to coastal development permits shall be made to the Planning or Building Department on an application form provided by the Department, together with all required plans, maps, elevations, reports and any such supporting information deemed necessary by the Planning Department or any other ordinance contained in the certified LCP to adequately assess and evaluate the proposed project for consistency with the LCP. Application for a coastal development permit may be submitted concurrently with other city permits required by the City Municipal Code. The application may include a fee set by the City Council.

B. Following submittal of an application, the Planning Department shall review the application for completeness. Within 30 calendar days from submittal, the Planning Department shall notify the applicant in writing of which parts of the application are incomplete and describe the specific materials needed to complete the application. Not later than 30 days after receipt of the requested materials, the Planning Department shall determine whether the submittal of the requested materials is complete and transmit that determination to the applicant. If no

determination of completeness is provided to the applicant within 30 days of submittal, the application will be deemed complete. Any application for a coastal development permit shall not be determined to be complete and shall not be filed until and unless the applicable requirements of sections 13.6.2, 13.6.3 and 13.6.4 of the Malibu LIP have been met. Until such application is determined to be complete by the Planning Department, no action shall be taken on it by the Planning Department.

C. To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The Planning Director shall not accept for filing a second application for development which is the subject of a permit application already pending before the City. This section shall not limit the right of an applicant to amend a pending application.

D. The Planning Director shall not accept for filing an application for development on a lot or parcel or portion thereof which is the subject of a pending proposal for an adjustment to the boundary of the coastal zone pursuant to Public Resources Code section 30103(b) of the Coastal Act.

13.6.2 Proof of Ownership or Owner's Consent.

A. In addition to other information required to be submitted with an application, applicants must prove that they own the property which is the subject of the application or provide the City with written consent from the owner for the proposed development for the City to file the application.

B. Applicants for development along the shoreline property or fronting a beach shall submit written evidence of a review and determination from the California State Lands Commission relative to the project's location to or impact upon the boundary between public tidelands and private property.

C. Where the applicant for a Coastal Development Permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the City shall not require the holder or owner of any superior interest in the property to join as a co-applicant. All holders or owners of any other interest of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant.

D. Prior to the issuance of a Coastal Development Permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

13.6.3 Application Fees.

The City Council may, by resolution, establish a schedule of fees for coastal development permits, approvals, and other matters pertaining to this Chapter. The schedule of fees may be changed or modified only by resolution of the City Council. Until all applicable fees have been paid in full, no application shall be deemed complete and no action shall be taken on any application, appeal or other matter pertaining to this Chapter for which a fee is required.

13.6.4 Application Form and Information Requirements.

The coastal development permit application form shall require submittal of at least the following items:

A. A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

B. For development on a vacant lot(s), a complete title history, including evidence that the lot proposed for development is a legally created lot, and information on the date and method by which the lot was created. Where the City determines that the lot(s) was created after the effective date of the Coastal Act, or was created prior to the effective date of the Coastal Act but without complying with applicable state or local requirements, either evidence of a valid coastal development permit authorizing the subdivision or other form of lot creation must be submitted prior to filing of any application for proposed development on the lot, or the subdivision or other form of lot creation must be included as part of the application request in order to be deemed filed. <u>In addition, a listing of any prior coastal development permits issued for the property shall be provided.</u>

C. An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Malibu LCP, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the City will be adequately informed as to present uses and plans, both public and private.

D. A site plan, to scale, showing:

1. Existing and proposed property lines on the site, including all dedications, easements or recorded offers to dedicate easements, deed restrictions over or adjacent to the site and documentation for such recorded instruments.
2. Existing and proposed topography, at a contour interval appropriate to the size of the site to be developed;
3. All existing and proposed structures, roads, utilities lines, signs, fences and other improvements; and
4. Major natural and man-made landscape features, including location, type, size and quantification of acreage of any trees or other natural vegetation to be planted or to be removed or made subject to thinning, irrigation or other modification by the proposed project including building pad and road/driveway areas.
5. Location and amount of any fuel modification or brush clearance that would be required on the site and on adjacent properties to comply with fire safety requirements.

E. An inventory of the plant and animal species present on the project site, or those known or expected to be present on the project site at other times of the year, prepared by a qualified biologist, or resource expert. The inventory shall include an identification of any species present that have been designated as rare, threatened, or endangered species under State or Federal law. Where the initial site inventory indicates the presence or potential for sensitive species or habitat on the project site, the submittal of a detailed biological study of the site is required, consistent with the provisions of Chapter 4 of the Malibu LIP.

F. Building elevations, showing:

1. All exterior walls
2. Type of roof and other exterior materials and
3. Location and design of roof equipment, trash enclosures, fences, exterior lights, signs and other exterior structures and equipment.

G. Drainage and Erosion Control Plans as required by Chapter 17 of the Malibu LIP (Water Quality).

H. For development relying on an On Site Disposal System, a Septic Plot Plan, prepared by a registered sanitarian, that shall include a percolation testing report and septic system design of adequate size, capacity and design to serve the proposed development for the life of the project.

I. For applications for land divisions:

1. A report prepared by a registered groundwater hydrologist and sanitarian that addresses the ability of each proposed building site to accommodate a sewage disposal system, including an analysis of depth to groundwater that addresses seasonal and cyclical variations as well as the adequacy of percolation rates in post-grading conditions (cut or compacted fill);
2. Evidence of water availability sufficient to provide service for each proposed parcel;
3. Grading Plan, including grading for any necessary road construction or improvements;
4. Drainage/Polluted Runoff Control Plan as required by Chapter 17 of the Malibu LIP (Water Quality);
5. Landscape plan, including landscape plans for any proposed slope, and conceptual fuel modification plan based on the anticipated location of future structures;
6. Line of sight analysis showing the view of the project site from public viewing areas.
7. Depiction of the proposed building pad or building area (if future structures will be built to the slope) and access road/driveway to each proposed parcel.
8. Easements required to access each proposed parcel from a public road.

J. For applications for water wells, a groundwater hydrological study that analyzes the individual and cumulative impacts the well may have on groundwater supplies and the potential individual and cumulative impacts the well may have on adjacent or nearby streams, springs, or seeps and their associated riparian habitat.

K. For applications for development located in areas identified by the City or State as archaeologically sensitive, a site survey performed by a qualified archaeologist consistent with the requirements of Chapter 11 of the Malibu LIP, including alternatives that would avoid or minimize impacts to resources and recommended measures to mitigate impacts to resources.

L. For applications for development located in areas visible from public viewing areas, public trails, beaches or scenic roads, a visual analysis as required by Chapter 6 of the Malibu LIP (Scenic and Visual Resource Protection).

M. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as: "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the

project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (CEQA Guidelines, 14 Cal. Code of Reg. Section 15382).

N. A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

O. In addition to full size drawings, maps, photographs, and other exhibits drawn to scale, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to distribute exhibits of a larger size, enough copies reasonably required for distribution to those persons on the City's mailing lists and for inspection by the public in the City offices. A reasonable number of additional copies may, at the discretion of the Planning Director, be required.

P. A list of names and addresses of, and stamped envelopes for, adjacent landowners and residents, and other interested persons as provided in Section 13.12 of the Malibu LIP (Public Notice). The applicant shall provide the City with all of the following:

1. The addresses of all residences, including each residence within an apartment or condominium complex, located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed;

2. The addresses of all owners of parcels of real property of record located within one hundred (100) feet (not including roads) of the perimeter of the parcel of real property of record on which the development is proposed, based upon the most recent equalized assessment roll;

3. The names and addresses of all persons known to the applicant to be interested in the application;

4. Stamped envelopes for all addresses on the list prepared pursuant to subsection (a) above. Separate stamped envelopes shall be addressed to "owner," "occupant," or the name of the interested person, as applicable. The applicant shall also place a legend on the front of each

envelope including words to the effect of "Important. Public Hearing Notice." The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope.

P. The Water Quality Checklist as required by Chapter 17 of the Malibu LIP (Water Quality Ordinance).

Q. Any additional information, including identified preliminary approvals by local, state and federal agencies, for specific categories of development or for development proposed for specific geographic areas where otherwise required by specific LCP policies or regulations. This shall include but not be limited to site specific filing requirements specified in: the Public Access Ordinance (Ch.12), the Environmentally Sensitive Habitat Area Overlay Ordinance (Ch.4), the Scenic and Visual Resource Protection Ordinance (Ch.6), the Subdivision Ordinance, (Ch.15) the Hazards/Geology Ordinance (Ch.10); the Shoreline and Bluff Development Ordinance (Ch.10), the Archaeological/Cultural Resources Ordinance (Ch.11), or the Water Quality Protection Ordinance (Ch. 17) of the Malibu LIP. Where more specific filing requirements are provided for in other Chapters of the Malibu LIP which conflict with the provisions of this Chapter, the more specific provisions shall govern.

R. The application form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these requirements may result in delay in processing the application or may constitute grounds for revocation of the permit.

13.7. ACTION ON COASTAL DEVELOPMENT PERMIT

A. Permits issued under Section 13.13 of the Malibu LIP (Administrative Permits), and any subsequent changes to the administrative permit that are consistent with Section 13.3 of the Malibu LIP, and permits issued under Section 13.14 of the Malibu LIP (Emergency Permits) may be decided upon by the Planning Director.

B. All other coastal development permits shall be decided upon by the Planning Commission subject to appeal provisions in Section 13.20 of the Malibu LIP (Appeals). Minor changes to the permit may be subsequently decided upon by the Director consistent with Administrative Permit procedures; significant changes from the original approval of the permit must be approved through a permit amendment approved by the Planning Commission.

C. Except as provided in Section 13.4 of the Malibu LIP (Emergency Permits), the Environmental Review Board (ERB) ~~or a qualified biologist or environmental specialist~~ shall serve as advisors to the Planning Director, Planning Commission and

City Council for coastal development permits within or adjacent to ~~properties within~~ ESHA as provided in the ESHA Overlay zone or identified as being EHSA pursuant to provisions of the ESHA Overlay Ordinance Chapter 4 of the Malibu LIP. The ERB ~~or qualified biologist or environmental specialist~~ shall provide recommendations on the conformance or lack of conformance of the proposed project with the policies of the certified Malibu LUP and may suggest mitigation measures designed to avoid or minimize impacts on environmentally sensitive habitat area resources.

13.8. CONDITIONS

Approval of a coastal development permit shall be subject to conditions as necessary to ensure conformance with, and implementation of, the certified Local Coastal Program. Modification and resubmittal of project plans, drawings and specifications, preparation of additional plans, or recordation of documents may be required to ensure conformance with the Malibu Local Coastal Program. When modifications and resubmittal of plans, additional plans, or recorded documents are required, issuance of the permit shall be deferred for a sufficient period of time to allow the Planning Director to determine if the modified project, the additional plans, or the recorded documents comply with the conditions of approval of the permit.

13.9. FINDINGS

All decisions on coastal development permits shall be accompanied by written findings:

A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program; and

B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

C. The project is the least environmentally damaging alternative.

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

13.10. DETERMINING NOTICE AND HEARING PROCEDURES.

At the time a complete application for a Coastal Development Permit is made, the Planning Director shall determine and inform the applicant of the applicable review procedures as established herein. The determinations required by this section shall be made based on the provisions of this chapter and with reference to the certified Local Coastal Program, including any maps, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program.

A. Types of Applications. The Planning Director shall first determine whether the proposed development is:

1. Subject to the requirement for a Coastal Development Permit or permit amendment from the Coastal Commission. ~~because the proposed development is on tidelands, or on submerged lands or public trust lands, whether filled or unfilled~~; ~~or~~

2. Appealable to the Coastal Commission consistent with Chapter 2 of the Malibu LIP (Definitions); ~~or~~

3. Exempt from the Coastal Development Permit requirements as defined in Section 13.4 of the Malibu LIP;~~; or~~

4. Subject to the requirement of securing a Coastal Development Permit to be issued by the City.

13.10.1 Appeals of Determination of Permit Type and Jurisdiction.

Where an applicant, interested person, or the city has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is non-appealable or appealable:

A. The Planning Director or his or her designee shall make its determination as to what type of development is being proposed (i.e. appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development.

B. If the determination of the Planning Director is challenged by the applicant or an interested person, or if the City wishes to have a Coastal Commission determination as to the appropriate designation, the Planning Director shall notify the District Director of the South Central Coast District Office of the Coastal Commission by telephone or in writing

of the dispute/question and shall request the Executive Director's determination as to whether the development is categorically excluded, non-appealable or appealable.

C. The Executive Director of the Coastal Commission shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable.

D. Where, after the Executive Director's investigation, the Executive Director's determination is not in accordance with the City Planning Director's determination, the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the Executive Director's determination.

13.10.2 Jurisdiction.

A. The City's jurisdiction over Coastal Development Permits does not include tidelands, submerged lands, and public trust lands as described in Section 30519(b) of the Public Resources Code and described as areas of Coastal Commission Permit Jurisdiction illustrated on the Local Coastal Program Post-Certification Permit and Jurisdiction Map as amended.

B. ~~Development authorized by a Coastal Commission-issued coastal development permit remains under the jurisdiction of the Commission for the purposes of condition compliance, amendment, extension, reconsideration and revocation.~~

B. The Commission retains authority over coastal development permits issued by the Commission. Where either new development, or a modification to existing development, is proposed on a site where development was authorized in a Commission-issued coastal development permit either prior to certification of the LCP or through a de novo action on an appeal of a city-approved coastal development permit and the permit has not expired or been forfeited, the applicant shall apply to the City for the coastal development permit except for:

1) Requests for extension, reconsideration and revocation of the Commission-issued permits;
2) Development that would lessen or negate the purpose of any specific permit condition, any mitigation required by recorded documents, any recorded offer to dedicate or grant of easement or any restriction/limitation or other mitigation incorporated through the project description by the permittee, of a Commission-issued coastal permit.

In any of these circumstances, the applicant must seek to file an application with the Coastal Commission for an amendment to the Commission-issued coastal development permit and authorization for the proposed new development or modification to existing development. The Coastal Commission will determine whether the application for amendment shall be accepted for filing pursuant to the provisions of Title 14 California Code of Regulations, Section 13166.

~~C.~~C. Any proposed development within the coastal zone that is subject to the City's jurisdiction upon certification of the LCP and that the City preliminarily approved before effective certification ~~within the coastal zone area which the City preliminarily approved before effective certification~~ of the Malibu Local Coastal Program but for which a complete application has not been filed with the Coastal Commission for approval shall be resubmitted to the City through an application pursuant to this Certified Local Coastal Program. The standard for review for such an application shall be the requirements of this Certified Local Coastal Program. Any application fee paid to the Coastal Commission shall be refunded to the applicant.

~~D.~~D. Any proposed development within the certified area which the City preliminarily approved before effective certification of the Local Coastal Program and for which a complete application has been filed complete with the Coastal Commission may, at the option of the applicant, remain with the Coastal Commission for completion of review. Coastal Commission review of any such application shall determine consistency with the Certified Local Coastal Program. Projects which elect to obtain a coastal development permit from the Coastal Commission will remain under the jurisdiction of the Commission as set forth in Section 13.10.2 (B) of the Malibu LIP above.

~~E.~~E. Alternatively, the applicant may withdraw the application filed with the Coastal Commission and resubmit it to the City through an application pursuant to the requirements of this Certified Local Coastal Program. The standard of review for such an application shall be the requirements of this Certified Local Coastal Program.

~~F.~~F. Upon effective certification of a Local Coastal Program except as provided under A and B of this section, no applications for development shall be accepted by the Coastal Commission for development within the certified area.

13.11. PUBLIC HEARING REQUIRED AND PUBLIC COMMENT.

A. At least one public hearing shall be required on all appealable development as defined in Chapter 2 of the Malibu LIP (Definitions).

1. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13.12 of the Malibu LIP. The public hearing may be conducted in accordance with existing City procedures or in any

other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

2. If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 13.12 of the Malibu LIP, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565 of the California Code of Regulations.

B. Any person may submit written comments to the Planning Director on an application for a Coastal Development Permit, or on an appeal of a Coastal Development Permit, at any time prior to the close of the public hearing. If no public hearing is required, written comments may be submitted prior to the decision date specified in the public notice. Written comments shall be submitted to the Planning Director who shall forward them to the appropriate person, commission, board or the Council and to the applicant.

13.12. PUBLIC NOTICE REQUIRED.

13.12.1 Notice of Appealable Developments.

A. Within ten (10) calendar days of accepting an application for an appealable coastal development permit or at least seven (7) calendar days prior to the first public hearing on the development proposal, the City shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to:

1. Each applicant
2. All persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction;
3. All property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed;
4. Local, regional and state agencies known to be interested in the project including but not limited to: Los Angeles County, Ventura County, NPS, SMMC, CDPR, CDFG, NMFS, USFWS;
5. The South Central Coast District of the Coastal Commission.

B. The notice shall contain the following information:

1. A statement that the development is within the coastal zone;
2. The date of filing of the application and the name of the applicant;
3. The number assigned to the application;
4. A description of the development and its proposed location;

5. The date, time and place at which the application will be heard by the city approving authority;
6. A brief description of the general procedure concerning the conduct of hearing and local actions;
7. The procedures for filing local and Coastal Commission appeals, including any local fees required.

13.12.2 Notice of Non-Appealable Developments.

A. Notice of an application for a coastal development permit that is not appealable and that does not require a public hearing under local ordinance shall be provided as follows:

Within ten (10) calendar days of accepting an application for a non-appealable coastal development permit or at least seven (7) calendar days prior to the City's decision on the application, notice shall be provided as follows:

1. If the matter is heard by the Planning Commission, notice shall be published in a newspaper of general circulation;

2. Notice by first class mail to any person who has filed a written request to be on the mailing list for that development project or for coastal decisions within the City;

3. Notice by first class mail to all property owners within 300 feet;

4. Notice by first class mail to residents within 100 feet of the proposed project;

5. Notice by first class mail to local, regional and state agencies known to be interested in the project including but not limited to: Los Angeles County, Ventura County, NPS, SMMC, CDPR, CDFG, NMFS, USFWS;

6. Notice by first class mail to the South Central Coast District of the Coastal Commission.

B. The Notice shall contain the following information:

1. A statement that the development is within the coastal zone;

2. The date of filing of the application and the name of the applicant;

3. The number assigned to the application;

4. A description of development and its proposed location;

5. The date the application will be acted upon by the City's governing body or decision-maker;

6. The general procedure of the City concerning the submission of public comments either in writing or orally prior to the City's decision;

7. A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the City's decision.

13.13. ADMINISTRATIVE PERMITS

13.13.1 Applicability

The Planning Director may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).

a. Improvements to any existing structure;
b. Any single-family dwelling;
c. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars ($100,000) other than any division of land.

13.13.2 Filing Procedures.

A. Application for administrative permit shall be filed consistent with procedures for regular coastal development permits according to Section 13.6 of the Malibu LIP (Applications) of this Chapter. The form shall allow the applicant an opportunity to state that in his or her opinion the work applied for falls within the criteria established by this section.

B. Applications Not Thought to Be Administrative.

If the Planning Director receives an application that is asserted to be for improvements or other development within the criteria established pursuant to this section and Public Resources Code Section 30624 and if the Planning Director finds that the application does not qualify as such, he or she shall notify the applicant that the application cannot be processed administratively and must comply with regular permit procedures as provided in this chapter. The Planning Director, with the concurrence of the applicant, may accept the application for filing as a regular permit pursuant to this chapter and shall adjust the application fees accordingly.

13.13.3 Public Notice.

At the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public which is also as close as possible to the site of the proposed development, notice that an application for a permit for the proposed administrative coastal development permit has been submitted to the City. Such notice shall contain a general description of the nature of the proposed development. The City shall furnish the applicant with a standardized form to be used for such posting. If the applicant fails to sign the declaration of posting, the Planning ~~d~~Director ~~of the commission~~ shall refuse to file the application.

Notice of administrative coastal development permits shall also be made in the manner specified for non-appealable developments in section 13.12 of the Malibu LIP.

13.13.4 Criteria for Granting Administrative Permits

A. The Planning director may approve or modify an application for improvements or other development governed by this section on the same grounds that the planning commission may approve an ordinary application and may include reasonable terms and conditions required for the development to conform with the policies of the LCP and the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976.

B. Permits issued for such developments shall be governed by the provisions of Sections 13156 (format) and 13158 (notice of receipt and acknowledgement) of the California Code of Regulations concerning the format, receipt, and acknowledgment of permits, except that references to "Commission Resolution" shall be deemed to refer to the Planning Director's determination. A permit issued pursuant to this section and Public Resources Code Section 30624 shall contain a statement that it will not become effective until completion of the planning commission review of the permit pursuant to Section 13153.

13.13.5 Refusal to Grant - Notice to Applicant.

If the Planning Director determines not to grant an administrative permit based on a properly filed application under this section, the planning director shall promptly mail written notice to this effect to the applicant with an explanation of the reasons for this determination.

13.13.6 Reports on Administrative Permits.

The Planning director shall report in writing to the planning commission at each meeting the permits approved under this section up until the time of the mailing of the staff reports or recommendations for the meeting, with sufficient description of the work authorized to allow the Planning Commission to understand the development proposed to be undertaken. Copies of this report shall be available at the meeting and shall have been mailed to the planning commission and to all those persons wishing to receive such notification at the time of the regular mailing for the meeting and to the Coastal Commission. Any such permits approved following the deadline for the mailing shall be included in the report for the next succeeding meeting. If 1/3 of the appointed membership of the Planning Commission so request, the issuance of an administrative permit governed by this section and Public Resources Code Section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a regular coastal permit application under Section 13.6 of the Malibu LIP, subject to the provisions for hearing and appeal set forth in Sections 13.11 and 13.12 of the Malibu LIP.

13.14. EMERGENCY PERMITS

In the event of an emergency as defined in Chapter2 of the Malibu LIP (Definitions), an application for an Emergency Coastal Development Permit ("emergency permit") shall be made to the Planning Director. The Planning Director may issue an emergency permit in accordance with Coastal Act Section 30624 and the following:

A. Applications in cases of emergencies shall be made to the Planning Director by letter or facsimile during business hours if time allows, by telephone or in person if time does not allow.

B. The information to be included in the application shall include the following:

1. The nature of the emergency
2. The cause of the emergency, insofar as this can be established;
3. The location of the emergency
4. The remedial, protective or preventative work required to deal with the emergency; and
5. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

C. The Planning Director shall verify the facts, including the existence and nature of the emergency, insofar as time allows.

D. Prior to issuance of an emergency coastal development permit, when feasible, the Planning Director shall notify, and coordinate with, the South Central Coast District office of the California Coastal Commission as to the nature of the emergency and the scope of the work to be performed. This notification shall be in person or by telephone.

E. The Planning Director shall provide public notice of the proposed emergency, with the extent and type of notice determined on the basis of the nature of the emergency itself. The Planning Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the Planning Director finds that:

1. An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of this chapter and Public Resources Code Section 30600.5 and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
2. Public comment on the proposed emergency action has been reviewed if time allows; and
3. The work proposed would be temporary and consistent with the requirements of the City's certified LCP.
4. The work proposed is the minimum action necessary to address the emergency and, to the maximum extent feasible, is the least environmentally damaging temporary alternative for addressing the emergency.
5. The Planning Director shall not issue an emergency permit for any work that falls within the provisions of Public Resources Code Section 30519(b) since a coastal development permit application must be reviewed by the California Coastal Commission pursuant to provisions of Public Resources Code Section 30600.5.

F. The emergency permit shall be a written document that includes the following information:

1. The date of issuance;
2. An expiration date;
3. The scope of work to be performed
4. Terms and conditions of the permit;
5. A provision stating that within 90 days of issuance of the emergency permit, a regular coastal development permit application shall be submitted and properly filed consistent with the requirements of this Chapter;

6. A provision stating that any development or structures constructed pursuant to an emergency permit shall be considered temporary until authorized by a follow-up regular coastal development permit and that issuance of an emergency coastal development permit shall not constitute an entitlement to the erection of permanent development or structures;
7. A provision that states that: The development authorized in the emergency permit must be removed unless a complete application for a regular coastal development permit is filed within 90 days of approval of the emergency permit and said regular permit is approved. If a regular coastal development permit authorizing permanent retention of the development is denied, then the development that was authorized in the emergency permit, or the denied portion of the development, must be removed.

G. The emergency permit may contain conditions for removal of development or structures if they are not authorized in a regular coastal development permit, or the emergency permit may require that a subsequent permit must be obtained to authorize the removal.

13.14.1 Reporting of Emergency Permits

A. The Planning Director shall report in writing to the City Council and to the California Coastal Commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.

B. All emergency permits issued after completion of the agenda for the meeting shall be briefly described by the Planning Director at the meetings and the written report required by Section 13.14.1 (A) of the Malibu LIP shall be distributed prior to the next succeeding meeting.

C. The report of the Planning Director shall be informational only; the decision to issue the emergency permit is solely at the discretion of the Planning Director.

13.15. FINALITY OF CITY ACTION.

A City decision on an application for a coastal development permit shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified

Local Coastal Program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted.

13.16. NOTICE OF FINAL LOCAL GOVERNMENT ACTION.

A. Notice after Final City Action. Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13.15 of the Malibu LIP, the City shall notify by first class mail the South Central Coast District Office of the Coastal Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

B. Pursuant to Public Resources Code Section 30166.5, notwithstanding the requirements of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, once the City assumes coastal development permitting authority pursuant to Public Resources Code Section 30166.5, no application for a coastal development permit shall be deemed approved if the city fails to take timely action to approve or deny the application.

13.17. EFFECTIVE DATE OF CITY ACTION.

The City's final decision on an application for a coastal development permit that is appealable shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired unless either of the following occur:

A. An appeal is filed in accordance with Section 13.20 of the Malibu LIP (Appeals);
B. The notice of final local government action does not meet the requirements of Section 13.16 of the Malibu LIP.

When either of the circumstances in (a) or (b) occur, the Coastal Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the City and the applicant that the effective date of the City action has been suspended.

13.18. FORMAT OF PERMITS

13.18.1 Content of Permits

Permits shall be issued in a form signed by the Planning Director, and shall include:

A. A statement setting out the reasons for the approval of the permit;
B. Any other language or drawings, in full or incorporated by reference, that are consistent with the decision, and required to clarify or facilitate carrying out the intent of the City;
C. Any conditions approved by the City;
D. Such standard provisions as shall have been approved by resolution of the city;
E. A statement that the permit runs with the land and binds all future owners of the property;
F. A statement that the permit shall not become effective until the city receipt of acknowledgment as provided in Section 13.18.2 of the Malibu LIP.
G. The time for commencement of the approved development except that where the city has not imposed any specific time for commencement of development pursuant to a permit, the time for commencement shall be two years from the date of the city vote upon the application. Each permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit.

13.18.2 Notice of Receipt and Acknowledgment

A. Development shall not commence until an approved permit becomes effective.
B. No approved permit shall become effective until a copy of the permit has been returned to the city, upon which copy all permittees or authorized agent(s) have acknowledged that they have received a copy of the permit and have accepted its contents.
C. Each permit approved by the city shall be issued to the applicant with a blank acknowledgment to be signed by each permittee.
D. The acknowledgment should be returned within ten (10) working days following issuance of the permit.
E. A permit shall not be issued pursuant to this section unless the applicant has satisfied all prior to issuance conditions. Prior to issuance conditions are those conditions that are identified in the permit as conditions that must be complied with prior to issuance of the permit. After approval of a permit, the planning director shall notify the permit applicant of those conditions that have been designated as prior to issuance conditions.

13.19. PROCEDURES FOR RECORDATION OF LEGAL DOCUMENTS

All coastal development permits subject to conditions of approval pertaining to public access and open space or conservation easements shall be subject to either of the following procedures:

A. The executive director of the Coastal Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.

1. Upon completion of permit review by the City and prior to the issuance of the permit, the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents to the executive director of the Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;

2. The executive director of the Commission shall have fifteen (15) working days from receipt of the documents in which to complete the review and notify the applicant of recommended revisions if any;

3. The City may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the City within that time period;

4. If the executive director has recommended revisions to the applicant, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the executive director; or

B. If the City requests, the Commission shall delegate the authority to process the recordation of the necessary legal documents to the City if the requirements of 14 Cal. Code of Regulations, section 13574(b) are met. If this authority is delegated, upon completion of the recordation of the documents, the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space conditions to the Executive Director of the Commission.

13.20. APPEALS.

Development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.

13.20.1 Local Appeals

A. A decision or any portion of the decision made by the Planning Director under the provisions of this Chapter may be appealed to the Planning Commission by an aggrieved

person as defined in Chapter 2 of the Malibu LIP (Definitions). Any decision made by the Planning Commission may be appealed by an aggrieved person to the City Council.

B. Appeals shall be addressed to the appellate body on a form prescribed by such body, and shall state the basis of the appeal. An appeal shall be filed with the City Clerk within ten (10) days following the date of action for which appeal is made. Appeals may be accompanied by the filing fee as specified by the City Council, and shall be processed and noticed in the same manner as the original coastal development permit application.

C. A copy of the appeal shall be sent by the City to the applicant by certified mail and to the address listed on the application if it is different, within one week of its filing.

D. Upon receipt in proper form of an appeal, the appeal shall be set for the appropriate hearing body.

E. Public notice of an appeal hearing shall conform to the manner in which the original notice was given.

H The Planning Commission and City Council, respectively, may, upon the affirmative vote of a majority of its members, appeal a decision made by the Director or Planning Commission under the provisions of this Chapter. There shall be no appeal fee for such an appeal brought by either the Planning Commission or the City Council.

13.20.2 Appeals to the Coastal Commission.

A. Within ten (10) working days of Coastal Commission receipt of the notice of final action, an appealable coastal development permit ~~that is appealable~~, as defined in Chapter 2 of the Malibu LIP (Definitions), may be appealed to the Coastal Commission by an aggrieved person who has exhausted local appeals or by any two members of the Coastal Commission.

B. For appealable coastal development permits as defined in Chapter 2 of the Malibu LIP (Definitions) , a~~A~~n appellant shall be deemed to have exhausted local appeals and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the appellate bodies identified in this Chapter; except that exhaustion of all local appeals shall not be required if any of the following occur:

1. The City requires an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in this Chapter.

2. An appellant was denied the right of the initial local appeal by a City ordinance which restricts the class of persons who may appeal a local decision.

3. An appellant was denied the right of local appeal because City notice and hearing procedures for the development did not comply with the provisions of this Chapter.

4. The City charges an appeal fee for the filing or processing of local appeals.

C. Where ~~a project~~ an appealable coastal development permit is appealed by any two (2) members of the Coastal Commission, there shall be no requirement of exhaustion of local appeals. Provided, however, that the City may provide, by ordinance, that notice of Coastal Commissioner appeals may be transmitted to the City Council, and the appeal to the Coastal Commission may be suspended pending a decision on the merits by the City Council. If the decision of the City Council modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal from that decision.

13.21. EXPIRATION OF COASTAL DEVELOPMENT PERMIT.

Unless the permit states otherwise, a Coastal Development Permit shall expire two years from its date of approval if the development has not commenced during that time. The approving authority may grant a reasonable extension of time for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the two-year period.

13.22. PERMIT AMENDMENTS.

Upon application by the permittee, a Coastal Development Permit may be amended or extended. Application for an amendment shall be accomplished in the same manner specified by this chapter for the initial application of the Coastal Development Permit. All sections of this Chapter dealing with the specific type of Coastal Development Permit shall apply to permit amendments.

13.23. REAPPLICATION

An application or local appeal may be denied and no further application for the denied request shall be filed in the ensuing twelve months, except as otherwise specified at the same time of denial.

13.24. REVOCATION

If the Planning Director initiates revocation proceedings as provided below, the Planning Commission shall hold a public hearing upon the question of revocation of a coastal development permit granted under or pursuant to the provisions of this Chapter. Notice of such hearing shall be the same as would be required for a new coastal development permit.

13.24.1. Grounds for revocation of a permit

The grounds for revocation of a permit shall be:

A. Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the City finds that accurate and complete information would have caused additional or different conditions on a permit or denial of an application;

B. Failure to comply with the noticing provisions of this Chapter where the views of the person(s) not notified were not otherwise made known to the City and could have caused the City to require additional or different conditions on a permit or deny an application.

13.24.2 Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceedings because of the reasons stated in (2) above, may request revocation of a permit by application to the Planning Director specifying, with particularity, the grounds for revocation. The Planning Director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The Planning director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13.24.1 of the Malibu LIP.

13.24.3 Suspension of Permit.

Where the Planning Director determines in accord with Section 13.24.1 of the Malibu LIP that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the Planning Commission votes to deny the request for revocation. The Planning Director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The Planning director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the certified LCP and the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823.

13.24.4 Hearing on Revocation.

A. At the next regularly scheduled meeting, and after notice to the permittee and any persons the Planning Director has reason to know would be interested in the permit or revocation, the Planning Director shall report the request for revocation to the Planning Commission with a preliminary recommendation on the merits of the request.

B. The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

C. The Planning Commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the director to perform further investigation.

D. A permit may be revoked by a majority vote of the members of the Planning Commission present if it finds that any of the grounds specified in section 13.24.1 of the Malibu LIP exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

E. A Planning Commission action to revoke a coastal development permit may be appealed to the City Council pursuant to Section 13.20 of the Malibu LIP of this Chapter.

13.25. ENFORCEMENT AND PENALTIES.

A. In addition to all other available remedies, the City may seek to enforce the provisions of the LCP and the Coastal Act pursuant to the provisions of Public Resources Code section 30800 – 30822.

B. Any person who performs or undertakes development in violation of the LCP or inconsistent with any coastal development permit previously issued may, in addition to any other penalties, be civilly liable in accordance with the provisions of Public Resources Code Division 20 Section 30820.

C. Pursuant to Public Resources Code section 30811, the Planning Director may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the appropriate authority, the development is inconsistent with the provisions of the Coastal Act, and the development is causing continuing resource damage. Pursuant to Public Resources Code section 30821.6, any person who intentionally or negligently violates a restoration order may be civilly liable for a penalty for each day in which the violation persists.

13.26. VARIANCES

The purpose of this section is to provide a mechanism for applicants to make an application for a coastal development permit variance from standards or requirements of ~~this Chapter~~ the Malibu LIP and to provide specific findings for approval or denial of variances. A variance shall not be granted which confers a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone in which the subject property is situated or which authorizes a use or activity which is not otherwise expressly authorized by the zoning regulations governing that parcel of property. ~~Minor Modifications within the meaning of other City ordinances that would waive compliance with a provision of the LCP, or modify such provision, shall not be granted~~.

13.26.1 Application

Application for a variance shall be filed in the same manner as for a coastal development permit.

13.26.2 Applicability

Variances shall be decided in the same manner as for regular coastal development permits consistent with this chapter.

13.26.3 Hearings and Notice

All applications for variances require a public hearing consistent with procedures of this Chapter. Upon receipt in proper form of a variance application, a public hearing shall be set and notice of such hearing given in the same manner as for regular coastal development permits.

13.26.4 Investigation

An investigation of facts for each variance shall be made under the direction of the Director to assure that the action on each application is consistent with the intended purpose of the LCP.

13.26.5 Findings

Following a public hearing, the Planning Commission shall record the decision in writing. The Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, only if it makes all of the following findings of fact supported by substantial evidence that:

A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

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

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

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

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

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

~~F.~~<u>G.</u> The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property

~~F~~<u>H</u>. The subject site is physically suitable for the proposed variance.

~~G.~~<u>I</u> The variance complies with all requirements of state and local law.

~~H.~~<u>J.</u> A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

13.26.6 Revocation

If the Planning Commission has reason to believe that grounds for revocation of a variance may exist, the Planning Commission shall proceed consistent with coastal development permit procedures in this ordinance.

13.27 SITE PLAN REVIEW AND MINOR MODIFICATIONS

The purpose of this section is to provide a mechanism for the Planning Director, in the process of reviewing a coastal development permit, to consider specified minor changes to standards or requirements of the LCP as applied to the coastal development permit. In reviewing a coastal development permit the Planning Director can process a site plan review or minor modifications to approve a deviation from standards required in the LCP for the specific situations listed in sections 13.27.1 (A) and (B).

Application for a site plan review or minor modification shall be filed as part of the coastal development permit and shall be processed consistent with provisions of this chapter.

13.27.1 Applicability.

A. The Planning Director may consider only the following applications for site plan review:

1. Height increases over the base district maximum of 18 feet up to a maximum of 28 feet in height.

2. Remedial Grading, which is grading recommended by a geotechnical or soils report prepared by a licensed geologist or soils engineer which grading is necessary to correct physical deficiencies on the site for the construction of a primary residential structure or access to the lot.

   Within the Malibu Country Estates Overlay District, remedial grading may also be permitted to restore a building site as constructed in the original grading plan for Tract 30134. The purpose of all remedial grading within the Malibu Country Estates Overlay District shall be to maintain the existing building pads and slopes.

3. Non-visually permeable fences except for those required to comply with LCP policies and standards regarding protection of environmentally sensitive habitat and scenic and visual resources.

4. Structures constructed on slopes greater than 3:1 but less than 2 1/2:1, except

for the Malibu Country Estates Overlay District where this provision shall not be available.

5. Grading not exceeding 100 cubic yards total cut and fill within the Malibu Country Estates Overlay District.

6. Satellite or communication devices and antennas within the Malibu Country Estates Overlay District which exceed one meter in diameter and that project above rooflines or are visible from public streets or sidewalks, where necessary to accommodate the technical requirements of the equipment.

7. Wireless telecommunications antennae and facilities (pursuant to the provisions of Section 3.14.1 (B) of the Malibu LIP) that comply with the Most Restrictive Design Standards set forth in Section 3.14.1 (F) of the Malibu LIP.

(B) The Planning Director may grant minor modification permits authorizing the following:

1. Reduce setback and open space requirement by no more than 20%, except that front yard setbacks may be reduced by no more than 50% and side setbacks shall not be reduced where part of a required view corridor.

2. Approve alternative to water saving fixture requirements upon the recommendation of the Building Official.

13.27.3 Notice

Notice of the request shall be given consistent with provisions of this chapter for coastal development permits.

13.27.4 Investigation

The Planning Director shall investigate the site plan review or minor modification application, including consultation with all appropriate City staff and specialists including the Building Official, City Engineer, City Biologist, City Geologist, City Archeologist and a Coastal Morphologist.

13.27.5 Findings

(A) The Planning Director may approve or conditionally approve a site plan review application only if the Planning Director affirmatively finds that the proposal meets all of the following:

1. That the project is consistent with policies and provisions of the Malibu LCP.

2. That the project does not adversely affect neighborhood character.

3. That the project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed project complies with all applicable requirements of state and local law.
(B). The Planning Director may approve a minor modification application only if the Planning Director affirmatively finds that the proposal meets all of the following:

1. That the project is consistent with the policies of the Malibu LCP.

2. That the project does not adversely affect neighborhood character.

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

13.27.6 Processing. All Site Plan Reviews and Minor Modifications shall comply with requirements for processing of coastal development permits and appeals consistent with this Chapter.

~~13.27.~~13.28 DEVELOPMENT AGREEMENTS

This section is intended to provide procedures and requirements for consideration of development agreements for the purposes specified in and as authorized by the Government Code. The Planning Commission may recommend and the City Council may enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property.

13.28.1~~7.1~~ Applicability

Development Agreements shall be processed as Amendments to the Local Coastal Program consistent with procedures in Chapter 19 of the Malibu LIP. Approval by the Council of a development agreement shall be by ordinance and shall not take effect until and unless certified by the California Coastal Commission as an amendment to the LCP. Upon effective certification of a Development Agreement by the Coastal Commission through a Local Coastal Program Amendment, any land use designation changes in the Development Agreement shall be redesignated in the LCP.

13.28.2~~7.2~~ Initiation of Hearings

Hearings on a development agreement may be initiated:

A. If the City Council instructs the Commission to set the matter for a hearing, report and recommendation; or
B. Upon the initiative of the Commission; or
C. Upon the filing of an application as provided for by Chapter 19 of the Malibu LIP

13.28.3~~7.3~~ Hearing and Notice

Public Hearing and Notice requirements shall be as required in Chapter 19 of the Malibu LIP for LCP Amendments.

13.28.4~~7.4~~ Terms, Conditions, Restrictions and Requirements

A. A development agreement entered into by the Council may include terms and conditions, restrictions and requirements; provided, however, that such terms, conditions, restrictions or requirements shall not be contrary to the policies and regulations of the certified LCP applicable to the proposed development.

13.28~~7~~.5 Council Hearing and Notice

After receipt of the Commission's recommendation, the Council shall hold a public hearing and shall give notice of such public hearing pursuant to the procedure set forth in Section 13.28.3 of the Malibu LIP.

13.28~~7~~.5 Council Action

The Council may approve, modify or disapprove a Planning Commission recommendation involving a development agreement, provided that any modification of the development agreement bv the Council not previously considered by the Planning Commission during its hearing shall first be referred to the Planning Commission for report and recommendation, but the Commission shall not be required to hold a public hearing thereon. Failure of the Planning Commission to report within 40 days after such referral, or such longer period of time designated by the Council, shall be deemed to be an approval by the Planning Commission of the proposed modification.

13.28~~7~~.6 Amendment or Cancellation

An application to amend or to cancel in whole or in part a development agreement may be made by mutual consent of all parties to the agreement or their successors in interest and shall be submitted and processed consistent with Chapter 19 of the Malibu LIP as LCP Amendment. Procedures for amendment or cancellation shall be the same as provided in this Chapter for initiation and consideration of such agreement and such

amendment or cancellation shall not take effect unless and until effectively certified by the Coastal Commission.

CHAPTER 14—ENFORCEMENT PROGRAM

This section is deleted. Provisions for enforcement and penalties are included in Section 13.25 of the Malibu LIP.

CHAPTER 15 - REQUIREMENTS FOR LAND DIVISIONS

15.1 ~~DEFINITION OF LAND DIVISION~~APPLICABILITY

"Land divisions" that are subject to the requirements of Section 15.2 and 15.3 of the Malibu LIP shall include subdivisions through a parcel map, tract map, grant deed, or any other method; ~~lot line adjustments;~~ lot splits; ~~or~~ redivisions of land~~,~~; and issuance of a certificate of compliance, unless the land division occurred prior to the effective date of the Coastal Act and complied with all state laws and local ordinances in effect at the time.~~but shall not include m~~Mergers are subject to the requirements of Section 15.4 of the Malibu LIP. Lot line adjustments are subject to the requirements of Section 15.5 of the Malibu LIP~~or reversions to acreage~~.

15.1A PROCESSING OF PROPOSED LAND DIVISIONS

Proposed land divisions shall be processed in accordance with all other applicable City ordinances that do not conflict with the requirements of this Chapter and shall, in addition, be evaluated and approved only if in compliance with the requirements of this Chapter.

15.1B APPROVAL OF SUBSEQUENT DEVELOPMENT

Subsequent development on a parcel created through a land division shall conform to all provisions of the approved coastal development permit that authorized the land division, or any amendments thereto.

15.2 FINDINGS REQUIRED FOR APPROVAL OF LAND DIVISION.

A. A land division shall not be authorized unless it is approved in a coastal development permit. A coastal development permit authorizing a land division shall not be approved unless the evidence shows, and the City makes findings, that the proposed land division complies with the requirements of this Section (15.2). Such findings shall address the specific project impacts relative to the applicable standards identified below. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record.

B. A land division shall not be approved unless the City finds that the proposed land division:

1. Does not create any parcels that do not contain an identified building site that:

    a. Could be developed consistent with all policies and standards of the LCP,
    b. Is safe from flooding, erosion, geologic and extreme fire hazards,

c. Is not located on slopes over 30% and will not result in grading on slopes over 30%.

All required approvals certifying that these conditions are met shall be obtained;

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

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

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

5. Is designed to minimize impacts to visual resources by complying with the following:

   a. Clustering the building sites to minimize site disturbance and maximize open space;
   b. Prohibiting building sites on ridgelines;
   c. Minimizing the length of access roads and driveways;
   d. Using shared driveways to access development on adjacent lots;
   e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas;
   f. Minimizing grading and alteration of natural landforms, consistent with Chapter 8 of the Malibu LIP~~Land Use Plan policy 6.9 of the LCP~~;
   g. Landscaping or revegetating all cut and fill slopes and other disturbed areas at the completion of grading, consistent with Section 3.10 of the Malibu LIP~~Land Use Plan policy 3.49~~;
   h. Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.

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

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

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

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

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

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

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

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

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

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

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

15.3 CERTIFICATES OF COMPLIANCE

A. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was created in compliance with state law and local ordinances in effect at the time of its creation and the parcel(s) has not subsequently been merged or

otherwise altered, the City shall not require a coastal development permit. However, if the originally created parcel was subsequently merged or recombined with another parcel(s), a certificate of compliance shall not be issued for the originally created parcel, unless the City finds that creation of the parcel complies with all policies and standards of the LCP, including the ~~above~~ requirements of Section 15.2 of the Malibu LIP for approval of land divisions, and the City issues a coastal development permit authorizing the land division.

B. To determine whether parcels were created in compliance with state law and local ordinances in effect at the time of its creation, and whether they were subsequently merged or otherwise altered, the applicant shall submit a complete title history, including all documentation necessary to determine how the parcels were created; what additional parcels were created from the same parent parcel either at the same time, prior to and/or after creation of the parcel; and what other grants, land divisions, mergers or transactions occurred involving the parcel after the initial creation of the parcel.

C. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was not created in compliance with state law and local ordinances in effect at the time of its creation, or the parcel has subsequently been merged or otherwise altered, the certificate of compliance shall not be issued unless a coastal development permit that authorizes the land division is approved. In such ~~a~~ cases~~situation~~, the City shall only approve a coastal development permit in the following situations~~f the land division~~:

(1) ~~(1)~~ the land division complies with all policies and standards of the LCP, including the ~~above~~ requirements of Section 15.2 of the Malibu LIP for approval of land divisions, or

(2) ~~(2)~~ the permit is conditioned to prohibit development on the affected parcels, unless and until compliance with all policies and standards of the LCP, including the ~~above~~ requirements of Section 15.2 of the Malibu LIP for approval of land divisions, has been achieved; or~~. The permit shall also require transfer of development credits pursuant to Chapter 7 of the Local Implementation Plan.~~

(3) if (a) prior to certification of the LCP, the Coastal Commission approved a coastal development permit authorizing construction of a residence on one or more of the parcels that were created from the same parent parcel as the parcel for which the COC is requested and (b) the owner of the parcel for which the COC is requested does not also own the parcel referred to above on which the Coastal Commission authorized construction of a residence, and (c) the owner of the parcel for which the COC is requested acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit

construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size; or

(4) if (a) the parcel that is the subject of the request for a COC is not in common ownership with any other contiguous parcels that were created from the same parent parcel and (b) the current owner of the subject parcel acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size.

In each of the above cases, the permit shall also require transfer of development credits pursuant to Chapter 7 of the Malibu LIP.

D. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred after the effective date of the Coastal Act, the certificate of compliance shall not be issued unless a coastal development permit that authorizes the land division is approved. In such cases,

~~1. T~~the City shall only approve a coastal development permit i~~f~~n the following situations:

(1) the land division complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions; or
~~In addition, the City may approve a coastal development permit in the following situations:~~

~~a. I~~(2) if (a~~1~~) prior to certification of the LCP, the Coastal Commission approved a coastal development permit authorizing construction of a residence on one or more of the parcels that were created from the same parent parcel as the parcel for which the COC is requested and (b~~2~~) the owner of the parcel for which the COC is requested does not also own the parcel referred to above on which the Coastal Commission authorized construction of a residence, and (c~~3~~) the owner of the parcel for which the COC is requested acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved~~issued~~ if~~:~~ it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the ~~above~~ requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except ~~compliance with~~ the minimum parcel size; or~~; and transfer of development credits are required pursuant to Chapter 7 of the Implementation Plan.~~

~~b.I~~(3) if (a~~1~~) the parcel that is the subject of the request for a COC is not in common ownership with any other contiguous parcels that were created from the same parent parcel and (b~~2~~) the current owner of the subject parcel acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved~~issued~~ if~~:~~ it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the ~~above~~ requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size~~; and transfer of development credits are required in accordance with Chapter 7 of the Implementation Plan~~.

In each of the above cases, the permit shall also require transfer of development credits pursuant to Chapter 7 of the Malibu LIP.

If the requirements of Sections 15.3 (D)(1), 15.3 (D)(2)~~(a)~~ or 15.3 (D)(3~~2~~)~~(b)~~ of the Malibu LIP are not met, a coastal development permit for the proposed land division shall be denied.

15.4 MERGER OF PARCELS

15.4.1 Voluntary Merger

A. Contiguous parcels under common ownership may be voluntarily merged if:

1. either a merger or lot tie is authorized or required pursuant to a term or condition of a coastal development permit; or

2. the City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone. In this case, an administrative coastal development permit shall be approved for the merger if the requirements of Section 13.13 of the Malibu LIP are met.

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

C. The fee for processing a voluntary merger of parcels shall not exceed $50 (fifty dollars).

15.4.1A Merger Initiated by City

A parcel may be merged with a contiguous parcel held by the same owner if the following requirements are satisfied:

A. At least one (1) of the affected parcels is undeveloped with any structure

for which a building permit was issued, or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

B. With respect to any affected parcel, the existing subject lots must each have been legally created parcels as specified in the Subdivision Map Act.

C. A merger of parcels shall also conform to the procedural requirements of the Subdivision Map Act.

For a merger initiated by the City, the procedural requirements for merger of parcels set forth in the Subdivision Map Act shall be complied with. A merger of parcels shall become effective when the City records with the County recorder, a notice of merger, specifying the name of the record owner and particularly describing the property merged.

15.5 LOT LINE ADJUSTMENTS

A. A lot line adjustment shall not be authorized unless it is approved in a coastal development permit. A coastal development permit authorizing a lot line adjustment shall not be approved unless the evidence shows, and the City makes findings, that the proposed lot line adjustment complies with the requirements of this Section (15.5). Such findings shall address the specific project impacts relative to the applicable standards identified below. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record.

B. A lot line adjustment shall not be approved unless the City finds the following:

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

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

3. The reconfigured parcels comply with the LCP size standards and the parcels can be developed consistent with all LCP policies and standards or, if the existing parcels do not meet this requirement, then the reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than would have occurred from development on the existing parcels;

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

5. As a result of the lot line adjustment, future development on the reconfigured parcels will not increase the amount of landform alteration (including from any necessary road extensions or driveways) from what would have been necessary for development on the existing parcels;

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

B. If there is a conflict between Sections 15.5 (B)(5) or 15.5 (B)(6) and 15.5 (B)(4) of the Malibu LIP, then protection of environmentally sensitive habitat as required in Section 15.5 (B)(4) of the Malibu LIP shall be given preference.

15.6 SLOPE/DENSITY CRITERIA

In order to address the impacts associated with hillside development, the slope/density criteria shall be applied to subdivisions of parcels within the rural residential zone districts, with the intent to limit the potential intensity of development as the topography becomes steeper. Subdivision requests in these districts shall be subject to the following slope/density requirements to determine the adjusted, or actual minimum lot size requirement for the subject parcel of land.

15.6.1 Applicability

The following zoning districts shall be subject to the slope/density criteria provisions of this section. Each zoning district indicates the minimum lot size requirement. However, this minimum lot size requirement is subject to change pursuant to Section 15.6.3 of the Malibu LIP, as it relates to the topography of the subject site. Following is a list of the zoning districts and their "base" lot size requirements.

Minimum Lot Size Requirements:

RR-40. 40 acres per lot
RR-20: 20 acres per lot
RR-10: 10 acres per lot
RR-5: 5 acres per lot
RR-2: 2 acres per lot
RR-1: 1 acre per lot)

15.6.2 Formula for Determining the Average Slope

To determine the applicable slope/density factor, the average slope of the subject parcel shall be determined by a registered engineer based on the following formula:

$$S = \frac{IL \times 100}{A}$$

S = Average percent slope
I = Contour line elevation interval in feet

L = Sum of the length of all contour lines across the parcel
A = Net area of parcel in square feet

A. Measurements shall be made at contour intervals not to exceed 10N on a horizontal map scale where 1" equals 200N or less.

B. When more than one zoning designation exists on a parcel which is proposed to be subdivided, the density limit for the entire property shall be determined by calculating the allowable number of units within each separately zoned area (fractional numbers shall be rounded down to the nearest whole number) and taking the sum total of these densities.

15.6.3 Slope Density Factor

Based on the average percent slope for the property, the following table shall determine the slope/density factor for the subject property.

Average Percent Slope	Slope/Density Factor
0 - 10	1.0
10.1 - 15	1.1
15.1 - 20	1.3
20.1 - 25	1.5
25.1 - 33	1.7
33. - over	1.95

To determine the adjusted, or actual minimum lot size for a parcel, this slope/density factor shall be multiplied by the "base" minimum lot size requirement specified for that zoning district in which the subject parcel is located. The resulting figure is the actual minimum lot size requirement which must be met for any proposed subdivision of the subject parcel of land.

CHAPTER 16—PLANNED DEVELOPMENT

This section is deleted. The approval of planned development is addressed in Section 13.3 of the Malibu LIP.

CHAPTER 17 – WATER QUALITY PROTECTION ORDINANCE

17.1. PURPOSE AND INTENT

The purpose of this Chapter is to protect and enhance coastal waters within the City of Malibu in accordance with the policies of the City's Local Coastal Plan, ~~and~~ Sections 30230, 30231, 30232 and 30240 of the California Coastal Act, and the City's municipal NPDES permit requirements under the Regional Water Quality Control Board. To implement the certified Land Use Plan, application submittal requirements, development standards, and other measures are provided to ensure that permitted development shall be sited and designed to conserve natural drainage features and vegetation, prevent the introduction of pollutants into coastal waters, and protect the overall quality of coastal waters and resources.

The intent of this Chapter is to address the following principles:

A. All development should be evaluated for potential adverse impacts to water quality and applicants should consider Site Design, Source Control and Treatment Control BMPs in order to ~~minimize~~ prevent polluted runoff and water quality impacts resulting from the development. Site Design BMPs reduce the need for Source and/or Treatment Control BMPs, and Source Control BMPs may reduce the amount of Treatment Control BMPs needed for a development. Therefore, BMPs should be incorporated into the project design in the following progression:

- Site Design BMPs
- Source Control BMPs
- Treatment Control BMPs

B. All development should be designed to ~~minimize~~ prevent the introduction of pollutants that may result in water quality impacts. Projects should be designed to control post-development peak runoff rates and average volumes to maintain or reduce pre-development downstream erosion rates. These objectives can be accomplished through the creation of a hydrologically functional project design that strives to mimic the natural hydrologic regime and by achieving the following goals:

- Maintain and use natural drainage courses and vegetation
- Conserve natural resources and areas by clustering development on the least environmentally sensitive portions of a site while leaving the remaining land in a natural, undisturbed condition
- Reduce the amount of directly connected impervious surface and total area of impervious surface
- Incorporate on-site retention and infiltration measures

- Direct rooftop runoff to permeable areas rather than driveways or impervious surfaces to reduce the amount of storm water leaving the site
- Minimize clearing and grading

Incorporating these goals and principles into the project design will help to ~~minimize~~ prevent the introduction of pollutants to the site and decrease the amount of polluted runoff leaving the site, resulting in the overall objective of water quality protection. Sections 17.4, 17.5 and 17.6 of the Malibu LIP describe the requirements and process for implementing BMPs into development and provide examples of types of BMPs to incorporate.

17.2. APPLICABILITY

All properties within the City of Malibu are located within the coastal zone as defined in the California Coastal Act and are subject to the policies, standards and provisions of this Chapter, in addition to any other policies or standards contained elsewhere in the certified LCP that may apply. Where any policy or standard provided in this Chapter conflicts with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified Malibu LCP, and it is not possible for the development to comply with both the Malibu LCP and other plans, resolutions or ordinances, the policies, standards or provisions described herein shall take precedence.

17.3. DEFINITIONS

~~Except as specifically provided herein, any term used in this Chapter shall be defined as that term is defined in the City's certified LCP, the current Municipal NPDES Permit, or in the current version of the Standard Urban Storm Water Mitigation Plan ("SUSMP") approved by the Regional Water Quality Control Board-Los Angeles Region, or if it is not specifically defined in either the Municipal NPDES Permit or the SUSMP, then as such term is defined in the Federal Clean Water Act, as amended, and/or the regulations promulgated thereunder.~~ The following words and phrases shall have the following meanings when used in this Chapter:

"AUTHORIZED ENFORCEMENT OFFICER" means the City Manager or his or her designee.

"AUTOMOTIVE SERVICE FACILITY" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5511, 5541, 7532-7534, or 7536-7539.

"BEST MANAGEMENT PRACTICES (BMPs)" means activities, practices, facilities, and/or procedures that when implemented to their maximum efficiency will prevent or reduce pollutants in discharges and any program, technology, process, siting criteria,

operational methods or measures, or engineered systems, which when implemented prevent, control, remove, or reduce pollution. Examples of BMPs may include public education and outreach, proper planning of development projects, proper cleaning of catch basin inlets, and proper sludge- or waste-handling and disposal, as well as storm water treatment and detention facilities (see Structural BMPs), among others.

"CITY" means the City of Malibu.

"COMMERCIAL DEVELOPMENT" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, multi-apartment buildings, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"CONSERVATION COVER" means establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production.

"CRITICAL AREA PLANTING" means planting vegetation, such as trees, shrubs, vines, grasses, or legumes, on highly erodible or critically eroding areas. Critical Area Planting does not include tree planting mainly for wood products.

"CROP RESIDUE USE" means using plant residues to protect cultivated fields during critical erosion periods.

"DISCRETIONARY PROJECT" is defined in the same manner as Section 15357 of the Guidelines for Implementation of the California Environmental Quality Act contained in Title 14 of the California Code of Regulations, as amended, and means a project which requires the exercise of judgment or deliberation when the City decides to approve or disapprove a particular activity, as distinguished from situations where the City merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

"DIVERSION" means a channel constructed across the slope with a supporting ridge on the lower side.

"FILTER STRIP" means a strip or area of vegetation for removing sediment, organic matter, and other pollutants from runoff and wastewater.

"GOOD HOUSEKEEPING PRACTICES" means common practices related to the storage, use, or cleanup of materials, performed in a manner that minimizes the discharge of pollutants. Examples include, but are not limited to, purchasing only the quantity of materials to be used at a given time, use of alternative and less environmentally harmful products, cleaning up spills and leaks, and storing materials in a manner that will contain

any leaks or spills.

"GRASSED WATERWAY" means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

"GREATER THAN 9 UNIT HOME SUBDIVISION" means any subdivision being developed for 10 or more single-family or multi-family dwelling units.

"HILLSIDE" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is twenty-five percent (25%) or greater.

"INFILTRATION" means the downward entry of water into the surface of the soil.

"MATERIAL" means any substance including, but not limited to: garbage and debris; lawn clippings, leaves, and other vegetation; biological and fecal waste; sediment and sludge; oil and grease; gasoline; paints, solvents, cleaners, and any fluid or solid containing chemicals.

"MUNICIPAL NPDES PERMIT" means the "Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles" (Order No. 01- 182), dated December 13, 2001, issued by the California Regional Water Quality Control Board-Los Angeles Region, and any successor permit to that permit.

"MUNICIPAL SEPARATE STORM SEWER SYSTEM" or "MS4" or "STORM DRAIN SYSTEM" means streets, gutters, conduits, natural or artificial drains, channels and watercourses, or other facilities that are owned, operated, maintained or controlled by the City and used for the purpose of collecting, storing, transporting, or disposing of storm water.

"NEW DEVELOPMENT" - For the purpose of this Chapter "New Development" is defined to mean land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"NON-STORM WATER DISCHARGE" means any discharge to a Municipal Separate Storm Sewer System that is not composed entirely of storm water.

"NPDES PERMIT" means any waste discharge requirements issued by the Regional Board or the State Water Resources Control Board as an NPDES Permit pursuant to Water Code §§ 13370 (other than the Municipal NPDES Permit).

~~"ONE HUNDRED THOUSAND (100,000) SQUARE FOOT COMMERCIAL DEVELOPMENT" means any Commercial Development that creates at least one hundred thousand (100,000) square feet of impervious area, including parking areas.~~

"ORCHARD" means an area of land devoted to the cultivation of fruit or nut trees.

"PARKING LOT" means land area or a facility for the temporary parking or storage of motor vehicles used personally, for business or for commerce with a lot size of five thousand (5,000) square feet or more, or with twenty-five (25) or more parking spaces.

"POLLUTANT" means those "pollutants" defined in Section 502(6) of the federal Clean Water Act (33 U.S.C. § 1362(6)) and incorporated by reference into California Water Code § 13373.

"RAINY SEASON" means the calendar period beginning November 1 through March 31.

"REDEVELOPMENT" - For the purpose of this Chapter, the term "Redevelopment" means, land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"REGIONAL BOARD" means the California Regional Water Quality Control Board-Los Angeles Region.

"RESTAURANT" means a stand-alone facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. (SIC code 5812).

"RETAIL GASOLINE OUTLET" means any facility engaged in selling gasoline and lubricating oils.

"SEDIMENT BASIN" means a basin constructed to collect and store debris or sediment.

"SITE DESIGN BMP" means any project design feature that reduces the creation or severity of potential pollutant sources or reduces the alteration of the project site's natural flow regime.

"SOURCE CONTROL BMP" means any schedule of activities, prohibition of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"STANDARD URBAN STORM WATER MITIGATION PLAN" or "SUSMP" means ~~the current version and its updates of~~ the Standard Urban Storm Water Mitigation Plan (SUSMP) approved by the Los Angeles Regional Water Quality Control Board on March 8, 2000, and any updates or amendments approved thereafter by the Los Angeles Regional Water Quality Control Board.~~and on file in the office of the City Clerk of this City, and the NPDES Permit models that have been approved by the Executive Officer of the Regional Board for implementation to control storm water pollution from New Development and Redevelopment.~~

"STORM WATER MANAGEMENT PLAN" means a plan which shall be required in connection with any new development for the purposes of construction erosion control, runoff detention to control runoff rate to predevelopment levels, and runoff retention or other treatment measures to prevent dry-weather pollution from entering the storm drain system.

"STORM WATER RUNOFF" means that part of precipitation (rainfall or snowmelt) which travels via flow across a surface to the Municipal Separate Storm Sewer System or receiving waters from impervious, semi-pervious or pervious surfaces. When all other factors are equal, runoff increases as the perviousness of a surface decreases.

"STRUCTURAL BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g., canopy, structural enclosure). Structural BMPs may include both Treatment Control BMPs and Source Control BMPs.

"TERRACE" means an earthen embankment, a channel, or combination ridge and channel constructed across the slope.

"TREATMENT" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media adsorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"TREATMENT CONTROL BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

"URBAN RUNOFF" means surface water flow produced by non-storm water resulting from residential, commercial, and industrial activities involving the use of potable and

non-potable water.

"VINEYARD" means a plantation of grapevines where wine grapes are produced.

17.4. APPLICATION SUBMITTAL REQUIREMENTS

The following plans shall be submitted with an application for a Coastal Development Permit according to the requirements listed below.

17.4.1. Construction Phase Requirements: ~~Erosion Control and Polluted Runoff Control Plan~~Local Storm Water Pollution Prevention Plan

A. A ~~Construction Phase Erosion Control and Polluted Runoff Control Plan~~Local Storm Water Pollution Prevention Plan (SWPPP) shall be required for all development that requires a Coastal Development Permit and a grading or building permit, and it shall apply to the construction phase of the project. The ~~plan~~ SWPPP shall include:

- Property limits, prior-to-grading contours, and details of terrain and area drainage
- Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
- Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
- Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
- Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction
- Details pertaining to the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees
- Clearing and grading during the rainy season (extending from November 1 to March 31) shall be prohibited for development that:
    - Is located within or adjacent to ESHA, or
    - Includes grading on slopes greater than 4:1
- Approved grading for development that is located within or adjacent to ESHA or on slopes greater than 4:1 shall not be undertaken unless there is sufficient time to

complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources

- Information on potential flow paths where erosion may occur during construction
- Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
    - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method
    - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method
    - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site
    - Prevent blowing dust from exposed soils
- Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
    - Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials
    - Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies
    - Provide sanitary facilities for construction workers
    - Provide adequate disposal facilities for solid waste produced during construction and recycle where possible

17.4.2. Post Construction Phase Requirements: Storm Water Management Plan

Post construction plans detailing how stormwater and polluted runoff will be managed or mitigated will be required for all projects that require a Coastal Development Permit. The basic requirement for all projects will be a Storm Water Management Plan that shows how the project will use appropriate Site Design and Source Control BMPs to minimize or prevent adverse effects of the project on water quality. For certain categories of development (see 17.4.3 of the Malibu LIP below) a Water Quality Mitigation Plan will be required showing how Treatment Control (or Structural) BMPs will be used (in addition to Site Design and Source Control BMPs) to minimize or prevent the discharge of polluted runoff from the project.

~~A.~~A Storm Water Management Plan (SWMP) shall be required for all development that requires a Coastal Development Permit and shall require the implementation of appropriate Site Design and Source Control BMPs from Section 17.6 of the Malibu LIP and Appendix A to minimize or prevent post-construction polluted runoff. The SWMP ~~shall~~ should also specify any Treatment Control or Structural BMPs that the applicant ~~chooses to~~ ~~will~~ elects to include in the development to minimize or prevent post-

construction polluted runoff, and ~~shall~~ include the operation and maintenance plans for these BMPs.

A. The SWMP shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public -Works. The following information shall be included in a SWMP:

- Site design and~~,~~ source control BMPs ~~and treatment control BMPs~~ that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements

B. In addition to the requirements in A. above, the SWMP shall implement the requirements for a SWMP found in the Malibu Storm Water Code, Section 5.4.09, described below:

1. ~~Construction Phase Erosion Control and Polluted Runoff Control Plan~~~~Local~~ Storm Water Pollution Prevention Plan (SWPPP), as required in Section 17.4.1. of the Malibu LIP above.

2. Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:

a. Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100 year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street & gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;

b. Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;

c. Constructing necessary off-site storm drain improvements to satisfy b. above, or;

d. Other measures accomplishing the goal of mitigating all offsite/downstream impacts.

3. Storm drain pollution prevention measures including all construction elements and Best Management Practices (BMPs) to address the following goals in connection with both construction and long-term operation of the site:

a. Maximize, to the extent practicable, the percentage of permeable surfaces in order to allow more percolation of runoff into the ground,

b. Maximize, to the extent practicable, retention of dry-weather runoff onsite to allow percolation into the ground, or installation of other treatment measures thereby preventing pollutants from entering the storm drain system.

4. The applicant is required to comply with the approved SWMP.

C. The City of Malibu will review a SWMP according to the following requirements, found in the City of Malibu Storm Water Code, Section 5.4.09:

1. The City's evaluation of the SWMP will ascertain how well the proposed plan meets the combined objectives set forth above. In addition, the City will analyze the watershed characteristics and land uses, and estimate water quality requirements for each project. Each plan will be evaluated on its own merits according to the particular characteristics of the project and the site to be developed.

2. The SWMP shall be approved or disapproved by the Director of Public Works ~~and the Director of Building and Safety~~ (or ~~their~~ designees) within twenty-one (21) calendar days following submittal. If the plan is disapproved, the reasons for disapproval shall be given in writing to the applicant and made available to the public.

3. Full or partial waivers of compliance with this Section may be obtained for development sites where it can be adequately demonstrated that the accomplishment of these storm drain management measures is an economic and/or physical impossibility due to the particular configuration of the site ~~or due to irreconcilable conflicts with other City requirements~~. Requests for waivers must be approved, in writing, by the Planning Department, the Public Works Department, and the Environmental and Building Safety Department.

~~**17.4.3.Water Quality Mitigation Plan**~~

~~A.A Water Quality Mitigation Plan (WQMP), requiring specific Site Design and Source Control BMPs, consistent with the most recent Standard Urban Storm Water Mitigation Plan (SUSMP), shall be required for all development that requires a Coastal Development Permit and falls into one or more of the following categories:~~

- ~~Single family hillside[1] residential developments (one unit or more)~~
- ~~Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more~~
- ~~Industrial/commercial development (100,000 square feet or more of impervious surface area)~~
- ~~Automotive service facilities~~
- ~~Retail gasoline outlets~~
- ~~Restaurants~~
- ~~Parking lots (5,000 square feet or more of surface area or with 25 or more parking spaces)~~
- ~~Projects discharging directly to an ESHA~~
- ~~Redevelopment projects that result in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site~~

17.4.3. Post Construction Phase Requirements: Water Quality Mitigation Plan

Post construction plans detailing how stormwater and polluted runoff will be managed or mitigated will be required for all projects that require a Coastal Development Permit. The basic requirement for all projects will be a Storm Water Management Plan (see 17.4.2 above) that shows how the project will use appropriate Site Design and Source Control BMPs to minimize or prevent adverse effects of the project on water quality. For certain categories of development a Water Quality Mitigation Plan[2] will be required showing how Treatment Control (or Structural) BMPs will be used (in addition to Site

[1] "HILLSIDE" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is twenty-five percent (25%) or greater.
[2] The Water Quality Mitigation Plan is essentially a local version of the model Standard Urban Stormwater Mitigation Plan (SUSMP) required by the RWQCB for these categories of development.

Design and Source Control BMPs) to minimize or prevent the discharge of polluted runoff from the project.

A Water Quality Mitigation Plan (WQMP) shall be required for all development that requires a Coastal Development Permit and is in a category of development identified in 17.4.3. A. below. In addition to the Site Design and Source Control BMPs required for a Storm Water Management Plan, the WQMP shall include Treatment Control (or Structural) BMPs identified in Appendix A to minimize or prevent post-construction polluted runoff. The WQMP shall also include the operation and maintenance plans for these BMPs.

~~B.~~A. ~~Treatment Control BMPs~~A WQMP shall ~~also~~ be required ~~as part of the WQMP~~for projects that fall into one or more of ~~for~~ the following categories of development:

- Single family hillside[3] residential developments (~~one unit~~1 acre or more of disturbed area)
- Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more
- Industrial/commercial development (~~100,000 square feet~~1 acre or more of impervious surface area)
- Automotive service facilities (5,000 square feet or more of impervious surface area)
- Retail gasoline outlets (5,000 square feet or more of impervious surface area)
- Restaurants (5,000 square feet or more of impervious surface area)
- Parking lots (5,000 square feet or more of impervious surface area or with 25 or more parking spaces)
- Projects that are 2500 square feet or more of impervious surface area and discharge~~ing~~ ~~directly~~ to an ESHA
- Redevelopment projects that result in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site

~~C.The WQMP shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works and the City's Department of Environmental and Building Safety. The following information shall be included in a WQMP:~~

- ~~Site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff (see 17.5.1 and 17.5.2)~~
- ~~Pre-development peak runoff rate and average volume~~
- ~~Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)~~

[3] "HILLSIDE" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is twenty-five percent (25%) or greater.

- ~~Potential flow paths where erosion may occur after construction~~
- ~~Expected post-development peak runoff rate and average volume from the site with all proposed non-structural and structural BMPs~~
- ~~Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements~~
- ~~Measures to treat, infiltrate, or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullying on or downslope of the subject parcel, ponding on building pads, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures (alone or in combination) such as on-site desilting basins, detention ponds, dry wells, biofilters, etc.~~
- ~~A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.~~

B. The WQMP shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works. The following information shall be included in a WQMP:

- Site design, source control and treatment control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 and 17.5.2)
- Pre-development peak runoff rate and average volume
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Expected post-development peak runoff rate and average volume from the site with all proposed non-structural and structural BMPs
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Measures to treat, infiltrate, or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullying on or downslope of the subject parcel, ponding on building pads, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures

(alone or in combination) such as on-site desilting basins, detention ponds, dry wells, biofilters, etc.

- A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.

~~D.~~C. In addition to implementing the requirements in A. and B. above for a WQMP, the City will implement the following measures, consistent with SUSMP requirements, as described in the Malibu Storm Water Code, Section 5.4.09.5:

1. Issuance of Discretionary Permits. No Discretionary permit may be issued for any New Development or Redevelopment Project identified in Section 17.4.3. ~~A~~ until the Authorized Enforcement Officer confirms that either (1) the project plans comply with the applicable SUSMP requirements, or (2) compliance with the applicable SUSMP requirements is impracticable for one or more of the reasons set forth below in paragraph 3 regarding issuance of waivers. Where a Redevelopment project results in an increase of less than fifty percent (50%) of the impervious surfaces of a previously existing development, and the existing development did not require a SUSMP at the time the last Discretionary approval was granted by the City, the Design Standards set forth in the SUSMP and the WQMP will apply only to the addition, and not to the entire development.

2. Issuance of Certificates of Occupancy. As a condition for issuing a Certificate of Occupancy for a New Development or Redevelopment Project identified in Section 17.4.3. ~~A~~, the Authorized Enforcement Officer shall require facility operators and/or owners to build all of the storm water pollution control Best Management Practices and Structural or Treatment Control BMPs that are shown on the approved project plans and to submit a signed Certification Statement stating that the site and all Structural or Treatment Control BMPs will be maintained in compliance with the SUSMP, the WQMP and other applicable regulatory requirements.

3. Granting of Waiver. The Authorized Enforcement Officer shall have the authority to grant a waiver to a Development or Redevelopment Project from the requirements of the SUSMP, if impracticability for a specific property can be established by the project applicant. A waiver of impracticability may be granted only when all Structural or Treatment Control BMPs have been considered and rejected as infeasible. Recognized situations of impracticability are limited to the following, unless approved by the Regional Board[4]:

a. Extreme limitations of space for treatment on a Redevelopment project;
b. Unfavorable or unstable soil conditions at a site to attempt infiltration; and
c. Risk of ground water contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than ten (10) feet from the soil surface.

4. CEQA. Provisions of this section shall be complementary ~~complimentary~~ to, and shall not replace, any applicable requirements for storm water mitigation required under the California Environmental Quality Act.

17.4.4. Verification of Ongoing BMP Maintenance and Conditions of Transfer

All applicants shall provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and conditional use permits. Verification at a minimum shall include:

- The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either
- A signed statement from the public entity assuming responsibility for Structural and Treatment Control BMP maintenance and that it meets all local agency design standards; or
- Written conditions in the sales or lease agreement, which require the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or
- Written text in project conditions, covenants, and restrictions (CCRs) for residential

[4] Note that the Standard Urban Storm Water Mitigation Plan (SUSMP) for Los Angeles County and Cities in Los Angeles County (March 8, 2000) specifies that except for those three situations above, "Any other justification for impracticality must be separately petitioned by the City and submitted to the Los Angeles Regional Water Quality Control Board for consideration. A waiver granted by the City to any development or redevelopment project may be revoked by the Regional Board Executive Officer for cause and with proper notification upon petition."

properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

- Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural and Treatment Control BMPs.

17.4.5. ~~Polluted Runoff~~ Water Quality Mitigation~~Management~~ Plan for Agricultural and Confined Animal Facility Development

A. New and/or expanded agricultural development, including vineyards and orchards, and the development of confined animal facilities, shall require a Coastal Development Permit if it involves placement or erection of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials; change in intensity of use of land; or removal of significant native vegetation, except for residential vegetable gardens that meet the conditions for an exemption from the Coastal Development Permit requirements under Section 13.4.1 of this Ordinance. For this type of development, a ~~Polluted Runoff~~ Water Quality Mitigation~~Management~~ Plan for Agricultural and Confined Animal Facility Development (~~PR~~WQMP-Ag) shall be developed in order to minimize or prevent polluted runoff and water quality impacts resulting from the development. The ~~PR~~WQMP-Ag shall be submitted with an application for a Coastal Development Permit and shall include the following measures:

1. Minimize erosion and prevent excessive sediment and pollutants from adversely impacting water quality by incorporating BMPs such as:

    a. Diversions
    b. Grassed waterways
    c. Sediment basins
    d. Terraces
    e. Critical area planting
    f. Crop residue use
    g. Conservation cover
    h. Filter strips

2. Minimize the release of pesticides into the environment by implementing Integrated Pest Management (IPM) strategies that apply pesticides only when an economic benefit to the producer will be achieved and apply pesticides efficiently and at times when runoff losses are least likely shall be implemented. Pesticide runoff shall be carefully managed in a comprehensive manner, including evaluating past and current pest problems and cropping history, evaluating the physical characteristics of the site, selecting pesticides that are the most environmentally benign, using anti-backflow devices on hoses used for filling tank mixtures, and providing suitable mixing, loading and storage areas.

3. Minimize nutrient loss by developing and implementing comprehensive nutrient management plans based on crop nutrient budgets, identification of the types, amounts and timing of nutrients necessary to produce a crop based on realistic crop yield expectations and identification of onsite environmental hazards.

4. Reduce water loss to evaporation, deep percolation and runoff, remove leachate efficiently, and minimize erosion from applied water by implementing a managed irrigation system that includes the following components:

a. Irrigation scheduling
b. Efficient application of irrigation water
c. Efficient transport of irrigation water
d. Use of runoff or tailwater
e. Management of drainage water

5. Reduce physical disturbance of soil and vegetation and minimize direct loading of animal waste and sediment to sensitive areas by implementing the following siting and design measures for confined animal facility development:

a. Natural vegetation shall be maintained on site and vegetated filter strips, sediment basins and other measures to treat runoff shall be incorporated into the animal facility design.
b. Animal waste shall be managed, contained, and disposed of to ensure that waste is not introduced to surface runoff or groundwater.
c. Paddocks, stalls and bedding shall be cleaned on a regular basis and waste stored at least 100 feet away from streams or other surface waters. Wastes shall be covered with impermeable materials during the rainy season (November 1 – March 31), at a minimum.
d. Clean water shall be diverted around feedlots, holding pens, and the storage or disposal areas for waste, compost, fertilizer, amended soil products and any other byproducts of agricultural activities.

17.4.6. Water Quality Checklist

A water quality checklist will be developed by the City and used in the permit review process to assess potential water quality impacts and appropriate mitigation measures. Examples of questions that should be asked include:

- Could the proposed project result in an increase in pollutant discharges to receiving waters? Consider water quality parameters such as temperature, dissolved oxygen,

turbidity and other typical storm water pollutants (e.g., heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances, and trash).

- Could the proposed project result in significant alteration of receiving water quality during or following construction?
- Could the proposed project result in increased impervious surfaces and associated increased runoff?
- Could the proposed project create a significant adverse environmental impact to drainage patterns due to changes in runoff flow rates or volumes?
- Could the proposed project result in increased erosion downstream?
- Is the project tributary to an already impaired water body, as listed on the Clean Water Act Section 303(d) list. If so, can it result in an increase in any pollutant for which the water body is already impaired?
- Is the project tributary to other environmentally sensitive areas? If so, can it exacerbate already existing sensitive conditions?
- Could the proposed project have a potentially significant environmental impact on surface water quality or wetlands?
- Could the proposed project have a potentially significant adverse impact on ground water quality?
- Could the proposed project cause or contribute to an exceedance of applicable surface or groundwater receiving water quality objectives or degradation of beneficial uses?
- Could the project impact aquatic, wetland, or riparian habitat?

17.5. DEVELOPMENT STANDARDS

17.5.1. BMP Requirements and Implementation

A. All development shall be evaluated for potential adverse impacts to water quality and the applicant shall consider Site Design, Source Control and Treatment Control BMPs in order to minimize or prevent polluted runoff and water quality impacts resulting from the development. A SWMP requires the implementation of Site Design and Source Control BMPs, as specified in 17.4.2 of the Malibu LIP, and a WQMP requires the implementation of Site Design, Source Control and~~, in certain cases,~~ Treatment Control BMPs, as specified in 17.4.3 of the Malibu LIP. In order to maximize the reduction of water quality impacts, BMPs should be incorporated into the project design in the following progression: (1) Site Design BMPs, (2) Source Control BMPs, and (3) Treatment Control BMPs. Examples of these BMPs can be found in Section 17.6 and Appendix A of the Malibu LIP.

B. BMP Selection Process.

1. In selecting BMPs to incorporate into the project design, the applicant should first identify the pollutants of concern that are anticipated to be

generated as a result of the development. Table 1 in Appendix B should be used as a guide in identifying these pollutants of concern. These pollutants of concern should then be prioritized, identifying primary pollutants of concern using the following process:

a. For each of the proposed project's discharge points, identify the receiving water(s) that each discharge point proposes to discharge to, including hydrologic unit basin number(s), as identified in the most recent version of the *Water Quality Control Plan for the Los Angeles Basin*, prepared by the Los Angeles Regional Water Quality Control Board.

b. Identify any receiving waters, into which the developed area would discharge to, listed on the most recent list of Clean Water Act Section 303(d) impaired water bodies. List any and all pollutants for which the receiving waters are impaired.

c. Compare the list of pollutants for which the receiving waters are impaired with the pollutants anticipated to be generated by the project (as identified in Table 1). Any pollutants identified by Table 1 for the project that are also causing impairment of receiving waters shall be considered primary pollutants of concern.

d. Pollutants generated by the development that exhibit one or more of the following characteristics shall also be considered primary pollutants of concern:

i. Current loadings or historical deposits of the pollutant are impairing the beneficial uses of a receiving water
ii. Elevated levels of the pollutant are found in water or sediments of a receiving water and /or have the potential to be toxic to or bioaccumulate in organisms therein
iii. Inputs of the pollutant are at a level high enough to be considered potentially toxic

2. Site Design and Source Control BMPs are required based on pollutants commonly associated with the project type, as identified in Table 1. Table 2 in Appendix B should be used as guidance to determine the specific areas for each project where Site Design and Source Control BMPs are required to be implemented. BMPs that minimize the identified pollutants of concern may be selected from the examples in Appendix A and Section 17.6 of the Malibu LIP, targeting primary pollutants of concern first. In the event that the implementation of a BMP listed in Appendix A or Section 17.6 of the Malibu

LIP is determined to be infeasible at any site, the implementation of other BMPs that will achieve the equivalent reduction of pollutants shall be required.

3. Treatment Control BMPs should be selected using the matrix in Table 3 in Appendix B as guidance to determine the removal efficiency of the BMP for the pollutants of concern for that project. Treatment Control BMPs that maximize pollutant removal for the identified primary pollutants of concern should receive priority for BMP selection, followed by BMPs that maximize pollutant removal for all other pollutants of concern identified for the project. The most effective combination of BMPs for polluted runoff control that results in the most efficient reduction of pollutants shall be implemented. The applicant may select from the list of BMPs in Appendix A. In the event that the implementation of a BMP listed in Appendix A is determined to be infeasible at any site, the implementation of other BMPs that will achieve the equivalent reduction of pollutants shall be required.

17.5.2. Sizing of Treatment Control BMPs

For design purposes, with case-by-case considerations, post-construction Treatment Control BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. The above numerical design criteria shall apply to Treatment Control BMPs implemented as part of a WQMP (see Section 17.4.3.A.of the Malibu LIP).~~for the following projects:~~

- ~~Single family hillside residential developments (one unit or more)~~
- ~~Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more~~
- ~~Industrial/commercial development (100,000 square feet or more of impervious surface area)~~
- ~~Automotive service facilities (5,000 square feet or more of impervious surface area).~~
- ~~Retail gasoline outlets (5,000 square feet or more of impervious surface area)~~
- ~~Restaurants (5,000 square feet or more of impervious surface area)~~
- ~~Parking lots (5,000 square feet or more of impervious surface area or with 25 or more parking spaces)~~
- ~~Projects discharging directly to an ESHA~~
- ~~Redevelopment projects that result in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site~~

17.5.3. Development on Steep Slopes

A. Soils shall be stabilized and infiltration practices incorporated during the development

of roads, bridges, culverts and outfalls to prevent stream bank or hillside erosion. Project plans must include the following BMPs to decrease the potential of slopes and/or channels from eroding and impacting storm water runoff:

- Convey runoff safely from the tops of slopes and stabilize disturbed slopes
- Utilize natural drainage systems to the maximum extent ~~practicable~~feasible
- Control or reduce or eliminate flow to natural drainage systems to the maximum extent ~~practicable~~feasible
- Stabilize permanent channel crossings
- Vegetate slopes with native or drought tolerant vegetation
- Install energy dissipaters, such as riprap, at the outlets of new storm drains, culverts, conduits, or channels that enter unlined channels in accordance with applicable specifications to minimize erosion

B. Additional measures to prevent downstream erosion, such as contour drainage outlets that disperse water back to sheet flow, shall be implemented for projects discharging onto slopes greater than 10 percent.

~~B.~~C. New development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability should incorporate BMPs that do not rely on or increase infiltration.

17.6. DEVELOPMENT-SPECIFIC DESIGN STANDARDS

17.6.1. Commercial Development

Commercial development shall be designed to control the runoff of pollutants from structures, parking and loading areas. The following measures shall be implemented to minimize the impacts of commercial development on water quality.

A. Properly Design Loading/Unloading Dock Areas
Loading/unloading dock areas have the potential for material spills to be quickly transported to the storm water conveyance system. To minimize this potential, the following design criteria are required:

- Cover loading dock areas or design drainage to minimize run-on and runoff of storm water.
- Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

B. Properly Design Repair/Maintenance Bays
Oil and grease, solvents, car battery acid, coolant, and gasoline from repair and maintenance bays can negatively impact storm water if allowed to come into contact with storm water runoff. Therefore, design plans for repair bays must include the following:

- Repair/ maintenance bays must be indoors or designed in such a way that doesn't allow storm water runoff or contact with storm water runoff.
- Design a repair/maintenance bay drainage system to capture all washwater, leaks, and spills. Connect drains to a sump for collection and disposal. Direct connection of the repair/maintenance bays to the storm drain system is prohibited. Obtain an Industrial Waste Discharge Permit if required.

C. Properly Design Vehicle/Equipment Wash Areas
The activity of vehicle/equipment washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for washing/steam cleaning of vehicles and equipment. This area must be:

- Self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer.

D. Properly Design Parking Areas
Parking lots contain pollutants such as heavy metals, oil and grease, and polycyclic aromatic hydrocarbons that are deposited on parking lot surfaces by motor vehicles. These pollutants are directly transported to surface waters. To minimize the offsite transport of pollutants, the following design criteria are required:

- Reduce impervious surface land coverage of parking areas.
- Infiltrate runoff before it reaches storm drain system.
- Treat runoff before it reaches storm drain system.

Parking lots may also accumulate oil, grease, and water insoluble hydrocarbons from vehicle drippings and engine system leaks. To minimize impacts to water quality, the following measures are required:

- Treat to remove oil and petroleum hydrocarbons at parking lots that are heavily used (e.g. fast food outlets, lots with 25 or more parking spaces, sports event parking lots, shopping malls, grocery stores, discount warehouse stores).
- Ensure adequate operation and maintenance of treatment systems particularly sludge and oil removal, and system fouling and plugging prevention control.

17.6.2. Restaurants

Restaurants shall be designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system. The following measures shall be implemented to minimize the impacts of restaurants on water quality.

A. Properly Design Equipment/Accessory Wash Areas
The activity of outdoor equipment/accessory washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for the washing/steam cleaning of equipment and accessories. This area must be:

- Self contained, equipped with a grease trap, and properly connected to a sanitary sewer.
- If the wash area is to be located outdoors, it must be covered, paved, have secondary containment and be connected to the sanitary sewer.

17.6.3. Gasoline Stations, Car Washes and Automotive Repair Facilities

Gasoline stations, car washes and automotive repair facilities shall be designed to minimize runoff of oil and grease, solvents, car battery acid, coolant and gasoline to stormwater system. The following measures shall be implemented to minimize the impacts of gasoline stations, car washes and automotive repair facilities on water quality.

A. Properly Design Fueling Areas

Fueling areas have the potential to contribute oil and grease, solvents, car battery acid, coolant, and gasoline to the storm water conveyance system. Therefore, design plans for fueling areas must include the following:

- The fuel dispensing area must be covered with an overhanging roof structure or canopy. The canopy's minimum dimensions must be equal to or greater than the area within the grade break. The canopy must not drain onto the fuel dispensing area, and the canopy downspouts must be routed to prevent drainage across the fueling area.
- The fuel dispensing area must be paved with Portland cement concrete (or equivalent smooth impervious surface), and the use of asphalt concrete shall be prohibited.
- The fuel dispensing area must have a 2% to 4% slope to prevent ponding, and must be separated from the rest of the site by a grade break that prevents run-on of storm water to the extent practicable.
- At a minimum, the concrete fuel dispensing area must extend 6.5 feet (2.0 meters) from the corner of each fuel dispenser, or the length at which the hose and nozzle assembly may be operated plus 1 foot (0.3 meter), whichever is less.

B. Properly Design Repair/Maintenance Bays

Oils and grease, solvents, car battery acid, coolant, and gasoline from the repair/maintenance bays can negatively impact storm water if allowed to come into contact with storm water runoff. Therefore, design plans for repair bays must include the following:

- Repair/maintenance bays must be indoors or designed in such a way that doesn't allow storm water run-on or contact with storm water runoff.
- Design a repair/maintenance bay drainage system to capture all wash-water, leaks, and spills. Connect drains to a sump for collection and disposal. Direct connection of the repair/maintenance bays to the storm drain system is prohibited. Obtain an Industrial Waste Discharge Permit if required.

C. Properly Design Vehicle/Equipment Wash Areas

The activity of vehicle/equipment washing/steam cleaning has the potential to contribute metals, oil and grease, solvents, phosphates, and suspended solids to the storm water conveyance system. Include in the project plans an area for washing/steam cleaning of vehicles and equipment. This area must be:

- Self-contained and/or covered, equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer or to a permit disposal facility.

D. Properly Design Loading/Unloading Dock Areas

Loading/unloading dock areas have the potential for material spills to be quickly transported to the storm water conveyance system. To minimize this potential, the following design criteria are required:

- Cover loading dock areas or design drainage to minimize run-on and runoff of storm water.
- Direct connections to storm drains from depressed loading docks (truck wells) are prohibited.

17.6.4. Outdoor Material Storage Areas

Outdoor material storage areas refer to storage areas or storage facilities used solely for the storage of materials. Improper storage of materials outdoors may provide an opportunity for toxic compounds, oil and grease, heavy metals, nutrients, suspended solids, and other pollutants to enter the storm water conveyance system. Outdoor material storage areas shall be designed to prevent stormwater contamination from stored materials. Where proposed project plans include outdoor areas for storage of materials

that may contribute pollutants to the storm water conveyance system, the following measures are required:

- Materials with the potential to contaminate storm water must be: (1) placed in an enclosure such as a cabinet, shed or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or (2) protected by secondary containment structures such as berms, dikes or curbs.
- The storage areas must be paved and sufficiently impervious to contain leaks and spills.
- The storage area must have a roof or awning to minimize collection of storm water within the secondary containment area.

17.6.5. Trash Storage Areas

A trash storage area refers to an area where a trash receptacle or receptacles are located for use as a repository for solid wastes. Loose trash and debris can be easily transported by the forces of water or wind into nearby storm drain inlets, channels, and/or creeks. Trash storage areas shall be designed to prevent stormwater contamination by loose trash and debris. All trash container areas must meet the following requirements (individual family residences are exempt from these requirements):

- Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s).
- Trash container areas must be screened or walled to prevent off-site transport of trash.

17.6.6. Pools and Spas

Chlorinated and brominated pool and spa drainage have the potential to negatively impact both aquatic and marine plant and animal species. To minimize impacts to water quality, and to ensure that any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area, the following design criteria are required:

- Alternative sanitization methods are required for all pools and spas. This may include no chlorine or low chlorine sanitization methods.
- Prohibit discharge of chlorinated pool water.
- Prohibit discharge of non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters.

17.7. PROHIBITED ACTIVITIES

Design, construction and implementation of development in the City of Malibu shall take into consideration the prohibitions on discharges to the Municipal Separate Storm Sewer

System (MS4) from the Malibu Storm Water Code (Section 5.4.05). Development in the City of Malibu shall also be designed, constructed and implemented in a manner that minimizes or eliminates these types of discharges to other watercourses, water bodies, potable groundwater and wetlands within the City.

17.8. GOOD HOUSEKEEPING PROVISIONS

Design, construction and implementation of development in the City of Malibu shall take into consideration the good housekeeping provisions from the Malibu Storm Water Code (Section 5.4.07). Development in the City of Malibu shall also be designed, constructed and implemented in a manner that encourages these types of practices.

17.9. HYDROMODIFICATION

A. Alterations or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except for:

- Necessary water supply projects where no feasible alternative exists
- Flood protection for existing development where there is no other feasible alternative
- The improvement of fish and wildlife habitat

B. Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of groundwater, and shall include maximum feasible mitigation measures to mitigate unavoidable impacts. Bioengineering is the only acceptable method of bank stabilization and flood protection for new development, and the preferred method for redevelopment. ~~alternatives shall be preferred for flood protection over "hard" solutions such as concrete or riprap channels.~~ Any permitted stream alterations shall include BMPs such as incorporating vegetation in structure design, deflecting flow from eroding stream banks, and reshaping the eroding bank and establishing vegetation.

C. Any channelization or dam proposals shall be evaluated as part of a watershed planning process, evaluating potential benefits and/or adverse impacts. Potential adverse impacts of such projects include effects on wildlife migration, downstream erosion, dam maintenance (to remove silt and trash) and interruption of sand supplies to beaches.

17.10. AGRICULTURE AND CONFINED ANIMAL FACILITIES

A. New and/or expanded agricultural development, including vineyards and orchards, and the development of confined animal facilities, shall require a Coastal Development Permit if it involves placement or erection of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials; change in intensity of use of

land; or removal of significant native vegetation, except for residential vegetable gardens that meet the conditions for an exemption from the Coastal Development Permit requirements under Section 13.4.1 of this Ordinance. For this type of development, a ~~Polluted Runoff~~ Water Quality Mitigation~~Management~~ Plan for Agricultural and Confined Animal Facility Development (~~PR~~WQMP-Ag) shall be developed in order to minimize or prevent polluted runoff and water quality impacts resulting from the development. The ~~PR~~WQMP-Ag shall be submitted with an application for a Coastal Development Permit, as specified in 17.4.5 of the Malibu LIP.

B. In addition to the requirement of the ~~PR~~WQMP-Ag, agricultural and confined animal facility development shall comply with the following:

1. Development shall not result in the placement of compost, fertilizer, or amended soil products in or within 100 feet of streams or other surface waters.

2. Development shall not result in the disposal of animal wastes, wastewater, or any other byproducts of agricultural activities in or within 100 feet of streams or other surface waters.

3. Confined animal facility development shall not produce sedimentation or polluted runoff on any public road, adjoining property, or in any drainage channel.

Appendix A

STORM WATER BEST MANAGEMENT PRACTICES

The following are a list of BMPs that may be used to minimize or prevent the introduction of pollutants of concern that may result in significant impacts to receiving waters. Other BMPs approved by the City as being equally or more effective in pollutant reduction than comparable BMPs identified below are acceptable. All BMPs must comply with local zoning and building codes and other applicable regulations.

Site Design BMPs

Minimizing Impervious Areas

- Reduce sidewalk widths
- Incorporate landscaped buffer areas between sidewalks and streets.
- Design residential streets for the minimum required pavement widths
- Minimize the number of residential street cul-de-sacs and incorporate landscaped areas to reduce their impervious cover.
- Use open space development that incorporates smaller lot sizes
- Increase building density while decreasing the building footprint
- Reduce overall lot imperviousness by promoting alternative driveway surfaces and shared driveways that connect two or more homes together
- Reduce overall imperviousness associated with parking lots by providing compact car spaces, minimizing stall dimensions, incorporating efficient parking lanes, and using pervious materials in spillover parking areas

Increase Rainfall Infiltration

- Use permeable materials for private sidewalks, driveways, parking lots, and interior roadway surfaces (examples: hybrid lots, parking groves, permeable overflow parking, etc.)
- Direct rooftop runoff to pervious areas such as yards, open channels, or vegetated areas, and avoid routing rooftop runoff to the roadway or the urban runoff conveyance system

Maximize Rainfall Interception

- Maximizing canopy interception and water conservation by preserving existing native trees and shrubs, and planting additional native or drought tolerant trees and large shrubs

Minimize Directly Connected Impervious Areas (DCIAs)

- Draining rooftops into adjacent landscaping prior to discharging to the storm drain
- Draining parking lots into landscape areas co-designed as biofiltration areas
- Draining roads, sidewalks, and impervious trails into adjacent landscaping

Slope and Channel Protection

- Use of natural drainage systems to the maximum extent ~~practicable~~feasible
- Stabilized permanent channel crossings
- Planting native or drought tolerant vegetation on slopes
- Energy dissipaters, such as riprap, at the outlets of new storm drains, culverts, conduits, or channels that enter unlined channels

Maximize Rainfall Interception

- Cisterns
- Foundation planting

Increase Rainfall Infiltration

- Dry wells

Source Control BMPs

- Storm drain system stenciling and signage
- Regular street and parking lot sweeping
- Outdoor material and trash storage area designed to reduce or control rainfall runoff
- Efficient irrigation system

Treatment Control BMPs

Biofilters

- Grass swale
- Grass strip
- Wetland vegetation swale
- Bioretention

Detention Basins

- Extended/dry detention basin with grass lining

- Extended/dry detention basin with impervious lining

Infiltration Basins

- Infiltration basin
- Infiltration trench
- Porous asphalt
- Porous concrete
- Porous modular concrete block

Wet Ponds and Wetlands

- Wet pond (permanent pool)
- Constructed wetland

Drainage Inserts

- Oil/Water separator
- Catch basin insert
- Storm drain inserts
- Catch basin screens

Filtration Systems

- Media filtration
- Sand filtration

Hydrodynamic Separation Systems

- Swirl Concentrator
- Cyclone Separator

Appendix B

BMP IMPLEMENTATION TABLES

Table 1. Anticipated and Potential Pollutants Generated by Land Use Type

	General Pollutant Categories								
Priority Project Categories	Sediments	Nutrients	Heavy Metals	Organic Compounds	Trash & Debris	Oxygen Demanding Substances	Oil & Grease	Bacteria & Viruses	Pesticides
Detached Residential Development	X	X			X	X	X	X	X
Attached Residential Development	X	X			X	P(1)	P(2)	P	X
Commercial Development >100,000 ft^2	P(1)	P(1)		P(2)	X	P(5)	X	P(3)	P(5)
Automotive service facilities			X	X(4)(5)	X		X		
Retail Gasoline Outlets			X	X(4)(5)	X		X		
Restaurants					X	X	X	X	
Hillside development	X	X			X	X	X		X
Parking Lots	P(1)	P(1)	X		X	P(1)	X		P(1)
Streets, Highways & Freeways	X	P(1)	X	X(4)	X	P(5)	X		

X = anticipated
P = potential
(1) A potential pollutant if landscaping exists on-site
(2) A potential pollutant if the project includes uncovered parking areas
(3) A potential pollutant if land use involves food or animal waste products
(4) Including petroleum hydrocarbons
(5) Including solvents

Table 2. Site Design and Source Control BMP Selection Matrix

	Specific Areas for Implementation of Site Design and Source Control BMPs													
Priority Project Categories	Private Roads	Residential Driveways & Guest Parking	Loading/Unloading Dock Areas	Repair/Maintenance Bays	Vehicle Wash Areas	Outdoor Processing Areas	Equipment Wash Areas	Parking Areas	Roadways	Fueling Areas	Hillside Landscaping	Outdoor Material Storage Areas	Trash Storage Areas	Pools and Spas
Detached Residential Development	R	R									R			R
Attached Residential Development	R												R	R
Commercial Development >100,000 ft^2			R	R	R	R						R	R	
Automotive service facilities			R	R	R		R			R		R	R	
Retail Gasoline Outlets			R	R	R		R			R		R	R	
Restaurants			R				R					R	R	
Hillside development	R										R			
Parking Lots								R					R	
Streets, Highways & Freeways									R					
R = Required – minimize pollutants of concern by selecting appropriate Site Design and Source Control BMPs														

Table 3. Treatment Control BMP Selection Matrix[1]

Pollutant of Concern	***Treatment Control BMP Categories***						
	Biofilters	Detention Basins	Infiltration Basins[2]	Wet Ponds or Wetlands	Drainage Inserts	Filtration	Hydrodynamic Separator Systems[3]
Sediment	M	H	H	H	L	H	M
Nutrients	L	M	M	M	L	M	L
Heavy Metals	M	M	M	H	L	H	L
Organic Compounds	U	U	U	U	L	M	L
Trash & Debris	L	H	U	U	M	H	M
Oxygen Demanding Substances	L	M	M	M	L	M	L
Bacteria	U	U	H	U	L	M	L
Oil & Grease	M	M	U	U	L	H	L
Pesticides	U	U	U	U	L	U	L

(1) The City is encouraged to periodically assess the performance characteristics of many of these BMPs to update this table.
(2) Including trenches and porous pavement
(3) Also known as hydrodynamic devices and baffle boxes

L: Low removal efficiency
M: Medium removal efficiency
H: High removal efficiency
U: Unknown removal efficiency

Sources: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (1993), *National Stormwater Best Management Practices Database* (2001), *and Guide for BMP Selection in Urban Developed Areas* (2001).

CHAPTER 18 – ON-SITE WASTEWATER TREATMENT ~~DISPOSAL~~ SYSTEM STANDARDS ORDINANCE

18.1. PURPOSE AND INTENT

The purpose and intent of this Chapter is to protect coastal waters within the City of Malibu from impacts resulting from the design, siting, installation, operation, and maintenance of On-site Wastewater ~~Disposal~~ Treatment Systems (~~OSDS~~OSTSs), in accordance with the policies of the City's Local Coastal Plan. To implement the certified Land Use Plan; permit application requirements; siting, design and performance standards; maintenance, operation and monitoring requirements; and other measures are provided to ensure that permitted ~~OSDS~~OSTSs shall be designed, sited, installed, operated and maintained to prevent the introduction of pollutants into coastal waters and protect the overall quality of coastal waters and resources.

18.2. APPLICABILITY

All properties within the City of Malibu are located within the coastal zone as defined in the California Coastal Act and are subject to the policies, standards and provisions of this Chapter in addition to any other policies or standards contained elsewhere in the certified LCP that may apply. Where any policy or standard provided in this Chapter conflicts with any other policy or standard contained in the City's General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the certified LCP, and it is not possible for the development to comply with both the LCP and other plans, resolutions or ordinances, the policies, standards or provisions described herein shall take precedence.

OSTSs shall be designed, sited, installed, operated and maintained in compliance with the policies, standards and provisions contained herein in the LCP. At such time as the rules and regulations developed for OSTSs by the State Water Resources Control Board pursuant to Assembly Bill 885 become effective, if they conflict with the requirements of the LCP, the City shall submit an LCP amendment seeking to modify the requirements of the LCP.

Development involving onsite wastewater discharges shall also be consistent with the rules and regulations of the California Regional Water Quality Control Board-Los Angeles Region, including Waste Discharge Requirements, revised waivers and other regulations that apply.

18.3. DEFINITIONS

Except as specifically provided herein, any term used in this Chapter shall be defined as that term is defined in the City's certified LCP. The following words and phrases shall

have the following meanings when used in this Chapter:

"CESSPOOL" means a lined or partially lined underground pit into which raw household wastewater is discharged and from which the liquid seeps into the surrounding soil.

"EFFLUENT DISPERSAL SYSTEM" means typically a soil-based system containing a bed or trenches with clean gravel and a system of piping through which treated sewage may seep into the surrounding soil for further treatment and disposal. The systems are usually subsurface but can be above the natural grade as well. Typical horizontal systems include leachfields and seepage beds. Vertical systems (i.e., seepage pits) consist of a deep hole and use no piping.

"GRAYWATER" means domestic wastewater. Graywater does not include water from a toilet, kitchen sink, or dishwasher.

"LEACHFIELD" means the area used for disposal of septic tank effluent through a non-water-tight artificial structure, conduit, or porous material by downward or lateral drainage, or both, into the surrounding permeable soil. A leachfield is considered a standard ~~soil-absorption field~~subsurface sewage effluent dispersal system/soil absorption field.

"ON-SITE WASTEWATER ~~DISPOSAL~~ TREATMENT SYSTEM" OR "~~OSDS~~OSTS" means an on-site system designed to treat and dispose of domestic sewage.

"REGIONAL BOARD" means the California Regional Water Quality Control Board-Los Angeles Region.

"SEEPAGE PIT" means a deep hole with a porous-walled inner chamber and a filling of gravel between the chamber and the surrounding soil. Septic tank effluent enters the inner chamber and is temporarily stored there until it gradually seeps out and infiltrates into the surrounding sidewall soil. A seepage pit is considered a vertical sewage effluent dispersal system.

"SEPTIC SYSTEM" means an on-site system designed to treat and dispose of domestic sewage. A typical septic system consists of a tank that receives waste from a residence or business and a system of tile lines or a pit for disposal of the liquid effluent that remains after decomposition of the solids by bacteria in the tank. Solids remaining in the tank must be pumped out periodically.

"SOIL ABSORPTION SYSTEM" means a soil-based effluent dispersal system typically containing a bed or trenches with clean gravel and a system of piping through which

treated sewage may seep into the surrounding soil for further treatment and disposal. The systems are usually subsurface, but can be above the natural grade as well.

18.4. PERMIT APPLICATION AND OTHER GENERAL REQUIREMENTS

A. A CDP is required for all new ~~OSDSs~~OSTSs, for any expansion and modification of an existing ~~OSDS~~OSTS, or for a change in the type or intensity of use of an existing system. The CDP shall not be approved unless (1) the existing or proposed septic system is consistent with the requirements contained in this Chapter, current Guidelines of the Regional Water Quality Control Board or such other requirements of the City of Malibu, whichever are more stringent, or (2) a condition is imposed on the permit that requires upgrade or redesign of the existing septic system, or construction of a new septic system, to comply with the requirements contained in this Chapter.

B. The application for a CDP for ~~OSDS~~ OSTS installation and expansion shall include a Site Evaluation Report (SER) prepared by a qualified professional. The SER shall contain results of soils analysis and/or percolation tests including but not limited to: soil conditions, characteristics and estimated permeability, depth of zones of saturation, depth to bedrock, surrounding geographic and topographic features, direction of ground contour and % slopes, distance to drainages, water bodies and potential for flooding. Site limitations and special characteristics shall be listed in the SER.

C. The SER prepared for ~~OSDS~~OSTS installation or expansion shall also include the following information:

1. Existing uses on the site (for expansion only)
2. Existing and proposed locations of all buildings, roads, driveways, and other physical features
3. Property lines
4. Easements
5. Water sources, wells and surface water courses or drainage ways.
6. Locations for septic tank, distribution box or drop boxes, and all other system components
7. Locations of soil treatment area and replacement area, drawn to scale.
8. Operations and maintenance instructions for ~~OSDS~~OSTS components

D. The SER prepared for the following developments shall include a cumulative impact analysis evaluating the potential impact by the proposed ~~OSDS~~OSTS(s) on groundwater level and quality (i.e., effects of groundwater mounding, nitrate loading and fecal/pathogen contamination), quality of nearby surface drainages (i.e., nitrate loading and fecal/pathogen contamination), and slope stability:

1. Individual ~~OSDS~~OSTS with flow of greater than 1,500 gallons per day (gpd);
2. Subdivisions;
3. ~~OSDS~~OSTSs for commercial developments;
4. For any lot which involves two or more ~~OSDS~~OSTSs within 100 feet of each other with a combined capacity of over 1,500 gpd;
5. ~~OSDS~~OSTSs for multi-family residential developments;
6. Any "community" disposal system which includes three or more individual homes utilizing one disposal system;
7. System(s) which the City or LA RWQCB has identified as presenting a potential threat to surface water or groundwater beneficial uses; and
8. For systems within areas of known nitrate groundwater problems.

E. The minimum values used in the cumulative impact analysis for the total nitrogen concentration of septic tank effluent shall be 40 mg/L as N (for average flow conditions) for residential wastewater, or as determined from the sampling of comparable system(s) or literature values acceptable to the City. ~~OSDS~~OSTSs shall not cause the groundwater nitrate-nitrogen concentration to exceed 10.0 mg/L as N at any current or potential source of drinking water on or off-site.

F. Groundwater mounding analysis (in the cumulative impact analysis) shall be used to predict the highest rise of the water table and shall account for background groundwater conditions during the wet weather season. The maximum acceptable rise of the water table under treatment systems for short periods of time during the wet weather season, as estimated from groundwater mounding analysis, shall be as follows;

1. All ~~OSDS~~OSTSs: Groundwater mounding beneath the ~~disposal field~~effluent dispersal system/soil absorption field shall not result in more than 50% reduction in the minimum depth to seasonably high groundwater as required in this Ordinance.
2. Large Systems: Notwithstanding (F)(1), systems with design flows of 1,500 gpd or more shall have a minimum unsaturated depth of 24 inches beneath the ~~trench~~ bottom of the subsurface effluent dispersal system (for leachfield or similar systems) or beneath the natural grade (for above ground systems).

G. Development that includes new ~~OSDS~~OSTS(s) or expansion of existing ~~OSDS~~OSTS(s) shall also include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and, where feasible, the elimination of garbage disposals to avoid hydraulic overloading of the ~~OSDS~~OSTS.

H. Where feasible, development that includes new ~~OSDS~~OSTS(s) or expansion of existing ~~OSDS~~OSTS(s) shall divert graywater such as washing machine and bath/shower

wastewater from the septic system for separate treatment and/or reuse on site.

I. The construction dimensions of the ~~subsurface~~ sewage effluent ~~disposal~~ dispersal ~~area~~ system (soil absorption field~~/leachfield~~) of an ~~OSDS~~OSTS shall be based on soils analysis and/or percolation tests. Soils analysis shall be conducted by a California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist.

J. A valid Standard Operating Permit (SOP) or Renewable Operating Permit (ROP) shall be required for all new, modified, and expanded ~~OSDS~~OSTSs. A SOP shall be issued for standard ~~OSDS~~OSTSs for single-family residences in areas of low environmental sensitivity. A ROP shall be issued for:

1. Systems for commercial and multi-family residential developments.
2. Alternative/enhanced treatment systems.
3. Performance-based systems required to achieve specific water quality criteria.

K. The City shall not issue an operating permit until the as-built plans and the operations and maintenance instructions are submitted and the final inspection and testing of the system has been performed. The plans showing placement of soil absorption systems shall be kept on file in City offices.

L. The operating permit shall include all applicable monitoring, operation and maintenance requirements contained in this Chapter and all applicable regulations.

M. The ROP shall further require that maintenance contracts with qualified service providers be established and remain in effect. In addition, the City shall only renew a ROP after a satisfactory compliance inspection. The City shall require any corrections necessary to bring the ~~OSDS~~OSTS into compliance with all applicable regulations. Failure to make the corrections within thirty days after written notification or posting of a correction notice at the site shall result in a violation of the permit process and the issuance of a violation notice by the City.

N. All ~~OSDS~~OSTSs shall be designed, sited, installed, operated, and maintained in full compliance with the requirements contained in this LCP.

18.5. LAND DIVISION

A. Any residential land division including single and/or multi-family residential parcels

that will use ~~OSDS~~OSTS for wastewater treatment shall be subject to the following criteria for approval:

1. Documented site and soils evaluation by a qualified professional and the City. The evaluation shall be based on a soils analysis and/or percolation test providing information including but not limited to:

    a. Depth to groundwater on each proposed lot with an ~~OSDS~~OSTS or, where allowed, lot(s) used for a community ~~OSDS~~OSTS;
    b. Seasonal and cyclical variations; and
    c. Adequacy of percolation rates in post-grading conditions.

2. Any additional evaluation or testing deemed necessary to satisfy the standards set forth in this LCP and all applicable regulations.
3. Each parcel within the proposed land division shall have a designated soil treatment area. The location of the treatment area shall be determined from evaluation of the site and soil characteristics, and absorption capacity of the soil in gallons per day, per square foot. The treatment areas for all parcels shall be sufficient to accommodate, at a minimum, a 2-bedroom home and the recommended type of treatment system.
4. A plot or site plan prepared by the professional performing the site and soils evaluation noting the dimension and location of the proposed soil treatment area. The soil treatment area shall note the size and dimension of the primary soil absorption field and the reserve field. The reserve field shall have the capability to accommodate the entire wastewater flow. The site plans shall be recorded with the parcel or subdivision map. A copy of the site plan and recommended type of ~~OSDS~~OSTS shall be placed on file with the City.

~~5.The City shall require deed restrictions or Covenants, Conditions, and Restrictions (CC&Rs) to protect the set-aside area for the reserve soil absorption field on each parcel from development.~~

~~6.~~5. An analysis for the proposed land division showing no potential significant cumulative impact as a result of the construction and operation of the ~~OSDS~~OSTSs on groundwater level and quality (i.e., effects of groundwater mounding, nitrate loading and fecal/pathogen contamination), quality of nearby surface drainages (i.e., nitrate loading and fecal/pathogen contamination), and slope stability.

~~7.~~6. The minimum values used in the cumulative impact analysis for the total nitrogen concentration of septic tank effluent shall be 40 mg/L as N (for average flow conditions) for residential wastewater, or as determined from the sampling of comparable system(s) or literature values. ~~OSDS~~OSTSs shall not cause the groundwater nitrate-nitrogen

concentration to exceed 10.0 mg/L as N at any current or existing source of drinking water.

~~8.~~7. Groundwater mounding analysis (in the cumulative impact analysis) shall be used to predict the highest rise of the water table and shall account for background groundwater conditions during the wet weather season. The maximum acceptable rise of the water table for short periods of time during the wet weather season, as estimated from groundwater mounding analysis, shall be as follows:

a. All ~~OSDS~~OSTSs: Groundwater mounding beneath the ~~disposal~~ effluent dispersal system/soil absorption field shall not result in more than 50% reduction in the minimum depth to seasonably high groundwater as required in this Ordinance.

b. Large Systems: Notwithstanding the above, systems with design flows of 1,500 gpd or more shall have a minimum unsaturated depth of 24 inches beneath the ~~trench~~ bottom of the subsurface effluent dispersal system (for leachfield or similar systems) or beneath the natural grade (for above ground systems).

B. Soils analysis shall be conducted by a California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist.

C. The creation of parcels for commercial use shall conform to the above criteria established for single and multi-family residential parcels except that the designated soil treatment area shall be sized according to the estimated strength and volume of waste flow generated by the commercial facility. The use of ~~OSDS~~OSTS for any waste discharge other than sewage and graywater shall not be allowed without prior approval by the Executive Officer of the Regional Board.

18.6. MANAGEMENT PROGRAM

A. The City ~~should~~ will develop, adopt and implement, by December 31, 2004, a Wastewater Management Plan (WMP) in consultation with the Environmental Review Board and other pertinent City committees, to address future wastewater issues. The WMP should include a set of management objectives, and an accompanying set of associated elements and activities targeted towards the satisfactory achievement of the objectives. The WMP should map out actions for the City to:

1. Identify its management objectives;
2. Evaluate whether its current program is adequate;
3. Determine both an appropriate management program, and the necessary program enhancements to achieve its management objectives and public health and environmental goals; and
4. Establish a funding structure.

B. The WMP should provide a flexible framework and guidance to best tailor the City's programs to the specific needs of the community, and to the institutional capacity of the regulatory authority. As such, the WMP should provide the necessary framework, guidelines and legal authority for:

1. Creation of an ~~OSDS~~OSTS inventory;
2. Establishment of a computer-based record keeping and reporting program to ensure that up-to-date records are kept of location, ownership, site evaluation, design, and compliance reports are maintained, and performance of systems is monitored;
3. Enhancement of system operator/owner's awareness of maintenance needs;
4. Performance monitoring of all new, expanded, or modified ~~OSDS~~OSTSs subject to a CDP issued pursuant to this LCP throughout the jurisdiction or in concentrated areas of special concern, whichever is considered appropriate to protect public health and safety and evaluate the effects on ground and surface water quality;
5. Inspection of ~~OSDS~~OSTSs as prescribed by this LCP, the WMP and all applicable regulations;
6. Management of enhanced treatment/alternative systems and/or large, complex systems (e.g., systems for multi-family or commercial developments), on new developments and redevelopments, through maintenance contracts and Renewable Operating Permits;
7. Required performance monitoring for complying with specific water quality criteria where applicable;

C. The WMP should, to the extent practicable, follow the framework and guidelines provided in the September 26, 2000, Draft EPA Guidelines for Management of Onsite/Decentralized Wastewater Systems, or any modifications thereof.

18.7. SITING, DESIGN AND PERFORMANCE REQUIREMENTS

A. ~~OSDS~~OSTSs shall be located above the ten-year floodplain and be protected from standing water to the maximum extent ~~practicable~~feasible.

B. The construction dimensions of the ~~subsurface~~ sewage effluent ~~disposal~~ dispersal area

(soil absorption field) of an ~~OSDS~~OSTS shall be based on soils analysis and/or percolation tests. Soils analysis shall be conducted by a California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist.

C. Septic tank and leach area systems shall be used only where the proposed site can maintain subsurface disposal. When a percolation test is required, no standard ~~OSDS~~OSTS shall be permitted to serve a new development or redevelopment if that test shows the absorption capacity of the soil is less than 0.83 gallons per square foot (33.8 L/m) per 24 hours.

D. The proposed site for ~~soil absorption field~~subsurface sewage effluent dispersal system/soil absorption system shall also be free from poorly drained soils and soils or formations containing continuous channels, cracks, or fractures, unless a setback of 250 ft. to domestic water supply well or surface water is assured, or unless secondary or tertiary wastewater pre-treatment is provided prior to discharging to the system.

E. Under no circumstances shall construction of new cesspools be allowed.

~~F.OSDSs designed for surface water discharge of effluent shall provide tertiary treatment.~~

~~G.~~F. Use of treated ~~OSDS~~OSTS effluent for above-surface irrigation, as an alternative to subsurface treatment, shall require the design and operation approval by the Executive Officer of the Regional Board and/or any other applicable permitting authorities.

~~H.~~G. Depth from the bottom of the ~~leach area~~effluent dispersal system to groundwater shall be based upon percolation rate, but no less than 5 feet. Groundwater shall be defined as the highest seasonal level of the permanent water table in the soil.

~~I.~~H. Seepage pits shall be used only where distances between pit bottom and groundwater is equal to or greater than the following minimum separations, based on soil type:

1. 50 ft (Gravels – soils with over 95% by weight coarser than a No. 200 sieve and over half of the coarse fraction larger than a No. 4 sieve.)
2. 20 ft (Gravels with few fines – soils with 90% to 94% coarse fraction larger than a No. 4 sieve.)
3. 10 ft (Other)

~~J.~~I. Standard systems shall not be placed on soils having percolation rates above 60

minutes per inch (mpi) or below 5 mpi. Enhanced treatment/alternative systems offering secondary or tertiary effluent treatment prior to discharging to any subsurface sewage effluent dispersal system shall be used instead.

~~K.~~J. Siting of soil absorption fields/~~leachfields~~ effluent dispersal systems on slopes greater than 10% shall be evaluated to assess possible impacts of lateral migration of effluent. The evaluation results shall be included in the SER. No soil absorption fields/~~leachfields~~ shall be located on slopes greater than 45%. Conventional gravity trench leachfields shall not be installed on slopes greater than 30%. Soil absorption fields/~~leachfields~~ located on slopes between 30 and 45% shall be designed to address critical factors of soil depth, restrictive horizons, soil permeability, application rates and disposal methods. The soil shall have a minimum effective depth of six feet with no evidence of seasonal saturation.

~~L.~~K. Where a cumulative impact analysis has been performed as required in this Chapter, ~~OSDS~~OSTS installation or expansion shall be allowed only if all of the following are true:

1. ~~OSDS~~OSTSs will not cause the groundwater nitrate-nitrogen concentration to exceed 10.0 mg/L as N at any current or potential source of drinking water on or off-site; and
2. The maximum acceptable rise of the water table under treatment systems for short periods of time during the wet weather season, as estimated from groundwater mounding analysis, shall be as follows:

    a. All ~~OSDS~~OSTSs: Groundwater mounding beneath the ~~disposal~~ effluent dispersal system/soil absorption field shall not result in more than 50% reduction in the minimum depth to seasonably high groundwater as required in this Ordinance; and
    b. Large Systems: Notwithstanding the above, systems with design flows of 1,500 gpd or more shall have a minimum unsaturated depth of 24 inches beneath the ~~trench~~ bottom of the subsurface effluent dispersal system (for leachfield or similar systems) or beneath the natural grade (for above ground systems).

~~M.~~L. All ~~OSDS~~OSTSs on new developments and redevelopments shall comply with the following horizontal setbacks (in feet):

Min. Horizontal Setback From:	Septic Tank	~~Soil Absorption Field~~Horizontal Effluent Dispersal System	Vertical Effluent Dispersal System (Seepage Pit)
Buildings or structures	5	8	8
Property line	5	5	8
Water supply wells	~~50~~150	~~100~~150	150
Perennial streams	~~50~~100	100	100
Intermittent/ephemeral streams	~~50~~100	~~50~~100	100
Springs or seeps	50	50	100
Ocean/Lakes/Reservoirs[1]	50	100	100
Upgradient groundwater interceptor	20	20	20
Downgradient groundwater interceptor	25	50	50
Storm drainage pipe[2]	5	50	50
Fill / Cut bank[3]	10	4 x Height	4 x Height
Trees	10	N/A	10
On-site domestic water service line	5	5	5
Distribution box	N/A	5	5
Pressure public water main	10	10	10

~~N.~~M. Design flows shall be estimated by one of two methods: by number of bedrooms for the proposed dwelling or by estimating the treatment capacity of the soil treatment area/soil absorption field in gallons per day per square foot (gpd/sf). In sizing by number of bedrooms the designer shall use a minimum of 300 gallons per day per bedroom (gpd/bdrm) or 120 gpd/bdrm for low-flow fixtures. The dwelling shall be designed not to

[1] Systems that provide secondary or tertiary effluent treatment prior to discharge to the subsurface effluent dispersal systems are not required to meet these minimum horizontal setback requirements provided that no parts of the OSTS are, at any time, submerged or exposed to direct contact with these surface water bodies. In the case of beachfront developments and redevelopments, the OSTS shall, to the maximum extent feasible, be located at the farthest point from the Ocean on a parcel to avoid the construction of protective structures such as sea walls and bulkheads.

[2] Where publicly owned storm drainage pipes run across a property rendering it impossible to meet these minimum horizontal setback requirements, the effluent dispersal system is allowed to be located within 50 feet of the pipes provided that these pipes are positioned vertically higher than the bottom of the effluent dispersal system or the applicant demonstrates that the pipes are sealed so that there is no possibility for shallow groundwater to infiltrate the storm drain.

[3] Where a California Registered Geologist finds and states in writing that the stability of the fill or cut bank will not be compromised by a shorter horizontal separation and that a shorter horizontal separation will not result in sewage effluent daylighting, a shorter horizontal setback for the effluent dispersal system can be used per the said geologist's recommendation.

exceed the maximum number of fixture units or number of bedrooms than can be supported by the estimated maximum daily flow. For commercial developments, the design flows shall be based on the estimated waste/sewage flow rates for the various commercial uses identified in Table K-3 of the City of Malibu's Uniform Plumbing Code, 1997 Edition, as amended in 2000.

~~O.~~N. All systems shall comply with the following application rates according to the different soil textures:

Soil Texture	Structure	Application Rate (gpd/sf)
Gravelly coarse sand & coarser	Loose or cemented	0.0
Clay, sandy or silty clay silt loam	Weak or massive Massive	0.0 0.0
Sandy clay loam, clay loam or silty clay loam	Massive	0.0
Sandy clay, clay or silty clay	Moderate to strong	0.2
Sandy clay loam, clay loam or silty clay loam	Weak	0.2
Sandy clay loam, clay loam or silty clay loam	Moderate to strong	0.4
Sandy loam, loam or silt loam	Weak	0.4
Sandy loam, loam or silt loam	Moderate to strong	0.6
Fine, very fine, loamy fine and very loamy fine sand	Not Applicable	0.8
Coarse, single grain sand	Not Applicable	1.2

~~P.~~O. Septic tanks shall be designed to provide a minimum retention time of at least 24 hours, with one-half to two-thirds of the tank volume reserved for sludge and scum accumulation. The appropriate septic tank capacity shall conform to requirements contained in Table K-2 of the City of Malibu's Uniform Plumbing Code, 1997 Edition, as amended in 2000.

P. There shall be a minimum of 100% reserve area set aside for replacement of the soil absorption field. The backup field shall be capable of accommodating the entire wastewater flow.

~~R.~~Q. No soil absorption fields/~~leachfields~~ subsurface effluent dispersal systems shall be allowed beneath nonporous paving or ~~other nonporous~~ surface covering.

~~S.~~R. Soils in the designated soil absorption field shall not be compacted during construction and post construction of new developments and redevelopments. Construction vehicles shall be restricted from entering the designated soil absorption field area. Septic owners shall not place buildings, livestock, impervious materials, equipment, parking areas, or driveways over the soil absorption area. Surface and subsurface soils in these areas shall not be removed, ripped, contoured or compacted.

18.8. ALTERNATIVE SYSTEMS

A. Alternative systems are defined as any system other than a standard system. They shall be used on parcels where site and soil conditions will not support a standard system or where increased treatment is needed. They are generally characterized as having increased design and performance criteria.

B. Alternative systems shall be designed by a California Registered Geologist, California Registered Geotechnical Engineer, California Registered Civil Engineer or a California Registered Environmental Health Specialist.

C. Alternative systems shall be reviewed on a case-by-case basis. Their use shall only be considered when combined with a reasonable testing and monitoring protocol subject to approval by the Executive Officer of the Regional Board. Alternative systems shall be tested and evaluated for a minimum of three years. The owner of the system shall be responsible for the performance, operation and evaluation of the system for the first five years. Thereafter, the owner shall assume responsibility for repair and/or replacement should the system fail to perform in accordance with applicable requirements contained in the operating permit, this LCP and any other pertinent regulations.

D. Package wastewater treatment plants shall only be used on parcels where site and soil conditions will not support a standard system and other alternative systems or where it can be demonstrated that a package treatment plant would have fewer adverse impacts to coastal resources, water quality or geology stability than traditional or other alternative systems. Package treatment plants shall be designed by a California Registered Civil Engineer~~ or a California Registered Environmental Health Specialist~~.

E. Package wastewater treatment plants shall be reviewed on a case-by-case basis. Their use shall only be considered when combined with a reasonable testing and monitoring protocol subject to approval by the Executive Officer of the Regional Board. Package wastewater treatment plants shall be tested and evaluated for a minimum of three years. The owner of the system shall be responsible for the performance, operation and evaluation of the system for the first five years. Thereafter, the owner shall obtain a Renewable Operating Permit from the City and assume responsibility for repair and/or replacement should the system fail to perform in accordance with applicable requirements contained in the operating permit, this LCP and any other pertinent regulations.

F. The construction of public package wastewater treatment facilities may be permitted where it is demonstrated to be the preferable long-term wastewater management solution, where it is designed to not exceed the capacity for growth allowed in the LCP, and where it can be constructed consistent with all requirements of this LCP and all applicable regulations.

18.9. MAINTENANCE, OPERATION AND MONITORING

A. Owners and/or operators of new, expanded, or modified septic systems shall submit monitoring and evaluation reports to the City with results of inspection and maintenance work performed every three years, or according to any similar requirements in the operating permit, whichever is more frequent. The septic owners and/or operators shall be responsible for proposing and undertaking all measures necessary to ensure the continuing proper operation and adequate capacity of the septic tank and leach line systems. The first report shall be submitted, at the latest, three years from the date of issuance of the operating permit.

B. The City should have a continuing public education program to provide homeowners with onsite system operation and maintenance guidelines. Information can be distributed by mailing with water bills or another method on an annual basis. Homeowners shall be informed of the routine ~~OSDS~~OSTS inspection and maintenance needs and notified that they should periodically check their septic tank for pumping need. Homeowners shall also be notified of other problems indicative of system failure. Some examples include wet spots in leachfield area, lush grass growths, slowly draining wastewater, and sewage odors.

C. Permit conditions shall be imposed to ensure that all new, expanded, or modified ~~OSDS~~OSTSs subject to a CDP issued pursuant to this LCP are maintained, operated and monitored in accordance with the following requirements:

1. Septic tanks shall be inspected every two to five years to determine the need for pumping. If garbage grinders or dishwashers discharge into the septic tank, inspection should occur at least every two years.
2. Septic tanks shall be pumped when the clear liquid zone separation in the tank is less than 2/3 of the total depth in the tank.
3. Leachfields shall be alternated when leachfield inspection pipes reveal a high water level.
4. ~~OSDS~~OSTSs shall be operated and maintained to prevent the surfacing of effluent. In the event of surfacing effluent, the owner shall minimize use or cease operation of the system until it is repaired.
5. No buildings, livestock, impervious materials, equipment, parking areas, or driveways shall be placed over the soil treatment areas/soil absorption fields. Surface and subsurface soils in the treatment areas shall not be

removed, ripped, contoured or compacted. The treatment areas may be tilled with a light duty, hand operated garden tiller (no tractor operated implements), hand graded and covered with lawn or non-invasive plants. The treatment areas may be irrigated with portable sprinklers or landscape irrigation. Flood irrigation and surface drainage shall not encroach on or impact components of the ~~OSDS~~OSTS.

6. The septic owner and/or operator shall control the wastewater discharge to the system within the design quantity and strength parameters.
7. The septic owner and/or operator shall operate and maintain their system in conformance with the conditions prescribed in the operating permit and the designer and installer's recommendations.

D. Septic owners and/or operators of new, expanded, or modified ~~OSDS~~OSTSs subject to a CDP issued pursuant to this LCP shall use one or more of the following management methods to monitor and maintain their systems:

1. For a standard ~~OSDS~~OSTS with a Standard Operating Permit, owners may manage their own system and provide to the City routine monitoring and evaluation reports per requirements set forth by the City.
2. Recording the requirement for an on-going service contract on the property deed and implementing the requirement.
3. Obtaining a Renewable Operating Permit with the requirement for maintaining a service contract by employing a qualified public or private entity to provide monitoring and maintenance of ~~OSDS~~OSTSs.
4. Obtaining the services of a management entity (e.g., public utility districts, water & sewer districts, special-use districts, and corporations and home-owner associations with demonstrated capacity to assure long-term management) to provide maintenance, operation and monitoring assurance.

E. Permit conditions shall be imposed to require that: prospective buyers of property with new, expanded, or modified ~~OSDS~~OSTSs authorized in a CDP issued pursuant to this LCP shall be informed of any enforcement action affecting the property; the seller shall have his/her ~~OSDS~~OSTS(s) inspected at the time of property sale prior to close of escrow; certified staff or representative officer of the City, or a qualified professional, at the expense of the property owner, shall prepare an inspection report; and the report shall be presented to the buyer and City. The report shall contain the following information:

1. The type, configuration and condition of the septic tank, the primary soil treatment system (and reserve treatment area if known) and any enhanced treatment components and treating devices.
2. The operation status of the system as observed in the field or taken from recent monitoring reports on file with the City.
3. Pumping need of the septic tank(s).

4. Any observable problems or needed repairs requiring immediate attention.
5. An estimate of remaining usable area on the parcel to support repair or expansion of the existing soil absorption field if no known expansion site has been designated for the system.

18.10. WATER SYSTEMS/WASTEWATER MANAGEMENT

A. The expansion of existing community sewer facilities (package wastewater treatment plants, dedicated sewer service systems, existing trunk lines, etc.) in existing developed areas shall be limited in capacity to the maximum level of development allowed by this LCP.

B. The formation of On-site Wastewater Disposal Zones pursuant to Section 6950 et seq. of the California Health and Safety Code should be investigated and considered for use as a method to protect water quality in areas where site-specific soil and groundwater conditions may adversely affect the performance of ~~OSDS~~OSTSs. Such areas of special concern may include the Civic Center area, the Point Dume area, the immediate coastal strip and any areas known to have poor percolation rates, a high water table or known to be prone to geologic hazards. These zones could be used to establish site-specific design criteria, inspection and maintenance frequencies, monitoring protocols, performance standards and other water quality protection practices.

C. A City-wide public sewer system may be designed and proposed~~, in consultation with the Departments of Health Services and Public Works~~ where it is found to be the least environmentally damaging wastewater treatment alternative, where it is designed to serve a capacity of development which does not exceed the amount allowed by the LCP, and where it is found to be consistent with all other policies of the LCP. In particular, the proposed method of effluent disposal shall be required to be consistent with policies requiring the protection of marine resources, riparian habitat and water quality.

D. Any proposed sewer system shall be submitted to and approved by the Coastal Commission as an LCP amendment prior to issuance of local permits and construction. Any assessment district formed to finance construction of a public sewer system shall be considered a public works project pursuant to PRC Section 30114~~-~~.

E. Additional water storage facilities and/or new pipelines may be allowed in the City to replace deteriorated or undersized facilities and/or to ensure an adequate source of domestic and fire protection water supply during outages or pipeline interruptions provided such facilities are designed and limited to accommodate existing or planned development allowed by the Land Use Plan and are consistent with all applicable policies of the LCP.

CHAPTER 19—LOCAL COASTAL PROGRAM AMENDMENTS

19.1 PURPOSE AND INTENT

The City Council may amend the Local Coastal Land Use Plan, the Official Zoning Map, or the text of Local Coastal Implementing Ordinances when required by public necessity, convenience and general welfare or protection of coastal resources, or where required by specific policies in the Land Use Plan by following the procedure specified in this Chapter. For purposes of this Chapter, amendments of a certified Local Coastal Program includes, but is not limited to, any action by the City that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel, except for temporary uses as defined in Chapter 2 of the Malibu LIP (Definitions). Such amendments will not take effect until effectively certified by the Coastal Commission.

19.2 APPLICATION.

19.2.1 Proposals.

A. Initiation.

An amendment to the Official Zoning Map, or to the LCP Land Use Plan or Implementing Ordinances, may be initiated by:

1. Resolution of the City Council; or by
2. Resolution of intention of the Planning Commission;
3. Property owners, their duly authorized agents, by filing a complete and verified application with the Planning Commission for amendments to the LCP involving their property.
4. Any person authorized to undertake a public works project or proposing an energy facility development may request to amend the local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the Coastal Commission for certification.

B. Contents of Amendment Applications.

The amendment application shall include:

1. Except for amendments initiated under Section 19.2.1 (A)(3) or (4) of the Malibu LIP, a summary of the measure taken to provide the public and affected agencies and districts maximum opportunity to participate in the LCP amendment process, pursuant to Section 19.3 of the Malibu LIP; a listing of members of the public,

organizations, and agencies appearing at any hearing or contacted for comment on the LCP; and copies or summaries of significant comments received and of the City's response to the comments.

2. All policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. Written documents should be readily reproducible. An amendment to a land use plan shall include, where applicable, a readily identifiable public access component as set forth in California Code of Regulations Section 13512.
3. The application shall be accompanied by a map drawn to scale showing the location of the property concerned and the location of all highways, streets and alleys, public easements or Offers to Dedicate Public Easements and all lots and parcels of land within a distance of five hundred feet from the exterior boundaries of the property involved. The accuracy of such map shall be the responsibility of the applicant.
4. A discussion of the amendment's relationship to and effect on the other sections of the certified LCP.
5. An analysis that meets the requirements of California Code of Regulations Section 13511 that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act.
6. Any environmental review documents, pursuant to CEQA, required for all or any portion of the amendment to the LCP.
7. An indication of the zoning measures or implementation that will be used to carry out the amendment to the land use plan (unless submitted at the same time as the amendment to the land use plan).

Any application made pursuant to subsection A (3) of this section shall be in writing and signed and verified by the owner of the land involved or by his authorized agent. If a person other than the owner makes the application, except as provided in subsection A (4), written authorization to act on behalf of the owner shall be submitted with such application. The application shall show or be accompanied by the legal description of the property for which the amendment is requested, and the street address or addresses, if any, or other common description of the premises.

19.2.2 Review of Filing.

An amendment to a certified LCP together with all necessary attachments and exhibits shall be deemed "submitted" after having been received and found by the Planning Director to be in proper order and legally adequate to comply with Section 19.2.1 of the Malibu LIP. The Planning Director shall cause a date of receipt stamp to be affixed to all LCP submissions on the day they are so received and a stamp of the date of submittal on the day they are found to be properly submitted.

19.3 LCP Amendment Hearing and Notice

Upon receipt in proper form of an LCP amendment application, or upon receipt of a Resolution Of Intention from either the Planning Commission or City Council, the Planning Commission shall set a public hearing for a time no earlier than 6 weeks from the filing of the amendment proposal.

19.3.1 Notice of Document Availability.

Notice of the availability of review drafts of the proposed LCP amendment materials and transmittal of said documents pursuant to noticing requirements in (a) and (b) of this section shall be made as soon as such drafts are available, but at a minimum at least six (6) weeks prior to any final action on the documents by the City. Review drafts shall also be made readily available for public perusal in local libraries, in the City administrative offices, and at the Coastal Commission District office.

A. At a minimum, all notices for public review sessions, availability of review drafts, studies, or other relevant documents or actions pertaining to the proposed amendment of the LCP shall be mailed to:

1. Any member of the public who has so requested;
2. Each local government contiguous with the area that is the subject of the Amendment;
3. Local governments, special districts, or port or harbor districts that could be directly affected by or whose development plans should be considered in the Amendment;
4. Regional, state and federal agencies that may have an interest in or be affected by the amendment;
5. Local libraries and media;
6. The Coastal Commission.

Any reference in this subchapter to "interested parties" or "public agency" shall include the aforementioned persons or groups.

B. Proposed LCP amendment documents including review drafts shall be made available at no cost to relevant state agencies and to other interested persons and agencies upon request.

19.3.2 Notice Of Public Hearings.

Notice of public hearings shall be given at least ten (10) days prior to the hearing. Such notice shall state the nature of the proposed change, location of the affected area, and the time(s) and place(s) of the scheduled hearing(s) and for accepting comments on the proposed amendment.

A. For Amendments to the LCP Land Use Plan or text of the Implementing Ordinances, the notice shall be provided by mail to parties identified in section 19.3.1(A) of the Malibu LIP above and one of the following additional procedures:

1. By placing a display advertisement of at least one-fourth page in a newspaper having the greatest circulation within the area affected by the proposed action; or

2. By placing an insert within any generalized mailing sent by the City to property owners and tenants in the area affected by the proposed action.

B. For Amendments to the LCP Zoning Map that propose to reclassify property, the notice shall be provided by mail to parties identified in section (a) above and by one of the following additional procedures:

1. Notice for the hearing shall be mailed, post prepaid, to all owners and tenants of property within a radius of five hundred (500) feet of the exterior boundaries of the property or properties involved in the amendments, excluding roads. In addition, a legal advertisement shall be placed in the newspaper of greatest circulation within the area affected by the proposed action.

2. In the event the number of owners to whom notice would be sent pursuant to (1) above is greater than one thousand (1,000), notice may at the discretion of the City be given at least ten (10) days prior to the hearing by either of the alternate procedures explained in Section (A) above.

C. Following a public hearing, the Planning Commission shall recommend approval, modification or denial of the proposed amendment to the City Council. The recommendation shall be by resolution carried by the affirmative vote of not less than the majority of the entire Commission. It shall be transmitted to the City Council within forty (40) days after the rendering of a decision. Such decision is final and conclusive and may not be reconsidered except upon referral by the City Council.

19.4 COUNCIL HEARING AND NOTICE

After receipt of the Planning Commission's recommendation, the City Council shall hold a public hearing and shall give notice in the same manner as required for the Planning Commission in Section 19.3 of the Malibu LIP above.

19.5 COUNCIL DECISION.

After the required hearing, the City Council shall take either or both of the following

actions on the Amendment, as applicable:

A. For amendments to the Local Coastal Land Use Plan, by resolution, approve, modify or deny the proposed amendments;

B. For amendments to the Local Coastal Implementing Ordinances or Zoning Map, by adopting an ordinance approving or modifying the amendment or denying the proposal by adopting a resolution of denial.

19.6 REQUIRED FINDINGS.

Before approval of any LCP Amendment, the City Council must make the finding that such amendment meets the requirements of, and is in conformity with, the LCP and the policies of Chapter 3 the California Coastal Act.

19.7 CERTIFICATION OF LOCAL COASTAL PROGRAM AMENDMENTS.

19.7.1 Submittal to Coastal Commission.

Any amendment approved by the City shall be submitted to the Coastal Commission in accordance with Sections 30510, 30512, 30513 and 30514 of the Public Resources Code and Sections13551 and 13552 of the California Code of Regulations.

19.7.2 Effective Certification.

An amendment to the Commission-certified Local Coastal Program shall not become effective after City Council adoption until the amendment is submitted pursuant to the requirements of Section 13551 et seq. of the California Code of Regulations and is effectively certified by the California Coastal Commission pursuant to Chapter 6, Article 2, of the California Coastal Act.

19.7.3 Amendments Pursuant to PRC 30515.

LCP Amendments approved by the Coastal Commission pursuant to Public Resources Code Section 30515 shall be effectively certified upon final action by the Coastal Commission.

TABLE B - PERMITTED USES

KEY TO TABLE (In addition to a coastal development permit, the following permits are required.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
•	Not permitted (Prohibited)

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Single family residential	P	P	P	P	•	•	•	•	•	•	•	•	•	A	•	•
Manufactured homes	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments)	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•
Second units	A[1]	A[1]	A[1]	A[1]	•	•	•	•	•	•	•	•	•	•	•	•
Mobile home parks	•	•	•	•	P	•	•	•	•	•	•	•	•	•	•	•
Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses)	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•
Mobile home as residence during construction	•	•	•	MCUP	•	•	•	•	•	•	•	•	•	•	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Accessory uses (guest units, garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses)	A[1]	A[1]	A[1]	A[1]	•	•	•	•	•	•	•	•	•	•	•	•
Residential care facilities (serving 6 or fewer persons)	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•	•
Small family day care (serving 6 or fewer persons)	A	A	A	•	•	•	•	•	•	•	•	•	•	•	•	•
Large family day care (serving 7 to 12 persons)	LFDC	LFDC	LFDC	•	•	•	•	•	•	•	•	•	•	•	•	•
Home occupations	P/ MCUP[2]	P/ MCUP[2]	P/ MCUP[2]	P/ MCUP[2]	•	•	•	•	•	•	•	•	•	•	•	•
AGRICULTURAL/ANIMAL-RELATED																
Domestic animals kept as pets or for personal use	A	A	A	A	A	•	•	•	•	•	•	•	•	•	•	•
Equestrian and hiking trails (public and private)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Equestrian riding and training facilities and activities including boarding of horses and domestic animals, tournaments, shows and contests (including accessory uses such as club house with food and beverage service, pro shop, tack shop, riding rings, boarding/training/show facilities, barns, parking lots, sports courts, and living accommodations for members, their guests, participants, employees and persons required for the operation and maintenance of such facilities)	•	•	•	•	•	CUP	•	•	CUP	•	•	CUP	•	•	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Grazing of cattle, horses, sheep or goats, including the supplemental feeding of such animals, provided that such grazing is not a part of nor conducted in conjunction with any dairy, livestock feed yard, livestock sales yard or commercial riding academy located on the same premises	P[3]	•	•	•	•	CUP[3]	•	•	•	•	•	•	•	•	•	•
Raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals	P	A	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Boarding of horses as a commercial use	MCUP[3]	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Raising of hogs or pigs	P	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature	P	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Greenhouses	P	•	CUP	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Raising of crops (field, tree, bush, berry row, nursery stock, etc.) provided no retail sale from the premises	A	A	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•
Wildlife preserves	•	•	•	•	•	P	•	•	•	•	•	•	P	•	•	•
RETAIL USES																
Book stores	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Convenience stores	•	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Food markets	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Hardware, garden supply stores	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Liquor stores	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Plant nurseries	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Prescription pharmacies	•	•	•	•	•	•	A	P	P	P	P	P	•	•	•	•
Stationary supplies	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Visitor-oriented goods such as recreational equipment and clothing, souvenirs, local arts/crafts, and similar uses	•	•	•	•	•	•	•	MCUP	•	P	P	•	•	•	•	•
GENERAL SERVICES																
Bakeries (no on-site seating)	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Barber shops, beauty salons	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Laundry, dry cleaners	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Miscellaneous services including travel agencies, photocopy services, photographic processing and supplies, mailing services, appliance repair, and similar uses	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
OFFICE/HEALTH USES																
Banks, financial institutions	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Health care facilities	•	•	•	•	•	•	•	•	CUP	CUP[4]	CUP[4]	CUP	•	CUP	•	•
Medical, dental, physical therapy, and veterinary clinics and offices	•	•	•	•	•	•	P	P[5]	P[5]	P[4,5]	P[4,5]	P[5]	•	•	•	•
Professional offices	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•	•
DINING, DRINKING, AND ENTERTAINMENT																
Amphitheatre	•	•	•	•	•	•	•	•	•	P	P	•	•	•	•	•
Bars	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Live entertainment	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Movie theaters	•	•	•	•	•	•	•	•	•	P	P	CUP	•	•	•	•
Refreshment stands, ice cream stands, and other fixed location outdoor food vending stands	•	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Restaurants	•	•	•	•	•	•	•	CUP[6]	CUP[7]	CUP[7]	CUP[7]	CUP[7]	•	•	•	•
AUTOMOTIVE RELATED USES																
Vehicle washing/detailing	•	•	•	•	•	•	•	CUP[8]	CUP[8]			CUP	•	•	•	•
Service stations (without convenience market)	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Towing and automobile storage	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
RECREATION AND LEISURE																
Camping	•	•	•	•	•	MCUP	•	•	•	•	•	•	P	•	•	•
Community stage theaters	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Cultural and artistic uses (such as museums, galleries, performing arts venues)	•	•	•	•	•	CUP	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Dance studios	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Golf driving ranges	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	P	•
Health clubs	•	•	•	•	•	•	•	P	P	P	P	P	•	•	P	•
Hotels	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•	•
Motels, bed and breakfast inns	•	•	•	•	•	•	•	•	•	CUP	CUP	•	•	•	•	•
Parks, beaches, and playgrounds	CUP	CUP	CUP	CUP	•	P	•	CUP	CUP	CUP	CUP	CUP	P	•	P	•
Public Beach Accessway	P	P	P	P	P			P	P	P	P	P	P			
Recreation facilities (swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts and similar uses)	•	•	•	•	•	A	•	•	CUP	CUP[9]	CUP[9]	CUP	P	•	P	•
Recreation facilities (neighborhood – for use by surrounding residents and operated by a non-profit corporation or neighborhood association for non-commercial purposes)	•	CUP	CUP	CUP	•	•	•	CUP	CUP	•	•	CUP	•	•	•	•
Recreational vehicle parks	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	P
Sports courts (lighted)	•	•	•	•	•	•	•	CUP	CUP	CUP[9]	CUP[9]	CUP	•	•	•	•
PUBLIC, QUASI-PUBLIC, OR NON-PROFIT USES																
Charitable, philanthropic activities	•	•	•	•	•	•	•	P[10]	P[10]	P[10]	P[10]	P[10]	•	•	•	•
Churches, temples, and other places of worship	•	•	CUP	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	CUP	•	•
Community centers	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Day care facilities, nursery schools	CUP	CUP	CUP	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Educational (non-profit) activities	•	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•
Educational institutions (public or private)	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Emergency communication and service facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP[4]	CUP[4]	CUP	CUP	CUP	CUP	CUP
Helipad sites	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Government facilities	•	•	CUP	•	•	•	•	P	P	P[4]	P[4]	P	•	CUP	•	•
Libraries, museums	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Maintenance yards	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Public utility facilities	CUP	CUP	CUP	CUP	•	•	•	CUP	CUP	CUP[4]	CUP[4]	CUP	•	CUP	•	•
Research institutions	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Residential care facilities for the elderly	•	•	•	•	•	•	•	•	CUP	CUP	CUP[4]	CUP[4]	•	•	•	•
Wastewater storage and hauling	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Wireless telecommunications antennae and facilities	WTF	•	•	•	•	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF
CONSTRUCTION/LIGHT INDUSTRIAL USES																
Construction services (neighborhood-serving)	•	•	•	•	•	•	•	•	CUP	•	•	CUP	•	•	•	•
Manufacturing, processing, or treatment of products	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Masonry and building supplies	•	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Metal welding	•	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Research and development, testing facilities	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Self-storage	•	•	•	•	•	•	•	CUP	CUP	•	•	CUP	•	•	•	•
Wholesale, storage, and distribution	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
OTHER USES																
Uses permitted by right that operate between the hours of 11:00 p.m. to 7:00 a.m.	•	•	•	•	•	•	MCUP	MCUP	•	•	•	•	•	•	•	•

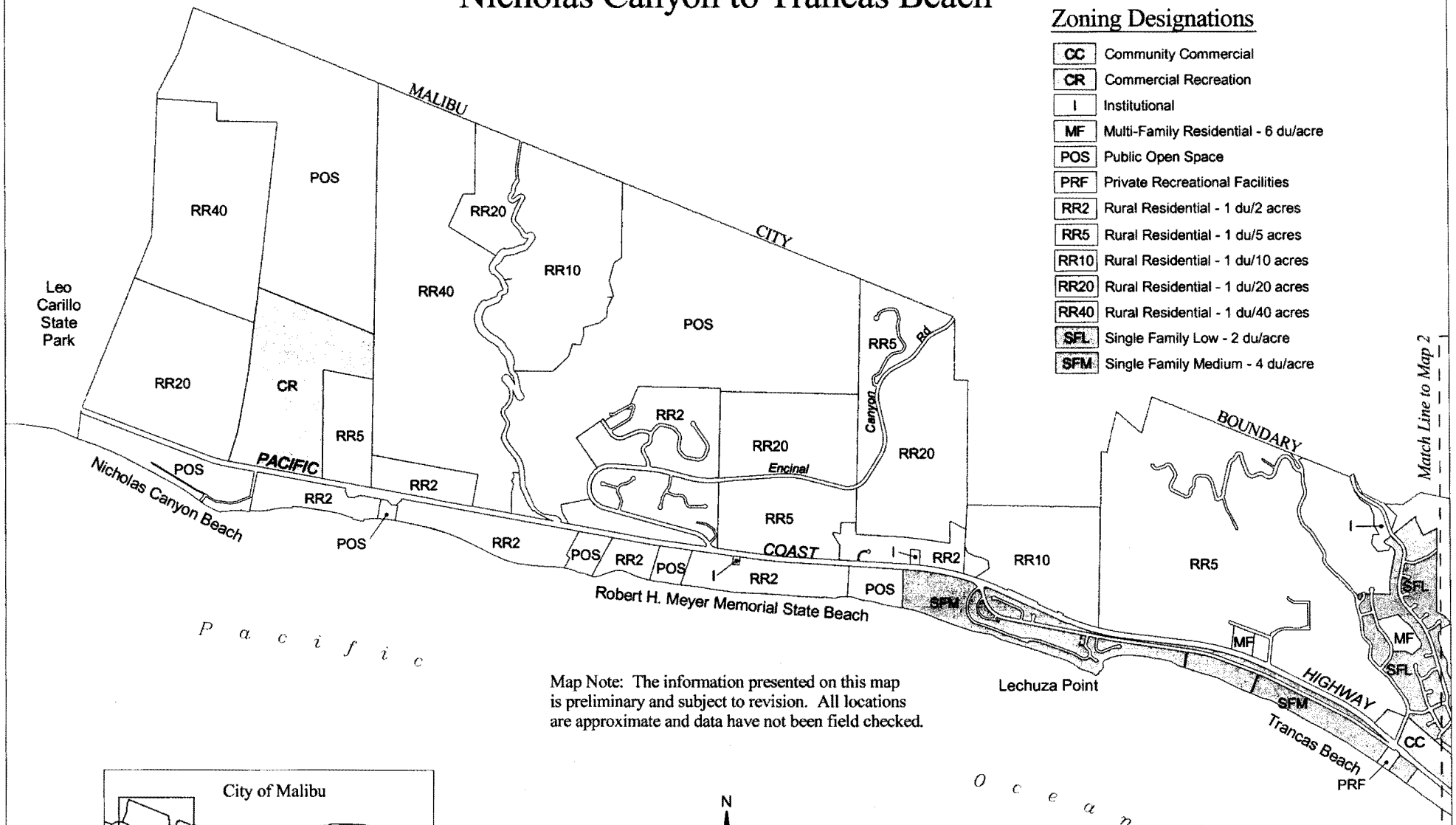
USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Mixed use (commercial and residential)	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•

Notes

1. Subject to Residential Development Standards (Section 3.6)
2. Subject to Home Occupations Standards [(Section 3.6(O)]
3. Use Prohibited in Environmentally Sensitive Habitat Areas
4. This commercial use may be permitted only if at least 50% of the total floor area of the project is devoted to visitor serving commercial use
5. CUP for veterinary hospitals
6. Maximum interior occupancy of 125 persons
7. If exceeding interior occupancy of 125 persons
8. By hand only
9. Use permitted only if available to general public
10. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.

Local Coastal Program - City of Malibu

Zoning Map 1: Nicholas Canyon to Trancas Beach



California Coastal Commission
Technical Services Division

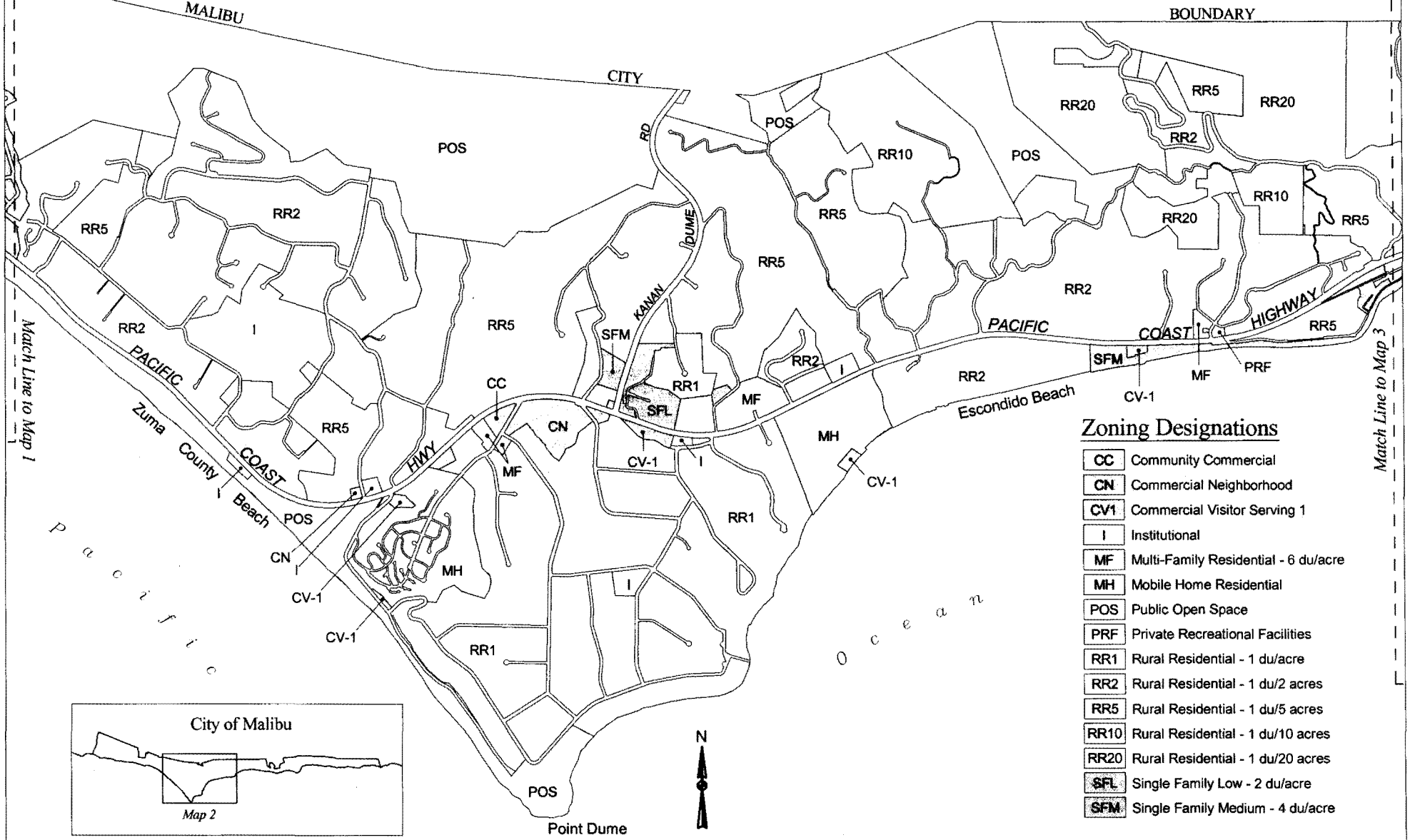
Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

Local Coastal Program - City of Malibu

Zoning Map 2: Zuma Beach to Escondido Beach

Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.



Zoning Designations

CC	Community Commercial
CN	Commercial Neighborhood
CV1	Commercial Visitor Serving 1
I	Institutional
MF	Multi-Family Residential - 6 du/acre
MH	Mobile Home Residential
POS	Public Open Space
PRF	Private Recreational Facilities
RR1	Rural Residential - 1 du/acre
RR2	Rural Residential - 1 du/2 acres
RR5	Rural Residential - 1 du/5 acres
RR10	Rural Residential - 1 du/10 acres
RR20	Rural Residential - 1 du/20 acres
SFL	Single Family Low - 2 du/acre
SFM	Single Family Medium - 4 du/acre

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

California Coastal Commission
Technical Services Division

DSM, Revised 8/02

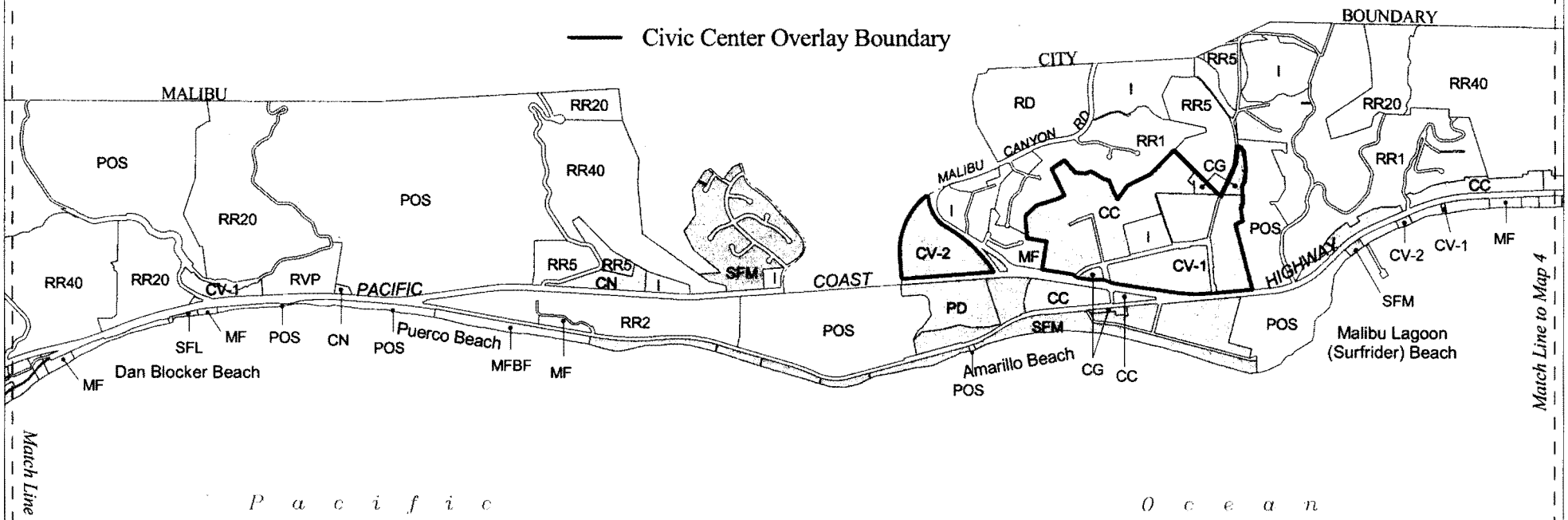
Local Coastal Program - City of Malibu

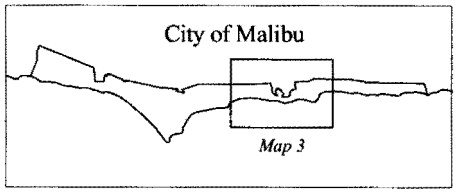
Zoning Map 3: Dan Blocker to Malibu Pier

Land Use Designations

- CC Community Commercial
- CG Commercial General
- CN Commercial Neighborhood
- CV1 Commercial Visitor Serving 1
- CV2 Commercial Visitor Serving 2
- I Institutional
- PD Planned Development
- MF Multi-Family Residential - 6 du/acre
- MFBF Multi-Family Beach Front
- POS Public Open Space
- RD Industrial/R&D
- RVP Recreational Vehical Park
- RR1 Rural Residential - 1 du/acre
- RR2 Rural Residential - 1 du/2 acres
- RR5 Rural Residential - 1 du/5 acres
- RR20 Rural Residential - 1 du/20 acres
- RR40 Rural Residential - 1 du/40 acres
- SFL Single Family Low - 2 du/acre
- SFM Single Family Medium - 4 du/acre

Civic Center Overlay Boundary





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California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

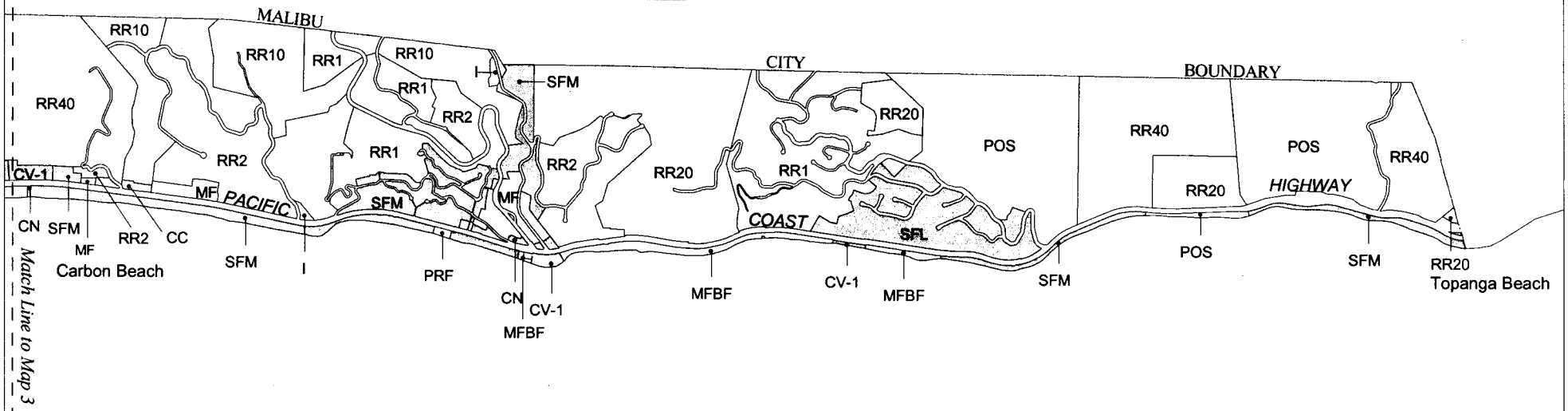
DSM, Revised 8/02

Local Coastal Program - City of Malibu

Zoning Map 4:
Carbon Beach to Topanga Beach

Zoning Designations

CC	Community Commercial
CN	Commercial Neighborhood
CV1	Commercial Visitor Serving 1
I	Institutional
MF	Multi-Family Residential - 6 du/acre
MFBF	Multi-Family Beach Front
POS	Public Open Space
PRF	Private Recreational Facilities
RR1	Rural Residential - 1 du/acre
RR2	Rural Residential - 1 du/2 acres
RR5	Rural Residential - 1 du/5 acres
RR10	Rural Residential - 1 du/10 acres
RR20	Rural Residential - 1 du/20 acres
RR40	Rural Residential - 1 du/40 acres
SFL	Single Family Low - 2 du/acre
SFM	Single Family Medium - 4 du/acre



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Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

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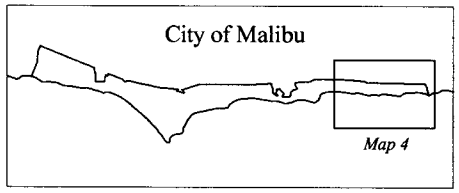

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California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

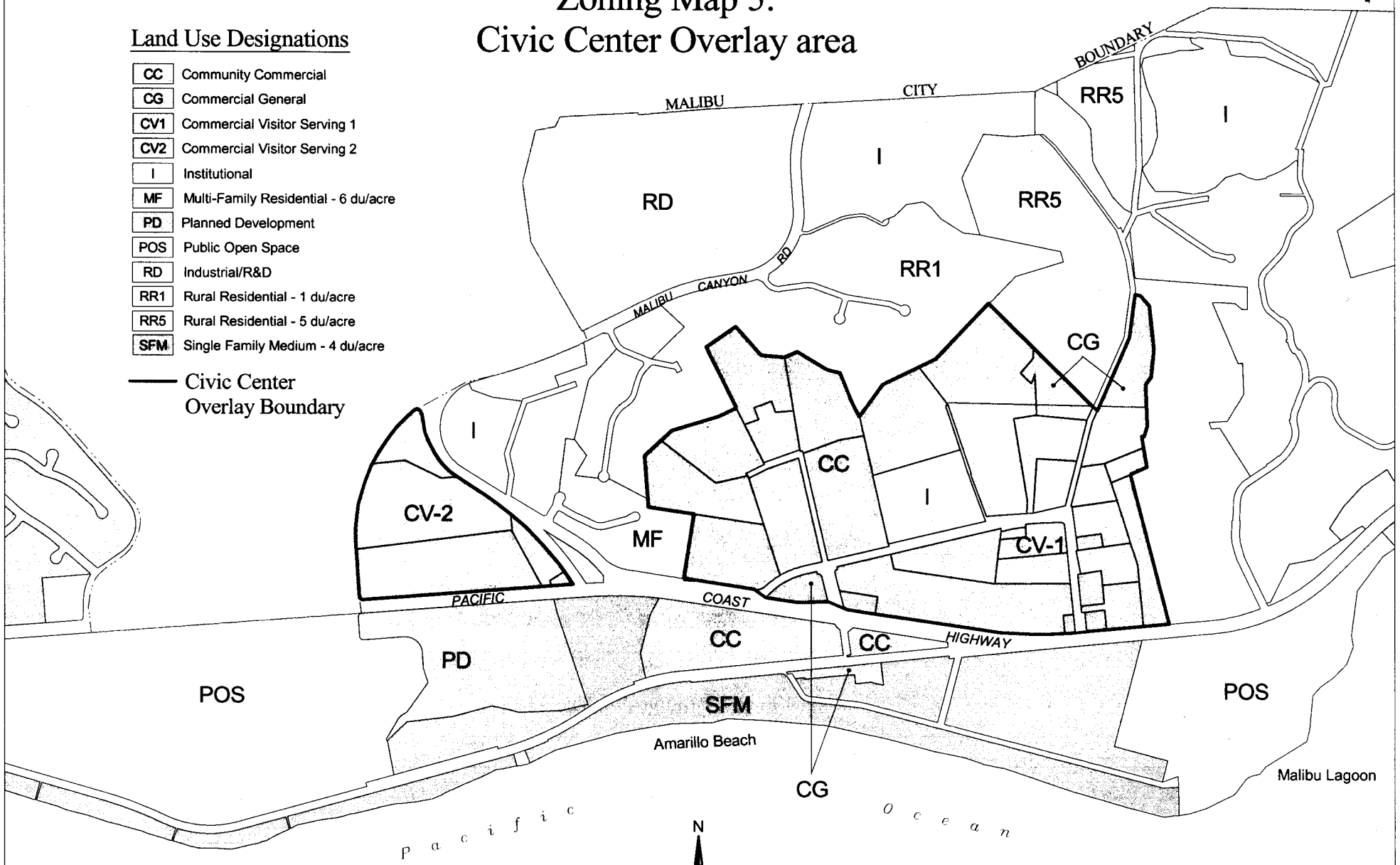
Local Coastal Program - City of Malibu

Zoning Map 5: Civic Center Overlay area

Land Use Designations

- CC Community Commercial
- CG Commercial General
- CV1 Commercial Visitor Serving 1
- CV2 Commercial Visitor Serving 2
- I Institutional
- MF Multi-Family Residential - 6 du/acre
- PD Planned Development
- POS Public Open Space
- RD Industrial/R&D
- RR1 Rural Residential - 1 du/acre
- RR5 Rural Residential - 5 du/acre
- SFM Single Family Medium - 4 du/acre

Civic Center Overlay Boundary



Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

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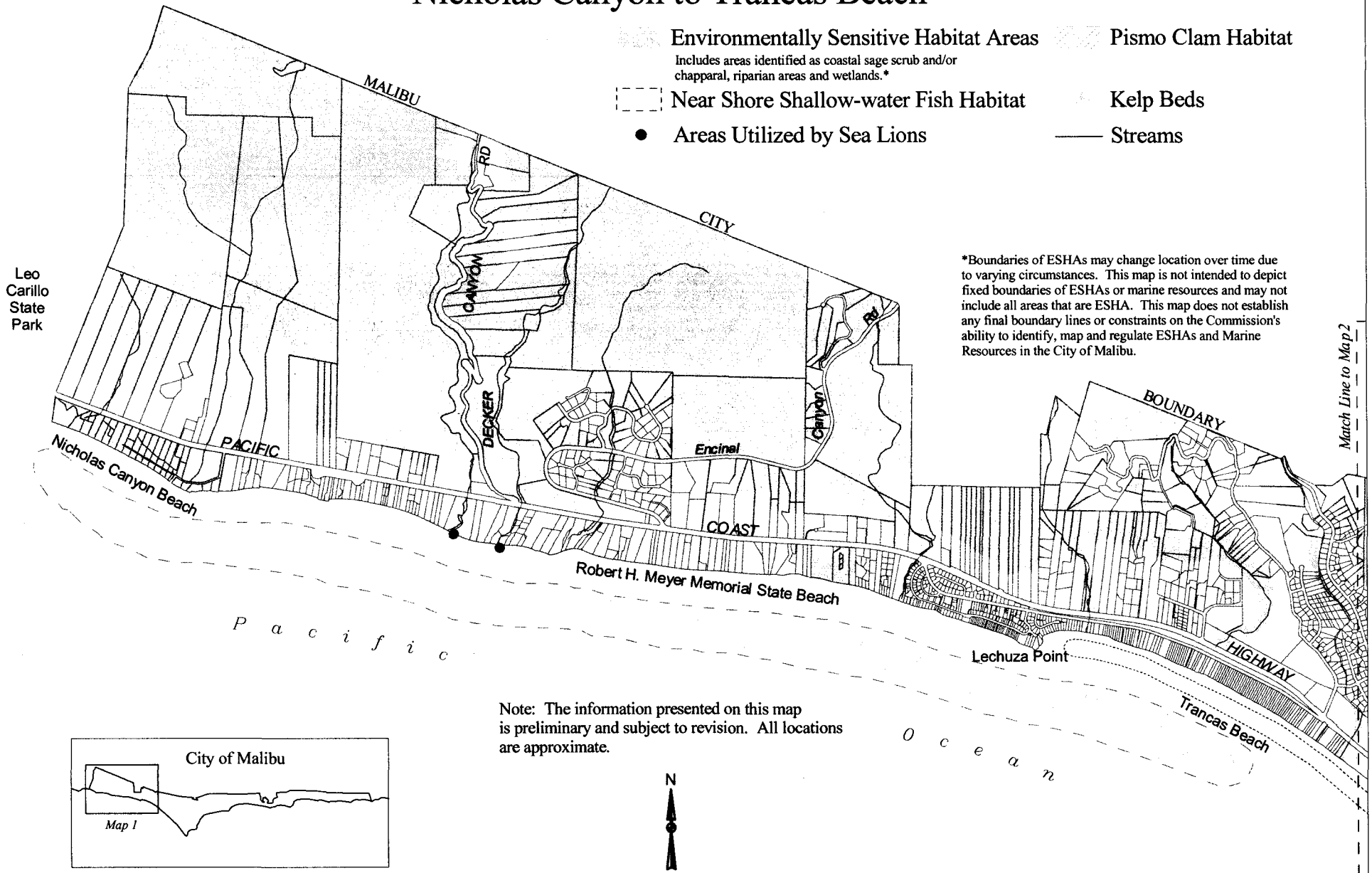
California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02

Local Coastal Program - City of Malibu

ESHA Overlay Map 1: Nicholas Canyon to Trancas Beach



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

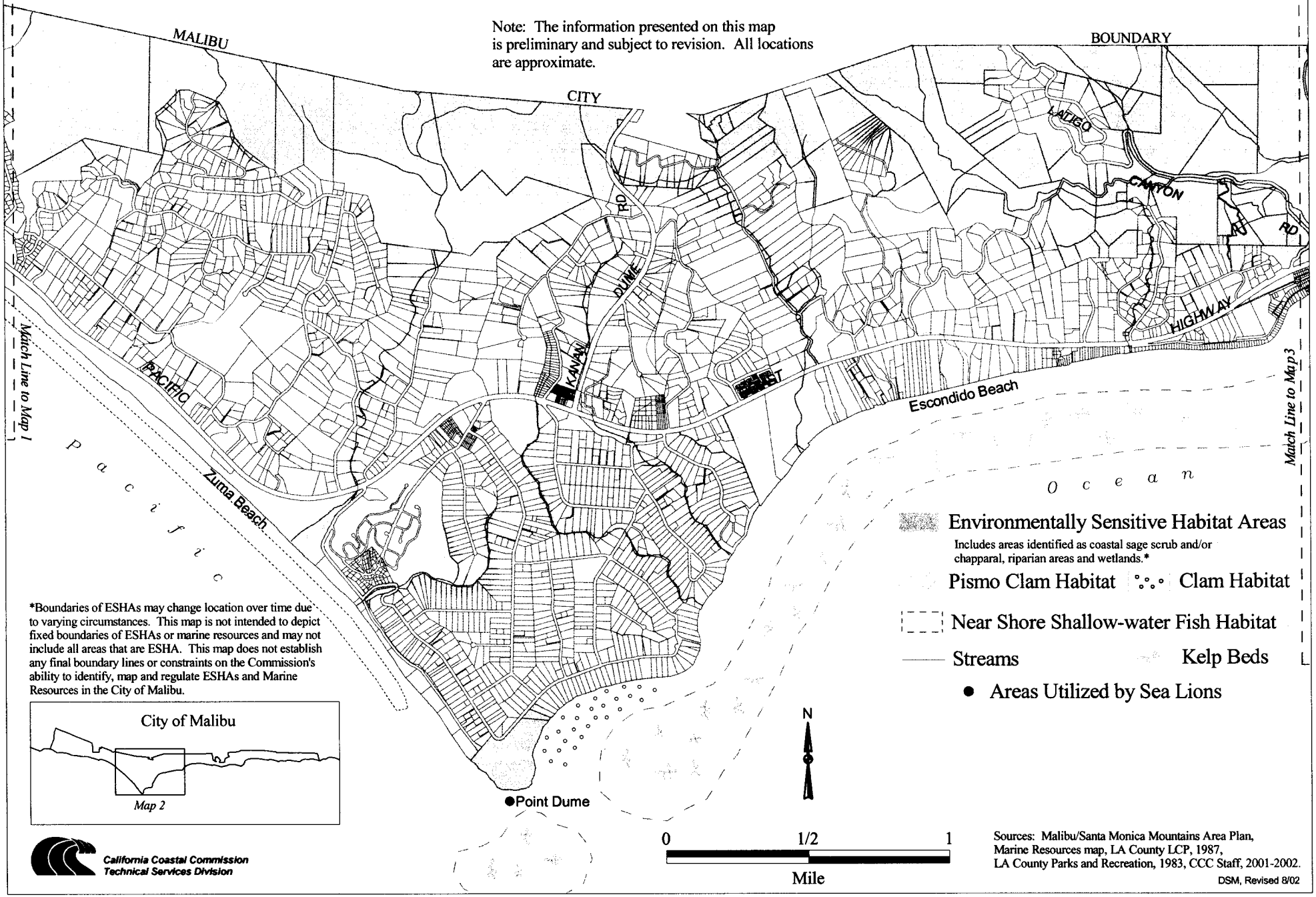
California Coastal Commission
Technical Services Division

DSM, Revised 8/02

Local Coastal Program - City of Malibu

ESHA Overlay Map 2: Zuma Beach to Escondido Beach

Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.



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

California Coastal Commission
Technical Services Division

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

DSM, Revised 8/02

Local Coastal Program - City of Malibu

ESHA Overlay 3: Dan Blocker to Malibu Pier

Environmentally Sensitive Habitat Areas

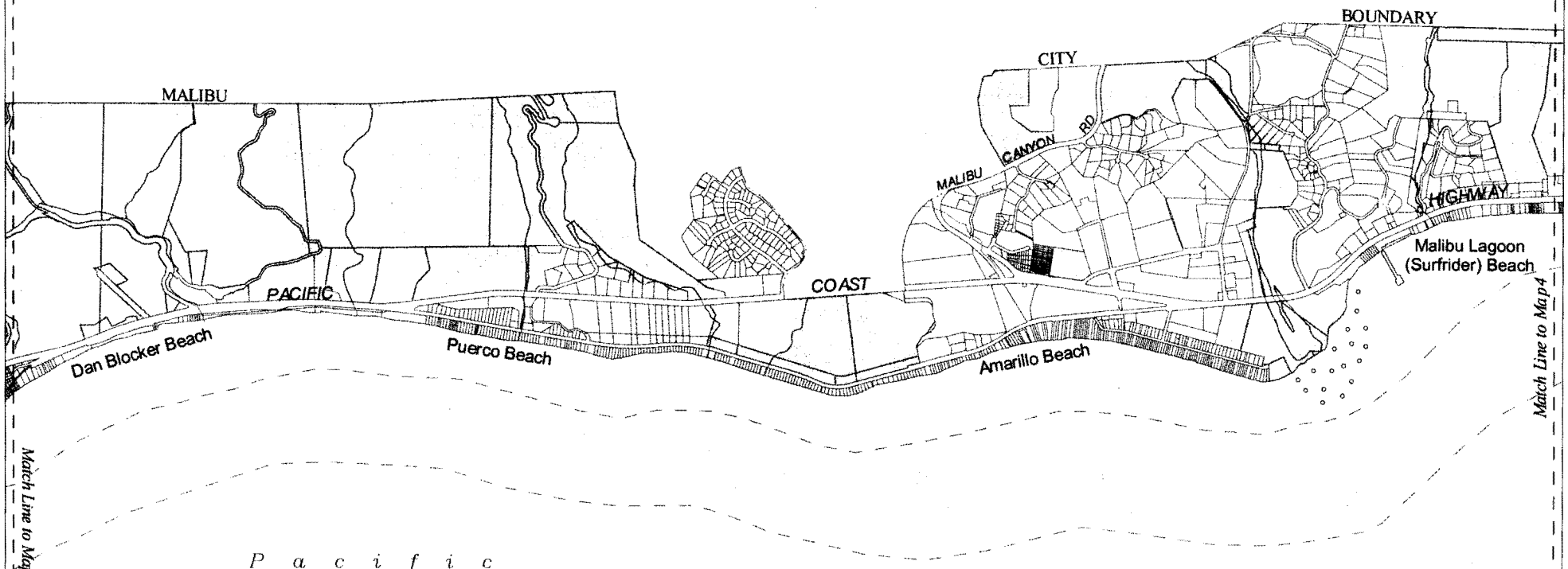
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

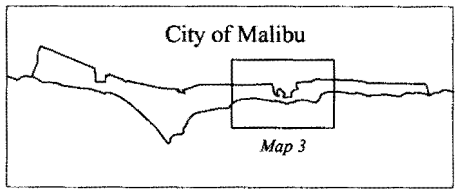
Kelp Beds

Near Shore Shallow-water Fish Habitat

Streams

Clam Habitat





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California Coastal Commission
Technical Services Division

DSM, Revised 8/02

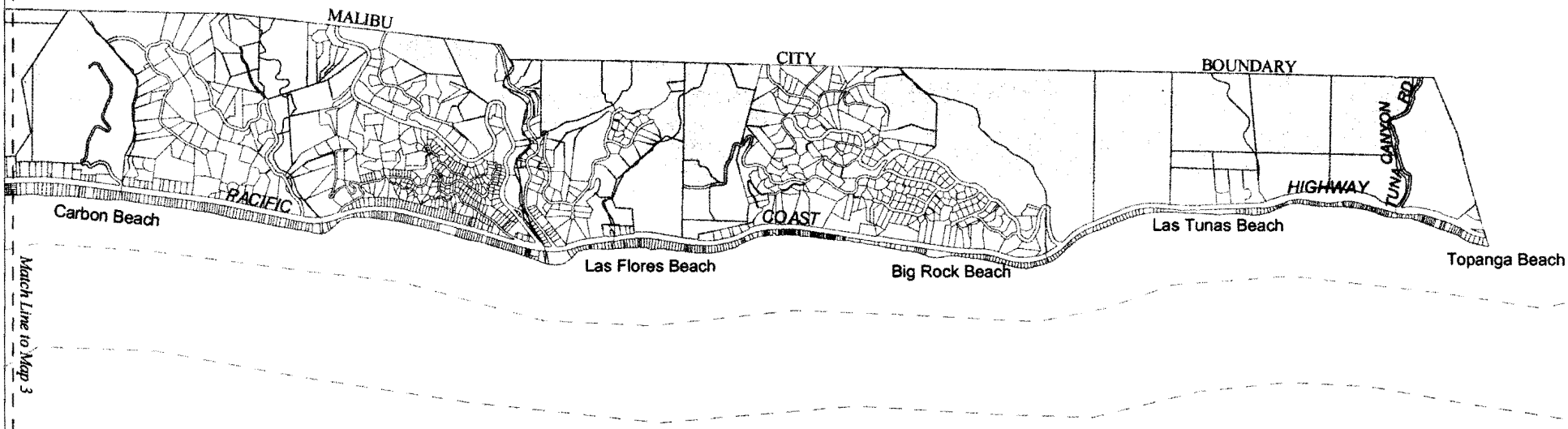
Local Coastal Program - City of Malibu

ESHA Overlay Map 4: Carbon Beach to Topanga Beach

Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.*

Near Shore Shallow-water Fish Habitat

Streams



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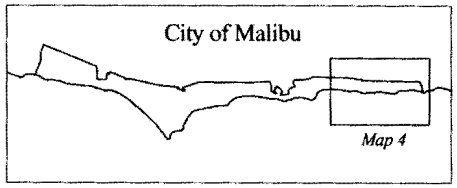

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California Coastal Commission
Technical Services Division

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DSM, Revised 8/02

City of Malibu

23815 Stuart Ranch Road ! Malibu, California ! 90265-4861
(310) 456-2489 ! fax (310) 456-3356

August 21, 2002

Gary Timm, District Manager
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Suggested ERB policy language - **REVISED**

Dear Mr. Timm:

The following is the suggested revised language for the ERB policies requested by the California Coastal Commission, and based on discussions held between City Staff and Coastal Commission Staff at the July 29, 2002 meeting:

3.36 **Prior to taking action on any development proposal within an ESHA, ESHA buffer, as identified through a biological study required pursuant to Policy 3.35, or within a Resource Protection Area, the** ~~The~~ Environmental Review Board (ERB), **City Biologist,** or other qualified **City-appointed group of** professionals with technical expertise in ~~resource management~~ **biological resources (marine/coastal, wetland/riparian protection and restoration, upland habitats and connectivity), geology (coastal protection devices, slope stability, onsite waste disposal), architecture or civil engineering (siting of structures within hillside areas), and landscape architecture (fuel modification, planting of wildland edges)** shall review and make recommendations to **the City body responsible for taking action on the project** ~~the Planning Director, Planning Commission and/or City Council on development proposals within or adjacent to ESHA, or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35.~~ The ERB**, City Biologist,** or other **City-appointed group of** qualified professionals shall consider the individual and cumulative impact of each development proposal within or adjacent to ESHA. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB**, City Biologist,** or other **City-appointed group of** qualified professionals when required by this policy.

3.37 The ~~ERB or other qualified professionals shall provide recommendations to the Planning Commission (or decision making body for coastal permits) on the conformance or lack of conformance of the reviewed development project~~ **Planning Director shall review each project for conformance** with the policies of the ~~LUP~~ **LCP**. ~~Any recommendation of~~

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~~approval~~ **Approvals** shall include mitigation measures designed to minimize adverse impacts on environmental resources. The decision-making body shall make written findings relative to the approved project's conformance with ~~the recommendations of the ERB or other qualified professionals~~ **the LCP**.

3.38 **The Planning Director, in consultation with the City Biologist, ERB, or City-appointed group of qualified professionals in resource management, shall review all applications for development within or potentially within ESHA and ESHA buffers or within a Resource Protection Area to ensure conformance with the LUP, define the least environmentally damaging development alternative, and require modifications or mitigation measures to minimize or eliminate impacts. If mitigation measures are necessary to avoid or minimize impacts to coastal resources, those measures shall be made conditions of approval of the coastal development permit.** ~~All applications for development within or adjacent to ESHA shall be reviewed by the City Biologist or other qualified professional for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision making body.~~

If you have any questions or clarifications regarding this matter, please contact me at your convenience at (310) 456-2489, extension 250.

Sincerely,

Glenn Michitsch
Associate Planner

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City of Malibu

23815 Stuart Ranch Road ! Malibu, California ! 90265-4861
(310) 456-2489 ! fax (310) 456-3356

August 21, 2002

Gary Timm, District Manager
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

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3.37 The ~~ERB or other qualified professionals~~ Planning Director shall review each project for conformance ~~provide recommendations to the Planning Commission (or decision-making body for coastal permits) on the conformance or lack of conformance of the reviewed development project~~ with the policies of the LCP. ~~LUP~~. ~~Any recommendation of~~ Approvals shall include mitigation measures designed to minimize adverse impacts on environmental resources. The

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decision-making body shall make written findings relative to the approved project's conformance with the ~~recommendations of the ERB or other qualified professionals~~ LCP.

3.38 The Planning Director, in consultation with the City Biologist and a City-appointed group of qualified professionals, shall review all applications for development within ESHA and ESHA buffers to ensure conformance with the LUP, define the least environmentally damaging development alternative, and require modifications or mitigation measures to minimize or eliminate impacts. If mitigation measures are necessary to avoid or minimize impacts to coastal resources, those measures shall be made conditions of approval of the coastal development permit. ~~All applications for development within or adjacent to ESHA shall be reviewed by the City Biologist or other qualified professional for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision-making body.~~

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Sincerely,

Glenn Michitsch
Associate Planner

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City of Malibu

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(310) 456-2489 • fax (310) 456-3356

August 14, 2002

RECEIVED
AUG 15 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Gary Timm, District Manager
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Cultural Resources information

Dear Mr. Timm:

The attached packet is information related to our Cultural Resources Advisory Committee that we thought would be helpful in gaining a better understanding of our cultural resources review process. Also, we are currently gathering additional information regarding our approved list of qualified archaeologists and selection method for placement on this list, and will send you that information, and all other pertinent information as soon as possible.

If you have any questions or clarifications regarding this matter, please contact me at your convenience at (310) 456-2489, extension 250.

Sincerely,

Glenn Michitsch
Associate Planner

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RECEIVED
AUG 1 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

NATIVE AMERICAN CULTURAL RESOURCES ADVISORY COMMITTEE

The intent of this booklet is to provide current and historical information to the Honorable Members of the California Coastal Commission regarding the level of involvement of the City of Malibu in not only the protection and preservation important cultural resources, but in promoting education, understanding and involvement with the Chumash people both in and around the City of Malibu.

History

Within three years after incorporation as a City, the City of Malibu established and approved bylaws for the Native American Cultural Resources Study Group, making it responsible for safeguarding the City's unique cultural heritage, for education of the public about cultural resources, to identify and resolve conflicts between the preservation of cultural resources and proposed land uses, to integrate preservation of cultural resources into land use management and development processes, and , finally, to promote awareness of today's Chumash people and their continuity with the past and future (bylaws Section 1.2 and 1.3).

Finally, with the expanding role of the City in its involvement with land use within the City, the Advisory Group became a Brown Act Committee of the City of Malibu as the Native American Cultural Resources Advisory Committee.

Membership and Meetings

Membership has always been open, not only to those who live or work within the City , but also to Native Americans and cultural resources professionals regardless of where they live or work. The composition of membership has included Chumash elders and spokespersons who served on the Committee and as Chair. Presently, of the 14 members, five are Native Americans. All members are appointed by the City Council at large and are independent. Regular public meetings are held at the City Hall on the first Tuesday of each month. The meetings are noticed in the local newspapers as well as on our community television station, and the public is invited to attend and speak to any issue of concern.

Work done and work in progress

The range of work done by this Committee, consistent with its bylaws and the needs of the community has included the following:

1. Evaluation of conflicts between archeologists on the necessary scope of work during construction, resulting in dispute resolution without litigation.
2. Complete revision of the Cultural Resources section of the City's Zoning Ordinance, which revision was adopted, word for word, as the Commissions draft LCP Plan, Chapter 11 – Archaeological Resources, June 2002, pages 182 – 186. The reason for the revisions was to eliminate ambiguity and revise key language to incorporate CEQA definitions for uniformity of application.
3. Advising the City and implementing a Proclamation of Chumash Heritage Day, with appropriate spiritual ceremonies. Our research has not shown that any other City in this State has so honored the Mit'Chumash heritage.
4. Producing an annual Chumash Day Gathering for the last four years bringing Native American participants from the western United States and Mexico. All children in the Malibu schools receive personal invitations to this even which is also promoted by southern California media resources. The Gathering honors Chumash and other indige[redacted] significance, including [redacted] Native American arts, crafts and cultural displays. Local response and participation have made this event self-sustaining.
5. Producing several educational videotaped programs which have been shown on local television daily for several months, as well as the production, of educational, historical pamphlets on the Chumash history in Malibu.

In these ways, the Committee has reflected the highest level of involvement in the City's fulfilling of its moral and legal responsibilities in preserving for now and for the future, the Chumash heritage of "Humaliwo" (Malibu).

Attached to this historical statement are examples of the preceding

"range of work" reflecting past and ongoing efforts by the City and this Committee in meeting or exceeding any existent moral or statutory mandate of performance in these areas.

Finally, it should be noted that definitions essential to the understanding and implementation of Draft – Chapter 11, which are contained in the City Ordinance in Section 9.3.81, entitled "Definitions" has been inadvertently omitted from your Commissions Draft Definitions section.

BYLAWS OF THE CITY OF MALIBU

NATIVE AMERICAN CULTURAL RESOURCES STUDY GROUP

RECEIVED
AUG 15 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ARTICLE I. THE STUDY GROUP

Section 1.1 Name of the Study Group

The name of the Study Group shall be the City of Malibu Native American Cultural Resources Study Group (hereinafter referred to as "Study Group").

Section 1.2 Purpose and Scope of Work

1) To safeguard the City's unique cultural heritage as embodied and reflected in the City's cultural history.

2) To encourage and facilitate public knowledge, understanding, and appreciation of the City's cultural past, present and future.

3) To identify as early as possible and resolve conflicts between the preservation of cultural resources and proposed land uses.

4) To integrate the preservation of cultural resources into public and private land use management and development processes.

5) To promote awareness of today's Native Chumash people and their continuity with the past and future.

Section 1.3 Duties of the Study Group

1) The primary duty is the preservation of cultural resources for the City and the citizens of Malibu.

2) Provide a forum for the discussion of issues affecting cultural resources.

3) Resolve issues and conflicts relating to development and preservation.

4) Educate the public about cultural resources.

ARTICLE II. MEMBERSHIP

Section 2.1 Composition

The Study Group shall consist of an unlimited number of members who shall be ratified by a simple majority of the City Council. Members may be Malibu residents or owners of property within Malibu, Native Americans, or cultural resource professionals. All members shall submit a completed City Study Group Application Form to the City Clerk's Office prior to ratification of an appointment. The City Council shall review each application and shall make the ratification as soon as possible after receipt of the application.

Section 2.2 Terms of Membership

There shall be no specific terms of membership on the Study Group. All members shall have voting rights commencing thirty (30) days after the date of appointment by the City Council.

Section 2.3 Termination of Membership

Membership in the Study Group shall automatically terminate upon any of the following occurrences:

1) The member has been absent from more than three (3) regular meetings within a fiscal year;

2) Upon receipt of a notice or letter or resignation submitted to the City Clerk by the member;

3) Upon removal by a majority of the City Council, with or without cause.

Section 2.4 Resignation

Any Study Group member may resign at any time by giving written notice to the City Clerk. Any such resignation shall be effective upon receipt or upon any date specified therein. The acceptance of such resignation shall not be necessary to make it effective.

ARTICLE III. OFFICERS

Section 3.1 Officer(s)

The officer(s) of the Study Group shall consist of a Chairperson, Vice-Chairperson or Co-Chairpersons (in the event of no Vice-Chairperson), and a Secretary. The Study Group shall have the option of selecting a Chairperson and Vice-Chairperson or two Chairpersons.

Section 3.2 Chairperson

The Chairperson(s) shall preside at all meetings of the Study Group and shall serve as spokesperson(s) on behalf of the Study Group. The Chairperson(s) shall also coordinate with City staff to prepare Study Group agendas.

Section 3.3 Vice-Chairperson

In the event the Study Group appoints a Vice-Chairperson, the Vice-Chairperson shall preside at meetings of the Study Group in the absence of the Chairperson. The Vice-Chairperson shall also assume the duties of the Chairperson in the Chairperson's absence.

Section 3.4 Secretary

The Secretary shall prepare at a minimum action minutes of all Study Group meetings and submit all Study Group action minutes, reports and correspondence to the City Clerk's Office for distribution to the City Council and City Manager and for filing of an official record with the City. Minutes shall be submitted to the City Clerk not more than thirty (30) days after Study Group approval.

Section 3.5 Additional Duties

The officer(s) shall perform such other duties and functions as may from time-to-time be required by the Study Group, other rules and regulations, or duties and functions which are incidental to the offices held by such officer(s).

Section 3.6 Election

The Chairperson(s), Vice-Chairperson and Secretary shall be elected by the Study Group at a designated regular meeting from among the members, who shall each hold office for a term of one (1) year or until their successor(s) are elected and qualified. An officer shall not be prohibited from election to successive terms of office.

Section 3.7 Vacancies

Should the office of Chairperson, Vice-Chairperson or Secretary become vacant, the Study Group shall elect a successor from among its members at the next regular or special meeting, and the office shall be held for the unexpired term of office.

ARTICLE IV. MEETINGS

Section 4.1 Regular Meetings

Regular meetings shall be held on a specific day of each month as designated by the Study Group and Councilmember Liaisons. Regular meetings shall be limited to one per month. In the event that the regular meeting date shall be a legal holiday, then any such regular meeting shall be held on the next regular date or as agreed upon by the members at the prior meeting.

Section 4.2 Special Meetings

Special meetings may be held upon call of the Chairperson(s) or of the majority of the membership for the purpose of transacting any business designated in the special meeting agenda, after notification of all members by written notice personally delivered or by mail or facsimile at least 72 hours before the time specified in the notice of the meeting. At such special meeting, no business other than that designated in the agenda shall be considered. Every effort shall be made to notify all members of the Study Group by telephone as soon as possible after the call of the meeting, but at least 72 hours before the time specified in the notice of the meeting.

Section 4.3 Adjourned Meetings

Any meeting of the Study Group may be adjourned to an adjourned meeting providing the adjournment indicates the date, time and place of the adjourned meeting. Members absent from the meeting at which the adjournment decision is made shall be notified by the Chairperson(s) of the adjourned meeting.

Section 4.4 Location of Meetings

Regular meetings shall be held at a specific public location as designated by the Study Group. Special and adjourned meetings shall be held at that location whenever possible or at another specified public facility in the event the location for regular meetings is not available.

Section 4.5 Meetings to be Open and Public

All meetings of the Study Group shall be open and public to the extent required by the Ralph M. Brown Act. All persons shall be permitted to attend any such meetings, except as otherwise provided by law.

Section 4.6 Meeting Agendas

The City Clerk's Office shall distribute all Study Group agendas in a sufficient period of time necessary for the members to receive the agendas in compliance with the requirement for meeting notice.

Section 4.7 Quorum

A majority of the Study Group voting membership shall constitute a quorum. A quorum shall be required for the members to take action on any item brought before the Study Group. Unless otherwise provided in the bylaws, an affirmative vote by a majority of members present at a meeting shall be required for approval of any action brought before the Study Group. A quorum of the members shall not be required for the members to call a meeting to order and discuss items listed on an agenda.

Section 4.8 Order of Business

The order of business shall be established by the Study Group. Agendas shall be prepared and posted in compliance with applicable state and local laws and rules. The City Clerk's Office or designated staff shall be responsible for the proper posting of agendas at the Malibu City Hall, Malibu Main Library, Point Dume Community Center and all other official City posting places. Agendas shall be submitted to the City Clerk's Office within a reasonable period of time necessary to meet posting requirements and for all members of the Study Group to receive agendas within that period of time.

Section 4.9 Rules of Order

Unless otherwise decided by the Study Group or as required by state law, all business and matters before the Study Group shall be transacted substantially in conformance with Robert's Rules of Order (latest edition).

ARTICLE V. RECORDS, REPORTS AND ANNUAL GOALS AND OBJECTIVES

Section 5.1 Meeting Records

The Study Group shall keep, at a minimum, action minutes of all meetings, which shall be open for inspection by any members of the public. Action minutes shall consist of a brief description of actions taken by the Study Group and shall reflect any motions, seconds and votes by members. The Study Group may, but shall not be required, to prepare detailed minutes of any meeting for its own use. Upon approval of action minutes by the Study Group, the Secretary shall submit within thirty (30) days copies of such minutes to the City Clerk's Office. The City Clerk shall be responsible for distributing copies of such records to the City Council and City Manager. In addition, copies of all agendas for the Study Group shall be distributed to the City Clerk's Office as an official record. The City Clerk shall also be responsible for distributing copies of all agendas to the City Council and City Manager. All agendas and approved action minutes shall be posted for public review at the Malibu City Hall, Malibu Main Library, Point Dume Community Center and other official City posting places. The City Clerk shall distribute agendas of all Study Group meetings in a sufficient period of time so that members receive the agendas within the time period required for posting of agendas.

Section 5.2 Reports Submitted to City Council

The Study Group Secretary shall submit copies of all written reports, studies, and correspondence to the City Clerk's Office upon distribution of the original document. The City Clerk shall be responsible for distributing copies of such documents to the City Council and City Manager. The Chairperson(s) or designated member shall also make periodic reports before the City Council indicating the activities and actions of the Study Group.

Section 5.3 Presentation of Annual Goals and Objectives

The Study Group shall submit to the City Clerk's Office no later than December 31 of each year a statement of goals and objectives indicating specific projects and tasks proposed for the next fiscal year to support the purpose and scope of responsibilities as described in Section 1.2. The Goals and Objectives shall be subject to approval by the City Council. The Study Group may use the Statement of Goals and Objectives format provided by the City for this purpose. Study Group efforts shall be directly related to the needs of the City and the purposes and duties as defined in Section 1.2 and 1.3.

Section 5.4 Study Group Review of Council Requested Items

As an advisory group to the City Council, the Study Group shall be responsible for reviewing, considering and making recommendations on issues, items and projects submitted to the Study Group by the City Council. In addition, it is the City's intent to utilize the advisory services of the Study Group for review, consideration and recommendation of issues, items and projects which are similar in scope to the purpose and scope of work assigned to the Study Group, as defined in Sections 1.2 and 1.3. When applicable, staff may submit items and projects to the Study Group for review and recommendation prior to consideration by the City Council.

ARTICLE VI. MISCELLANEOUS

Section 6.1 Councilmember Liaisons to Study Group

The City Council shall designate two (2) members of the City Council to serve as liaisons between the City Council and the Study Group. The Study Group shall work with the City Council designated liaisons in order to keep the City Council informed of activities and issues addressed by the Study Group and in order to assist the Study Group in formulating recommendations to the City Council. As liaisons, said Councilmembers shall from time-to-time inform the City Council of the activities and issues addressed and the actions taken by the Study Group.

Section 6.2 Representation

Any official representation on behalf of the Study Group shall be made by the Chairperson(s) or a member specifically designated by formal action of the Study Group. No member shall act or speak on behalf of the entire Study Group unless approved by a majority vote of the members at a quorum meeting. Any representation made and/or written materials released or distributed by the Study Group or any members to agencies other than the City shall be approved first by the City Manager or by action of the City Council.

Section 6.3 City Assistance to Officers and Study Group

The City Manager shall appoint staff to assist the Study Group officer(s) and members, as necessary in such activities as setting and conducting meetings, preparing meeting agendas and reviewing minutes prepared by the Secretary, and requests for assistance from Study Group members. The City Council and City Manager shall determine the specified number of staff hours per month to be allocated to support of the Study Group.

Section 6.4 Amendment of Bylaws

The bylaws of the Study Group shall be recommended for amendment upon the affirmative vote of at least a majority of the total membership of the Study Group at a regular or special meeting of the Study Group. No such amendment shall be adopted unless at least seven (7) days written notice has previously been given to all members of the Study Group. Notice of amendment to the bylaws shall be approved by resolution of the City Council and shall take effect as of the date of such City Council approval.

PASSED, APPROVED AND ADOPTED BY THE NATIVE AMERICAN CULTURAL RESOURCES STUDY GROUP ON THE 20TH DAY OF SEPTEMBER, 1994.

PASSED, APPROVED AND ADOPTED BY THE MALIBU CITY COUNCIL ON THE 27TH DAY OF FEBRUARY, 1995.

City Council Agenda Report
Executive Summary

Item 6.B.

Date Prepared: October 11, 1999

Meeting Date: October 25, 1999

TO: Mayor Van Horn and Members of the City Council

PREPARED BY: Craig A. Ewing, Planning Director

APPROVED BY: Harry Peacock, City Manager

RECEIVED
AUG 15 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SUBJECT: REVIEW OF CULTURAL RESOURCES (ARCHAEOLOGY) REVIEW PROCEDURES

RECOMMENDED ACTION

That the City Council provide direction regarding the Cultural Resource Ordinance, especially in the establishment of a peer review committee and in the definition of "Important Cultural Resource".

REPORT IN SUMMARY

Introduction

At its last Quarterly Review, the Council requested a report on how development projects are processed regarding cultural resources, including a discussion of the time required to obtain clearances. This memo summarizes the cultural resources section of the Zoning Ordinance and describes how the City administers these rules. Information on processing times has also been compiled and recommendations for reform have been developed for Council consideration.

Cultural Resources Regulations

The regulations for protection of cultural resources are contained in Chapter 9.3.80 of the Zoning Ordinance (attached). Staff notes the following important features of the ordinance:

1. Cultural resource protection applies to all development projects, including preliminary geologic investigations, grading permits, building additions, and new structures.
2. The review process is spelled out in the Ordinance, and has four significant elements:
   a. Purpose: Identify if the site contains an "Important Cultural Resource", and establish mitigation measures to avoid impacts.
   b. Process: A succession of investigations, from "over-the-counter" review to Phase 2 Evaluation are defined. The lowest, most cost-effective review necessary is used.
   c. Responsibility: The City Archaeologist can be contracted by the applicant to conduct archaeological investigations, except for the most complex studies.
   d. Decision: The final decision is left to the Planning Director, but only after consultation with the City Archaeologist.

3. The definition of "Important Cultural Resource" is subject to five criteria:
   a. Related to a significant event or person in history / prehistory
   b. Provides information useful in answering significant research questions
   c. Represents a special quality (oldest, largest, best preserved, last surviving, etc.)
   d. Possesses substantial stratigraphic integrity
   e. Involves important research questions of an archaeological nature

The consequences of these features are as follows:

1. Property owners who need a geology test permit face two archaeological reviews - one for the geology test and another for the main project.
2. The City uses 'sensitivity maps' at the public counter to streamline the process. They are checked whenever a project is first submitted - about 75% of all projects are cleared "over-the-counter" using these maps.
3. The City Archaeologist is available to work for the applicant. This speeds the processing time, but allows a perception that the City Archaeologist can treat contract work differently.
4. The City has no adopted standards for gathering or interpreting data - consequently, we have occasional disagreements between archaeologists regarding whether someone's work plan will lead to an accurate evaluation of the site.

Finally, two additional areas of concern are the definition of "Important Cultural Resource" and the inadequate enforcement of conditions and mitigation measures (see below).

Performance Under the Regulations

The attached memo from Chester King provides a look at our performance under the current ordinance. Of the total number of projects received by the City over the past five years, the substantial majority (75%) of project applications are cleared over-the-counter using the "sensitivity maps". These maps are an effective tool, and staff supports their continued use. The City Archaeologist updates them on an annual basis, at a cost of approximately $2000 each time.

Projects not cleared at the counter are subject to the procedures of the Ordinance, which consist of three levels of review:

- Initial Evaluation- A review of archive documents and a site visit.
- Phase 1 Inventory- A review of archives, a site visit, possibly test pits or other minor excavations.
- Phase 2 Evaluation- A detailed research design / work plan, excavations, analysis.

Each level can lead to clearance or to the next higher level. Dr. King's memo shows that of all the projects that did not clear through the sensitivity maps, approximately two-thirds are cleared at the Initial Evaluation or Phase 1 Inventory levels. The average time to process Initial Evaluations and Phase 1 Inventories is from two weeks to two months. This is an average range, and masks the fact that some projects take up to six months or longer. These extended times are the result of factors outside the City's control, such as delayed responses from the applicant and project revisions. The City does not spend six months on an Initial Evaluation or Phase 1 Inventory, without applicant authorization.

The Phase 2 Evaluation is the most detailed investigation and applies to less than 10% of all projects. These are usually the most contentious projects. Phase 2 Evaluations may not be prepared by the City Archaeologist, but only by the applicant's archaeologist. The investigations can be costly, and yet at times yield no new data.

Phase 2 Evaluations can take up to a year. This long time schedule is caused by a number of factors, most of which arise from the complexity of the task:

- An archaeologist must be hired;
- A work plan prepared, reviewed, amended and approved;
- The investigation conducted, analyzed, documented and reviewed;
- Additional investigations can be required;
- Final conditions or mitigation measures must be developed, reviewed and accepted.

In addition, sometimes projects are sometimes redesigned, which can further extend processing times.

If a dispute arises between the City Archaeologist and the contract archaeologist over the work plan, additional delays can result. This does not happen often - although our rate of once a year is too frequent - but it burdens the property owner with cost and uncertainty, and undercuts the City's efforts to build support for fair protection of cultural resources. Again, this is an infrequent occurrence - of 400 projects processed in a year, 399 avoid this kind of problem.

Recommendations

No one wants to be that four hundredth property owner who is stuck for a year or more in Archaeology Review. Further, there are ways in which the process can be streamlined for all applicants. Staff has prepared a list of measures which can improve our processing times and enhance our effectiveness as stewards of the city's cultural heritage. As seen below, some of these items have been implemented at the administrative level, while others remain are in the process of being introduced:

1. **Update the Sensitivity Maps** - The City Archaeologist is preparing the second annual update of the maps, to be completed by December 31st.
2. **Standardize the Procedures for Referrals to City Archaeologist** - Staff has prepared and implemented a standard referral form, which simplifies the processing of Initial Evaluations and Phase 1 Inventories (see attachment).
3. **Standardize the Conditions of Approval** - A list of standard conditions is under review by which the City Archaeologist can more speedily generate clearances for the simplest projects (see attachment).
4. **Standardize the Action and Billing Form** - Staff has prepared and implemented a standard form which simplifies the approval of projects at the Initial Evaluation and Phase 1 Inventories stages (see attachment).
5. **Develop and Adopt Investigation Procedures** - The City Archaeologist is reviewing the procedures from Santa Barbara County for conducting Phase 2 Evaluations. A recommendation to the Planning Director is expected within the next 60 days regarding a standard procedure to be used by any archaeologist working in the City. (This would be similar to the Guidelines for the Preparation of Geology Reports used in the Building Department.)

6. **Establish a Peer Review Committee** - Staff is considering the need for a peer review committee to review disputes between archaeologists.

As indicated above, Items 2 and 4 are complete, and Items 1 and 3 will be implemented before the end of the calendar year. Recommendations on the remaining items will be studied and appropriate action taken at the administrative level. Staff is not recommending any changes to the Zoning Ordinance at this time; however, the Planning Commission is studying the following changes as part of its comprehensive review of the Zoning Ordinance:

7. **Combine the Minor and Major Phase 1 Inventories** into a single category (Section 9.3.83.E), and
8. **Eliminate automatic requirement for a CEQA Negative Declaration for Phase 1 Inventories** (Section 9.3.83.E).

Both of these actions will simplify the ordinance for processing projects. The City Council may also wish to investigate the following additional changes:

9. **Update the definition of "Qualified Archaeologist"** to reflect recent changes in the certifying organization (Section 9.3.81.F), and
10. **Provide policy guidance on the definition of "Important Cultural Resource"** (Section 9.3.81.D). This item is discussed below

"Important Cultural Resource"

The definition of "Important Cultural Resource" has significant meaning to the entire cultural resource protection program. It is where the City's values are contained regarding how much protection is to be provided to cultural artifacts. As noted early in this memo, there are five criteria and most of them rarely apply to materials discovered on properties:

A. **Related to a significant event or person in history / prehistory** - Rarely is a person or event in history or pre-history identified with any site in Malibu.
B. **Provides information useful in answering significant research questions** - The City does not monitor significant research questions which might be under investigation.
C. **Represents a special quality (oldest, largest, best preserved, last surviving, etc.)** - Our archaeological investigations rarely identify sites or artifacts having these special qualities.
D. **Possesses substantial stratigraphic integrity** - This is an open-ended determination, and can be argued to apply to most any site that has not be substantially disturbed by recent grading or construction activity. The word 'substantial' could use clarification.
E. **Involves important research questions of an archaeological nature** - Like Item B above, this criteria implies that we monitor research questions, which we do not do.

In summary, the criteria do not suggest that every site is of equal importance. Further, when the ordinance considers the issue of importance, it is weighted in favor of the archaeologist's perspective rather than the perspective of a Chumash descendent. In other words, the ordinance does not consider that every site is sacred. (If the Council wishes to address this issue, a Zone Text Amendment is needed.) Even limiting itself to the perspective of archaeological significance, the City needs to clarify the above definitions. Staff will work with the Native American Cultural Resource Study Group to develop a policy for Council review.

Enforcement of Conditions

Lastly, as noted above, a weakness of the current system is that conditions of approval are not adequately verified to see they are carried through. This is especially true when the conditions involves monitoring a site during construction. Monitoring means having someone representing the City on the site checking trenching and grading activities to see if artifacts are found during construction. As in other cases where the City is trying to regulate people's behavior, it is hard to have someone there at every appropriate moment.

We are presently studying ways to improve our implementation of monitoring; however, it is a problem with no easy solution. The alternatives to monitoring include relocating the structure to some other part of the lot, building the structure on fill over the archaeological site, or excavating the entire site under the structure. None of these is a perfect solution: A different location may be undesirable to the owner; construction on fill may not conform to code; and complete excavation is very costly. Staff will continue to work on answers to this dilemma with the City Archaeologist and the Native American Cultural Resources Study Group.

Conclusion

Staff has spent the last several months implementing several changes to our administration of the Cultural Resource Ordinance. Our goal is to simplify and standardize so that the applicant can have greater confidence in the process. We do not intend to water down the protections; however, we have identified some areas that need further work to be sure our administration of the Ordinance accurately reflects the Council's values on this matter. This memo has identified two areas that the Council may need to take direct action: Establishing an Archaeology Peer Review Committee and clarifying "Important Cultural Resource". We seek the Council's direction in these matters.

FISCAL IMPACT

The City Council action as recommended will not impact fiscal resources.

IMPACT ON GENERAL PLAN/CEQA

The administrative changes will have no impact on the General Plan or CEQA.

CONSEQUENCES OF NOT ACCEPTING RECOMMENDATION

The City's development review procedures would remain unchanged.

STAFF FOLLOW-UP ACTIONS

Staff will continue to monitor our administration of the Cultural Resources Ordinance.

ATTACHMENTS TO REPORT

Exhibit A.	Section 9.3.80 of the Zoning Ordinance
Exhibit B.	City Archaeologist Memo of July 26, 1999
Exhibit C.	Referral Sheet - Cultural Resources
Exhibit D.	Standard Conditions - Cultural Resources (Draft)
Exhibit E.	Action / Billing Form - Cultural Resources
Exhibit F.	Other Public Information Bulletins

In Memoriam
Harry Barowsky
Honorary Mayor
2000

Council Agenda Report

Item 3.B.5.

RECEIVED
AUG 1 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To: Mayor Hasse and the Honorable Members of the City Council

Prepared by: Barry K. Hogan, Planning Director
Approved by: Christi Hogin, Interim City Manager

Date Prepared: November 10, 2000 **Meeting Date:** December 11, 2000

Subject: NATIVE AMERICAN CULTURAL RESOURCES ADVISORY COMMITTEE REPORT: A request from the Native American Cultural Resources Advisory Committee for consideration of amendments to the Interim Zoning Ordinance Cultural Resources Section.

RECOMMENDED ACTION:
Adopt the attached Resolution of Intention to initiate an amendment to the Interim Zoning Ordinance.

DISCUSSION:
The Native American Cultural Resources Advisory Committee has met on a number of occasions to discuss amendments to the Interim Zoning Ordinance (IZO) section on Cultural and Historic Resources. The result of its many meetings is attached as is its recommendation to the City Council for amendments to the IZO.This section of the IZO is used to implement the archeology goals of the General Plan.

The suggested amendments clean up the language and clearly define who can be a Native American monitor. The suggestions also address the concerns which have been raised in the past relative to the level of detail required for investigations. If the City Council is interested in pursuing these recommendations further, it should direct Staff to prepare a Resolution of Intention to initiate an amendment to the IZO. The specifics of each of the recommendations of the Committee would then be discussed and addressed through the amendment process.

The Native American Cultural Resources Advisory Committee respectfully suggested that the Planning Director review the document entitled "County of Santa Barbara Resource Management Department Cultural Resources Guidelines, Historic Resources Element" and consider adopting similar guidelines to provide a clear and consistent comparison base for "cultural resources." Furthermore, the Committee suggested that the same consideration be given to the same County's definitions regarding professional qualifications for archeological investigations found under their Phase 1 definitions under section 2.0.

STAFF FOLLOW UP:

Prepare a resolution of intention to amend the IZO. Then set the resolution on the next regularly scheduled City Council agenda for consideration. Once the resolution has been adopted, review the proposed changes recommended by the Committee, make adjustments as necessary, prepare the initial study as well as complete the environmental determination, and advertise the environmental determination and public hearing for Planning Commission and City Council consideration.

ATTACHMENTS:

1. **Proposed Amendments to the Cultural Resources Section**
2. **Proposed Resolution of Intention to Initiate an Amendment to the Interim Zoning Ordinance**

Changes recommended by the Cultural Resources and Native American Advisory Committee are shown through strikeout and underlining.

ARTICLE IX

ZONING

CHAPTER 9.3.80
(Ord. 133, 08-14-95)

CULTURAL RESOURCES

9.3.80. Purpose

The intent of these provisions is to avoid the damage to or destruction of important cultural resources within the City of Malibu. ~~including prehistoric and ethnohistoric Native American archaeological sites and historic archaeological sites.~~

9.3.81. Definitions

For the purposes of this Chapter, the following definitions shall apply:

A. "CEQA" shall mean the California Environmental Quality Act which shall be the statutory reference for those portions of this Chapter drawn therefrom.

B. "Cultural Resource Sensitivity ~~Location~~ Map" shall mean a map developed by the Director showing the location of culturally sensitive areas.

C. "Culturally Sensitive Areas" shall mean areas identified on the Cultural Resource Sensitivity~~Location~~ Map as an area where important ~~cultural resources are known, likely, or suspected to exist~~.

D. "Important Cultural Resource" may include, but not be limited to ~~shall meet one of the following criteria:~~

~~1. Is associated with an event or person of either~~

~~a. recognized significance in California or American history or~~

~~b. recognized scientific importance in prehistory, or~~

~~2. Can provide information which is both of demonstrable public interest and useful in addressing scientifically consequential and reasonable archaeological research questions, or~~

~~3.~~ Has a special ~~or particular~~ quality such as oldest, best example, largest, or last surviving example of its kind; or

24. Is at least 100 years old ~~and possesses substantial stratigraphic integrity~~; or

~~5. Involves important research questions that historical research has shown can be answered only with archaeological methods.~~

3. Significant to Chumash prehistory or history;

4. Contains burial or other significant artifacts;

5. Is an archeologically undisturbed site;

6. Has important archeological significance;

7. Relates to significant events or persons;

8. Listed on Cultural Resources Sensitivity Map;

9. Of specific local importance.

E. "Project" shall include any earth moving requiring a planning clearance, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, or grading permit. The term shall include government-initiated or funded works except those projects necessary for emergency purposes.

F. "Qualified archaeologist" shall mean a professional archaeologist~~, excluding the City Archaeologist,~~ included as qualified by or on the registry of Professional Archeologist of the Society for American Archeology who has a minimum o one of these years at the supervisory level. ~~on a list maintained by the Planning Director. In order to be included on this list, a qualified archaeologist must make a written request to the Planning Director and must submit evidence indicating that he/she meets the following criteria:~~

~~1. Posses a master's degree in Anthropology, specializing in Archaeology.~~

~~2. Is currently certified by the Society of Professional Archaeologists.~~

~~3. Is included on the most recent list of qualified consultants maintained by the Regional Historical Resources Information Center.~~

~~4. Has a minimum of three years of experience evaluating Chumash cultural resources, with a minimum of one these years at the supervisory level.~~

~~5. Submits a resume detailing his/her qualifications.~~

G. "Qualified Chumash Cultural Resources Monitor" shall mean a Native American of Chumash decent who; ~~tribal affiliation included on a list maintained by the Planning Director. In order to be included on this list, a qualified Chumash cultural resources monitor must make a written request to the Planning Director and must submit evidence indicating that he/she meets the following criteria:~~

1. Submits verifiable evidence, approved by the Planning Director, indicating that he/she is of verifiable Chumash descent or is a Native American member of the Chumash community. Being listed as Chumash "most likely descendent" by the California Native American Heritage Commission may satisfy these criteria.

2. Submits verifiable evidence, approved by the Planning Director, indicating that he/she has Has a minimum of three years thirty (30) days of on site experience monitoring Chumash cultural resource sites, with a minimum of 21 days of on site experience.

~~3. Submits a resume detailing his/her qualifications.~~

H. "Regional Historical Resources Information Center" shall mean the South Central Coastal Information Center, at the Institute of Archaeology, University of California, Los Angeles.

9.3.82. Applicability

A Cultural Resource Review pursuant to this Chapter shall be required for all projects prior to the issuance of a planning clearance, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, grading permit, or prior to the commencement of government-initiated or funded works except ~~those projects necessary for emergency purposes.~~

9.3.83. Cultural Resource Review

A. Preliminary Review. The Director shall conduct a preliminary review of all projects to determine whether the project may have an adverse impact (or "substantial adverse change" as defined by CEQA) on cultural resources. The Planning Director shall utilize Section 9.3.81.D. criteria in determing an important cultural resource. It shall be determined if the project will result in earth disturbance. The Cultural Resources Sensitivity Map will be reviewed to determine if an earth-disturbing project requires archeological review. Where the Planning Director determines that the project will not have an adverse impact or result in a substantial adverse change to cultural resources, no further Cultural Resources Review shall be required. ~~In making such determination, the Director shall consider the nature of the project and the project site, including, among other factors, (1) whether the project site is outside a culturally sensitive area; (2) whether the project site is on substantial fill material or a steep slope; (3) whether the project involves renovation to or reconstruction of an existing structure involving no more than minor increases to the building footprint; and (4) whether cultural resource review would merely duplicate adequate archaeological investigations previously performed.~~

~~B. Exemption. Where, following the Preliminary Review, the Director determines that the project will not have an adverse impact on cultural resources, no further Cultural Resource Review shall be required and a categorical exemption shall be issued. An exemption under this section shall be granted for only the project and such exemption shall not exempt future projects on the same parcel from further cultural resource review.~~

B~~C~~. Initial Evaluation. Where, following the Preliminary Review, the Director determines that the project may have an adverse impact on cultural resources, the project applicant shall submit an Initial Evaluation. An Initial Evaluation shall include a review of relevant documents and a field survey of the project site to verify the presence and condition of previously recorded cultural

resources and to identify previously unrecorded resources. The Initial Evaluation shall be conducted by a qualified archaeologist hired by the project applicant or by the City Archaeologist if requested by the project applicant. Where the Initial Evaluation reveals that the project will not have an adverse impact on cultural resources or cause substantial adverse changes as defined by CEQA, no further Cultural Resources Review shall be required.

~~D. Waiver. Where the Initial Evaluation reveals that the project will not have an adverse impact on cultural resources, no further Cultural Resource Review shall be required. A waiver and a categorical exemption shall be issued. In making such determination, the Director shall consider the factors listed in Subsection A (Preliminary Review) in addition to information developed from the document review and field evaluation during the Initial Evaluation. A waiver under this section shall be granted for only the project and such waiver shall not exempt future projects on the same parcel from further cultural resource review.~~

C.E. Phase I Inventory. Where, following the Initial Evaluation, the Director determines that the project may have an adverse impact on or result in a substantial adverse change to cultural resources, the Director shall require that a Phase I Inventory of cultural resources be prepared. The project applicant shall submit a Phase I Inventory conducted by a qualified archaeologist hired by the project applicant ~~or the City Archaeologist if requested by the project applicant and he or she shall determine whether a Minor Phase I Inventory or a Major Phase I Inventory shall be required.~~ All Phase I Inventories that involve any excavation or monitoring shall be conducted in consultation with ~~the City Chumash Cultural Resources Manager or~~ a qualified Chumash Cultural Resources Monitor.

Phase I Inventories shall include:

1. A records search through the regional historical resources information center;
2. An archival search of historic records;
3. A field survey described in Subsection B; and
4. A written report which describes how the survey was conducted and the result of the survey.

If on the basis of the Phase I Inventory described above, one or more significant cultural resources is found, a Phase I Inventory may be required to include:

1. An evaluation of limited shovel test pits to determine whether a subsurface deposit is present and a negative declaration shall be prepared;
2. Recommendations for Phase II. Evaluations and a negative declaration, mitigated negative declaration, focused environmental impact report or an environmental impact report shall be prepared; or
3. Monitoring programs pursuant to Section 9.3.83D(4) and a mitigated negative declaration shall be prepared.

~~1. Minor Phase I Inventory. All Minor Phase I Inventories shall include the following: (a) a records search through the Regional Archaeological Information Center; (b) an archival search of historic records; (c) a field survey described in Subsection C (Initial Evaluation); and (d) a written report which describes how the survey was conducted, the result of the field survey. A Negative declaration shall be prepared.~~

~~2. Major Phase I Inventory. All Major Phase I Inventories shall include the information listed in Subsection E.1 (Minor Phase I Inventory) and in addition may be required to include the following: (a) an evaluation of limited shovel test pits to determine whether a subsurface deposit is present and a negative declaration shall be prepared; (b) recommendations for Phase II Evaluations and a negative declaration, mitigated negative declaration, focused environmental impact report, or an environmental impact report shall be prepared; or (c) monitoring programs pursuant to Section 9.3.83(F)(4) and a mitigated negative declaration shall be prepared.~~

DF. Phase II Evaluation.

1. Applicability. Where, as a result of the Phase I Inventory, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required and a negative declaration, mitigated negative declaration, focused environmental impact report, or an environmental impact report shall be prepared. All Phase II Evaluations shall be conducted by a qualified archaeologist and, where the Phase I Inventory indicates the presence of prehistoric or ethnohistoric Chumash cultural resources, the evaluation shall also be conducted in consultation with a qualified Chumash cultural resources monitor.

2. Definition. Phase II Evaluations are investigations intended to gather any additional data necessary to assess the importance of the cultural resources identified in Phase I Inventories, to define site boundaries of the cultural resources, to asses the site's integrity, to evaluate the project's potential adverse impacts on cultural resources, and to develop measures to mitigate potential adverse impacts. Phase II Evaluation proposals shall be designed on a project-specific basis and must be guided by a research design/work plan that clearly identifies the study goals and articulates the proposed methods of data collection and analysis with the goals.

   Data collection methods may include a number of subsurface exploration techniques, including excavation of auger holes, test pits, or trenches.

3. City Review and Approval. The Planning Director shall review and approve all Phase II design/work plans prior to any testing or excavations. The Planning Director shall also review and approve all reports resulting from Phase II Evaluations. Where, as a result of the Phase II Evaluation, the Planning Director determines that the project will not have an adverse impact on important cultural resources, no further cultural resource review of the project shall be required.

4. Exceptions. Notwithstanding the foregoing provisions, the Planning Director may waive the preparation of a Phase II Evaluation and prepare a mitigated negative declaration where the Phase I Inventory indicates the following conditions:

   a. Based upon substantial evidence, the Planning Director determines that there is the presence of prehistoric or ethnohistoric Chumash cultural resources and it appears unlikely that the project site will contain important cultural resources (as for example, where the site is in an area of low density of artifacts or other remains, the suspected amount of the site deposit to be disturbed is small, or where it appears the

artifacts or other remains have been historically redeposited); and

b. Project applicant agrees to provide monitoring of all excavation or trenching by a qualified Chumash cultural resource monitor.

In the event that any potentially important cultural resources are found in the course of excavation or trenching, work shall immediately cease until the ~~City Archaeologist or a~~ qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to Section 9.3.83(EF). The limitations on mitigation as described in Section 9.3.83(DG)(4) shall not be applicable to monitoring programs described in Section 9.3.83(EF)(4).

G. Phase III Mitigation Programs

1. Applicability. Where, as a result of the Phase II Evaluation the Planning Director determines that the project may adversely affect important cultural resources, a Phase III Mitigation Program shall be required. All Phase III Mitigation Programs shall be conducted by a qualified archaeologist and, where the Phase II Evaluation indicates the presence of important prehistoric cultural resources or ethnohistoric Chumash cultural resources, the evaluation shall also be conducted in consultation with a qualified Chumash cultural resource monitor.

2. Purpose. Phase III Mitigation Programs are intended to mitigate adverse impacts upon important cultural resources. These programs shall be designed on a project-specific basis to meet the particular needs of each project and shall be guided by a research design/work plan that clearly articulates the scope of mitigation based on the recommendations developed in the prior Phase II Evaluation of the affected site.

3. Cultural Resource Impact Mitigation. Measures to mitigate ~~potential~~ impacts may include, but shall not be limited to, the following:

a. In-situ preservation of the important cultural resource site.

b. Avoiding damage to the important cultural resource site through the following approaches:

1) Planning construction to miss important cultural resource sites.

2) Planning parks or other open space to incorporate important cultural resource sites.

3) "Capping" or covering important cultural resource sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be utilized if all the following conditions are satisfied:

a) The soils to be covered will not suffer serious compaction;

b) The covering materials are not chemically active;

c) The site is one in which the natural processes of deterioration have been effectively arrested; and

d) The site has been recorded.

4) Deeding important cultural resource sites into permanent conservation easements.

c. Scientific data recovery of an appropriate sample of the important cultural resource(s) via surface collection and archaeological excavation as provided for under this Chapter.

4. Limitations on Mitigation. The limitations on mitigating adverse impacts on important cultural resources shall apply as provided in California Environmental Quality Act ~~Appendix K, 14 Cal. Code Reg. § 15000, et seq.~~, as may be amended from time to time.

5. Review and Approval. The Planning Director shall review and approve all design/work plans for Phase III Mitigation Programs and reports which detail the evaluative techniques and results.

H. Cost. The maximum fees for Cultural Resource Reviews required by this Chapter shall be set by Resolution of the City Council, and as amended from time to time, except where set by the California Environmental Quality Act .

9.3.84. Cataloging and filing of Information

A. All reports resulting from the conduct of any cultural resource review described in this Chapter shall be filed with the Regional ~~Historical Resources Information Center~~.

B. All artifacts discovered in connection with any cultural resource review shall be recorded in the manner required by the State of California. All site records, field notes, maps, photographs, notes by Native American monitors, reports by consulting archaeologists, and other records resulting from the conduct of any cultural resource review described in this Chapter shall be cataloged in accordance with the United States Department of the Interior Guidelines.

9.3.85. Archaeological Discoveries

Any person who discovers important cultural resources during the course of construction for a project shall notify the Planning Director of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without approval of the Planning Director.

RESOLUTION NO. 00-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, CALIFORNIA DECLARING ITS INTENT TO INITIATE ZONING TEXT AMENDMENTS REGARDING ARTICLE IX, CHAPTER 9.3.80 CULTURAL RESOURCES

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

Section 1: Recitals.

A. On December 11, 2000, the City Council of the City of Malibu received a report from the Cultural Resources and Native American Advisory Committee which suggested a number of changes to the Cultural Resources Chapter of the Interim Zoning Ordinance.

Section 2: Initiation.

A. In accordance with Section 9.5.51 Initiation of Hearings of the Interim Zoning Ordinance, the City Council does hereby declare its intent to amend the Interim Zoning Ordinance with respect to Article IX, Chapter 9.3.80, Cultural Resources.

Section 3: Certification. The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED this 11th day of December, 2000.

THOMAS J. D. HASSE, Mayor

ATTEST:

VIRGINIA BLOOM, City Clerk

The City of Malibu and the Native American Cultural Resources Committee are celebrating

CHUMASH DAY 2003

Inter-Tribal Gathering

RECEIVED
AUG 1 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

April 27, 2003

10:00 a.m. - 6:00 p.m.

Bluffs Park

PCH and Malibu Canyon

Native Dancers, Food, and Entertainment
by
Elk Whistle,
Carlos Reynosa,
Childrens Events, and Much More

Information:
Bluffs Park: (310) 317-1364
Francine Greene: (310) 457-3006

CHUMASH DAY 2002

MOTHERS OF THE EARTH

RECEIVED
AUG 1 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

NATIVE AMERICAN CULTURAL RESOURCES ADVISORY COMMITTEE

PROPOSED BYLAW CHANGES

December 4, 2001

Section 2.1 Composition - Change second sentence to read "Members may be Malibu residents or owners of property within Malibu, or work within the City of Malibu, Native Americans, or cultural resources professionals".

Add – " There shall be a non-voting class of members called "Associate Members" who may be Appointed by vote of the Committee at a regular meeting. This class of membership is intended to augment the Committee by addition of special skills for special projects or events. Such Associate Members need not conform to the attendance requirements of Regular Members and will generally act as consultants to the Committee.

Section 2.2 Terms of Membership – Change "all" to "Regular"

Section 2.3 Termination of Membership – Paragraph 1) change "3" to "4", and change "fiscal" to "calendar"

Section 3.1 Officers – Change first sentence to read "The officers of the Advisory Committee shall consist of a Chairperson, Vice-Chairperson or Co-Chairpersons (in the event of no Vice-Chairperson, an Event Chairperson, and a Secretary."

All other sections – Change "Native American Cultural Resources Study Group" to "Native American Cultural Resources Advisory Committee"; "Study Group" to "Advisory Committee" and "Group" to "Committee" wherever appropriate.

ARTICLE II. MEMBERSHIP

Section 2.1 Composition

The Study Group shall consist of an unlimited number of members who shall be ratified by a simple majority of the City Council. Members may be Malibu residents or owners of property within Malibu, Native Americans, or cultural resource professionals. All members shall submit a completed City Study Group Application Form to the City Clerk's Office prior to ratification of an appointment. The City Council shall review each application and shall make the ratification as soon as possible after receipt of the application.

Section 2.2 Terms of Membership

There shall be no specific terms of membership on the Study Group. All members shall have voting rights commencing thirty (30) days after the date of appointment by the City Council.

Section 2.3 Termination of Membership

Membership in the Study Group shall automatically terminate upon any of the following occurrences:

1) The member has been absent from more than three (3) regular meetings within a fiscal year;

2) Upon receipt of a notice or letter or resignation submitted to the City Clerk by the member;

3) Upon removal by a majority of the City Council, with or without cause.

Section 2.4 Resignation

Any Study Group member may resign at any time by giving written notice to the City Clerk. Any such resignation shall be effective upon receipt or upon any date specified therein. The acceptance of such resignation shall not be necessary to make it effective.

City of Malibu

Press Release

December 4, 2001

The City of Malibu will host its fourth annual "Chumash Day" on April 21, 2002, from 10 AM to 5 PM at Bluffs Park, at the corner of Las Virgenes (Malibu Canyon) and Pacific Coast Highway in Malibu. The event, sponsored by the City's Native American Cultural Resources Advisory Committee coincides with Earth Day. Admission is free and handicapped facilities are available.

The Cultural Resources Advisory Committee, a volunteer body, was formed in 1996 to safeguard Malibu's unique cultural heritage. Its mission is to encourage and facilitate public knowledge, understanding, and appreciation of Malibu's cultural past, present, and future. Malibu's cultural history is intimately intertwined with its Native American roots, particularly those of the Chumash peoples.

The Cultural Resources Advisory Committee is not a political entity, but it helps set the tone for mediating crucial local concerns – especially conflicts between, preservation of Chumash and other Native American cultural resources and, proposed land and development uses.

Cultural resources advocates and land development supporters both agree that a balance between these two concerns is important. The Chumash have played a pivotal role in the local history of Malibu and the Los Angeles area, as well as in the greater regional history of Southern and Central California. The City of Malibu is committed to [illegible] awareness of the past, present, and future contributions of the Chumash – Malibu's first residents – for all its citizens. Equally important, the Native American Advisory Committee has set up guideposts for integrating policies for cultural resources preservation and land development.

Chumash Day was created to educate the public, including children, about Malibu and the surrounding community's heritage. This year's Chumash Day will be an innovative, family-oriented, and all-round fun experience. Native American tribal ceremonies and dance will take place, and vendors will be on hand with an assortment of food, art, and crafts for sale. Chumash Day 2002 promises to have ample parking for everyone at Bluffs Park.

Several events will be tailored especially for children. Native American story tellers, a corral for pony rides, and an animal petting zoo are just a few of the featured activities for young people. Children can also participate in do-it-yourself arts and crafts such as face painting and tattooing. Youngsters who want to enter the Chumash Day 2002 painting contest can draw or paint a picture and bring it to the event. Prize ribbons will be awarded to all the children who participate.

. For more information on Chumash Day 2002, including the art contest and other activities for children, please contact (310) 456-CITY.

CHUMASH DAY 2002

10:00 A.M. TO 5:00 P.M.

BLUFFS PARK, MALIBU

APRIL 21, 2002

THANK YOU FOR YOUR MAKING OUR LAST YEAR SUCH A WONDERFUL SUCCESS. WE LOOK FORWARD TO SEEING YOU AT THIS YEARS GATHERING.

FOR INFORMATION CONTACT:

FRANCINE GREENE
NATIVE AMERICAN CULTURAL RESOURCES ADVISORY COMMITTEE
P.O. BOX 6403
MALIBU, CALIF. 90264

TEL. (310) 457-3006

LOCATION:

BLUFFS PARK

The City of Malibu is Celebrating
Chumash Day
'Mothers of the Earth'
Join is at our Gathering

April 21, 2002
9:00 A.M – 6:00 P.M.

Bluffs Park – Malibu Canyon and Pacific Coast Highway
(310) 317-1364

Vendor Information: Francine Greene
(310) 457-3006

VENDOR INFORMATION SHEET

Vendors may begin setting up on Saturday evening, April 20, 2002
At 5:00 P.M. with overnight camping for Vendors and Registered Participants only.
Set up on Sunday between 6:00 A.M. and 9:00 A.M.
DRIVE-ON AND DRIVE-OFF LOADING AND UNLOADING IS AVAILABLE
The City of Malibu and the Native American Cultural Resources Committee
Are not responsible for theft of or damage to Vendors property.
Limited electricity will be available
Vendor Spaces are 10x10 at $125.00 per space.
$50.00 deposit is required with completed application and balance is due at event before 10:00A.M.

NO ALCOHOL, DRUGS OR ANIMALS ARE PERMITTED ON THE GROUNDS.
NO SALE OF SAGE OR OTHER SACRED CEREMONIAL PLANTS

VendorName_____ **Business name**_____

Address_____

Tel.No._____ **Fax No.**_____

What will you be selling?_____

Space Size 10x10 at $125.00 each – Number of spaces required ?

_____

Make Check Payable to: Native American Cultural Resources Advisory Committee
P.O. Box 6403, Malibu, SA. 90264

Signature_____ **Date**_____

This year we have on-site parking for up to 500 cars. We have also reserved close in parking for vendors for easy access. The event falls on Earth Day and will be widely advertised in Southern California.

Harold L Greene
29500 Heathercliff Road, Space 1
Malibu, Ca. 90265

December 4, 2001

WESTWAYS Calendar
P.O. Box 25222
Santa Ana, Ca. 92799-5222

Gentlemen,

The City of Malibu Native American Cultural Resources Committee respectfully requests that you publish notice of the Fourth Annual Chumash Day Native American Gathering to be held on Earth Day, April 21nd, 2002 at Bluffs Park at the corner of Pacific Coast Highway and Malibu Canyon, across from Pepperdine University. Native American music, dancing, drumming, arts and crafts will be featured. Admission is free. For further information call 310-317-1364.

Respectfully,

Harold L. Greene, Chair
Native American Cultural Resources Committee
of the City of Malibu

CHUMASH HERITAGE DAY

AND

INDIGENOUS PEOPLE'S FESTIVAL
APRIL 22, 2001

Whereas

this is the time to recognize the importance of the Mit'Chumash heritage in Malibu (Humaliwo) and the time for recognizing all indigenous people throughout the State of California.

Whereas

It is time for all human beings to walk together in unity,
recognizing with honor our diversity,
while embracing the essence of our similarities, and

Whereas

this PROCLAMATION will continue the process of healing and integration of the indigenous peoples and the spiritual beliefs of their ancestors; and

Whereas

the City of Malibu (Humaliwo) supports the Mit'Chumash in their process toward state recognition; and in that regard the City of Malibu (Humaliwo) recognizes April 22 as Chumash Day and Indigenous Peoples' Festival Day. It will hereinafter be called "CHUMASH DAY". With respect to all peoples of the world; each being invited to join in ceremony and in a moment of silence and prayer on March 28, 2001, at 6:00 P.M., at Malibu High School and at the Gathering for all peoples of this land; for the living and for their ancestors, on April 22, 2001 at Bluff's Park between the hours of 10:00 a.m. to 6:00 p.m. in the City of Malibu.

NOW, THEREFORE, I, THOMAS HASSE, by the authority vested in me as Mayor of the City of Malibu (Humaliwo) and the members of the City Council, do hereby proclaim the day of April 22, 2001, as Chumash Day and Indigenous Peoples' Festival Day in the City of Malibu (Humaliwo), California, a day dedicated to multicultural consciousness and understanding.

_____

THOMAS HASSE - Mayor

City of Malibu

23555 Civic Center Way • Malibu, California • 90265-4804
(310) 456-2489 • fax (310) 456-3356

July 26, 2002

Gary Timm, District Manager
John Allen, Staff Ecologist
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

On July 23, 2002, John Dixon, Senior Staff Biologist, and John Allen, Staff Ecologist for the Coastal Commission, accompanied City Staff on a site inspection of mapped Environmentally Sensitive Habitat locations around the City. The purpose of the site inspections was to identify areas designated as Environmentally Sensitive Habitat Areas (ESHAs) on the June 2002 proposed ESHA map that do not meet the Coastal Act Definition of Environmentally Sensitive Habitat and thus should be removed from the ESHA maps. The following represents a summation of the topics discussed and the mapped ESHA elements which were visited and analyzed. Attached is a map demonstrating the areas/lots that the City feels should not be included on the ESHA map. Each number on the attached map correlates to that same number listed under Section B below. Each area contains a brief description and the City's position on whether that area or a portion of that area should be removed from the ESHA map. The areas that the City feels should be removed are indicated as cross-hatched areas on the attached ESHA map dated July 26, 2002.

A. *GENERAL HILLSIDE AND CANYON AREAS*

Although specific areas were not indicated on the attached ESHA map as areas to be taken out, the City strongly recommends that all areas that are mapped as ESHA that do not fall under the Coastal Act definition of Environmentally Sensitive Habitat Area be excluded from the ESHA map. These areas include lots mapped as ESHA due to its existence as public parkland, having slopes of 40% or greater and/or lots containing Chaparral or Coastal Sage Scrub habitat that may be valuable, but not "rare or especially valuable" as required under the Coastal Act definition. These areas are mostly located in the foothill and inland coastal slope regions.

B. *SPECIFIC AREAS*

1. (Intentionally omitted)

2. Los Alisos Canyon (just west of Decker Cyn. Road / PCH intersection) – Drainage has some influx of non-native species, but remains a relatively intact native community. The majority of this drainage south of PCH is ESHA, but boundaries should be refined to the limits of the drainage channel, as existing disturbance/development occurs on either side.

3. Lachusa Canyon (just east of Decker Canyon Road/PCH intersection) – This drainage south of PCH is heavily disturbed. The drainage channel qualifies as jurisdictional by Department of Fish and Game standards, but over all habitat is highly disturbed by existing stable/horses, tennis court, and

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encroaching landscape vegetation. The City recommends that this area be **removed from ESHA designation**.

4. Encinal Drainage (between El Pascador and La Piedra State Beaches) – Boundaries of the drainage channel support habitat consistent with ESHA. However, **ESHA boundary lines should be refined to limits of drainage channel** as existing disturbance occurs on either side.

5. La Piedra State Beach Drainage (at Encinal Canyon Rd. /PCH intersection) – Drainage is located in mostly parkland. Habitat exists in a deeply eroded gully. Native vegetation consists primarily of upland scrub species, some influx of non-native invasive species. Though designation of parkland itself is not an issue, adjacent private properties would be affected significantly by setbacks from mapped boundaries. Habitat is not particularly unique. City recommends this drainage be **removed from ESHA designation**.

6. Drainage East of Encinal (just east of Encinal Canyon Rd. / PCH intersection – south of PCH) – Narrow ditch heavily dominated by non-native species. This drainage has very low habitat value. The City recommends **removal from ESHA designation**.

7. Drainage East of Encinal (just east of Encinal Canyon Rd. / PCH intersection – north of PCH) – Upper portion of drainage supports a native, though somewhat disturbed scrub community. Though some of this portion of drainage provides habitat for wildlife and the drainage channel is jurisdictional, this section of drainage is fragmented from any surrounding habitat. As such, habitat functions and values are substantially reduced. The City Recommends **removal from ESHA designation**.

8. Encinal Canyon (just west of Broad Beach Rd/Sea Level Drive) – Vegetation consists of predominantly eucalyptus trees with some sycamores mixed in. There was a suggestion from CCC staff that this area may support roosting monarchs, which would justify ESHA status. However, the City does not have any current data to support this. The drainage otherwise does provide some reasonably good habitat. As such, the City recommends that the **ESHA boundary lines be refined to only incorporate the actual drainage channel**, as uplands on both sides are either developed or highly disturbed.

9. Lunita Drainage (just east of Lunita /PCH intersection) – The section of the drainage course identified on the map is highly disturbed. Beyond the banks of both sides, nearly all of the vegetation has been removed through regular disking. The drainage itself appears to be of higher quality. Coyote brush and scattered California sagebrush are dominant and there is a considerable element of non-native plant species. The drainage course is still jurisdictional by the Department of Fish and Game standards, but the habitat is of very low value. The City recommends that this area be **removed from ESHA designation**.

10. Morning View Drainage (just west of Malibu High School) – This drainage is heavily dominated by castor bean and other non natives. Portions may be jurisdictional by Department of Fish and Game Standards, but habitat not consistent with ESHA designation. The City recommends that **this area be removed from ESHA designation.**

11. (Intentionally omitted)

12. (Intentionally omitted)

13. Portshead /Fernhill /Grayfox Drainage (just west of Portshead Road, crosses Fernhill Road and parallel to Grayfox Road) – The West fork of upper portion of the drainage is not jurisdictional and does not support high quality habitat consistent with ESHA. The City recommends that **this area be removed from ESHA designation.** The East fork is jurisdictional and supports willows within the channel boundaries for a little less than one half mile to the south. The City recommends that the **ESHA boundaries in this area be confined to the channel as shown on the map**. The remainder of the

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drainage is highly disturbed with encroaching development, sections of channelization and substantial element of non-native vegetation. The City recommends that the **remainder of the drainage be removed from the ESHA designation.**

14. Upper Portshead Drainage (portion north of PCH) – This portion of the drainage is heavily disturbed, fragmented, and surrounded by development. The City recommends that **this area be removed from ESHA designation.**

15. Bison Court Drainage (immediately north and south of Bison Court) – This entire drainage is highly disturbed, fragmented, supports predominantly non-native vegetation, providing very low habitat value. The City recommends that **this drainage be removed from ESHA designation.**

16. Kanan Dume Road Drainage (just west of Kanan Dume Road) – Relatively high quality habitat in the drainage channel. The City recommends the **ESHA boundaries in this area be confined to the drainage channel.**

17. Upper Walnut Canyon (just west of Zumirez Drive, north of PCH) – This portion of the drainage sustains no riparian associated vegetation, is partially disked, and contains a substantial non-native vegetation component. The City recommends that **this drainage be removed from ESHA designation.**

18. Lower Walnut Canyon (just west of Zumirez Drive, south of PCH) – This area exhibits relatively intact riparian vegetation. The City recommends that **this area remain in ESHA designation.**

19. Zuma View Drainage (both west and east of Zuma View Place, mostly south of PCH) – This area exhibits some decent riparian habitat south of PCH. Area north is heavily disturbed and surrounded by development with considerable encroaching non-native vegetation. The City recommends that **the portion north of PCH be removed from ESHA designation.** The City also recommends that **the ESHA boundaries in the southern portion be refined to actual resource edge.**

20. Ramirez Canyon lots (located on the west side of Ramirez Canyon Road) – This areas is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**

21. Ramirez Canyon lots (located on the east side of Ramirez Canyon Road) – This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**

22. West Winding Way lots (located on the west side of West Winding Way) – This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**

23. West Winding Way lots and drainage (located on the east side of West Winding Way) – This area is all regularly disked and supports little to no native vegetation. The City recommends **removal from ESHA designation.**

24. Winding Way Drainage (just east of Winding Way / PCH intersection and north of PCH) – No habitat is present in this area. The area illustrated on the ESHA map consists of already developed properties. The City recommends **removal of this area from ESHA designation.**

25. Winding Way Drainage (just east of Winding Way / PCH intersection and south of PCH) – This drainage is heavily disturbed and dominated by non-native vegetation. The City recommends **removal of this area from ESHA designation.**

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26. Latigo Canyon lot (located on the west side of Latigo Canyon Road) – Existing developed lot. The City recommends removal of this area from ESHA designation.

27. Latigo Canyon lot (located on the west side of Latigo Canyon Road) – Existing developed lot. The City recommends removal of this area from [redacted]

28. Latigo Canyon lot (located on the west side of Latigo Canyon Road) – Existing developed lot. The City recommends removal of this area from ESHA designation.

29. Corral Canyon lot (located on the east side of Corral Canyon Road at the City boundary) – Existing developed lot. The City recommends removal of this area from ESHA designation.

30. Corral Canyon Road (parallel to and on both sides of Corral Canyon Road) – This area is regularly disked and/or does not support native vegetation. City recommends removal of this area from ESHA designation.

31. Puerco Canyon drainage (located west of Bluff's Park and south of PCH) – This area demonstrates good quality riparian habitat in the drainage channel. However, the City recommends that the ESHA boundaries be refined to the drainage channel edges.

32. Malibu Creek / Serra Road lots (located just west of Serra Road) – This area is nearly all developed. Lawns and landscaping abut the edge of Malibu Creek. City recommends removal of the area shown on the map from ESHA designation.

33. Sweetwater Mesa drainage (located just east of Sweetwater Mesa Road) – This area demonstrates good quality riparian habitat in the drainage channel. However, the City recommends that the ESHA boundaries be refined to the drainage channel edges.

34. Carbon Canyon Road lots (located north of Carbon Mesa Road and on both sides of Carbon Canyon Road) – This area is regularly disked and/or does not support native vegetation. City recommends removal of this area from ESHA designation.

35. Las Flores Creek / Las Flores Canyon Road (located just west and along Las Flores Canyon Road) – This area exhibits good quality habitat in the drainage channel. However, the City recommends that [redacted]

36. [redacted] has a long history of disking/disturbance. Little native vegetation is present. City recommends removal of the area shown on the map from ESHA designation.

37. Piedra Gorda Canyon (located on the west side of Big Rock Drive) – This drainage is heavily disturbed, and essentially has no native habitat remaining. City recommends removal of this area from ESHA designation.

38. El Matador Drainage (just west of El Matador State Beach) – Habitat in this drainage is heavily disturbed, and contains a substantial element of non-native vegetation. In addition, this area is isolated by development and PCH. City recommends removal of this area from ESHA designation.

39. Bailiard Road Drainage (just west of the terminus of Bailiard Road) – Habitat in this drainage is heavily disturbed, and has no connectivity to open space areas. City recommends removal of this area from ESHA designation.

Please note that refinement of the ESHA mapping is an ongoing process. The recommendations contained herein were derived from meetings held jointly between Coastal Commission Staff and City Staff and from some of City Staff's independent analysis. Due to abbreviated time frames, this review may not include all areas recommended for removal

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from the ESHA designation. The City will continue its efforts to analyze and provide recommendations for modifications to the ESHA maps in order to help achieve the goal of accurate ESHA mapping. In addition, the City would like to express its gratitude to the Coastal Commission and its Staff for its ongoing effort in working with the City to refine the ESHA maps into a more accurate representation of the actual conditions.

For any questions or clarifications regarding this matter, please contact me at your convenience at (310) 456-2489, extension 243.

Sincerely,

Drew D. Purvis
Planning Director

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City of Malibu

23555 Civic Center Way • Malibu, California • 90265-4861
(310) 456-2489 • fax (310) 456-3356

RECEIVED
South Coast Region

JUL 9 2002

CALIFORNIA
COASTAL COMMISSION

July 8, 2002

Dear California Coastal Commissioner:

Attached is the City of Malibu revised matrix based on the revised Land Use Plan received on July 1, 2002 and comments on the Implementation Plan (including the revisions received on July 1, 2002). As you may know, the City has seven primary issues that encompass many policies. The following is a brief overview of these issues.

1. Land Use Maps should reflect the zoning designated in the City's General Plan. The Coastal Commission's proposed maps include a multitude of changes to the City's adopted Land Use Maps. Since January numerous improvements to the maps have been made – the designations on many parcels (including some of the Multi-family Beachfront properties) have been changed to conform to the City's designation. This is a positive step. Unfortunately, there are still more than 150 parcels that do not conform. The City objects to any substantive variation from the City's Land Use Maps. This is especially true because there was ample notice as required by state law to every property owner when the City adopted its Land Use Maps which is not the case with the Coastal Commission's proposed Land Use Maps. To assist in this discussion we have attached a map comparing the City's zoning to that which is proposed by the Coastal Commission Staff.

2. Designation of Environmentally Sensitive Habitat Area are not supported by up-to-date field analysis and based on the application of vague criteria. The City strongly supports protection of ESHA and other sensitive resources as defined by the criteria proposed in the [redacted] 3.2. This criteria or other criterion developed by the Department of Fish and Game as [redacted] Sheila Kuehl and Assemblymember Fran Pavley should be used to evaluate habitat in the field in order to develop new ESHA Maps over the next three years.

   The city is fully committed to this process. In the interim, the City proposes using the 1986 Certified Los Angeles County ESHA Maps in addition to any habitat area that meets the criteria in Policy 3.2 proposed by the City as a result of a project-by-project review by the City Biologist.

   To assist in this discussion we have attached a map comparing the Coastal Commission staff proposals for ESHA (both January and July) and the 1986 certified Los Angeles County ESHA Maps.

3. Malibu Bluffs Park: The City's position is that the policies specifically related to Bluffs Park should be deleted from the LUP. Bluffs Park is located on state property. There are on-going efforts to determine the ultimate location of this regional recreation facility. There is little nexus between this decision and the California Coastal Act. For this reason the city believes that all policies concerning Bluffs Park should be removed from any portion of the Malibu LCP.

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4. Application of restrictive development standards to any new development visible from scenic roads, trails, parklands, beaches and state waters. Policies in LUP chapter six are onerous. One policy limits any new development visible from a scenic road. A scenic road includes many of the City's Canyon roads such as Malibu Canyon Road and Kanan Dume, as well as Pacific Coast Highway. The practical implication is that many parcels and associated new development is visible from these scenic roads or areas. This policy allows the development to take place if impacts are minimized. Most concerning is the policy that limits impacted area from development if it is visible from a scenic road to 10,000 square feet or 25% of the lot size, whichever is less. This series of policies are onerous and complicated to interpret. It appears that if the new development is visible from several miles up the coast but not visible from the scenic road that fronts the parcel these limitations apply. This seems over-reaching.

5. The requirements for a Temporary Use Permit (TUP) are challenging. As stated previously, the system set up in the draft LUP will require someone to know prior to their event that they will have a negative impact on public access, recreation and coastal resources. Unfortunately, this forces someone to violate the law (have a party without a permit). This is problematic.

6. Agricultural and confined animal uses. There are a number of policies that limit the use of private property for agricultural or animal uses. As a rural residential community it is perfectly normal to have agricultural uses and confined animals. Some of the policies are so restrictive that their uses would be prohibited. This should be changed.

7. Retained Jurisdiction. The current Coastal Commission LUP is silent on the retained jurisdiction. The City believes that this issue should be articulated in the policies. As a result the City is proposing to add a policy which is reflected on the matrix at the beginning of Chapter 5.

On behalf of the City, thank you for taking the time to understand the issues concerning Malibu's Local Coastal Plan. We are looking forward to having this matter before you later this week.

Sincerely,

Katie E. Lichtig
City Manager

cc: Malibu Mayor and City Council
Senator Sheila Kuehl
Assembly Member Fran Pavley
Coastal Commission Staff

Recycled Paper

DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
		Chapter 2 - Public Access & Recreation	
	Public Access & Recreation - LUP Policies	2.3 Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions for new development which incorporate measures to provide or protect access when there is substantial evidence that prescriptive rights exist.	2.3 Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through ~~historic use or~~ legislative authorization **or when there is substantial evidence that prescriptive rights exist.** These rights shall be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access when there is substantial evidence that prescriptive rights exist.
	Public Access & Recreation - LUP Policies	2.7 Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an Existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.	2.7 Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. ~~Where there is an~~ Existing, ~~but unaccepted and/or unopened~~ public access Offer**s**-to-Dedicate (OTD**s**), easement**s**, ~~or deed~~ restriction**s** for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use **when it is found to comply with the access policies of this LUP**.
	Public Access & Recreation - LUP Policies	2.19 Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A coastal development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources.	2.19 Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. ~~A coastal development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources.~~

Proposed Policy Language Changes shown as strikeout and bold/underlining

DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation - LUP Policies	2.22 Signs advertising off-site non-coastal related uses or services shall be prohibited in public beaches and parks.	2.22 Signs advertising off-site non-coastal related uses or services shall be prohibited in public beaches and **beach** parks.
	Public Access & Recreation - LUP Policies	2.28 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.	2.28 New Ggates, guardhouses, barriers or other structures designed to regulate or restrict access, and located shall not be permitted within private street easements shall be designed and operated in such a manner that allows for public access 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.
	Public Access & Recreation - LUP Policies	2.29 Parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreational areas.	2.29 Parking facilities for new development of general office or commercial use, which may cumulatively impacts public access and recreation, shall be designed to such that the parking facility will serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreational areas.
	Public Access & Recreation - LUP Policies	2.30 A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business should be developed. As feasible, new non-visitor serving office or commercial development shall be required to provide public parking for beach access during weekends and holidays.	2.30 A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business should be **considered** developed. As feasible, new non-visitor serving office or commercial development shall be required to provide public parking for beach access during normal closure hours.
	Public Access & Recreation - LUP Policies	2.31 The City should complete an inventory of existing public parking along Pacific Coast Highway and public roads seaward of PCH to identify all unpermitted signage or physical barriers to public parking and to establish a database to aid in preventing future loss of legal public access and parking. All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted.	2.31 The City should complete an inventory of existing public parking along Pacific Coast Highway and public roads seaward of PCH to identify all unpermitted signage or physical barriers to public parking and to establish a database to aid in preventing future loss of legal public access and parking. All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted.

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DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation - LUP Policies	2.32 Landscaping and any other barriers or obstructions placed by private landowners shall not be allowed within existing road rights of way where such areas would otherwise be available for public parking.	2.32 Landscaping and any other barriers or obstructions placed by private landowners shall not be allowed within existing **public** road rights of way where such areas would otherwise be available for public parking.
	Public Access & Recreation - LUP Policies	2.35 New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations ~~as part of the project~~ (e.g. campground, RV park, hostel, or lower cost hotel/motel) ~~to the maximum extent feasible. New hotels, motels or other overnight accommodations that do not provide~~ The lower-cost visitor accommodations may be provided on-site, ~~shall be required to provide for such accommodations~~ off-site, or through. ~~If the applicant establishes that it cannot feasibly build such facilities, then~~ payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities ~~shall be required~~ in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.	2.35 New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g. campground, RV park, hostel, or lower cost hotel/motel) to the maximum extent feasible. ~~The lower-cost visitor accommodations may be provided on-site, off-site, or 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 or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.~~
	Public Access & Recreation - LUP Policies	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.	2.37 ~~Priority shall be given to the development of~~ **v~~V~~isitor**-serving commercial recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches **should be encouraged.** ~~Visitor-serving commercial recreational uses may be located near public park and recreation areas only if~~ The scale and intensity of the visitor-serving commercial recreational uses**, when adjacent to public parks and recreation areas, shall be** is compatible with the character of the nearby parkland **or recreation area**.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation - LUP Policies	2.38 ~~To help finance the construction and maintenance of new accessways, a one-time fee based on the gross square footage of the structure shall be required of new non-visitor serving commercial and general office uses (uses other than hotels, motels, restaurants, and similar uses intended primarily for patronage by visitors) approved in the City for deposit into the fund.~~	**OK as Deleted. However, if this policy is reinstated, then the City proposes the following language:** 2.38 **The City shall explore ways of assisting in the finance, construction and maintenance of new accessways including, but not limited to the establishment of a mitigation fee, community facilities district, or assessment district.**
	Public Access & Recreation - LUP Policies	2.42 For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.	2.42 For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a **qualified** private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City ~~shall~~ **may** approve any **qualified** private association that submits a management plan that **requires** ~~indicates that~~ the association **to** ~~will~~ open, operate and maintain the easement in accordance with terms of the recorded offer to dedicate the easement **in a condition free of debris, weeds, trash, and in a manner safe for public access**.
	Public Access & Recreation -LUP Policies - Trails & Bikeways	2.50 A trail offer of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide maximum privacy for residents and maximum safety for trail users.	2.50 A trail offer of dedication shall be required in new development where the development causes or contributes to adverse public access impacts, and the property either contains a LCP mapped trail alignment, or where there is substantial evidence that prescriptive rights exist. An existing trail that has substantial evidence that prescriptive rights exist ~~which has historically been used by the public~~ may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide maximum privacy for residents and maximum safety for trail users.

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DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Trails & Bikeways	2.51 The opening of a trail easement that was dedicated for public use as a term or condition of a Coastal Development Permit shall occur only after a public agency or private association has accepted the offer of dedication and agreed to open, operate and maintain the trail. New offers to dedicate public trail easements shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.	2.51 The opening of a trail easement that was dedicated for public use as a term or condition of a Coastal Development Permit shall occur only after a public agency or private association has accepted the offer of dedication and agreed to open, operate and maintain the trail. New offers to dedicate public trail easements shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with **adjudicated** prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.
	Public Access & Recreation -LUP Policies - Shoreline Access	2.64 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where: 1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; 2) adequate access exists nearby, or; 3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.	2.64 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development **causing or contributing to adverse public access impacts.** Exceptions may occur only where: 1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; 2) adequate access exists nearby, or; 3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Shoreline Access	2.67 An Offer to Dedicate (OTD) an easement for vertical access shall be required in all new development projects causing or contributing to adverse public access impacts when adequate access is not available within 500 feet of the development site. Vertical accessways shall be a minimum of 10 feet in width and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent. Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist.	2.67 An Offer to Dedicate (OTD) an easement for vertical access shall be required in all new development projects causing or contributing to adverse public access impacts, **consistent with the guidelines contained in Policy 2.69.** ~~when adequate access is not available within 500 feet of the development site.~~ Vertical accessways shall be a minimum of 10 feet in width and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent. Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist.
	Public Access & Recreation -LUP Policies - Shoreline Access	2.70 Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept the responsibility for maintenance and operation of the accessway. New offers to dedicate public access shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights in the areas subject to the easement prior to acceptance of the offer and 2) prohibits any development or obstruction in the accessway prior to acceptance of the offer of dedication.	2.70 Dedicated accessways shall not be required to be opened to public use until a public agency or **qualified** private association agrees to accept the responsibility for maintenance and operation of the accessway. New offers to dedicate public access shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with **adjudicated** prescriptive rights in the areas subject to the easement prior to acceptance of the offer and 2) prohibits any development or obstruction in the accessway prior to acceptance of the offer of dedication.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Shoreline Access	2.71 Offers to dedicate public access shall be accepted for the express purpose of opening, operating and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6 months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.	2.71 Offers to dedicate public access shall be accepted for the express purpose of opening, operating and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified **private** association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6 months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or **qualified** private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.
BLUFFS PARK	Public Access & Recreation -LUP Policies - Shoreline Access	2.79 A future ~~D~~development ~~of a Public Works Plan~~ plan, including but not limited to a Development Agreement of Public Works Plan, for Malibu Bluffs State Park by the California Department of Parks and Recreation that results in removal and relocation of existing athletic fields and provides for uses which complement State and regional park objectives to expand public access and visitor opportunities shall be supported.	**Delete, not required by the Coastal Act**
BLUFFS PARK	Public Access & Recreation -LUP Policies - Shoreline Access	2.80 No expansion, reconstruction or improvements to existing athletic fields at Malibu Bluffs State Park shall be permitted.	**Delete, not required by the Coastal Act**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
BLUFFS PARK	Public Access & Recreation -LUP Policies - Shoreline Access	2.81 A The Amended Draft Development Agreement between the City, the State Department of Parks and Recreation and the Crummer Family Trust ~~or any subsequent property owner~~ presented at a multi-agency meeting on April 15, 2002 ~~and~~ should be pursued which provides for the permanent removal of ~~all~~ the existing athletic fields at Malibu Bluffs State Park, with the exception of a 2.678 acre portion of the Park not located in the prime view shed, and relocation to the 24.9 acre Crummer Family Trust parcel which is adjacent to the State Park on the east and south of Pacific Coast Highway ~~(Crummer Trust)~~. Said agreement may include the construction of up to 8 residential units on the remainder of the (Crummer Trust) site and shall cause the redesignation of the subject site to Residential in the Land Use Plan upon approval of the Coastal Commission. Said agreement shall not exempt the residential development from compliance with all other provisions of the LCP, ~~including, but not limited to, visual and landform alteration policies~~.	**Delete, not required by the Coastal Act**
	Public Access & Recreation -LUP Policies - Shoreline Access	2.89 The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies.	2.89 The following standards ~~shall apply in~~ **are a guideline to help** carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline, **where new development is found to cause or contribute to adverse public access impacts**. These standards shall not be used as limitations on any access requirements pursuant to the above policies.
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 3) Lechuza • Public acquisition of or requirements for two vertical access (OTDs)	2.89 (Con't) 3) Lechuza • ~~Public acquisition of or requirements for~~ **Requirement for or public acquisition of** two vertical access (OTDs) **with a separation of approximately ¼ mile (1,320 feet).**

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 4) Trancas • Public acquisition of and/or requirements for vertical access every 1,000 feet of shoreline	2.89 (Con't) 4) Trancas • ~~Public acquisition and/or requirements for~~ **Requirement for or public acquisition of** vertical access ~~every 1,000 feet of shoreline~~ **with a separation of approximately ¼ mile (1,320 feet)**
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 7) Dume Cove / Point Dume State Reserve: • Vertical access to the beach from the blufftop headlands parking lot. • Vertical access to and lateral access along the blufftop at the Point Dume headlands for coastal view purposes and passive recreation, with a minimum of two established viewpoints at least 500 feet apart. • The provision and protection of public parking pursuant to the terms of the settlement agreement between the City, the State Department of Parks and Recreation and the Coastal Commission shall be required.	2.89 (Con't) 7) Dume Cove / Point Dume State Reserve: • **Maintain the existing** vertical access to the beach from the blufftop headlands parking lot. • **Maintain the existing** vertical access to and lateral access along the blufftop at the Point Dume headlands for coastal view purposes and passive recreation~~, with a minimum of two established viewpoints at least 500 feet apart.~~ • **Maintain the existing** ~~The~~ provision and protection of public parking pursuant to the terms of the settlement agreement between the City, the State Department of Parks and Recreation and the Coastal Commission ~~shall be required.~~
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 8) Paradise Cove • Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with no fewer than two)	2.89 (Con't) 8) Paradise Cove • **Support public acquisition of sandy beach for passive recreational purposes and other recreation supporting facility, e.g. restored pier** • **If public acquisition of sandy beach is not feasible,** requirement for public acquisition of vertical access ~~every 1,000 feet of shoreline (with no fewer than two)~~ **with a separation of ¼ mile (1,320 feet)**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 9) Escondido Beach/Malibu Cove Colony • Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with at least two additional accessways to those existing at Escondido Creek and Geoffrey's Restaurant). • Improvement, opening and operation of 2 existing vertical accessways and 3 existing vertical access easements.	2.89 (Con't) 9) Escondido Beach/Malibu Cove Colony • ~~Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with at least two additional accessways to those existing at Escondido Creek and Geoffrey's Restaurant).~~ • **No additional public acquisition requirement** • Improvement, opening and operation of 2 existing vertical accessways and 3 existing vertical access easements.
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 10) Latigo Beach • Requirement for or public acquisitio of vertical access dedication on property seaward of and fronting Latigo Shore Drive to meet standard of one accessway every 1,000 feet. • Requirement for or acquisition of public viewpoint on the blufftop at Pacific Coast Highway (PCH) or public street seaward of PCH • Improvement, opening and operation of existing vertical accessway and OTD.	2.89 (Con't) 10) Latigo Beach • ~~Requirement for or public acquisitio of vertical access dedication on property seaward of and fronting Latigo Shore Drive to meet standard of one accessway every 1,000 feet.~~ • ~~Requirement for or acquisition of public viewpoint on the blufftop at Pacific Coast Highway (PCH) or public street seaward of PCH~~ • **No additional public acquisition requirement** • Improvement, opening and operation of existing vertical accessway and OTD.
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 11) Dan Blocker Beach • Improvement of existing vertical accessway, public parking and restroom facilities on portion of shoreline owned by Los Angeles County.	2.89 (Con't) 11) Dan Blocker Beach • ~~Improvement of existing vertical accessway, public parking and restroom facilities on portion of shoreline owned by Los Angeles County.~~ • **No additional public acquisition requirement**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 12) Malibu Beach Road (Amarillo and Puerco Beach) • Requirement for or public acquisition of vertical access every 1,000 feet of shoreline. • Open existing vertical access OTD. • Maintain and operate existing accessways (5 are open). • Enhance trail connections to Malibu Bluffs State Park.	2.89 (Con't)12) Malibu Beach Road (Amarillo and Puerco Beach) • ~~Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.~~ • **No additional public acquisition requirement** • Open existing vertical access OTD. • Maintain and operate existing accessways (5 are open). • Enhance trail connections to Malibu Bluffs State Park.
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 13) Malibu Bluffs State Park • No dedications required – Public Park. • Replacement of local City park uses (ballfields, community center) with public blufftop trails and viewpoints, passive recreation, and vertical access trail to Malibu Road.	2.89 (Con't) 13) Malibu Bluffs State Park • No dedications required – Public Park. • **Until a permanent solution to the location of the existing athletic fields at Malibu Bluffs State Park is reached, maintenance and rehabilitation of the athletic fields shall be permitted.** ~~replacement of local City park uses (ballfields, community center) with public blufftop trails and viewpoints, passive recreation, and vertical access trail to Malibu Road~~
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 14) Malibu Beach • Public vertical access dedications or public acquisition to meet the minimum standard of one accessway per 1,000 feet of shoreline from properties located seaward of and fronting on Malibu Road	2.89 (Con't) 14) Malibu Beach • **No additional public acquisition requirement** • ~~Public vertical access dedications or public acquisition to meet the minimum standard of one accessway per 1,000 feet of shoreline from properties located seaward of and fronting on Malibu Road~~
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 16) Carbon Beach • Requirement for or public acquisition of vertical access every 1,000 feet of shoreline • Improve and open existing vertical access OTDs	2.89 (Con't) 16) Carbon Beach • Requirement for or public acquisition of vertical access ~~every 1,000 feet of shoreline~~ **with a separation of ¼ mile (1,320 feet)** • Improve and open existing vertical access OTDs

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 17) La Costa/Las Flores Beaches • Requirement for or public acquisition of vertical access every 1,000 feet of shoreline • Improve and open vertical access OTD at Las Flores Creek • Improve and open parcel at 21704 PCH and western end.	2.89 (Con't) 17) La Costa/Las Flores Beaches • Requirement for or public acquisition of vertical access ~~every 1,000 feet of shoreline~~ **with a separation of ¼ mile (1,320 feet)** • Improve and open vertical access OTD at Las Flores Creek • Improve and open parcel at 21704 PCH and western end.
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 18) Big Rock Beach • Dedication of one vertical accessway every 1,000 feet of shoreline.	2.89 (Con't) 18) Big Rock Beach • **Requirement for or public acquisition of** ~~Dedication of~~ one vertical accessway**s** ~~every 1,000 feet of shoreline.~~ **with a separation of ¼ mile (1,320 feet).**
	Public Access & Recreation -LUP Policies - Specific Access	2.89 (Con't) 19) Las Tunas Beach • Dedication of one vertical accessway every 1,000 feet of shoreline • Open, operate and maintain existing vertical OTD and Deed Restriction.	2.89 (Con't) 19) Las Tunas Beach • **Requirement for or public acquisition of** ~~Dedication of~~ one vertical accessway**s** ~~every 1,000 feet of shoreline~~ **with a separation of ¼ mile (1,320 feet).** • Open, operate and maintain existing vertical OTD and Deed Restriction.
Chapter 3 - Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation			

Proposed Policy Language Changes shown as strikeout and bold/underlining

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation	3.1 Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments **are ~~shall be designated as~~** Environmentally Sensitive Habitat Areas (ESHAs) and **are** generally shown on the LUP ESHA Map. **The natural habitats in the City of Malibu that are rare or especially valuable because of their special nature or role in the Santa Monica Mountains ecosystem ~~ESHA types~~** include riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, **and are designated as ESHA ~~as defined by the Coastal Act~~**. **An exception to this ESHA designation is where native trees, coastal sage scrub, or chaparral exist in such small isolated patches that they will not maintain long term viability as habitat due to existing development, including fuel modification.**	3.1 **Areas meeting the statutory definition contained in Section 30107.5 of the Coastal Act shall be designated as "Environmentally Sensitive Habitat Areas" (ESHAs) and generally shown on the LUP ESHA Map. The LUP ESHA Map shall indicate all areas known to meet the ESHA criteria set forth in Policy 3.2, as well as those areas where habitat meeting the criteria of Policy 3.2 can reasonably be expected to occur.**

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation	3.2 Watersheds in the Santa Monica Mountains, including the City, contain complex systems of plant and animal habitats ranging from riparian areas in and near streams, to chaparral, coastal sage scrub, grasslands, savannas, woodlands and wetlands. Watershed areas containing exceptional undisturbed habitats and recognized as important in contributing to the integrity of these habitat systems are designated as ESHA. These include: • San Nicholas Canyon, • Los Alisos Canyon, • Lechuza Canyon, • Encinal Canyon, • Trancas Canyon, • Zuma Canyon (Upper Portion), • Escondido Canyon (Upper Portion), • Solstice Canyon, • Corral Canyon, • Malibu Canyon, • Carbon Canyon (Upper Portion), • Tuna/Pena Canyons	3.2 **Within the City of Malibu portion of the coastal zone, areas meeting the statutory definition for ESHA include the following,** • **Areas of Special Biological Significance and Marine Protected Areas designated by the California Department of Fish and Game,** • **Areas occupied by (1) plant or animal species that are designated as rare, threatened, or endangered under State or Federal law, or (2) by significant populations designated 1b (rare or endangered) by the California Native Plant Society,** • **Marine Habitats: Intertidal/subtidal, kelp beds, near shore shallow water fish habitat, clam habitat, rocky shoreline, sea lion haul outs, and shore fishing area.** • **Beach and Adjacent Upland Habitats: "jurisdictional wetland" areas, dunes, coastal bluffs, and undeveloped sandy beaches.** • **Watershed Areas that are relatively undisturbed and contain exceptional undisturbed habitats and are recognized as important to the integrity of complex systems of plant and animal habitats. Inland Habitats: Riparian stream corridors, oak woodlands, native grasslands, and other inland habitats which:** • **Are part of the core habitat areas of the Santa Monica Mountains, and thus are (1) contiguous with and part of the regionally significant block of unfragmented habitat along the main spine of the mountains, and (2) sufficiently separated and buffered from existing development so as to retain a full complement of species indigenous to the area, to the general exclusion of invasive non-native species;**

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			• **Are located outside of the core habitat areas of the Santa Monica Mountains, but are also outside of existing developed areas, and have (1) sufficient functional connectivity with core habitat areas to allow movement of animals and exchange of plant and animal genetic material and (2) are large enough to allow the essential biotic and abiotic processes of dynamic ecosystems to function, to be resistant to invasion and dominance by non-native species, and to sustainably support the plant and animal communities native to the Santa Monica Mountains region;** • **By virtue of their geographic location and habitat characteristics, provide important connectivity between major habitat areas, facilitating physical and genetic movement, and thereby provide for the life cycle requirements of plant and animal species; or** • **Are needed to ensure the long-term survival of species within the Santa Monica Mountains by protecting populations from random, periodic, or catastrophic extinction processes.** **Only those habitat areas identified in this Policy, whether shown on the LUP ESHA map or not, are considered to be ESHA, and thereby subject to the ESHA protection policies of the LUP.**

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ESHA	**New Policy added by CCC**	3.3 All Areas of Special Biological Significance, Marine Protected Areas (as designated by the California Department of Fish and Game), and ~~designated blue-line~~ streams shall be considered ESHA and shall be accorded all protection provided for ESHA in the LCP.	3.3 **Within three years following adoption of the Land Use Plan, detailed studies shall be undertaken to ensure that the LUP ESHA map accurately reflects the areas identified in Policy 3.2. During this period the 1986 Certified Los Angeles County ESHA Maps shall be used to define ESHA areas in addition to any area that meets the aforementioned criteria as determined by a project review by the City Biologist. Subsequently, the LUP ESHA map shall be reviewed every five years in co-operation with the City of Malibu, California Department of Fish and Game, and the resource agencies within the Santa Monica Mountains, updating the map to reflect current information, including information on rare, threatened, or endangered species. Areas subject to habitat restoration projects shall also be considered for designation as ESHA in accordance with the criteria set forth in Policy 3.2.** **a. Revisions to the ESHA criteria set forth in Policy 3.2 shall be treated as LCP amendments, and shall be subject to the approval of the Coastal Commission.** **b. Revisions of the LUP ESHA Map to accurately reflect the criteria set forth in Policy 3.2 may be made by the Planning Director upon recommendation of the City Biologist. Such revisions may be appealed to the Coastal Commission in the same manner as an appealable Coastal Development Permit.**

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ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation	3.4 Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. Any habitat area that is rare or especially valuable from a local, regional or statewide basis shall be considered ESHA, unless there is compelling site-specific evidence to the contrary. Similarly areas supporting plant or animal species designated as rare, threatened, or endangered under State or Federal law and areas supporting significant populations designated 1b (Rare or endangered) by the California Native Plant Society shall be considered ESHA, unless there is compelling, site-specific evidence to the contrary.	3.4 **Any area mapped as ESHA or meeting the ESHA criteria set forth in Policy 3.2 shall not be deprived of the protection as an ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species of concern have been illegally eliminated.**
ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation	3.5 The LUP ESHA Map shall be reviewed every five years in co-operation with the Environmental Review Board, or other qualified professionals and the resources agencies within the Santa Monica Mountains and updated to reflect current information, including information on rare, threatened, or endangered species. Areas subject to habitat restoration projects shall also be considered for designation as ESHA. Revisions to the map depicting ESHA shall be treated as LCP amendments and shall be subject to the approval of the Coastal Commission.	**3.6 If a site-specific biological study prepared pursuant to Policy 3.35 contains substantial evidence that the habitat on a site does not meet ESHA criteria for a reason other than those set forth in Policy 3.4, the City Biologist shall review the study to determine whether such habitat meets the criteria set forth in Policy 3.2. If the City Biologist determines that such habitat does not meet the ESHA criteria set forth in Policy 3.2, such habitat shall not be considered ESHA, and shall not be subject to the ESHA protection policies of the LUP. Determinations made by the City as to whether habitat meets or does not meet the definition of ESHA shall not be considered to be an amendment to the LUP, even if such a determination results in a modification to the LUP ESHA Map.** (Comparison ESHA Maps Attached)

Proposed Policy Language Changes shown as strikeout and bold/underlining

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Marine & Land Resources -LUP Policies - Land Resources - ESHA Designation	3.7 If a site-specific biological study, prepared pursuant to Policy 3.36 contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6, the City Biologist and the Environmental Review Board, <u>or other qualified professionals</u> shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, Policies 3.23 to 3.30 shall apply. The ERB, <u>or other qualified professionals</u>, shall provide recommendations to the Planning Commission (or decision-making body for coastal permits) as to the ESHA status of the area in question. If the decision-making body finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Map, <u>as part of a map update</u>, consistent with Policy 3.5. <u>If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be allowed (consistent with other LCP requirements) even if the ESHA map has not been amended.</u>	3.7 If a site-specific biological study, prepared pursuant to Policy 3.37 contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.5, the City Biologist ~~and the Environmental Review Board~~ shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, Policies 3.22 to 3.29 shall apply. The <u>Planning Director</u> ~~ERB~~ shall provide recommendations to the Planning Commission (or decision-making body for coastal permits) as to the ESHA status of the area in question. If the decision-making body finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Map, consistent with Policy 3.5.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Protection	3.12 ~~The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, pursuant to Policy 3.10, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. The maximum~~ **No development shall be allowed in wetlands unless it is authorized under Policy 3.84. For other ESHA types, the** allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) **on parcels where all feasible building sites are** in ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less, ~~provided that the conditions enumerated in parts a-c of Policy 3.13 are met~~. For parcels over 40 acres in size, the maximum development area may be increased by 500sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size, ~~provided that the conditions enumerated in parts a-c of Policy 3.13 are met.~~ **The development must be sited to avoid destruction of riparian habitat to the maximum extent feasible.** These ~~maximum~~ *development areas shall be ~~further~~ reduced,* **or no development shall be allowed, if necessary to avoid a nuisance.** ~~if necessary to protect sensitive resources, particularly in riparian ESHA.~~ Mitigation of unavoidable adverse impacts to ESHA shall be required.	3.12 The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, pursuant to Policy 3.10, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. ~~The maximum allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) in ESHA or ESHA buffer shall be 10,000 square feet on parcels containing 40 acres or less, provided that the conditions enumerated in parts a-d of Policy 3.12 are met. For larger parcels, the maximum development area may be increased by 250 sq. ft. for each additional acre in parcel size to a maximum of 43,560 sq. ft. (1 acre) in size, provided that the conditions enumerated in parts a-d of Policy 3.12 are met. These maximum development areas shall be further reduced if necessary to protect sensitive resources, particularly in riparian ESHA.~~ Mitigation of unavoidable adverse impacts to ESHA shall be required.
ESHA	Marine & Land Resources -LUP Policies - Land Resources - ESHA Protection	3.14 New development shall be sited and designed to avoid impacts to all ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Residual adverse impacts to sensitive resources shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to sensitive resources.	3.14 *New development shall be sited and designed to avoid* impacts to all ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. ~~Residual adverse impacts to sensitive resources shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when impacts cannot be fully mitigated on-site. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to sensitive resources.~~

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Marine & Land Resources -LUP Policies - Land Resources - Adjacent to ESHA & Parks	3.23 Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect, ~~but in no case shall they be less than~~ All buffers shall be a minimum of 100 feet in width, except for those cases addressed in Policies 3.26a and 3.26b.	3.23 Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, **unless a reduced buffer is necessary to allow for reasonable development, and is approved by the City Biologist,** ~~except for those cases addressed in Policies 3.26a and 3.26b~~.
ESHA	Marine & Land Resources -LUP Policies - Land Resources - Adjacent to ESHA & Parks	3.26a Development setbacks shall be provided from the canyon ESHAs in the Point Dume area to serve as transitional habitat and provide distance and physical barriers to human intrusion. The setback shall be of sufficient width to ensure that all the require irrigated fuel modification area (Zone A and B, inf required) is located above the top of slope and that all structures are set back a minimum of 25 feet from the top of slope.	**Delete, covered in Policy 3.23**
ESHA	Marine & Land Resources -LUP Policies - Land Resources - Adjacent to ESHA & Parks	3.26b Development setbacks shall be provided from coastal sage scrub and chaparral ESHA to serve as transitional habitat and provide distance and physical barriers to human intrusion. The setback shall be of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.	**Delete, covered in Policy 3.23**
	Marine & Land Resources -LUP Policies - Land Resources - Adjacent to ESHA & Parks	3.27 Variances or modifications to setback, buffer, or other sensitive resource protection standards shall not be granted . ~~except where there is no other feasible alternative for siting the primary structure. In such cases, one primary structure shall be the only permitted development on the site, and the structure shall be restricted in size and designed to maximize the setback, buffer or other resource protection standard to the maximum extent feasible.~~	3.27 Variances or modifications to setback, buffer, or other sensitive resource protection standards shall **only be granted when the proposed project does not significantly degrade ESHA and the project is the least impact alternative for development.** ~~not be granted~~

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Marine & Land Resources -LUP Policies - Land Resources - Stream Protection	3.32 Alteration of natural streams for the purpose of stream road crossings shall be prohibited, except where the alteration is not substantial and there is no other feasible alternative to provide access to public recreation areas or development on legal parcels ~~sited outside ESHAs~~, and the alteration does not restrict movement of fish or other aquatic wildlife. Any such stream crossings shall be accomplished by bridging. Bridge columns shall be located outside streambeds and banks. Wherever possible, shared bridges shall be used for providing access to multiple home sites. Culverts may be utilized for the crossing of minor drainages lacking beds and banks and riparian vegetation. If enlargement, replacement or improvements to the existing at grade crossing of Malibu Creek at Cross Creek Road are determined to be necessary, alternative designs, including, but not limited to, a caisson-supported bridge, that minimize impacts to ESHA shall be considered. In any case, any new improvement to this crossing shall minimize impacts to the movement of fish or other aquatic wildlife to the maximum extent feasible.	3.32 Alteration of natural streams for the purpose of stream road crossings shall be prohibited, except where the alteration is not substantial and there is no other feasible alternative to provide access to public recreation areas or development on legal parcels sited outside ESHAs, and the alteration does not restrict movement of fish or other aquatic wildlife. Any such stream crossings shall be accomplished by bridging. Bridge columns shall be located outside streambeds and banks. Wherever possible, shared bridges shall be used for providing access to multiple home sites. Culverts may be utilized for the crossing of minor drainages lacking beds and banks and riparian vegetation. If enlargement, replacement or improvements to the existing at grade crossing of Malibu Creek at Cross Creek Road are determined to be necessary, alternative designs, including, but not limited to a caisson-supported bridge, that minimize impacts to ESHA shall be considered. In any case, any new improvement to this crossing shall minimize impacts to the movement of fish or other aquatic wildlife to the maximum extent feasible.
STRUCTURE	Marine & Land Resources -LUP Policies - Land Resources- Environmental Review	3.36 The Environmental Review Board (ERB), <u>or other</u> ~~comprised of~~ qualified professionals with technical expertise in resource management, shall ~~serve as an advisory body to the Hearing Officer, Planning Commission and the City Council to~~ review and make recommendations <u>to the Planning Director, Planning Commission and/or City Council</u> on development proposals within or adjacent to ESHA, or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35. The ERB <u>or other qualified professionals</u> shall consider the individual and cumulative impact of each development proposal within or adjacent to ESHA. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB <u>or qualified professional</u> when required by this policy.	3.36 ~~The Environmental Review Board (ERB), or other qualified professionals with technical expertise in resource management,~~ shall <u>**The Planning Director, in consultation with the Environmental Review Board (ERB), or other qualified professionals with technical expertise in resource management, shall**</u> review and make recommendations on development proposals within or adjacent to ESHA, or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35. The ~~ERB or other qualified professionals~~ <u>**Planning Director**</u> shall consider the individual and cumulative impact of each development proposal within or adjacent to ESHA. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB or other qualified professional when required by this policy.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
STRUCTURE	Marine & Land Resources -LUP Policies - Land Resources-Environmental Review	3.37 The ERB <u>or other qualified professionals</u> shall provide recommendations to the Planning Commission (or decision-making body for coastal permits) on the conformance or lack of conformance of the reviewed development project with the policies of the LUP. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources. The decision-making body shall make written findings relative to the approved project's conformance with the ~~ERB's~~ recommendations of <u>the ERB or other qualified professionals.</u>	3.37 The ~~ERB or other qualified professionals~~ <u>Planning Director</u> shall <u>review each project for conformance</u> ~~provide recommendations to the Planning Commission (or decision-making body for coastal permits) on the conformance or lack of conformance of the reviewed development project~~ with the policies of the <u>LCP,</u> ~~LUP~~. ~~Any recommendation of~~ Approvals shall include mitigation measures designed to minimize adverse impacts on environmental resources. The decision-making body shall make written findings relative to the approved project's conformance with the ~~recommendations of the ERB or other qualified professionals.~~ <u>LCP.</u>
	Marine & Land Resources -LUP Policies - Land Resources-Environmental Review	3.38 All applications for development within or adjacent to ESHA shall be reviewed <u>by the City Biologist or other qualified professional</u> for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision-making body.	3.38 <u>The Planning Director, in consultation with a qualified professional in resource management, shall review all applications for development within or adjacent to ESHA for conformance with the LUP, and require modifications, mitigation measures, or an alternative to minimize or eliminate impacts. If mitigation measures are necessary to avoid or minimize impacts to coastal resources, those measures shall be made conditions of approval of the coastal development permit.</u>

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.40 New development shall be sited and designed to minimize impacts to ESHA by: • Minimizing grading and landform alteration, consistent with Policy 6.9 • Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures. • Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification. • Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources. • Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.44. • Minimizing impacts to water quality, consistent with Policies 3.89 - 3.144.	3.40 New development <u>in ESHA</u> shall be sited and designed to minimize impacts to ESHA by: • Minimizing grading and landform alteration, consistent with Policy 6.9 • Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures. • Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification. • Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources. • ~~Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.44.~~ • Requiring erosion control measures and the use of BMPs for all earthmoving activities. • Minimizing impacts to water quality, consistent with Policies 3.89 - 3.144.
	Marine & Land Resources –LUP Policies – Land Resources- New Development	3.42 Land divisions, including lot line adjustments and certificates of compliance (except as provided under Policy 5.40), for property which includes area within or adjacent to an ESHA or parklands shall only be permitted if the<u>each new</u> parcels being created ~~would contain potential building sites that~~ could be developed <u>(including construction of any necessary access road), without building in ESHA or ESHA buffer, or removing ESHA for fuel modification.</u> consistent ~~with all of the policies of the LUP, including, but not limited to, the provision of required ESHA buffer areas.~~	3.42 Land divisions, including lot line adjustments and certificates of compliance (except as provided under Policy 5.40), for property which includes area within ~~or adjacent to~~ an ESHA or <u>ESHA buffer</u> parklands shall only be permitted if each new parcel being created could be developed (including construction of any necessary access road <u>in ESHA</u>), without building in ESHA or ESHA buffer, or removing ESHA for fuel modification.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
STRUCTURE	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.44 *Earthmoving during the rainy season (extending from* November 1 to March 31) shall be prohibited for development that is: 1) Located within or adjacent to ESHA, ~~2)~~ that includes grading on slopes greater than 4:1 ~~or~~ 3) ~~where total grading would exceed 1,000 cu. yds. (cut and fill)~~. <u>In such cases</u>, Aapproved grading shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 31, unless the City determines that completion of grading would be more protective of resources.	**Delete, covered in City Staff's amended Policy 3.40**

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	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.47 Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that: • Plantings shall be primarily native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site. • Invasive plant species that tend to supplant native species and natural habitats shall be prohibited • Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures. • Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. • Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met	3.47 Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that: • Plantings **should** ~~shall~~ be primarily native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site. • Invasive plant species that tend to supplant native species and natural habitats shall be prohibited • Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures. • Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. • ~~Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met~~
	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.48 ESHAs that exhibit any level of disturbance shall be maintained, and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.	3.48 ~~ESHAs~~ **Disturbed ESHA shall not be further degraded.** ~~that exhibit any level of disturbance shall be maintained,~~ and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.

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	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.51 Development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include fencing, if necessary for security, that is limited to the area around the clustered development area. Any such fencing shall be sited and designed to be wildlife permeable.	3.51 Development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include fencing, if necessary for security, that is limited to the area around the ~~clustered~~ development area. Any such fencing shall be sited and designed to be wildlife permeable **except where such fencing is in area immediately adjacent to the development.**
	Marine & Land Resources -LUP Policies - Land Resources- New Development	3.52 Fencing adjacent to ESHA shall be sited and designed to be wildlife permeable, enabling wildlife to pass through.	3.54 Fencing adjacent to ESHA shall be sited and designed to be wildlife permeable, enabling wildlife to pass through, **except where such fencing is in area immediately adjacent to development.**
	Marine & Land Resources -LUP Policies - Land Resources- Fuel Modification	3.58 All new development shall be sited and designed to minimize required fuel modification and brushing in ESHA, ESHA buffer, or parklands, to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.47 through 4.55. Development shall utilize fire resistant materials and incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified.	3.58 All new development **in EHSAs** shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.47 through 4.55. Development shall incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified.
	Marine & Land Resources -LUP Policies - Land Resources- Native Tree Protection	3.60 New development shall be sited and designed to preserve oak, walnut, sycamore, or other native trees that are not otherwise protected as ESHA. Removal of native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual native trees in order to allow for future growth.	3.60 New development shall be sited and designed to preserve oak, walnut, sycamore, or other **mature** native trees that are not otherwise protected as ESHA. Removal of **mature** native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual **mature** native trees in order to allow for future growth.

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FEE	Marine & Land Resources -LUP Policies - Land Resources- Native Tree Protection	3.62 Where the removal of native trees cannot be avoided through the implementation of project alternatives or where development encroachments into the protected zone of native trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees ~~shall be planted~~ on-site, if suitable area exists on the project site, at a ratio of 10 replacement trees for every 1 tree removed. Where on-site mitigation is not feasible, Ccompensatory mitigation, in the form of an in-lieu fee, shall also be provided for the unavoidable temporal impacts of the loss of native tree habitat. The fee shall be based on the type, size and age of the tree(s) removed.	3.62 Where the removal of mature native trees cannot be avoided through the implementation of project alternatives, ~~or where development encroaches into the protected zone of mature native trees resulting in the loss or worsened health of the mature trees, mitigation measures shall include, at a minimum, the planting of,~~ replacement trees shall be planted on-site, if suitable area exists on the project site, at a ratio of 10 replacement trees for every 1 tree removed. ~~Where on-site mitigation is not feasible, compensatory mitigation, in the form of an in-lieu fee, shall also be provided for the unavoidable temporal impacts of the loss of mature native tree habitat. The fee shall be based on the type, size and age of the tree(s) removed.~~
FEE	Marine & Land Resources -LUP Policies - Land Resources- Native Tree Protection	3.63 A fund shall be established to receive the in-lieu fee payments required under Policy 3.62. This fund, administered by the Santa Monica Mountains Conservancy, shall be used for the restoration or creation of native tree woodland or savanna habitat areas within the Santa Monica Mountains Coastal Zone. Fees paid to mitigate impacts of development approved within the City may be used to restore habitat anywhere within this area. Priority shall be given to restoration or creation on properties containing areas designated ESHA, and to properties contiguous with existing parklands containing suitable native tree habitat.	3.63 ~~A fund shall be established to receive the in-lieu fee payments required under Policy 3.62. This fund, administered by the Santa Monica Mountains Conservancy, shall~~ The City shall consider establishing a native tree mitigation fee that would be used for the restoration or creation of native tree woodland or savanna habitat areas within the Malibu portion of the Santa Monica Mountains Coastal Zone. ~~Fees paid to mitigate impacts of development approved within the City may be used to restore habitat anywhere within this area.~~ Priority shall be given to restoration or creation on properties containing areas designated ESHA, and to properties contiguous with existing parklands containing suitable native tree habitat.
AG/ CA	Marine & Land Resources -LUP Policies - Land Resources- Ag & Confined Animal	3.64 The conversion of vacant land in ESHA, ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard, or other agricultural use shall not be permitted, except as provided in Policies 3.65 and 3.66.	3.64 The conversion of vacant land, devoid of native vegetation, in ESHA, ESHA buffer, or on slopes over 2:1 ~~3:1~~ to new crop, orchard, vineyard, or other agricultural use shall ~~not~~ be permitted, ~~except as provided in Policies 3.65 and 3.66.~~ so long as it can be determined by a qualified professional in resource management, that the conversion of land to agriculture will not be detrimental to the ESHA, ESHA buffer or 2:1 slopes.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
AG/ CA	Marine & Land Resources -LUP Policies - Land Resources- Ag & Confined Animal	3.65 New agricultural uses shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structures) only if such use is not located on slopes greater than 3:1 and does not result in any expansion to the required fuel modification area.	3.65 **Existing agricultural uses shall be allowed to continue**. New agricultural uses shall be **allowed consistent with the Coastal Act, Article 5 – Land Resources**. New agricultural uses shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structures) only if such use **does not result in erosion** ~~is not located on slopes greater than 3:1~~ and does not result in any expansion to the required fuel modification area.
AG/ CA	Marine & Land Resources -LUP Policies - Land Resources- Ag & Confined Animal	3.66 Crop, orchard, or vineyard uses in conjunction with an existing or new single family residence may be permitted only within the irrigated fuel modification area (Zones A & B, if required) required by an approved fuel modification plan for the approved structure(s). Such uses shall not result in any expansion to the fuel modification area required for the approved residential structure(s).	3.66 **In ESHA,** ~~C~~crop, orchard, or vineyard uses in conjunction with an existing or new single family residence may be permitted only within the irrigated fuel modification area (Zones A & B, if required) required by an approved fuel modification plan for the approved structure(s). Such uses shall not result in any expansion to the fuel modification area required for the approved residential structure(s). **This policy shall not apply to existing crops, orchards or vineyards.**
AG/ CA	Marine & Land Resources -LUP Policies - Land Resources- Ag & Confined Animal	3.67 New confined animal facilities for the keeping of horses or other ungulates for personal recreational use shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include ~~one~~ accessory confined animal structures such as a stables, barnes, or tack rooms, as well as corrals within the approved development area, ~~and/or a corral~~ Confined animal facilities or corrals may be included within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater than 4:1, does not require additional grading, is constructed of non-flammable materials, and does not result in any expansion to the required fuel modification area.	3.67 New confined animal facilities for the keeping of horses or other ungulates for personal recreational use shall be prohibited within ~~or adjacent to~~ ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include accessory confined animal structures such as stables, barnes, or tack rooms, as well as corrals within the approved development area. Confined animal facilities or corrals may be included within the ~~irrigated~~ fuel modification ~~area~~ zones ~~(Zones A and/or B if required)~~ for the approved structure(s) only if such use is not located on slopes greater than 2.5:1 ~~4:1,~~ ~~does not require additional grading, is constructed of non-flammable materials, and does not result in any expansion to the required fuel modification area~~.

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AG/ CA	Marine & Land Resources -LUP Policies - Land Resources- Ag & Confined Animal	3.68 Accessory structures used for confined animal facilities <u>or corrals</u> may be permitted in conjunction with an existing or new single family residence within the approved development area. <u>Confined animal facilities and</u> Ccorrals may also be permitted within ~~the development area or~~ the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) if such use is not located on a slope greater than 4:1, does not require additional grading, <u>is constructed of non-flammable materials</u>, ~~and~~ does not result in any expansion to the required fuel modification area and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides.	3.68 <u>In ESHA,</u> **A**~~a~~**ccessory** structures used for confined animal facilities or corrals may be permitted in conjunction with an existing or new single family residence within the approved development area. Confined animal facilities and corrals may also be permitted within the ~~irrigated~~ fuel modification ~~area~~ <u>zones</u> ~~(Zones A and/or B if required)~~ for the approved structure(s) if such use is not located on a slope greater than <u>2.5:1</u> ~~4:1~~, ~~does not require additional grading, is constructed of non-flammable materials, does not result in any expansion to the required fuel modification area~~ and does not increase ~~the possibility of~~ in-stream siltation or pollution from herbicides or pesticides.
	Marine & Land Resources -LUP Policies - Land Resources- ESHA Protection	3.71 Within the coastal zone, there are valuable marine resources and habitats including beaches, dunes, intertidal areas, kelp forests, near shore shallow fish habitats, and wetlands that require protection. Among these resources are some that, because of their special characteristics and/or vulnerability to degradation, require a greater level of protection. These resources are designated Environmentally Sensitive Habitat Areas (ESHAs) and shown on the LUP ESHA Map. As set forth in Policy 3.4, any other marine area that meets the ESHA criteria is ESHA and shall be accorded all of the protections provided for ESHA in the LCP.	**Delete, unnecessary if Policy 3.2 is adopted as amended by the City.**

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	Marine & Land Resources -LUP Policies - Land Resources- Wetlands- New Development	3.85 Where any dike or fill development is permitted in wetlands in accordance with the Coastal Act and any applicable LCP policies, mitigation measures shall include, at a minimum, creation or substantial restoration of wetlands of a similar type. Adverse impacts will be mitigated at a ratio of 3:1 for seasonal wetlands, freshwater marsh and riparian areas, and at a ratio of 4:1 for vernal pools and saltmarsh, unless the applicant provides evidence establishing, and the City finds, that creation or restoration of a lesser area of wetlands will fully mitigate the adverse impacts of the dike or fill project. However, in no event will the mitigation ratio be less than 2:1 unless, prior to the development impacts, the mitigation is completed and is empirically demonstrated to meet performance criteria that establish that the created or restored wetlands are functionally equivalent to superior to the impacted wetlands.	Delete, move to Implementation
	Marine & Land Resources -LUP Policies - Land Resources- Wetlands- New Development	3.86 Applications for new development within or adjacent to wetlands shall include evidence of the preliminary approval of the California Department of Fish and Game, U.S. Army Corps of Engineers, U. S. Fish and Wildlife Service, and other resource management agencies, as applicable.	Delete, move to Implementation
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - New Development	3.96 Post construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.	Delete, not required by the Coastal Act

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	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Existing Development	3.111 Many BMPs recommended for reducing the impacts of non-point source pollution rely on or increase the infiltration of surface water into the soil. Use of these BMPs may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not rely on or increase infiltration	3.111 **Some BMPs for reducing the impacts of non-point source pollution may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not rely on or increase infiltration.**
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Existing Development	3.112 New development that requires a grading/erosion control plan shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.49. An integrated vegetation management plan shall be required and implemented. Use of native or drought-tolerant non-invasive plants shall be required to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.	3.112 New development **shall meet the requirements of construction erosion control as required by the Malibu Municipal Code and shall be** ~~that requires a grading/erosion control plan shall include landscaping and re-vegetation of graded or disturbed areas~~, consistent with Policy 3.49. ~~An integrated vegetation management plan shall be required and implemented.~~ **Any landscaping that is required to control erosion shall** use of native or drought-tolerant non-invasive plants ~~shall be required~~ to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Hydromodification	3.114 Alterations or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except where consistent with Policy 3.31. Any permitted stream alterations shall include BMPs for hydromodification activities.	Delete, covered by Policy 3.31

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	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.118 Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site disposal systems (OSDSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters. Discharges for new or expanded wastewater treatment facilities shall not alter baseflow of any waterbody during the wet season.	3.118 Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site ~~disposal~~ **treatment** systems ~~(OSDSs)~~ **(OSTSs)** shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters. ~~Discharges for new or expanded wastewater treatment facilities shall not alter baseflow of any waterbody during the wet season.~~
WASTEWATER	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.119 OSDSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables, that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.	3.119 ~~OSDSs~~ **OSTSs shall be designed, sited, installed, operated, and maintained in compliance with all horizontal, and vertical distance separations required by the rules and regulations developed for OSTSs by the State Water Resources Control Board pursuant to Assembly Bill 885.**
WASTEWATER	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.120 New development shall be sited and designed to provide an area for a backup soil absorption field (leach field) in the event of failure of the first field.	3.120 New development **utilizing a conventional OSTS offering** primary sewage treatment **only prior to** discharge shall be **designed, sited, installed operated, and maintained with a 100 percent dedicated future subsurface sewage effluent disposal area. In the event that the original subsurface sewage effluent disposal area cannot absorb all of the sewage effluent discharged, the future area shall be utilized. New development utilizing an alternative OSTS offering secondary sewage effluent treatment, or better, prior to discharge, shall not be required to provide a 100 percent dedicated future subsurface sewage effluent disposal area.** ~~sited and designed to provide an area for a backup soil absorption field (leach field) in the event of failure of the first field.~~

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	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.121 Soils should not be compacted in the soil absorption field areas during construction and should be a balanced mix of coarse and fine particles. No vehicles should be parked over the soil absorption field or driven over the inlet and outlet pipes to the septic tank.	**Delete, covered by City Staff amended Policy 121a**
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.121a **Subsurface sewage effluent disposal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath paving or other nonporous surface covering.**	3.121a Subsurface sewage effluent disposal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. ~~No subsurface sewage effluent disposal fields shall be allowed beneath paving or other nonporous surface covering.~~
WASTEWATER	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.122 New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and the elimination of garbage disposals to avoid hydraulic overloading of the OSDS.	3.122 New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets~~, and the elimination of garbage disposals to avoid hydraulic overloading of the OSDS.~~
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.123 New development shall include a separate greywater treatment system where feasible.	3.123 New development shall *may* include a separate greywater treatment **dispersal** system **where approved by the Building Safety Department**~~, where feasible~~.
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.124 New development shall include protective setbacks from surface waters, wetlands and floodplains for conventional or alternative OSDSs, as well as separation distances between OSDS system components, building components, property lines, and groundwater. Under no conditions shall the leach field distribution lines be within five feet of groundwater.	**Delete, covered in Policy 3.119.**

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WASTEWATER	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.125 The construction of private sewage disposal systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage disposal system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.	**Redundant. See policies 3.118 and 3.119**
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.126 In areas with constraints on private sewage disposal, including, but not limited to, small lots, beachfront parcels, and geologic hazard areas, innovative and alternative methods of wastewater treatment and disposal are permitted. Such systems shall minimize impacts to water quality and coastal resources and be acceptable to the Environmental and Building Safety Department, the Department of Health Services, and the Regional Water Quality Control Board.	3.126 In areas **where the design, siting, installation, operation and maintenance of a conventional OSTS may be impossible, or impractical** ~~with constraints on private sewage disposal,~~ including, but not limited to, small lots, beachfront parcels, and geologic hazard areas, innovative and alternative **OSTSs shall be designed, sited, installed, operated and maintained in compliance with the rules and regulations developed for OSTSs by the City of Malibu and State Water Resources Control Board pursuant to Assembly Bill 885.** ~~methods of wastewater treatment and disposal are permitted. Such systems shall minimize impacts to water quality and coastal resources and be acceptable to the Environmental and Building Safety Department, the Department of Health Services, and the Regional Water Quality Control Board.~~
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.127 The expansion of existing community sewer facilities (package wastewater treatment plants, dedicated sewer service systems, existing trunk lines, etc.) in existing developed areas shall be limited in capacity to the maximum level of development allowed by this LUP.	3.127 ~~The expansion of existing~~ Community sewer facilities (package wastewater treatment plants, dedicated sewer service systems, existing trunk lines, etc.) **shall have the capacity to serve** ~~in existing developed areas shall be limited in capacity to~~ the maximum level of development allowed by this LUP.

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WASTEWATER		3.128 Applications for new development relying on an OSDS shall include a soils analysis and or percolation testing report. Soils analysis shall be conducted by a California Registered Geologist or California Registered Geotechnical Engineer and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist. The OSDS shall be designed, sited, installed, operated and maintained in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. ~~and septic system design prepared by a registered sanitarian. The proposed project site must accommodate a private septic system that will be of adequate size, capacity and design to serve the proposed development for the life of the project.~~	3.128 Applications for new development relying on an ~~OSDS~~ OSTS shall include a soils analysis and/or percolation test report. Soils analysis shall be conducted by a ~~California Registered Geologist or~~ California ~~Registered~~ Licensed Geotechnical Engineer and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California ~~Registered~~ Licensed Geologist, a California ~~Registered~~ Licensed Civil Engineer, or a California Registered Environmental Health Specialist. The ~~OSDS~~ OSTS shall be designed, sited, installed, operated and maintained in full compliance with the rules and regulations developed for OSTSs by the State Water Resources Control Board pursuant to Assembly Bill 885 and the City of Malibu Plumbing Code. ~~with the building and plumbing codes and the requirements of the LA RWQCB.~~
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.129 Applications for land divisions relying on an OSDS shall include a soils analysis and/or percolation test report for each proposed lot, or for any lot(s) used for a community OSDS, where allowed. Soils analysis shall be conducted by a California Registered Geologist or California Registered Geotechnical Engineer and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist. Applications for land division shall also include a report prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer ~~registered groundwater hydrologist and sanitarian that addresses the ability of each proposed building site to accommodate a private sewage disposal system. The report shall~~ that includes an analysis of depth to groundwater on each proposed lot or on any lot(s) used for a community OSDS, where allowed, that addresses seasonal and cyclical variations as well as the adequacy of percolation rates in post-grading conditions ~~(cut or compacted fill).~~	3.129 Applications for land divisions relying on an ~~OSDS~~ OSTS shall include a soils analysis and/or percolation test report for each proposed lot, or for any lot (s) used for a community OSTS ~~OSDS~~, where allowed. Soils analysis shall be conducted by a ~~California Registered Geologist or~~ California Licensed ~~Registered~~ Geotechnical Engineer, and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Licensed ~~Registered~~ Geologist, a California ~~Registered~~ Licensed Civil Engineer, or a California Registered Environmental Health Specialist. Applications for land divisions shall also include a report prepared by a ~~California Certified Engineering Geologist or Registered Geotechnical Engineer~~ **registered groundwater hydrologist** ~~that includes~~ including an analysis of depth to groundwater on each proposed lot or on any lot(s) used for a community OSTS ~~OSDS~~, where allowed, that addresses seasonal and cyclical variations as well as the adequacy of percolation rates in post-grading conditions

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	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.130 New septic systems shall be sited and designed to ensure that impacts to ESHA ~~sensitive environmental resources are minimized~~, including those impacts from grading and site disturbance and the introduction of increased amounts of water. Adequate setbacks and/or buffers shall be required to protect ESHA ~~sensitive environmental resources~~ and to prevent lateral seepage from the leach field(s) or seepage pit(s) into stream waters.	**Delete, covered in Policy 3.118 and Policy 3.119.**
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.131 Application for new development relying on an OSDS shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSDS on groundwater level and slope stability. Where it is conclusively shown that the OSDS will negatively impact groundwater or slope stability, the OSDS shall not be allowed. ~~Studies should be conducted to determine the cumulative impacts on groundwater and slope stability of using septic systems on the remaining buildable lots. The buildout of areas where the cumulative effect of private sewage disposal systems will negatively impact the environment by stream or groundwater pollution or by contributing to potential known geologic hazards shall not be permitted.~~	3.131 ~~Application for new development relying on an OSDS shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact~~ **Supporting geology, including groundwater analysis shall be conducted on each buildable lot, as required, to determine the impact** of any ~~the~~ proposed OSTS ~~OSDS~~ on groundwater ~~level~~ and slope stability. Where it is conclusively shown that **OSTS** ~~OSDS~~ will negatively impact **slope** groundwater or slope stability, the **OSTS** ~~OSDS~~ shall not be allowed.
	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.133 The formation of On-site Wastewater Disposal Zones pursuant to Section 6950 et seq. of the California Health and Safety Code shall be investigated and considered in appropriate areas.	3.133 The formation of On-site Wastewater ~~Disposal~~ Zones pursuant to Section 6950 et seq. of the California Health and Safety Code shall be investigated ~~and~~ considered in appropriate areas.

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	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.134 Cooperation and coordination with the Regional Water Quality Control Board to test septic systems for conformance with regional water quality standards shall be provided.	3.134 Cooperation and coordination with the **Los Angeles** Regional Water Quality Control Board **as to OSTS performance** ~~to test septic systems for conformance with regional water quality standards~~ shall be ~~provided.~~ **developed and implemented.**
UW	Marine & Land Resources -LUP Policies - Land Resources- Water Quality - Wastewater & On-Site Systems	3.135 Information on the proper operational and maintenance procedures for private sewage disposal systems should be distributed by mailing with water bills or another method annually. OSDSs should also be regularly inspected by qualified professionals.	3.135 **The City shall provide to the public** information on the proper operational and maintenance **of an OSTS.** ~~procedures for private sewage disposal systems should be distributed by mailing with water bills or another method annually.~~ **The City should establish an OSTS management program which includes periodic inspections by a qualified professional.** ~~OSDSs should also be regularly inspected by qualified professionals.~~
Chapter 4 - Shoreline/ Bluff Structures & Hazards - LUP Policies			
UW	Shoreline/ Bluff Structures & Hazards - LUP Policies - General Development	4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of the City/County Code.	4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of the City/~~County~~ Code.

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UW	Shoreline/ Bluff Structures & Hazards - LUP Policies - General Development	4.8 Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 50 40 percent (2.5:1), except that driveways and/or utilities may be located on such slopes, where there is no less environmentally damaging feasible alternative means of providing access to a building site, provided that the building site is determined to be the preferred alternative and consistent with all other policies of the LCP.	4.8 Grading and/or development-related vegetation clearance shall be **avoided on** ~~prohibited where the~~ slope**s** **exceeding**~~s~~ 40 **50** percent ~~(2.5:1)~~ **(2:1)**. ~~except~~ **Exceptions may be granted when necessary for fuel modification, development in overlay zones exhibiting slope characteristics steeper than 50 percent (2:1),** that driveways and/or utilities ~~may be located on such slopes,~~ where ~~there is no less~~ **the grading or clearance represents the least** environmentally damaging feasible alternative~~. means of providing access to a building site, provided that the building site is determined to be the preferred alternative~~ and **is** consistent with all ~~other~~ **the** policies of ~~the~~ **this** LCP.
UW	Shoreline/ Bluff Structures & Hazards - LUP Policies - General Development	4.15 Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the degree of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.	4.15 Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired **consistent with the requirements of the Grandfathering requirements of the Zoning Ordinance.** ~~provided that such repair and maintenance do not increase the degree of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.~~

Proposed Policy Language Changes shown as strikeout and bold/underlining

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
UW	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.18 City-wide or beach specific Shoreline Management Plans should be developed for shoreline areas subject to wave hazards and erosion which include: • An examination of local and regional annual erosion rates in order to reflect current shoreline changes; • Standard engineering plans and analyses defining the specific types of armoring that would be acceptable or preferable for specific areas, and where appropriate, identification of the types of armoring that should not be considered for certain areas or beaches in order to minimize risks and impacts from armoring to public access and scenic resources along the shoreline and beach recreation areas. • Standard alternatives feasibility analysis that would be a required element of all hazard response projects and that would require applicants to go through a series of steps to assure that hard protective devices were only used as a last resort. The analysis should require, but not be limited to, the use of technical evaluations of the site (geotechnical reports, engineering geology reports, wave uprush reports etc.), an examination of all other options (removal, relocation, sand replenishment, no action etc.), and a conclusion that a shoreline protective device would be the "best option" (most protective of the public trust, best long term solution etc.) for the subject site. • Standard conditions and monitoring requirements that should include mechanisms to ensure shoreline protection effectiveness and public safety with provisions for the removal or ineffective or hazardous protective structures as well as programs to address beach replenishment and sand supply.	**Delete not required by the Coastal Act and prohibitively expensive**

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
		• Procedures to address emergency armoring, such as: coordination with property owners and for field inspections before and after storm seasons; guidance for types of temporary structures preferred and a provision for removal of temporary structures if no follow up permit is filed. • Shoreline Management Plans developed pursuant to the above stated standards shall not be effective until they have been certified by the Coastal Commission as an amendment to the LCP.	
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.23 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.	4.23 **Beachfront development shall be setback and elevated to a sufficient foundation height to eliminate or minimize the need for shoreline protective devices over the 100-year economic life of the structure.**

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.32 In an existing developed area where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or tearoom on either side. All in-fill development shall be setback a minimum of 10-feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.	4.32 In an existing developed area where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, other accessory structure shall **meet the stringline requirements of the zoning ordinance.** ~~not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or tearoom on either side~~. All in-fill development shall be setback a minimum of 10-feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.33 "Infill Development" shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beachfront development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protection device.	4.33 **Development shall be allowed on "in-fill" lots consistent with the policies of this LCP. On beachfront lots, development shall be no further seaward than the adjacent developed properties, consistent with the stringline requirements of the Zoning Ordinance.**

Proposed Policy Language Changes shown as strikeout and bold/underlining

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
LG	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.39 Shoreline and bluff protection structures shall not be permitted to protect new development. Shoreline and bluff protection structures may be permitted to protect existing ~~development~~ structures that ~~was~~ were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for the purposes of this policy shall consist only of ~~the~~ a principle structure, e.g. residential dwelling or required garage, and shall not include accessory or ancillary structures such as ~~garages~~, decks, patios, pools, tennis courts, cabanas, ~~guesthouses~~, stairs, landscaping, etc.	4.39 Shoreline and bluff protection structures shall not be permitted to protect new development. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. ~~Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development.~~ "Existing development" for the purposes of this policy shall consist only of a principle structure~~,~~ (e.g. residential dwelling), or required garage, guesthouses, and any other habitable structures, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, non-habitable cabanas, stairs, landscaping, etc.
		4.40 No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush ~~and that a shoreline protection structure is necessary~~ or if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures ~~and at grade~~ including, but not limited to cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.	4.40 ~~No~~ **If there is no other feasible protection,** shoreline protection structures shall be permitted ~~for the sole purpose of protecting an~~ **to protect a legally constructed habitable** ancillary or accessory structure. ~~Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush or if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse.~~ New Aaccessory structures including, but not limited to cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be designed and constructed ~~and designed~~ to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.41 All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.	4.41 All Shoreline protection structures shall be sited as far landward as feasible, ~~regardless of the location of protective devices on adjacent lots.~~ In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. ~~A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.~~
		4.43 Existing shoreline protection structures which do not conform to the provisions of the LCP may be repaired and maintained to the extent that such repairs and/or maintenance conform to the provisions of ~~Section 13252 of the California Code of Regulations (Title 14, Division 5.5)~~ Chapter 13.4 and 13.5 of the certified LCP Implementation Plan.	4.43 Existing shoreline protection structures which do not conform to the provisions of the LCP may be repaired and maintained to the extent that such repairs and/or maintenance conform to the ~~provisions of Chapter 13.4 and 13.5 of the certified LCP Implementation Plan.~~ **requirements of the Grandfathering provisions of the Zoning Ordinance**
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.44 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.	**Delete, not required by the Coastal Act**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
WASTEWATER	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.45 As a condition of approval of a shoreline protection structure, or repairs or additions to a shoreline protection structure, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. The restrictions shall also acknowledge that the intended purpose of the subject structure is solely to protect existing structures located on the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure.	4.45 **Repairs, additions or construction of shoreline protective devices shall be allowed, in accordance with Coastal Act Section 30235. New construction of shoreline protective devices shall comply with policies of this LCP.**
	Shoreline/ Bluff Structures & Hazards - LUP Policies - Shoreline Development	4.46 As a condition of approval of new development on a vacant beachfront or blufftop lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235.	4.46 **New development, demolition and rebuilding on beachfront and blufftop lots shall be constructed without shoreline protective devices when geologic and engineering evaluations conclude that no such devices are required.**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
Chapter 5 - New Development - LUP Policies - General			
LAND USE MAPS	New Development-LUP Maps	LAND USE MAPS 1-4	**PROPOSED CHANGES TO MIRROR CITY'S ADOPTED LAND USE MAPS (COMPARISON MAPS ATTACHED)**
RETAINED JURISTICTION	New Development - LUP Policies - General	None	**PROPOSED NEW POLICY** **Except for those developments set forth in Public Resources Code Section 30519(b), all applications for new development, including modifications to previously approved projects, shall be reviewed and approved by the City, consistent with all provisions of the Local Coastal Program (LCP).**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
STRUCTURE	New Development - LUP Policies - General	5.5 The Environmental Review Board or other qualified professional with technical expertise in resource management shall review and make written recommendations on development proposals within or adjacent to ESHA or other areas containing sensitive resources as identified through a biological study. The decision-making body for coastal permits shall make written findings relative to the project's conformance with the recommendations of the Environmental Review Board or other qualified professional.	5.5 The Environmental ~~Review Board~~ **Planning Director, in** consultation with the Environmental Review Board (ERB) or other qualified professional with technical expertise in resource management, ~~or other qualified professional with technical expertise in resource management~~ shall review and make written recommendations on development proposals within or adjacent to ESHA ~~or other areas containing sensitive resources~~ as identified through a biological study. The decision-making body for coastal permits shall make written findings relative to the project's conformance with the recommendations of the **Planning Director.** ~~Environmental Review Board or other qualified professional.~~
	New Development - LUP Policies - Commercial	5.15 All new commercial and higher density residential development must be located and designed to facilitate provision or extension of transit service to the development and must provide nonautomobile circulation within the development, to the extent feasible.	5.15 **New commercial and multiple family residential development shall be designed to maximize pedestrian access, minimize the need for individual automobiles and encourage transit service to the extent feasible.**
	New Development - LUP Policies - Commercial	5.16 Visitor-Serving Commercial, General Commercial, and Community Commercial uses shall be allowed in the Civic Center area, as designated by the Land Use Map, consistent with all policies of the LUP. A maximum FAR of 0.15 is permitted, except that the project FAR may be increased to the maximum permitted for the parcel by the LUP, if where public benefits and amenities are provided as ~~part of the project~~ and the project site is included as part of a planned development, development agreement, or other comprehensive plan approved under a LCP amendment certified by the California Coastal Commission.	5.16 Visitor-Serving Commercial, General Commercial, and Community Commercial uses shall be allowed in the Civic Center area, as designated by the Land Use Map, consistent with all policies of the LUP. A maximum FAR of 0.15 is permitted, except that the project FAR may be increased to the maximum permitted for the parcel by the LUP, if public benefits and amenities are provided and the project site is included as part of a planned development, development agreement, or other comprehensive plan. ~~approved under a LCP amendment certified by the California Coastal Commission.~~
	New Development - LUP Policies - Civic Center	5.17 To allow any other uses, the City must develop a specific plan, planned development, development agreement, or other type of comprehensive plan for the Civic Center area that allows for a wider range of uses, including visitor-serving and other commercial uses, office, public open space, and/or residential uses. Such a specific plan must be adopted by the City and certified by the Coastal Commission as an amendment to the LCP.	**Delete, not required by the Coastal Act.**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
LAND USE	New Development - LUP Policies - Civic Center	5.18 The components of a specific plan or other comprehensive plan for the Civic Center area shall include, but not be limited to: Land use designations and permitted uses. Provision for ~~no less than 50 acres of~~ visitor serving commercial uses, including overnight accommodations, throughout the area. Maximum density and intensity standards, including floor area ratios for commercial use. Development standards, including heights, lot coverage, setbacks, and open space requirements. Measures to protect wetland habitat (as defined in Policy 3.80) identified through a wetland delineation prepared for the Civic Center area. Provisions for shared or consolidated parking areas. Provisions for public open space areas. Design guidelines, including architectural design, lighting, signs, and landscaping. Provisions for mixed use development.	**Delete, not required by the Coastal Act.**
	New Development - LUP Policies - Residential	5.20 The maximum number of structures permitted in a residential development shall be limited to one main residence, one second residential structure, and accessory structures such as stable, workshop, gym, studio, pool cabana, office, or tennis court provided that all such structures are clustered to minimize required fuel modification.	**Delete, not required by the Coastal Act.**
	New Development - LUP Policies - Residential	5.21 Second residential units (guesthouses, granny units, etc.) shall be limited in size to a maximum of 750 square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. Detached garages, including garages provided as part of a second residential unit, shall not exceed 400 square feet (2-car) maximum. The area of a garage provided as part of a second residential unit shall not be included in the 750 square foot limit.	**5.21** Second residential units ~~(guesthouses~~, granny units~~, etc.)~~ shall be limited in size to a maximum of ~~750~~ **1,200** square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. Detached garages, including garages provided as part of a second residential unit, shall not exceed 400 square feet (2-car) maximum. The area of a garage provided as part of a second residential unit shall not be included in the 750 square foot limit.

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	New Development - LUP Policies - Lot Retirement	5.25 A Lot Retirement Program will be implemented in order to minimize the individual and cumulative impacts to coastal resources of the buildout of existing parcels in sensitive and constrained areas and to allow for new development in areas less constrained. The Lot Retirement Program shall comprise the following components: Transfer of Development Credit Program. Expedited Reversion to Acreage Process	**Need to suggest an alternative program.**
	New Development - LUP Policies - Lot Retirement	5.26 The Transfer of Development Credit (TDC) Program shall be implemented in order to ensure that the individual and cumulative impacts of creating new lots or developing multi-family residential units are minimized and mitigated through the retirement of an equivalent number of development credits from existing lots that meet the qualification criteria of the program. Lots that contain ESHA, are located in small-lot subdivisions, or are located adjacent to parklands can be retired for transfer of development credits.	**Need to suggest an alternative program.**
	New Development - LUP Policies - Lot Retirement	5.27 One TDC Program shall be implemented on a region-wide basis for the Santa Monica Mountains Coastal Zone, including the City of Malibu and the County of Los Angeles. Credits to mitigate development approved in the City may be generated from qualifying lots anywhere within this region.	**Need to suggest an alternative program.**
	New Development - LUP Policies - Lot Retirement	5.28 Any coastal development permit for a land division resulting in the creation of additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through the recordation of an offer to dedicate an open space easement and the merging or reversion to acreage of the retired parcel(s) with a contiguous parcel where the development potential is not retired.	**Need to suggest an alternative program.**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	New Development - LUP Policies - Lot Retirement	5.29 The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted, merged, and that such actions are accurately reflected in the records of the County Tax Assessor.	**Need to suggest an alternative program.**
	New Development - LUP Policies - Land Divisions	5.38 Any coastal development permit for a land division resulting in the creation of additional lots shall be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created.	**Need to suggest an alternative program.**
	New Development - LUP Policies - Water	5.45 All new development shall demonstrate that an adequate potable water supply is available to each parcel. An on-site water well shall provide water of potable quality and be able to provide a quantity of water sufficient to meet domestic supply requirements for the life of the development.	**Delete, not required by the Coastal Act**
	New Development - LUP Policies - Non-Conforming & Structures	5.53 Existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained, and repaired. Minor improvements to such structures may be permitted provided that such improvements do not increase the degree of nonconformity. Substantial additions, or demolition and reconstruction that result in demolition of more than 50 percent of the exterior walls of non-conforming structures are not permitted unless such structures are brought into conformance with the policies and standards of the LCP. Non-conforming uses may not be increased or expanded into additional locations or structures.	5.53 Existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained, and repaired. **Improvements and repairs may be allowed when consistent with the Grandfathering provisions of the Zoning Ordinance. Improvements shall not increase the nonconformity. Expansions may be permitted when in compliance with the LCP.** ~~Minor improvements to such structures may be permitted provided that such improvements do not increase the degree of nonconformity.~~ Substantial additions, or demolition and reconstruction that result in demolition of more than 50 percent of the exterior walls of non-conforming structures are not permitted unless such structures are brought into conformance with the policies and standards of the LCP. ~~Non-conforming uses may not be increased or expanded into additional locations or structures.~~

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	New Development - LUP Policies - Communications Facilities	5.56 Communication processing, storage and transmission facilities and lines shall be sited, designed, and operated to avoid or minimize impacts to all resources. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.	5.56 Communication processing, storage and transmission facilities and lines shall be sited, designed, and operated to avoid or minimize impacts to **ESHA** ~~all resources~~. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.
Chapter 6 - Scenic & Visual Resources - LUP Policies - Identification			

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
SCENIC	Scenic & Visual Resources - LUP Policies - Identification	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.	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. **In protecting the visual qualities of these areas, it is recognized that new development permitted by the LUP will sometimes be visible from public viewing areas and scenic roadways, as well as adjacent to identified scenic elements. It is the objective of LUP policies to protect visual resources, including views of scenic elements, the ocean, and natural hillsides from public viewing areas and scenic roadways to the maximum feasible extent. To this end, new development permitted by the LUP should blend in with the natural environment to the maximum extent feasible.**
SCENIC	Scenic & Visual Resources - LUP Policies - Identification	6.2 Places on and along public roads, trails, parklands, beaches, and state waters that offer scenic vistas are considered public viewing areas. The LUP Scenic Resources Map shows public viewing areas located along existing public roads where there are views of the ocean and other scenic areas. Public viewing areas within public parklands and along riding and hiking trails 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.	6.2 Places on and along public roads, trails, parklands, beaches, and state waters that offer scenic vistas are considered public viewing areas. The LUP Scenic Resources Map shows public viewing areas **as specific points** located along existing public roads where there are views of the ocean and other scenic areas. **Also, shown on the Scenic Resources Map are scenic roadways and significant "scenic elements" within and adjacent to the City of Malibu.** Public viewing areas **are also considered to exist** within **the** public parklands and along **the** riding and hiking trails 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. ***[[Note: the City's General Plan Scenic Resources Map (Figure CO-5) should be added to the LUP's Scenic Resources Maps.]] (ATTACHED)***

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Scenic & Visual Resources - LUP Policies - Identification	6.3 Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads shown on the LUP Scenic Resources Map within the City are considered Scenic Roads: • Pacific Coast Highway, • Decker Canyon Road, • Encinal Canyon Road, • Kanan Dume Road, • Latigo Canyon Road, • Corral Canyon Road, • Malibu Canyon Road, • Tuna Canyon Road	**Delete, redundant, already included on Scenic Resources Map**

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Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
SCENIC	Scenic & Visual Resources - LUP Policies - New Development	6.4 New development shall not be visible from scenic roads or public viewing areas. 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 highways or public viewing areas, through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, and incorporating landscape elements and where appropriate, berming.	6.4 **Views of** new development ~~shall not be visible~~ from scenic roads or public viewing areas **shall be minimized to the maximum extent feasible.** ~~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 views of scenic elements, the beach, and natural hillsides from scenic highways or public viewing areas, through measures including, but not limited to, siting new development in the least visible portion of the site, locating new development below ridgelines, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, breaking up the mass of new structures, and designing structures to visually blend into a natural hillside setting, and where appropriate, berming.
SCENIC	Scenic & Visual Resources - LUP Policies - New Development	6.5 The maximum allowable development area (including the building pad and all graded slopes, if any, as well as any permitted structures) shall be limited to 10,000 sq. ft. or 25 percent of the parcel size, whichever is less, including the building pad, if any, and all graded slopes on sites visible from scenic roads or public viewing areas, or on slopes over 3:1. The maximum development area shall be further restricted if necessary to protect visual or other sensitive resources. All permitted structures shall be located within the approved development area. The maximum allowable development area for commercial development shall be restricted by the maximum floor area ratio. This policy shall not apply to ocean side parcels subject to policy 6.18.	6.5 **Except for beachfront lots,** the maximum allowable development area (including the building pad and all graded slopes, if any, as well as any permitted structures) shall be limited to **those portions of the lot which are in natural slopes of 3:1 or less. Development on slopes greater than 3:1 may be permitted in order to allow safe and adequate vehicular access or reasonable use of the lot.** ~~10,000 sq. ft. or 25 percent of the parcel size, whichever is less, including the building pad, if any, and all graded slopes on sites visible from scenic roads or public viewing areas, or on slopes over 3:1~~. The maximum development area shall be further restricted if necessary to protect visual or ~~other~~ sensitive resources. All permitted structures shall be located within the approved development area.

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DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
SCENIC	Scenic & Visual Resources - LUP Policies - New Development	6.13 New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited, <u>except for those materials necessary for a solar energy system, where there are no feasible alternative locations or designs with less visual impact and the system will not have a significant adverse impact on views from scenic roads or public viewing areas.</u>	6.13 New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.
	Scenic & Visual Resources - LUP Policies - New Development	6.14 The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.	**OK only if the proposed City modifications to Policy 6.2 is adopted.**
	Scenic & Visual Resources - LUP Policies - New Development	6.15 Fences, walls, and landscaping shall not block or obscure views from scenic roads highways, parks, beaches, and other public view areas.	6.15 Fences, walls, and landscaping shall not block **<u>public</u>** ~~or~~ obscure views **<u>of scenic elements or natural hillsides</u>** from **<u>public roads,</u>** scenic roads, parks, and beaches, and other public viewing areas.

Proposed Policy Language Changes shown as strikeout and bold/underlining

DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
SCENIC	Scenic & Visual Resources - LUP Policies - New Development	6.19 Except for replacement of structures destroyed by disaster, redevelopment of sites involving substantial remodels or demolition and reconstruction where existing landscaping or development blocks or obscures views of the ocean or other scenic views, the existing landscaping or development shall be removed and where appropriate replaced with landscaping and development that is sited and designed provide maximum views, as required by Policies 6.17 or 6.18, as applicable.	**Delete, not required by the Coastal Act**
	Scenic & Visual Resources - LUP Policies - New Development	6.20 Public works projects along scenic roads that include hardscape elements such as retaining walls, cut-off walls, abutments, bridges, culverts shall incorporate veneers, texturing, and colors that blend with the surrounding earth materials or landscape. The design of new bridges on scenic roads shall be compatible with the rural character of the Santa Monica Mountains and designed to protect scenic views.	6.20 Public works projects along ~~scenic~~ **public** roads that include hardscape elements such as retaining walls, cut-off walls, abutments, bridges, culverts shall incorporate veneers, texturing, and colors that blend with the surrounding earth materials or landscape. The design of new bridges on ~~scenic~~ **public** roads shall be compatible with the rural character of the Santa Monica Mountains and designed to protect scenic views.
	Scenic & Visual Resources - LUP Policies - Signs	6.28 Signs shall be designed and located to minimize impacts to visual resources. Signs approved as part of commercial development shall be incorporated into the design of the project and shall be subject to height and width limitations that ensure that signs are visually compatible with surrounding areas and protect scenic views. Roof signs, pole signs, projecting signs and internally illuminated signs shall not be permitted.	6.28 **Signage shall be designed and located to minimize impacts to identified scenic elements. Designs that have limited height, size, minimize lighting, and are visually compatible with the area in which they are located are encouraged. Illuminated signs, except for safety purposes, shall be discouraged, especially in light sensitive areas.**
	Scenic & Visual Resources - LUP Policies - Signs	6.29 Placement of signs, utilities, or other accessory equipment that obstruct views to the ocean, beaches, parks, or along scenic roads shall be prohibited.	6.29 Placement of signs **other than traffic and other public safety signs**, utilities, or other accessory equipment that obstruct views ~~to~~ **of** the ocean, beaches, parks, **and identified scenic elements** ~~or along~~ **from identified public viewing areas and** scenic roads shall be prohibited.
	Scenic & Visual Resources - LUP Policies - Signs	6.30 Existing offsite outdoor advertising billboards shall be phased out and the construction of new billboards is prohibited.	**Move to implementation.**

Proposed Policy Language Changes shown as strikeout and bold/underlining

DRAFT - Suggested Policy Changes on Remaining Policy Issues of June 2002 LUP

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
Chapter 7 - Public Works - LUP Policies			
	Public Works - LUP Policies	7.2 Publicly financed recreational facilities and access improvement projects, including all projects of the State Coastal Conservancy, shall be permitted consistent with the policies contained in the Access and Recreation Section of the LCP and the Access and Recreation policies of the Coastal Act when located between the sea and the first public road. All projects conducted or financed by the State Coastal Conservancy shall constitute "public works facilities" pursuant to the definition provided above in PRC Section 30114.	7.2 ~~Publicly financed recreational facilities and access improvement projects, including all projects of the State Coastal Conservancy, shall be permitted consistent with the policies contained in the Access and Recreation Section of the LCP and the Access and Recreation policies of the Coastal Act when located between the sea and the first public road.~~ All projects conducted or financed by the State Coastal Conservancy shall constitute "public works facilities" pursuant to the definition provided above in PRC Section 30114.
	Public Works - LUP Policies - Circulation & Traffic	7.12 Restrictions on or elimination of existing on-street public parking on Pacific Coast Highway and adjacent side-streets shall not be permitted unless a comparable number of replacement parking spaces are provided in the immediate vicinity and it is demonstrated that such restrictions or elimination will not adversely impact public access to the shoreline.	7.12 ~~Restrictions on or~~ Elimination of existing on-street public parking on Pacific Coast Highway and adjacent side-streets shall not be permitted unless a comparable number of replacement parking spaces are provided in the immediate vicinity. **Restrictions on parking may be permitted when** ~~and~~ it is demonstrated that such restrictions **are necessary for public safety and** ~~or elimination~~ will not adversely impact public access to the shoreline.

Proposed Policy Language Changes shown as strikeout and bold/underlining

Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
WASTEWATER	Public Works - LUP Policies - Water & Wastewater	7.17 On-site wastewater management zones that establish performance standards including water quality protection measures and periodic inspections should be created and enforced by the Department of Health Services and/or City engineer for the Civic Center area, Point Dume, the immediate coastal strip and any areas known to have poor percolation rates, a high water table or be prone to geologic hazards.	7.17 **The City shall encourage and facilitate the voluntary creation of on-site wastewater management districts for those system operators and owners whose systems are adjacent to impacted surface and groundwaters and/or clustered commercial and multifamily systems.**
	Public Works - LUP Policies - Water & Wastewater	7.18 The construction of public package wastewater treatment facilities may be permitted where it is demonstrated to be the preferable long-term wastewater management solution, where it is designed to not exceed the capacity for growth allowed in the LCP, and where it can be constructed consistent with all policies of the LCP.	7.18 The construction of public package wastewater treatment facilities may be permitted **consistent with the requirements of the Malibu General Plan and the Malibu Municipal Code.**~~where it is demonstrated to be the preferable long-term wastewater management solution, where it is designed to not exceed the capacity for growth allowed in the LCP, and where it can be constructed consistent with all policies of the LCP.~~
	Public Works - LUP Policies - Water & Wastewater	7.19 A City-wide public sewer system may be designed and proposed, in consultation with the Departments of Health Services and Public Works where it is found to be the least environmentally damaging wastewater treatment alternative, where it is designed to serve a capacity of development which does not exceed the amount allowed by the LCP, and where it is found to be consistent with all other policies of the LCP. In particular, the proposed method of effluent disposal shall be required to be consistent with policies requiring the protection of marine resources, riparian habitat and water quality.	Delete, policy not required by the Coastal Act.
	Public Works - LUP Policies - Water & Wastewater	7.20 Any proposed sewer system shall be submitted to and approved by the Coastal Commission as an LCP amendment prior to issuance of local permits and construction.	Delete, policy not required by the Coastal Act.

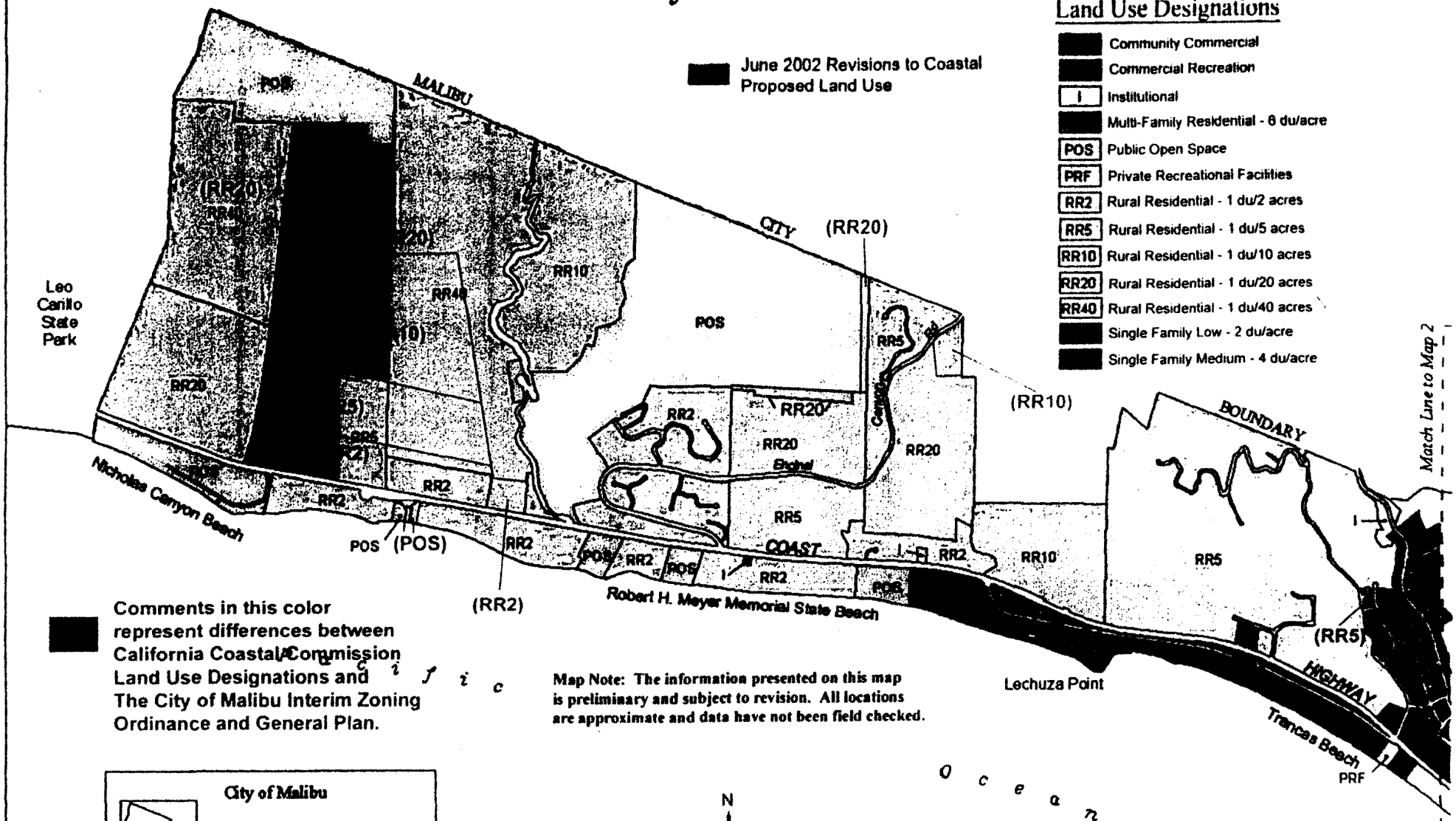
Issue	Chapter	June 2002 Coastal Policy	City Staff's proposed Policy Language
	Public Works - LUP Policies - Water & Wastewater	7.21 Any assessment district formed to finance construction of a public sewer system shall be considered a public works project pursuant to PRC Section 30114 and must be found consistent with all applicable policies of the LCP including the ultimate level of growth allowed by the LCP and shall not be effective until and unless the Coastal Commission has approved the proposed system as an LCP amendment.	Delete, policy not required by the Coastal Act.

Please Note: ***While it is the City's hope that this process will result in a local coastal program that is consistent with the Coastal Act and reflects the City's land use policies, the City reserves all of its rights and remedies. The City does not, by virtue of its good faith participation in this process, including the preparation of draft portions of the Implementation Plan and review of the Implementation Plan prepared by Coastal Commission staff, waive any argument or right or concede the validity of the enabling statute or any act by the Coastal Commission thereunder. Note that this is an administrative draft, and the City Council has not considered any aspect of it.***

Local Coastal Program - City of Malibu

Preliminary Draft

Land Use Map 1: Nicholas Canyon to Trancas Beach



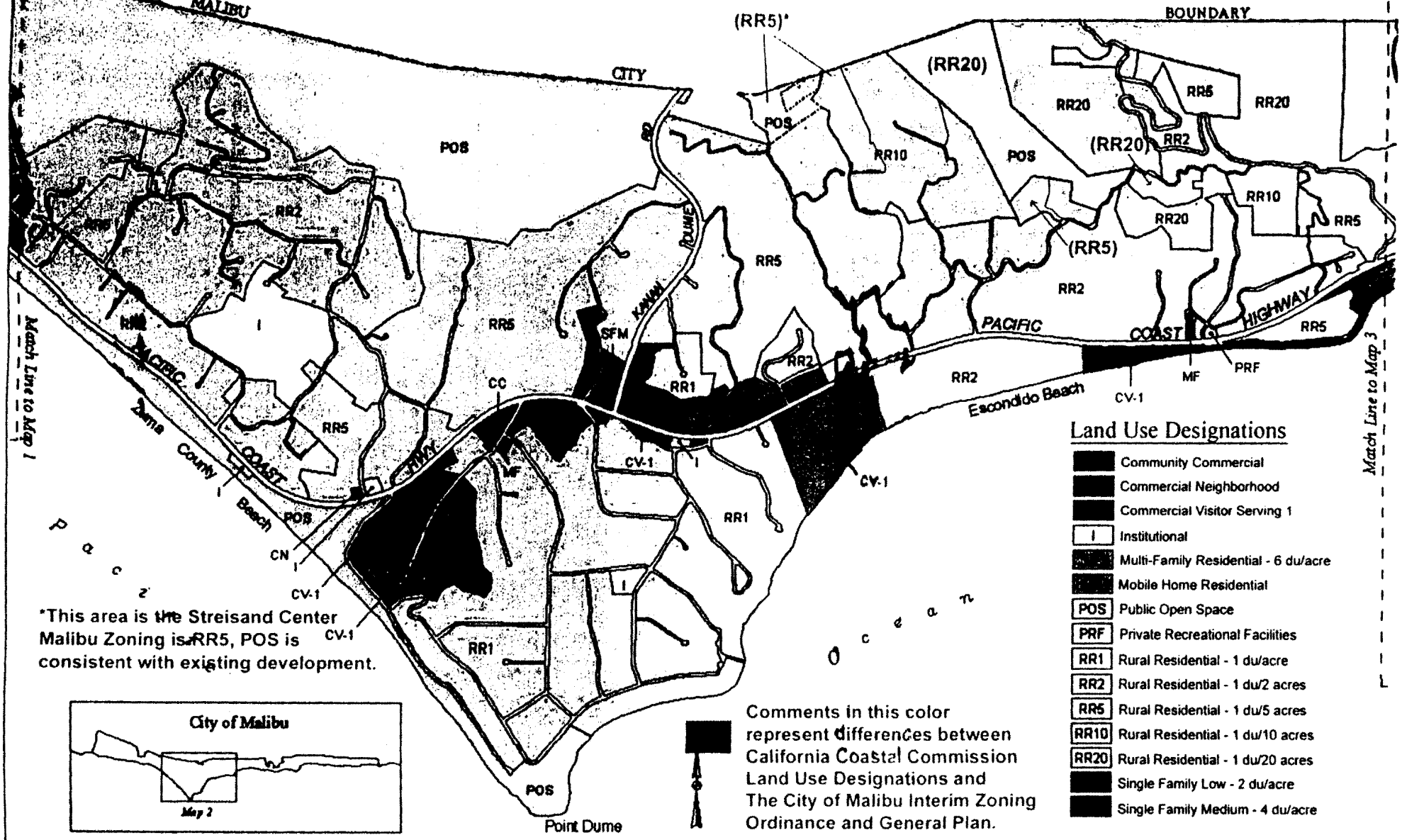
California Coastal Commission
Technical Services Division

Local Coastal Program - City of Malibu

Preliminary Draft

Land Use Map 2: Zuma Beach to Escondido Beach

Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.



California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 1/02

Local Coastal Program - City of Malibu

Preliminary Draft

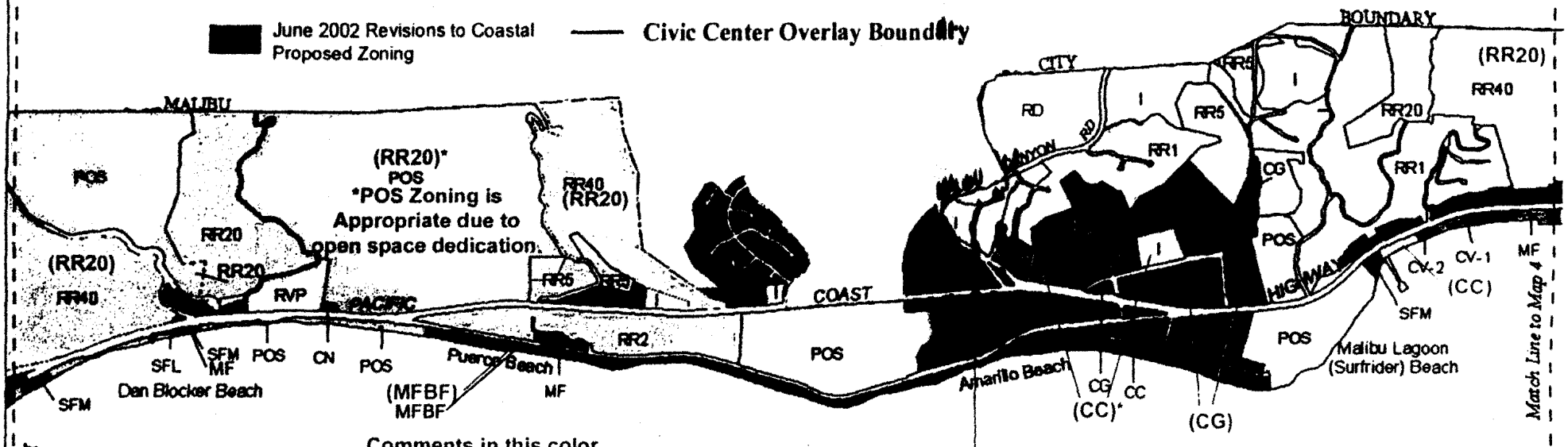
Land Use Map 3: Dan Blocker to Malibu Pier

Land Use Designations

- Community Commercial
- Commercial General
- Commercial Neighborhood
- Commercial Visitor Serving 1
- Commercial Visitor Serving 2
- I — Institutional
- Multi Family Residential - 6 du/acre
- Planned Development
- POS — Public Open Space
- RD — Industrial/R&D
- RVP — Recreational Vehical Park
- RR1 — Rural Residential - 1 du/acre
- RR2 — Rural Residential - 1 du/2 acres
- RR5 — Rural Residential - 1 du/5 acres
- RR20 — Rural Residential - 1 du/20 acres
- RR40 — Rural Residential - 1 du/40 acres
- Single Family Low - 2 du/acre
- Single Family Medium - 4 du/acre

June 2002 Revisions to Coastal Proposed Zoning

Civic Center Overlay Boundary



Comments in this color represent differences between California Coastal Commission Land Use Designations and The City of Malibu Interim Zoning Ordinance and General Plan.

Malibu Zoning is RR2 PD is consistent with Development Agreement

Pacific Ocean

*23555 Civic Center Way is Malibu Civic Center, I is consistent with existing development.

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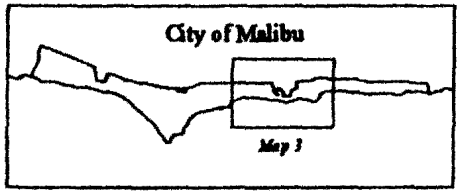

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California Coastal Commission Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 1/02

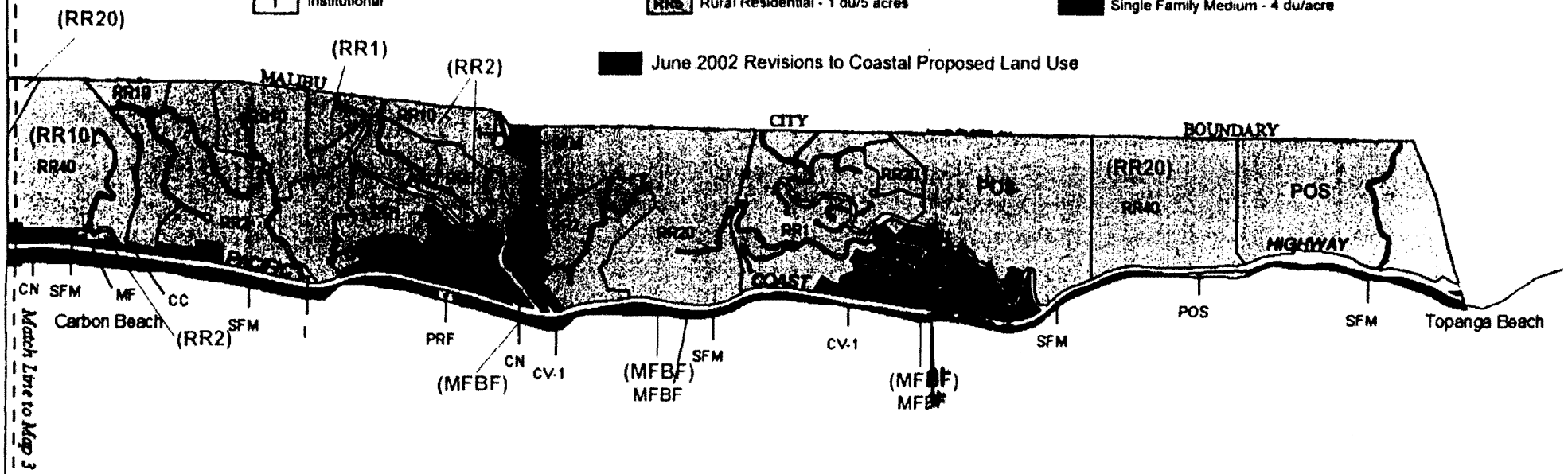
Local Coastal Program - City of Malibu

Preliminary Draft

Land Use Map 4: Carbon Beach to Topanga Beach

Land Use Designations

- Community Commercial
- Commercial Neighborhood
- Commercial Visitor Serving 1
- I Institutional
- Multi-Family Residential - 6 du/acre
- POS Public Open Space
- RR1 Rural Residential - 1 du/acre
- RR2 Rural Residential - 1 du.2 acres
- RR5 Rural Residential - 1 du/5 acres
- RR10 Rural Residential - 1 du/10 acres
- RR20 Rural Residential - 1 du/20 acres
- RR40 Rural Residential - 1 du/40 acres
- Single Family Low - 2 du/acre
- Single Family Medium - 4 du/acre
- June 2002 Revisions to Coastal Proposed Land Use



P a c i f i c O c e a n

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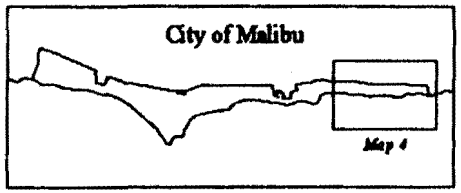

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California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

Local Coastal Program - City of Malibu

Preliminary Draft

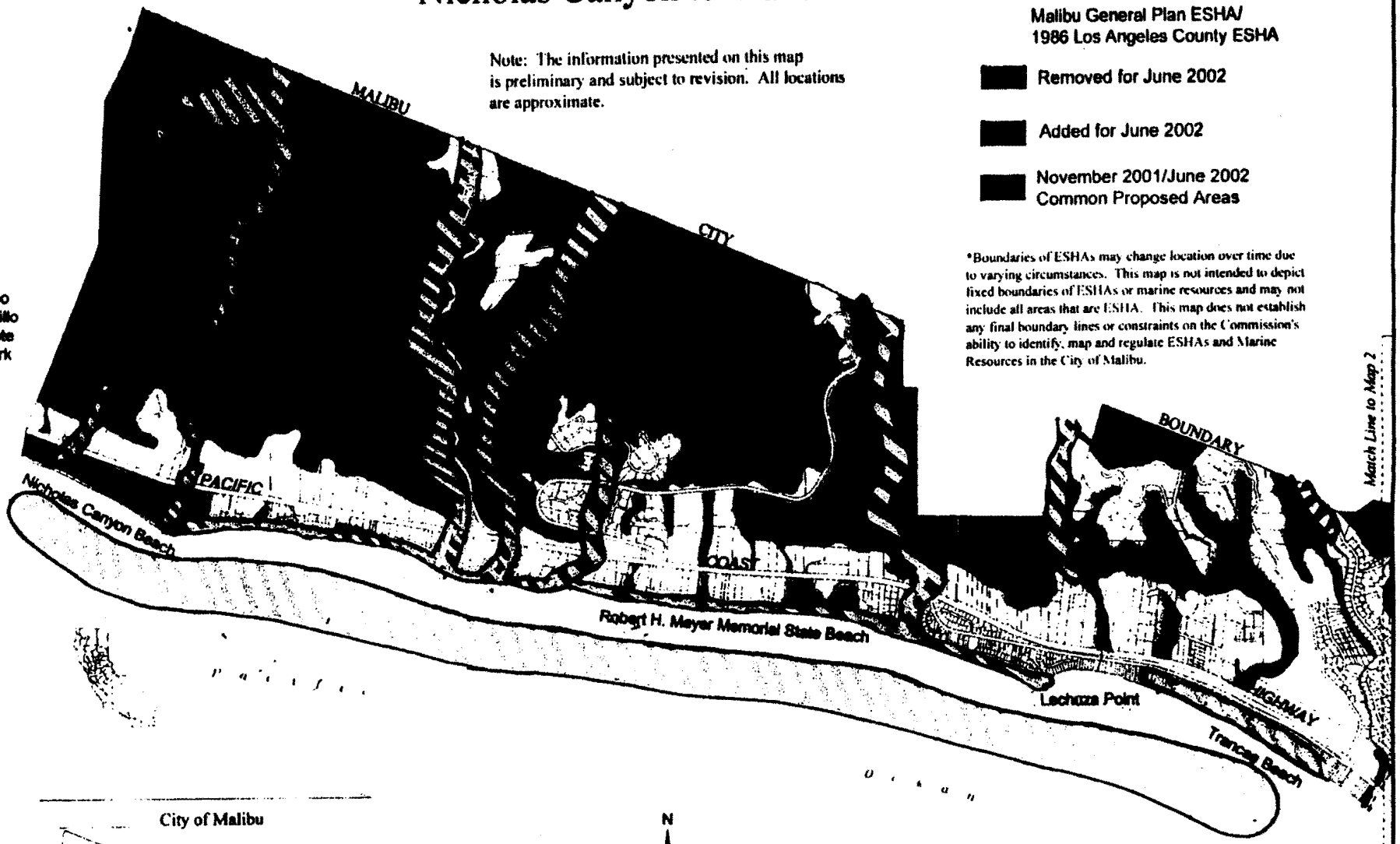
ESHA and Marine Resources Map 1: Nicholas Canyon to Trancas Beach

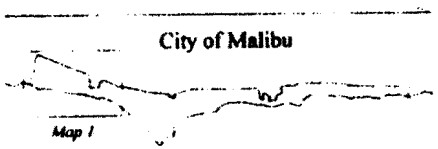
Note: The information presented on this map is preliminary and subject to revision. All locations are approximate.

Malibu General Plan ESHA/
1986 Los Angeles County ESHA

- Removed for June 2002
- Added for June 2002
- November 2001/June 2002 Common Proposed Areas

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





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California Coastal Commission
Technical Services Division

Preliminary Draft

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983, CCC Staff, 2001.

DSM, Revised 12/01

Preliminary Draft

Local Coastal Program - City of Malibu

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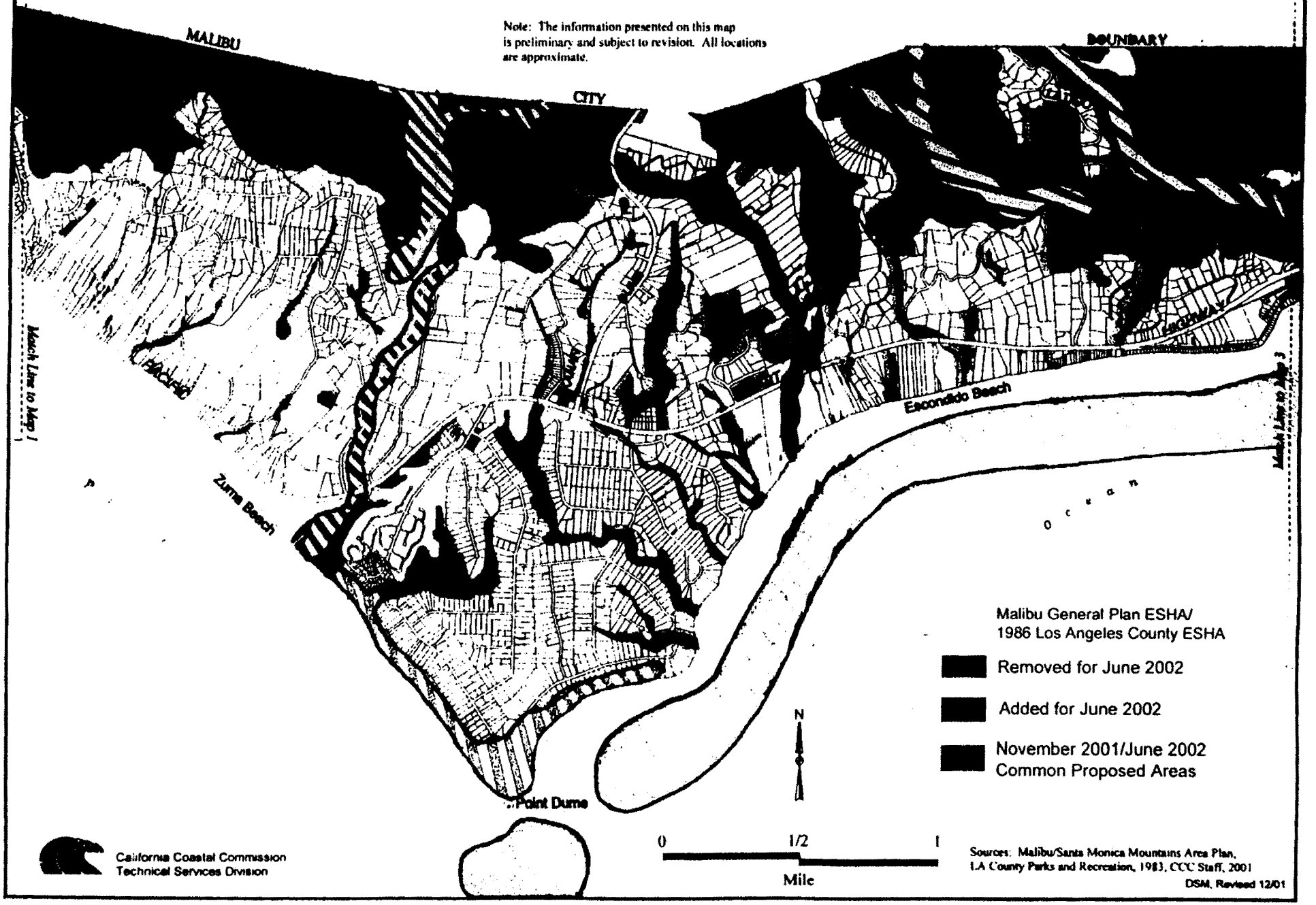

California Coastal Commission
Technical Services Division

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983, CCC Staff, 2001

DSM, Revised 12/01

Preliminary Draft

Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

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Added for June 2002

November 2001/June 2002
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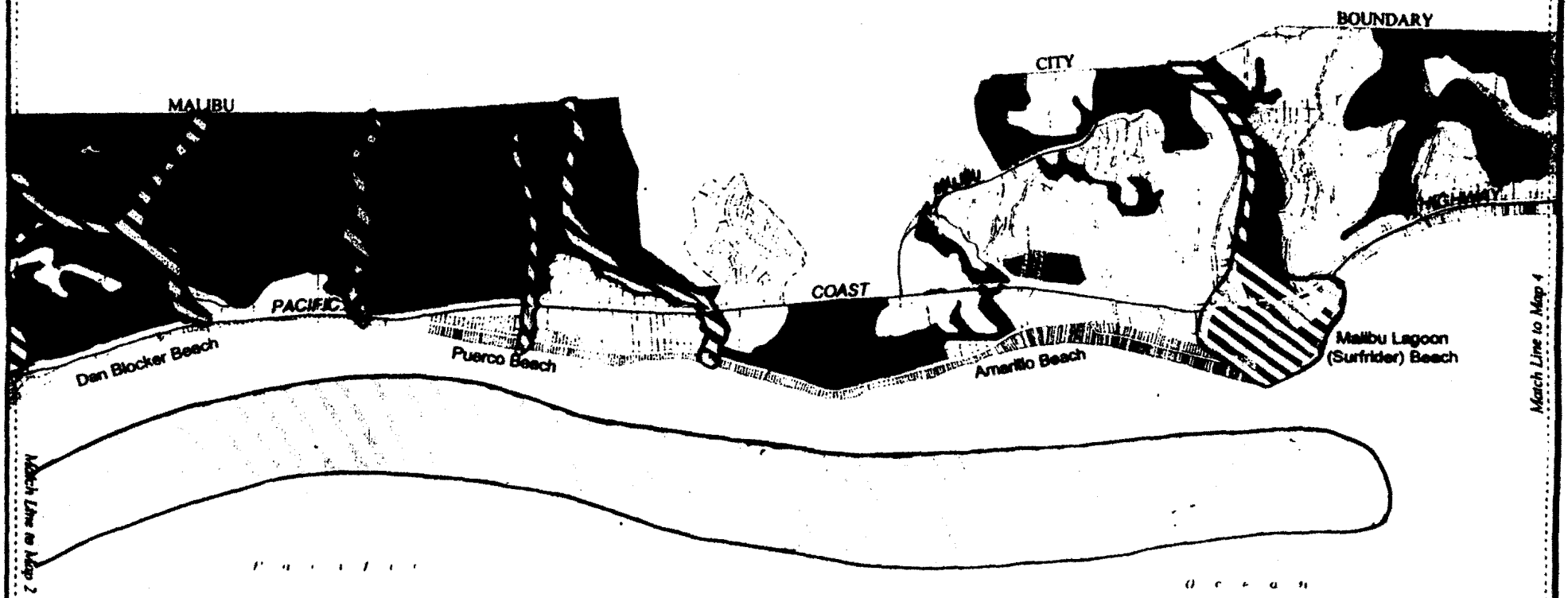
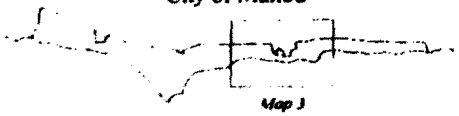


City of Malibu



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California Coastal Commission
Technical Services Division

Preliminary Draft

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Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 4: Carbon Beach to Topanga Beach

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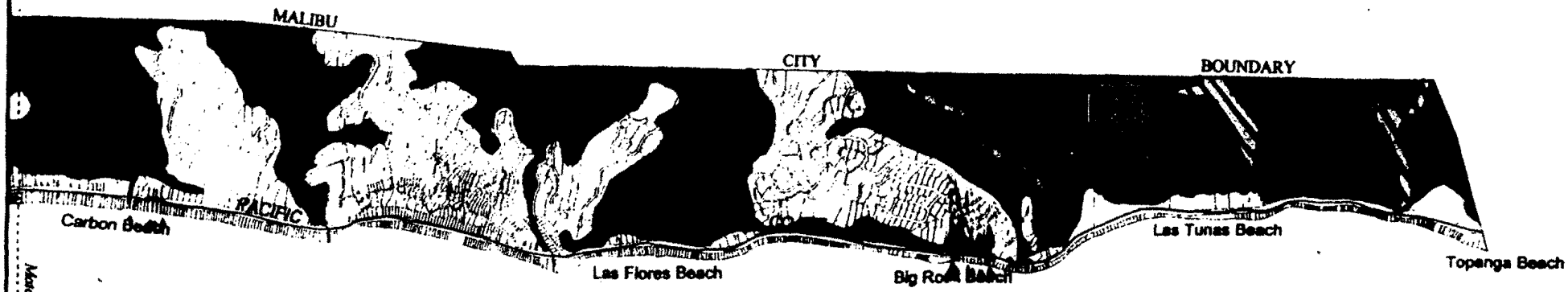

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Pacific Ocean

Match Line to Map 3

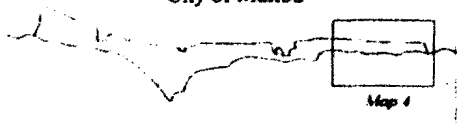
Malibu General Plan ESHA/
1986 Los Angeles County ESHA

Removed for June 2002

Added for June 2002

November 2001/June 2002
Common Proposed Areas

City of Malibu



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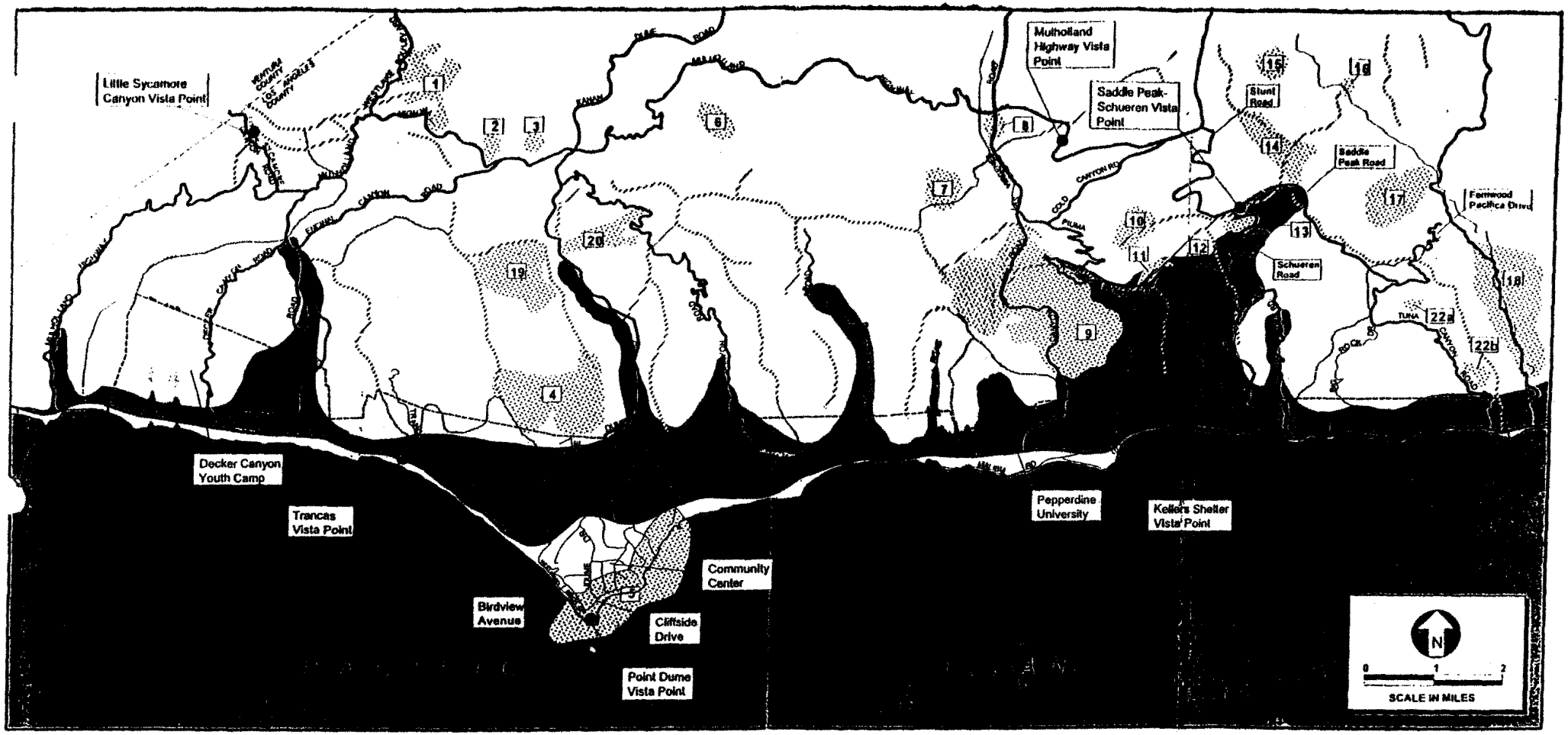
California Coastal Commission
Technical Services Division

Preliminary Draft

Sources: Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983, CCC Staff, 2001.

DSM, Revised 12/01



SCENIC ELEMENTS

1 West Mulholland Highway Sandstone
2 Saddle Rock
3 Turtle Rock
4 Lower Zuma Canyon
5 Little Dume Cove Bluffs
6 Cornell Sandstone Peaks
7 Brent's Mountain
8 Claretville Hills
9 Malibu Canyon
10 Dark Canyon
11 Puma Road Crest
12 Upper Carbon Canyon Cliffs
13 Schueren Road Sandstone
14 Topanga Lookout Ridge
15 Old Topanga Sandstone
16 Old Topanga Watergap
17 Fernwood Hillside
18 Lower Topanga Canyon
19 Upper Zuma Canyon
20 Newton Canyon Hillside
21 Lower Latigo Canyon
22 Tuna Canyon

LEGEND

SCENIC ELEMENTS
AREAS HAVING OCEAN VIEWS
CITY BOUNDARY
VISTA POINT
SIGNIFICANT RIDGELINE
VIEWSHED BOUNDARY
SCENIC ROAD

CITY OF MALIBU GENERAL PLAN
FIGURE CO-5
SCENIC RESOURCES

SOURCE: Malibu Local Coastal Program, 1986

COMMENTS ON JUNE 2002 MALIBU LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN

MALIBU LCP IMPLEMENTATION PLAN

CITY OF MALIBU

LOS ANGELES COUNTY, CALIFORNIA

Prepared for:

City of Malibu
23555 Civic Center Way
Malibu, California 90265

Prepared by:

LSA Associates, Inc.
1650 Spruce Street, Suite 500
Riverside, California 92507
(909) 781-9310

LSA Project No. MBU230

LSA

July 8, 2002

MALIBU LCP IMPLEMENTATION PLAN: COMMENTS ON JUNE 2002 PUBLIC REVIEW DRAFT

The following document presents comments on the June 2002 public review draft of the Malibu LCP Implementation Plan. By mutual agreement, City and Coastal Commission staffs each prepared portions of the overall Implementation Plan, and on May 3, 2002, exchanged Implementation Plan sections for the other party's review. On May 31, 2002, the City of Malibu provided Coastal Commission staff with comments on the sections of the Implementation that they had prepared. Some of these comments have been incorporated into the June 2002 public review draft of the Malibu LCP Implementation Plan. However, the City still has concerns with certain provisions of the Implementation Plan. In addition, Coastal Commission staff has modified some Implementation Plan provisions prepared by the City in the June 2002 public review draft of the Malibu LCP Implementation Plan. The City has concerns with some of these revisions. The purpose of this document is to provide the City's comments on the June 2002 public review draft of the Malibu LCP Implementation Plan.

While it is the City's hope that this process will result in a local coastal program that is consistent with the Coastal Act and reflects the City's land use policies, the City reserves all of its rights and remedies. The City does not, by virtue of its good faith participation in this process, including the preparation of draft portions of the Implementation Plan and review of the Implementation Plan prepared by Coastal Commission staff, waive any argument or right or concede the validity of the enabling statute or any act by the Coastal Commission thereunder. Note that this is an administrative draft, and the City Council has not considered any aspect of it. This is the work product of LSA Associates, Inc. (LSA) prepared under the supervision of City staff.

ORGANIZATIONAL AND GENERAL ISSUES

1. **Relationship between the Implementation Plan and the City's Zoning Ordinance.** It is the City's intention to merge the Implementation Plan with its Interim Zoning Ordinance, creating a single reference document to implement Malibu's General Plan and Coastal Land Use Plan. The Coastal Commission staff's work effort, of necessity, focuses on coastal issues, and not the broader questions of zoning. As a result, some provisions of the Implementation Plan, as suggested by Coastal Commission staff, may need to be supplemented to apply to the full range of issues the City needs to deal with. For example, coastal development permitting needs to be integrated with the City's application submittal, review, and approval processes. Merging the Implementation Plan and Interim Zoning Ordinance will entail incorporating references to implementing the City's General Plan and non-coastal zoning provisions into the Coastal Implementation Plan. If incorporating such provisions would be considered an amendment to the Implementation Plan, the City would request that Coastal Commission staff be directed to work with the City to merge non-coastal zoning provisions with the Implementation Plan prior to the September Coastal Commission meeting.

A number of provisions of the City's existing zoning ordinance have been modified in the June 2002 Implementation Plan, including revisions where the City's existing standard is not inconsistent with the proposed Coastal Land Use Plan. As a general rule, unless existing development standards in the Malibu Interim Zoning Ordinance and Malibu Municipal Code are inconsistent with the proposed Coastal Land Use Plan or there is a compelling reason to do so, existing adopted development standards need not and should not be modified.

Since the City will adopt the Implementation Plan as a single ordinance, the wording of the Implementation Plan should be revised to refer to individual "chapters," rather than to individual implementing "ordinances," as the Implementation Plan is now written.

2. **Relationship between the Coastal Land Use Plan and Implementation Plan.** A number of provisions contained in the Implementation Plan are taken verbatim from the Malibu LCP Land Use Plan. As they now stand, both the LUP and the Implementation Plan contain a mix of policy statements and standards, resulting in the potential for future conflicts between the LUP and Implementation Plan. It is requested that policy statements be consolidated into the LUP, and that standards be consolidated into the Implementation Plan.

3. **Conflicts with other plans and ordinances.** Several chapters have provisions that deal with handling internal conflicts within adopted plans and ordinances other than the LCP. These provisions should be consolidated into a single administrative provision describing the relationship of the Coastal Land Use Plan and Implementation Plan to other plans and ordinances, describing the manner in which conflicts between documents are to be resolved.

4. **Consolidation of required findings and conditions of approval.** Individual sections of the Implementation Plan identify a myriad of required findings and conditions of approval in relation to specific issues. There are also required findings and conditions of approval provided in the coastal development permit requirements section. To assist in development review, all required findings and conditions of approval should be consolidated into a single location within the Implementation Plan, providing direction as to which findings and conditions of approval are required in what situations.

5. **Organization of Development Standards.** The City desires that development standards be consolidated into a single Chapter. To the extent that the City can make modifications to the organization of the Implementation Plan without making substantive revisions, and not trigger an amendment to the LCP, these issues can be addressed by the City following Coastal Commission action on the LCP in September. If such organizational, non-substantive revisions would be considered an LCP amendment, the City would request that the organization of the Implementation Plan be modified per the City's recommendations. If the Commission concurs, the City of Malibu will provide a document with such revised organization for its review.

6. **Conditions of approval requiring compliance with the LCP.** A number of sections require conditions of approval to be placed on projects requiring compliance with the provisions of the Implementation Plan or Land Use Plan. Since the provisions of the Implementation Plan are already required, they need not be made conditions of approval. In addition, approval of a coastal development permit requires the permit to be consistent with the provisions of the Land Use Plan. Thus, conditions of approval to comply with the Land Use Plan are unnecessary.

7. **Relationship of City development review to CEQA.** References are made throughout the Implementation Plan to the "least environmentally damaging alternative" in relation to various environmental issues. In addition, the section on coastal development permits contains references to having applicants prepare and analyze alternatives for their projects. While the Coastal

Commission implements a "functional equivalent" of the California Environmental Quality Act (CEQA), the City of Malibu is required to comply with CEQA, as well as State and local guidelines to implement CEQA. Under CEQA, ministerial actions such as siting a house on an existing lot of record is not considered to be a project under CEQA, and the City does not have the authority to require "CEQA-like" alternative analyses. Discussion between the City and Coastal Commission staff is needed to address issues related to ministerial vs. discretionary actions. It is the City's preference to ensure that the ability to develop a single family home on an existing lot of record remains a ministerial action.

8. **Trade-off between mitigating various types of impacts**. Provision needs to be made in the Implementation Plan for balancing between different types of potential impacts and mitigation measures. The "least environmentally damaging alternative" in terms of biological resources might not be the least environmentally damaging alternative in terms of visual impacts. Guidance for such situations needs to be provided.

9. **Approving Authority**. References to the "Planning Commission" or "Director" and their approvals should be changed to "Approving Authority." This will assist in merging the Implementation Plan with other zoning provisions. A single section should be provided identifying which bodies in the City have authority to approve what specific types of approvals and permits.

10. **City decisionmaking authority for biological resource issues**. Several references to the Environmental Review Board (ERB) are made, indicating that coastal Commission staff recommends that it be a decision-making body. It is the City's preference to use the ERB as an advisory body to the Director and City Biologist.

11. **Location of permit requirements in the Implementation Plan**. References are made throughout the text of the Implementation Plan to "the permit" and how the permit is to be conditioned. It would be helpful to move the permitting section up to nearer to be front of the document. This would help clarify what the "permit" being referred to is.

12. **Timing of mitigation in relation to permit issuance/approval**. In a number of cases, the Implementation Plan requires that mitigation be completed prior to issuance of a coastal development permit. This creates a need to separate permit approval from issuance of the permit. It would be unreasonable to require a landowner or developer to comply with the conditions of a permit before it is approved.

13. **Clarity of what is permitted and what is not**. Provisions in the Implementation Plan tend to set forth a broad prohibition, and then define exceptions and exemptions to the prohibition. In some cases, it becomes difficult to understand the net effect of the provisions. A more straightforward presentation of what is permitted under what circumstances would be preferable.

CHAPTER 1: TITLE AND PURPOSE

Comments regarding Chapter 1, Title and Purpose, are included in comments on Organizational and Other Issues.

CHAPTER 2, DEFINITIONS

1. **Consolidation of Definitions within the Implementation Plan.** In addition to Chapter 2, Definitions, individual chapters prepared by Coastal Commission staff also include definitions, some of which appear to two or more chapters. All definitions should be consolidated into a single chapter.
2. **Comments on specific definitions.** Preparation of this Chapter was originally to be the responsibility of the City. Definitions are included in the City's Implementation Plan work tasks. The definitions suggested by Coastal Commission staff should be integrated with City existing zoning definitions and revisions to those definitions, as set forth in the work product provided to Coastal Commission staff. Comments on specific definitions are presented below.

Aggrieved Person

The definition is too limited as it only refers to appeals of Coastal Development permits, but needs to apply to all situations where it will be used. The definition should be removed from the Definitions Chapter, since anyone who may appeal under the Implementation Plan or zoning ordinance should be spelled out in the appeals section of the document. Included in this definition is the term "sensitive coastal resource area." That term should be defined as to whether it is limited to designated ESHAs or includes additional areas?

Appealable Coastal Development Permit

Depending upon the definition of "sensitive coastal resource area," the ability to appeal development within "sensitive coastal resource areas" could be too broad. Appeals should be limited to ESHAs. The threshold for "major" public works and "major" energy facilities ($100,000, with escalation per Engineering News Record) will include a myriad of projects that are straightforward and not "major." If there is no statutory requirement for these to be appealable to the Coastal Commission, they should be deleted since appeals would remain immediately along the coast and within ESHAs.

Development

This definition is already included in the Zoning Ordinance. The second paragraph can be confusing since it represents a definition within a definition. "Structure" should have its own definition.

Environmentally Sensitive Habitat Area (ESHA)

The definition is not needed as it restates the statutory definition of ESHA. If it to remain, it should refer to the more detailed definition of ESHA included in the LUP.

Land Division

A certificate of compliance certifies that a parcel is in conformance with applicable legal requirements. It cannot create a new lot, and should not be included in the definition of a land division.

Public Viewing Area

The definition is too broad, as it describes nearly all roadways and parks within the City. Standards under Section 6.5A of the Implementation Plan require that new development not be visible from public viewing areas to the maximum feasible extent.

Scenic Area, Scenic Road

These definitions are too broad, and would cover nearly the entire City. Another way of approaching defining scenic areas would be to map the areas and base the definition on that mapping.

Temporary Event

This definition needs to be merged with the Zoning Ordinance definition, and needs to refer to all temporary events for which a temporary use permit by the City would be required.

Tree Removal

This definition is unnecessary.

Upland Limit of Wetland

Clearer, less technical language should be used. If desired the technical definition could remain, provided that a "layman's" definition is added.

CHAPTER 3, ZONING DESIGNATIONS AND PERMITTED USES

This Chapter was originally prepared by LSA Associates on behalf of the City of Malibu. The following comments focus on revisions made by Coastal Commission staff.

1. **RR-40 zone**. Coastal Commission staff included a RR-40 (40-acre minimum lot size), which was not part of the City's existing zoning ordinance or its recommended zones. There do not appear to be any circumstances where RR-20 would be inappropriate, and it would be necessary to apply the RR-40 zone.
2. **Standards for Helipads and Small Community Stage Theaters**. Standards for these two uses are placed under "Site Development," and have been separated from standards specific to other uses (e.g., service stations, drive-up windows, wireless telecommunications facilities). It is recommended that development standards for specific uses be consolidated in the section designed for that purpose (Section 3.9).
3. **Planned Development**. The Implementation Plan requires that approval of a Planned Development would require an amendment to the Malibu Local Coastal Program to specify the permitted type, density, and intensity of development. An amendment to the LCP should not be required if the type, density, and intensity of development are consistent with the Malibu Coastal Land Use Plan and the Malibu General Plan.
4. **Malibu La Costa Overlay District**. "Exhibit A," referred to in Section 3.4.1 B9 needs to be added to the Implementation Plan.

5. **Setbacks from parklands.** Section 3.6 F6 and Section 3.8 A3 establishes setback from parklands for residential and commercial development, respectively, where the purpose of the park is "to protect the natural environment and ESHA" of 100 feet. This setback is in addition to ESHA protection requirements. The additional setbacks established in this Section are unnecessary, and should be deleted. The Implementation Plan includes stringent requirements to protect ESHAs, including establishment of ESHA buffer areas. The provisions of Section 3.6 F6 and Section 3.8 A3 extend setbacks beyond ESHA and ESHA buffers to the whole of any parkland intended to protect the natural environment, whether or not the land along the periphery of the park qualifies as ESHA or is an ESHA buffer. These provisions replace current requirements for a setback from "park natural vegetation" (essentially composed of native indigenous flora). Maintaining the existing setback from native vegetation within parks, rather than from the outer edge of a park boundary would be more appropriate to the purpose of the requirement.
6. **Rear setbacks for beachfront decks and dwellings.** Existing provisions in the Malibu Interim Zoning ordinance for rear setbacks for beachfront decks and dwellings were modified in the Implementation Plan. It is not clear why these modifications were made. In the absence of a compelling reason to modify existing development standards, minimum setback requirements should be retained from the City's existing zoning. Also, the explanatory text and graphic for beachfront setbacks that is in the City's existing zoning ordinance has been removed from the Implementation Plan. Again it is not clear why these modifications were made. Unless there is a compelling reason to revise the existing zoning standard, it should not be modified.
7. **Projection of decks seaward along the beach.** Current City development requirements permit accessory structures seaward of the main dwelling stringline *if* ocean views from adjacent developed properties are maintained to the maximum reasonable extent. Unless there is a compelling reason to revise the existing zoning standard, it should not be modified.
8. **Short beachfront bluffs.** Two provisions of existing City development standards have been deleted from the Implementation Plan. These provisions read as follows:

   Beachfront Bluffs: Consistent with the stringline rule, structures may extend over a bluff which is 10' or less in height, from toe to top, as established by average beach profile and having underlying geology composed mostly of sand and/or naturally or artificially deposited fill materials.

   Shoreline Bluffs: Structures on non-infill lots shall not extend over a bluff which is greater than 10' but less than 25' and all structures shall be setback to comply with the requirements of Title 26 (Building Code) for foundations adjacent to descending slopes. Structures on infill lots on shoreline bluffs shall conform to the stringline rule.

   Unless there is a compelling reason to revise these existing zoning standards, they should not be modified.

9. **Total Development Square Footage Structure Size Chart.** This figure was adopted as part of the City's existing Interim Zoning Ordinance to establish a maximum total development square footage area based on the size of parcels in Malibu. It is not included in the Implementation Plan. It is needed to illustrate the provisions of Section 3.6K of the Implementation Plan.

10. **Vesting**. Certain vesting provisions adopted in the existing Malibu Interim Zoning Ordinance have been removed from the Implementation Plan. These vesting standards read as follows:

    > **Vesting**. Previously approved and existing single-family residences shall be permitted to remodel within pre-model lot coverage, height, setbacks and volume. Any remodeling, including grading and changes in the wastewater disposal system, which exceed these existing dimensions or previous approvals shall comply with the standards of this Chapter. Notwithstanding the foregoing, nothing in this paragraph shall be construed to permit or legalize an illegal structure.

    Unless there is a compelling reason to revise these existing zoning standards, they should not be modified.

11. **Second Residential Units**. A series of standards for second residential units have been added to the Implementation Plan. These additional standards are not needed to implement the Coastal LUP since the siting of second units on a parcel is already required to meet the same standards as for the main structure. Additional standards added to the Implementation Plan limit the size of second units, but are not needed due to existing limitations on development area contained in the zoning ordinance, as well as implementation of environmental protection policies. Unless these standards are clearly needed to implement provisions of the Coastal LUP, they should not be added to existing City development requirements adopted as part of its Interim Zoning Ordinance.

    Parking standards for second residential units should be consolidated with other parking requirements.

12. **Grandfathering Provisions**. The grandfathering provisions of the City's existing Interim Zoning Ordinance have been deleted from the Implementation Plan. These provisions are important to address the application of zoning provisions to structures, uses, and parcels which were legally created in conformance with applicable regulations at the time they were created, but which no longer comply as the result of subsequent revisions to zoning standards. Removal of these provisions could ultimately result in potential taking of legal non-conforming structures, uses, and parcels

CHAPTER 4, ESHA OVERLAY

1. **ESHA determination criteria**. The City of Malibu has provided comments on the ESHA designation established in the Coastal Land Use Plan. In those comments, the City recommends that ESHAs be defined by a specific set of criteria, which are delineated in the City's comments. Designating the ESHAs mapped by Coastal Commission staff as part of the LUP as a overlay zone in the Implementation Plan runs counter to the staff's assertion that the ESHA designation is not intended to be applied to specific properties at this time, and would be applied to a specific site only after detailed study. It is also inconsistent with the revisions to Section 4.3B and C recommended by Coastal Commission staff on June 26, 2002. Adoption of an ESHA overlay zone, as occurs in the Implementation Plan would legally set the boundaries of ESHAs in concrete, even though, as was clear from the Coastal Commission's June 13 workshop, substantial technical biological research and conservation planning is needed before ESHAs boundaries consistent with the statutory definition can be precisely mapped.

    Although it is called an "overlay," Chapter 4 (ESHA Overlay) ultimately does not function as an overlay zone. A true overlay zone would provide additional regulations to be applied to an

underlying (standard) zone. The relationship between the ESHA overlay and other city zones, as set forth in the Implementation Plan is unclear. Also, it might be appropriate to zone areas actually designated as ESHA differently than ESHA buffers.

Section 4.3, ESHA Determination, should be revised to incorporate the City's recommended criteria for ESHAs.

2. **Incorporation of ESHA standards into the Implementation Plan.** Rather than have a separate chapter for ESHA overlays, ESHA-related development regulations should be incorporated with other development regulations under a section for regulations affecting ESHAs.

3. **Section 4.3 C.** This section is incomplete. This section is intended to address a situation where biological studies indicate that an area mapped as ESHA does not, in fact meet the criteria for ESHA. The Section uses the phrase "other independent evidence" as a means of demonstrating whether a property qualifies as ESHA. This phrase needs clarification, which should specify that such information must come from a professional biologist or resource specialist. In addition, correction of ESHA maps to reflect the actual existing biological resources on a site should not require an amendment to the LCP, as it actually constitutes a technical correction of maps to reflect actual conditions. The City concurs that if an area does not meet the definition of ESHA or ESHA buffer, the standards for ESHA and ESHA buffers will not apply; however, a formal amendment to the LUP ESHA map should not be required to reflect actual biological resource conditions.

4. **Section 4.4, Supplemental Application Requirements.** Application requirements for all applications should be consolidated into a single location within the ordinance.

5. **Section 4.4.4, Exceptions.** The final exception exempts areas that do not fall within the area affected by ESHAs, and does not need to be specified.

6. **Section 4.5, Conditionally Permitted Uses.** "Conditionally Permitted Uses," as used in this section of the Implementation Plan, has a different meaning than it does as used by the City. "Conditionally permitted uses," as used by the City in the specific zoning definitions section, refers to uses requiring approval of conditional use permits, including public hearing before the Planning Commission. It appears that the term as used here in the Implementation Plan refers to the ability to place conditions on the approval of these uses. This should be clarified, as it would not be appropriate to require conditional use permits or public hearings for several of the uses described in this section. In particular, approvals of restoration projects and invasive plant eradication projects require technical review by the City Biologist, and should not be subject to public hearing through a CUP.

7. **Section 4.6, Development Standards.** Identification of development standards should be made part of the development standards included in Chapter 3, Specific Land Use Designations. Separating the standards for ESHAs from other development standards could make it too difficult for landowners, staff, and decision-makers to determine what requirements apply, and runs the risk of certain standards being missed in the development review project. Paragraph should refer to "approval authority." The ERB should not be a decision-making body.

   It should be noted that the City disagrees with the blanket designation of coastal sage scrub and chaparral habitats as ESHA, and has proposed specific criteria to define the circumstances under which these habitat types meet the statutory definition of ESHA.

8. **Section 4.6.1, Buffers**. An exemption should be added where modification of habitat is needed for fire safety purposes.

9. **Section 4.6.2, Development Setbacks**. Establishing a setback "above the top of slope" (Paragraph 4.6.2A) is awkward. This phrase should be reworded to make clear how the setback is to be measured.

10. **Section 4.6.3, Fencing**. The second sentence of this Section discusses whether fencing for development adjacent to, but not within, an ESHA would be appropriate. It should be moved to development standards.

11. **Section 4.6.4, Variances**. This section should be consolidated with provisions for other variances under the Zoning Ordinance. The wording regarding variances other than those related to sensitive resource protection is too open ended, in that it seems to require approval of certain variances without recognizing that there may be reasons other than those related to sensitive resource protection to deny the variance. The phrase "may be permitted" should be substituted for "shall be permitted."

12. **Potential for Takings in Paragraph 4.6.4C**. Placing absolute priority on resource protection, and requiring the implementation of the standards most protective of resources in all circumstances, as is the case in Paragraph 4.6.4C, may conflict with other provisions in the Implementation Plan that are aimed at preventing takings.

13. **Section 4.7, Viable Use**. This section should be renamed to more clearly describe its function. Also, the ESHA text may create a confusing situation by permitting a use that is otherwise prohibited (single family dwelling) if a taking would occur. This situation needs to be incorporated into the permitted uses section of the Implementation Plan.

14. **Fencing standards (Section 4.7.2)**. Fencing standards in various sections of the Implementation Plan should be consolidated. This is one of two paragraphs in the ESHA chapter addressing fencing. Open fencing, where needed to protect the public and to protect habitat areas, should be permitted.

15. **Agricultural and Animal Facilities**. The discussion of agricultural and animal uses should be consolidated with other discussion of these uses, and should be included in the identification of permitted uses.

16. **Slope ratio for confined animal facilities**. The slope ratio included in Section 4.7.4 is too flat, and should be increased to 2.5:1.

17. **Section 4.7.5, Supplemental Findings**. The discussion in the first paragraph is unclear. Findings should not be required for uses that are permitted without the need for additional discretionary permits. It might be more clear to refer to what uses would be permitted subject to the identified findings, permitted uses, than uses "other than those conditionally permitted in the ESHA overlay." As written, the current text would seem to allow uses that are not otherwise permitted. Paragraph B should be moved into the initial text under 4.7.5, as a requirement, and not a finding. Paragraph C is a double negative, stating that a coastal development permit could be permitted if a proposed project was inconsistent with ESHA provisions. The exemption provided in Paragraph C would literally exempt projects from needing to be consistent with ESHA provisions limiting uses in situations where there would otherwise be a taking.

18. **Section 4.8, Mitigation**. This section seems out of place, and should be boiled down to clear development standards. Are the provisions of the ESHA permitting forms of development

consistent with the Bolsa Chica decision? The mitigation provisions imply that impacts could occur, if they are fully mitigated, even if mitigation is provided off-site.

The term "unavoidable impacts" has a CEQA meaning that implies the impact cannot be fully mitigated. In the context it is used here, it might be better to use a phrase like, "where avoidance of impact can not be avoided..." Then, mitigation can be applied.

19. **In-lieu fee for habitat conservation (Section 4.8.1C).** Requirements for payment of in-lieu fees could require preparation of a fee study pursuant to the provisions of AB1600. It might be preferable instead of referring to in-lieu fees to permit mitigation through a buy-in to an established mitigation bank.

20. **Section 4.8.1, Habitat Impact Mitigation.** It appears from the text that restoration or conservation at a 1:1 ratio is acceptable; however, the subsequent section (4.8.2) provides different ratio standards for wetland areas. Which standards apply should be clarified. Modifying the titles of Sections 4.8.1 and 4.8.2 might help to define the relationship between the sections (e.g., 4.8.1, General Habitat Impact Mitigation; 4.8.2, Wetland Impact Mitigation).

21. **Habitat Conservation and Transfer of Development Credits.** The habitat conservation concept of identifying and protecting habitat should be coordinated with the transfer of development credits (TDC) concept. If habitat conservation is provided, transfer of development credits should not also be required.

22. **Combining of donor lots (Section 4.8.1B2).** The concept of combining donor lots could be problematic. As it is currently proposed, the lot where habitat is conserved would need to be combined with an adjacent lot. This presumes that the landowner or developer has control of the adjacent lot, or that the adjacent property owner consents to this. There may also be a problem in requiring the vacant parcel with which the conserved parcel is combined not to be subdivided in the future. This provision seems to apply even if the adjacent parcel is already large enough to be divided. Gaining consent of the adjacent property owner could thus be a significant problem. Since the objective is to retire development rights and ensure preservation of habitat on the donor parcel, it is unclear why recorded conservation easements would not suffice.

    Would a Declaration of Restrictions pursuant to Government Code Section 66499.11 actually combine lots? Government Code Section 66499.11 refers to reversions to acreage.

23. **In-lieu fees for habitat conservation (Section 4.8.1C).** The concept of an in-lieu fee cannot be supported in the absence of a fee study pursuant to the provisions of AB1600. As currently stated, there is no easy way to objectively determine what the fee would be. The provisions of the Implementation Plan do not state who is responsible for determining what the fee would be. In addition, the requirement that the fee be paid to a specific program of the Santa Monica Mountains Conservancy needs support that this is the only method of a developer providing in-lieu funds that would actually represent mitigation.

24. **Section 4.8.2, Wetlands.** Consistency with 404 permits is needed. It may be better to specify the general rule for determining replacement ratios, rather than a fixed ratio that might not be appropriate in all circumstances.

CHAPTER 5: NATIVE TREE PROTECTION

1. **Regulation of Quercus species.** The text should specify which Quercus species are being regulated. Is replacement of scrub oak required? Definitions should be separated from standards, and consolidated with other definitions.
2. **Preparation of tree protection plans.** The tree protection plan called for in Section 5.3 should be prepared by a qualified arborist.
3. **Development standards.** The development standards set forth in Section 5.4 should become part of a consolidated development standards chapter. Under project construction measures, consideration should be given to naturally occurring drainage and the effect changes in drainage pattern might have on native trees. The requirements in Section 5.4.E.3 to have a biologist or arborist on site during all construction is unreasonable and should be deleted.
4. **Replacement ratio.** The 10:1 replacement ratio in Section 5.5.1 is excessive, and should apply only to the removal of mature trees. The requirements in Section 5.5.1.B that requires replacement oak trees to be grown from an acorn collected in the area is unreasonable and should be deleted
5. **In-lieu fee.** Section 5.5.2 refers to an in-lieu fee. Requirements for payment of in-lieu fees could require preparation of a fee study pursuant to the provisions of AB1600. In addition, the method of determining what the fee would be appears to be subjective, and it is not clear who would determine what fee would be required. It might be preferable instead of referring to in-lieu fees to permit mitigation through a buy-in to an established mitigation bank.
6. **Monitoring.** The ten-year monitoring requirement set forth in Section 5.6 where approved development is allowed to encroach into the root zone of native trees appears to be excessive. This monitoring could also make the property owner liable for replacing the tree even if the health problem faced by the tree had no relationship to the encroachment of development into its root zone. If this requirement is placed on a single family residence, it is possible that the home would turn over one or more times during the monitoring period, making enforcement of this provision difficult.

CHAPTER 6: SCENIC AND VISUAL RESOURCES

1. **General Comment.** Overall, the definition of scenic areas and impacts to scenic resources (new development being visible) is too broad to support the stringent standards set forth for avoiding and mitigating impacts. The provisions of this chapter would affect nearly all land within the City, including infill within currently developed areas if these infill areas were visible from scenic areas or along site lines to the beach. It would be preferable to develop detailed criteria as to what scenic areas are actually included, and to map these areas for application in the Implementation Plan. Tighter standards are also needed to define adverse impacts requiring mitigation through the provisions of this Chapter. New development being visible "from any scenic area, scenic road, or public viewing area" is an overly broad standard. It could result in an adverse impact being considered in nearly all situations; however, merely being visible from any scenic area, scenic road, or public viewing area does not necessarily result in an adverse impact if it is a great distance away or if development is appropriately designed.
2. **Section 6.3, Standards for Determination.** The relationship between the first sentence calling for a review of a development's potential to create visual/scenic impacts to the CEQA review that the City will undertake for discretionary actions needs clarification. Instead of requiring a

review, the Implementation Plan should set forth applicable standards to be implemented through the development review process.

3. The phrase "filing the application as legally complete" should be revised. The applicant will file an application, and the Planning Director will determine if that application is complete. Also, it is not desirable to have a site flagged prior to an application being filed with the City. It would be preferable to state that the site is to flagged within __ days of a request by the Planning Director to do so. That way, sites will not be flagged prior to the time the Planning director is ready to respond to calls from the public asking about the development proposal.

   The flag method is often helpful in understanding the location and height of proposed development, but can be misleading on sites where development is located in an area that will undergo a substantial change in grade.

4. **Section 6.4, Required Findings and Analysis**. The required findings should be consolidated with other required findings. Overall, this will make it easier to determine all of the findings that need to be made for approval of a CDP. The findings set forth as a requirement for approval of a CDP are unrealistic. If visibility is considered to be an adverse impact, it is unlikely that a development could meet these findings. Rather than set up a nearly impossible standard, and then create exceptions where meeting the standard is not feasible, the Implementation should devise a realistic standard, and enforce it. Because the LUP and Implementation Plan contain policies and standards for protecting sensitive habitat areas, steep slopes, and other key natural features, it is suggested that the standard for review for visual impacts be preservation of scenic features, and that the natural environment, not new development, be the dominant visual feature seen from scenic roads and public viewing areas.

5. **"Least environmentally damaging alternative"**. The phrase "least environmentally damaging alternative" is used in several different chapters as part of required findings. The fact that there may be a trade-off between mitigating certain impacts and creating others should be recognized. For example, alternatives that would lessen impacts on scenic and visual resources might, in certain cases, increase impacts on biological resources. If such a case would occur, it would not be possible to make the required findings, unless the alternative that reduced visual impacts and increased biological impacts were to be implemented. However, a similar provision is set forth in ESHA regulations, and it may thus be impossible to make required findings for both ESHA and visual impacts. It is unclear whether the provisions of Paragraph 5 are intended to address this potential conflict. If so, it should be clarified.

6. **Section 6.5, Development Standards**. How would be provisions of Section 6.5 A2 work if the least visible portion of a site contains the most sensitive or significant biological resources?

7. **Development Design**. Section 6.5 B basically restates City residential height standards, and should be consolidated with those zoning standards.

8. **Ridgelines (Section 6.5 C)**. The current provisions of the Malibu Interim Zoning Ordinance are consistent with the provisions of the Coastal Act. These provisions require rooflines adjacent to primary ridges to be below the ridgeline, and provide specific standards to determine whether this standard is met. Existing City ordinance provisions also provide specific standards for smaller, secondary ridges. Unless there is a compelling reason to do so, existing City requirements should not be modified.

9. **Bluff Development (Section 6.5 D).** The current provisions of the Malibu Interim Zoning Ordinance are consistent with the provisions of the Coastal Act. Unless there is a compelling reason to do so, existing City requirements should not be modified.

10. **Ocean Views (Section 6.5E).** If structures extend no higher than the adjacent road grade where the topography slopes down from the roadway (paragraph 1a), a one-story limitation for the same house is not needed (paragraph 1b).

11. **Section 6.6, Future Development.** It is unnecessary to require recordation of a deed restriction limiting development to that which is authorized by the CDP. The provisions of the Implementation Plan already accomplish this.

12. **Section 6.7, Application Submittal Requirements.** Application submittal requirements should be consolidated with other submittal requirements in a single location within the document. As written this Section is too broad, and should include a maximum distance (e.g., 500 feet) beyond which these provisions would not apply. Paragraphs 5-7 should be part of the City's review of an application, rather than a submittal requirement. The last sentence of Section 6.7B should b e clarified as to who makes the determination whether story poles are needed. Earlier provisions of this Chapter indicated they are required as part of the permit application.

13. **Exceptions (Section 6.8).** The first paragraph should be clarified. It is difficult to determine what it actually requires.

CHAPTER 7: TRANSFER OF DEVELOPMENT CREDITS (TDC)

1. **General issues.** While there may be merit to retiring development rights on existing lots within the Santa Monica Mountains, there is not sufficient nexus provided to support a blanket requirement to retire potential development of existing lots. In the absence of detailed analysis and compelling evidence that the provisions of this Chapter are required, it could be argued that the TDC requirements themselves could constitute a taking. It would be preferable to modify the provisions of this Chapter so that they can be applied as mitigation for the identified impacts of a specific proposed development project. For example, the provisions of this Chapter could be used to mitigate ESHA impacts. In fact, there are similar provisions in the ESHA chapter. Overall, the TDC requirement greatly increases the difficulty of developing areas where land divisions or multi-family development do make sense by requiring development in these areas to cure past mistakes.

2. **Relationship to State Housing Element law.** The TDC requirement, when applied to all land divisions and multi-family development, could have a chilling effect on the City to comply with State Housing Element law.

3. **Objectives (Section 7.4).** Paragraph A states that the TDC concept is a "voluntary program." The provisions of this Chapter are clear requirements of land divisions and multi-family development, and are not voluntary.

4. **Mitigation of cumulative impacts.** The objective of mitigating cumulative impacts needs to be analyzed. What are the cumulative impacts that lead to the need for a TDC program? Aren't these impacts mitigated through the other provisions of the LUP and Implementation Plan?

5. **"Incentive Program"**. The TDC program is a requirement for new development and not an "incentive program" as it is called in Paragraph 7.4 E. It does provide an alternative to development of existing lots within donor areas.

6. **Section 7.4 TDC Required Conditions**. The provisions of this Section make clear that the TDC program is a requirement, and not a voluntary or incentives program. Also, this section states that the TDC needs to occur prior to issuance of a coastal development permit. This necessitates an approval process separate from permit issuance, as it would be inappropriate to require an applicant to undertake such a costly requirement in anticipation of a development approval.

7. **Donor Areas**. Most of the areas defined in the Chapter as "donor areas" are within the County. In the absence of a similar requirement affecting unincorporated lands, the TDC program would not be equitable. The areas described in Paragraphs A, B, and D need to be clearly mapped.

   Retirement of development credits for lands adjacent to existing parklands as a means of avoiding encroachment of fire abatement requirements on the park seems to be a far lower priority than retiring development credits of lands meeting ESHA definitions. It might be better to address the provisions of Paragraph E by working with the County Fire Department to modify fuel modification guidelines.

8. **Section 7.8, Procedures to Transfer Development Credits**. Procedures to calculate donor credits are complex and appear to encourage retirement of development credits on the more suitable development sites (e.g., Paragraph 7.7.2A). Would it make more sense to encourage retiring development credits of the most problematic potential development sites?

9. **Small lot subdivisions**. Requirements for retiring development credits on contiguous lots within small lot subdivisions will greatly increase the difficulty of retiring development credits. This requirement will not only require purchasing development credits from a willing buyer, but finding a willing seller whose parcel is located next to one or more landowners who are also willing sellers. Within some small lot subdivisions, simply locating property owners can be difficult.

10. **Retirement of lots with geologic hazards. Requirements that donor credits** be on lots free of landslides or other geologic hazards could necessitate preparation of geologic studies of donor parcels in addition to studies of the development site itself. In the end, would it not be appropriate to facilitate retiring development credits on lands that are subject to geologic hazards?

11. **Monte Nido small lot subdivision**. Within the Monte Nido small subdivision, would it not be appropriate to encourage retiring development credits of parcels without access or water availability so as to discourage their extension?

12. **Combining of donor lots**. Provisions for the combining of donor lots could be problematic. As it is currently proposed, the lot where development credits are being retired would need to be combined with an adjacent lot. This presumes that the landowner or developer has control of the adjacent lot, or that the adjacent property owner consents to this. There may also be a problem in requiring the vacant parcel with which the conserved parcel is combined not to be subdivided in the future. This provision seems to apply even if the adjacent parcel is already large enough to be divided. Gaining consent of the adjacent property owner could thus be a significant problem. Since the objective is to retire development rights, it is unclear why this provision is needed.

CHAPTER 8: GRADING

1. **Seasonal restrictions on grading.** While it is desirable that grading occur outside of the wet season, this section is overly broad, especially paragraph B, which would allow denial of a grading permit because someone might believe grading cannot be completed before the start of the wet season. Based on past attempts by the City to avoid grading in the wet season, it has been found to be more effective to require appropriate erosion control.
2. **City Geologist.** References to "City Geologist" should be revised to "City geotechnical staff" throughout this and other Chapters of the Implementation Plan.
3. **Remedial grading.** Remedial grading should be defined as "grading recommended by a geotechnical consultant that is necessary to mitigate an onsite geotechnical hazard." The current wording is more a requirement for the study than a definition. This Section should also recognize that, depending upon the type of project, remedial grading may or may not conform to the City's codes regarding stability, and that a hazard waiver may be required.

CHAPTER 9: HAZARDS

1. **Applicability to liquefaction areas.** This paragraph should be revised to read "areas where water-saturated cohesionless soils can potentially lose strength and subside or spread laterally during strong ground shaking..."
2. **Section 9.4 (Development Standards).** Paragraph A should refer to "weak" soils, rather than "expansive" soils. Also, the reference to a pseudostatic factor of safety of 1.1 should be deleted, as a static factor of safety of 1.5 would govern.

   The bullet points in this Section should be rewritten to conform to the City's February 2002 Geotechnical Guidelines. Thus, they would read as follows:

   1. The analyses shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition. In the case of seismic conditions, the analyses shall demonstrate a permanent displacement of less than 50mm.
   2. Slope stability analyses shall be undertaken through cross-section modeling of worst case geologic and slope gradient conditions. Analyses shall include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units are examined.
   3. The effects of earthquakes on slope stability (seismic stability) should be evaluated in conformance with the guidelines published by the American Society of Civil engineers, Los Angeles Section (ASCE/SCEC), "Recommended Practices for Implementation of DMG Special Publication 117, Conditions for Analyzing and Mitigating Landslide Hazards in California."
   4. All slope stability analyses shall be performed using shear strength parameters (friction, angle, and cohesion), and unit weights determined from relatively undisturbed samples collected at the site. The choice of shear strength parameters shall be supported by direct shear tests, triaxial shear test, or literature references.
   5. (No changes recommended.)
   6. (No changes recommended.)
   7. (No changes recommended.)

8. If anistropic conditions are assumed for units containing critical failure surfaces determined above, and when planes of weakness are inclined at angles ranging from nearly parallel to the slope to dipping out of slope, factors of safety for translational failure surfaces shall also be calculated.... (Balance of paragraph to remain unchanged.)

9. (New paragraphs to read as follows.) The selection of shear strength is a critical component to the evaluation of slope stability. Reference should be made to the City of Malibu Guidelines and to the ASCE/SCEC guidelines (see Section 9.4(3)) when selecting shear strength parameters and the selection should be based on these guidelines.

CHAPTER 10: SHORELINE AND BLUFF DEVELOPMENT

1. **Definition of "Bluff"**. "Bluff," as it is used in this chapter, needs to be defined.

2. **Protective Devices**. This Chapter needs to make clear the circumstances under which new protective devices would be permitted.

3. **Applicability**. Under applicability, houses should be added.

4. **Development Standards**. Paragraph A needs to make clear whose sea level estimate is to be used. The reference to "*foundation* height" does not take into account that pile foundations are not elevated. "Finished floor height" or similar language should be used instead.

5. **Most landward surveyed mean high tide**. The Implementation Plan needs to make clear whether current or old surveys are to be used, and whether time of year or other factors come into play in determining what the most landward surveyed mean high tide is for purposes of this Chapter.

6. **Bluff setbacks**. Paragraph D on Page 174 needs clarification. Does it include storage facilities? Does it mean that if the erosion rate appears to be _ inches per year or more, then a study of the true erosion profile is to be performed? In the application of a 15-foot setback, does "bluff" mean only bluffs subject to wave action, or does it have a broader meaning?

7. **Section 10.4 D**. The factor of safety referred to at the top of Page 175 should be "gross factor of safety," rather than "a global or surficial factor of safety."

   To make the determination called for in paragraph D2 on Page 175, a civil engineer needs to have soils experience.

   In the next to last line of paragraph D1 on Page 175, after long-term bluff retreat at the site, "and published studies from other coastal cities in California" should be added.

   In the bullets at the bottom of Page 175, mention should be made of State standards like ASCE-LA DMG SP117 guidelines.

   Paragraph a at the bottom of Page 175 should be rewritten as follows: "The analysis shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition. In the case of seismic conditions, the analysis shall demonstrate a permanent displacement of less than 50mm. If this factor of safety or displacement cannot be demonstrated, then the location of the bluff top where these values are attained shall be determined."

   In paragraph c and the bottom of Page 175, "oriented perpendicular to the slope" should be replaced with modeling worst case geologic and slope gradient conditions."

Paragraph d on Page 176 should be revised consistent with the revision requested in Comment 2 of Chapter 9.

The phrase "when planes of weakness dip out of the slope" in paragraph "i" on Page 176 should be revised to read "when planes of weakness are inclined at angles ranging from roughly parallel to the slope of the dipping to out of slope."

A new paragraph "j" should be added consistent with the revision requested in Comment 2 of Chapter 9 (addressing Section 9.4(g)).

In addition to the items specified at the bottom of Page 176 to be studies to determine bluff retreat rates, "published and unpublished studies" should be added. In addition, the time intervals to be studied should be revised to 1982-1983, 1994-1995, and 1997-1998 (top of Page 177).

8. **Paragraph 10.4 E**. Paragraph 10.4 E should refer to "subdrains (where feasible)," rather than "drains."

9. **Paragraph 10.4 G**. This paragraph needs to be clarified to identify what profile is to be used (e.g., summer or winter). If no old surveys are available, is one survey considered sufficient?

10. **Paragraph 10.4 L**. Does the prohibition on shoreline and bluff protection structures also apply to infill development in areas already having such devices? Does "existing development" also include septic systems?

11. **Paragraph 10.4 L and M**. How are stairs for beach access to be evaluated against these standards? All stairs to the beach fall into the provisions of Paragraph M, unless they are outside of the wave uprush. Can they break away?

12. **Paragraph 10.4 P**. Sand nourishment is not a practical concept to include in this requirement, as it is difficult to measure.

13. **Paragraph 10.4 Q**. This should refer to the specific document and location that the referenced Corps of Engineers criteria can be found.

14. **Paragraph 10.4 R**. It may be inconsistent to base standards on a 100-year project lifetime, when surveys for mean high tide are less than 100 years of data. The Implementation Plan should recognize that project design lifetime and data gathering periods are two very different time spans.

15. **Section 10.5**. In the first paragraph, the requirement should b e for a Certified Engineering Geologist *and* a geotechnical engineer, since a Certified Engineering Geologist cannot submit a slope stability analysis.

    Paragraph 2 should refer to a specific document where the State Lands Commission criteria that are referred to can be found.

    Paragraph 3, addressing public access, is out of place in this requirements, as it is not an engineering issue.

    Should beach profiles be required to extend offshore to perform an appropriate evaluation?

16. **Section 10.5E**. This paragraph should clarify what type of wave action beachfront development would b e subject to in order for this provision to apply (e.g., affecting the house itself? seawall?).

17. **Section 10.6B**. This Section should be revised to define what types of activities would be considered to be "minor" in nature.

18. **Section 10.6C.** This provision seems extremely restrictive. Because the types of development referred to in this Section would never be considered "existing," landowners will want to get structures approved now, to preserve rights in the future.

CHAPTER 11: ARCHAEOLOGICAL RESOURCES

This Chapter mirrors existing City regulations. No revisions are requested.

CHAPTER 12: PUBLIC ACCESS

1. **Section 12.2, Definitions.** Definitions should be consolidated into a single Chapter.
2. **Definition of New Development.** The New Development definition might be clearer if it was reworded to describe what the provisions of Chapter 12 are to apply to.
3. **Section 12.3, Types of Public Access and Recreation.** The section seems to be more a definition than a standard, and should probably be combined with other definitions.
4. **Section 12.4, Character of Accessway Use.** The section seems to be more a definition than a standard, and should probably be combined with other definitions.
5. **Section 12.5, Access Required.** The first paragraph is difficult to follow. Other than issuance of a permit, what other authorizations could trigger access requirements? The provisions of this section have the ability put the City in the position of adjudicating prescriptive rights claims based on "substantial evidence." Such adjudication more properly rests with the courts.
6. **Section 12.6, Exceptions.** The first exception is difficult to follow. If the project does not qualify as "new development" as it is defined, the provisions of this Chapter related to new development do not apply, and an exception is not needed. Under Paragraph B, the mixing of findings and exceptions seems awkward, as it relies on findings pursuant to Sections 13.8.3 and 13.9.1, but also requires support by written findings required in Section 13.10.
7. **Section 12.7, Standards for Application of Access Conditions.** The purpose of the first parenthetical phrase is unclear. Overall, the wording of this paragraph is awkward, and should be clarified.
8. **Adjudication of prescriptive rights.** Section 12.7.6 places the City in the position of adjudicating prescriptive rights claims based on "substantial evidence." Such adjudication properly rests with the courts. The terms "substantial" and "minimal," as used in paragraph 12.7.6a(5) are vague and need to be clarified. Paragraph 12.7.6a(6) is unclear as to what is actually required. The term "impliedly dedicated" is also unclear.
9. **Legal description of an accessway.** Section 12.7.7 is too specific, and might not apply in all situations. The first paragraph of this section is unclear. References to the Coastal Commission in the second and fourth paragraphs of Section 12.7.7 should be revised to refer to the City. The third paragraph of Section 12.7.7 is awkward.
10. **Retained jurisdiction.** Paragraph 12.7.8D contains a provision wherein the Coastal Commission would retain jurisdiction over permits that were issued prior to certification of the Malibu LCP.

This is unacceptable to the City. Upon certification of the LCP, all local rights and obligations not specifically reserved in the Coastal Act for the Commission should be transferred to the City.

11. **Third party requirements**. Paragraph 12.7.8h is beyond the ability of the City to manage if the accessway is already under another party's control.

12. **Section 12.8, Required Findings**. The first sentence under Section 12.8.1 is unnecessary. This requirement is already covered as part of the required finding for issuance of CDP. The findings required in this Section need to be coordinated with findings required elsewhere in the Implementation Plan. A consolidated section on findings, outlining all of the findings that are required in various situations would be helpful.

13. **Section 12.10, Permitting and Application**. The provisions of this section need to be consolidated with provisions on development and permit review. In addition, this section should make clear what provisions are requirements for new development and what provisions are requirements for submittal of applications. For example, Paragraphs G and H should be identified as submittal requirements.

- **Paragraph 12.10b**. This paragraph should also refer to partial closure of an existing accessway as requiring a CDP, but also address how relocation of an existing accessway is to be handled.
- **Paragraph 12.10.d** This paragraph requires that a CDP be obtained for all signs without regard for the immediacy of the need. There are times when the public's health and safety dictates need for a sign (a beach closure sign or street sign identifying a hazard). This section should be revised to incorporate an emergency exemption.
- **Paragraph 12.10.j** This paragraph establishes fees for all non-visitor serving commercial development and identifies MRCA as the receipient of the fee. This has been done without a fee study and without addressing a specific negative impact on public access. This is unacceptable and should be deleted.
- **Section 12.11, in-lieu fees for lower cost overnight accommodations.** Before any in-lieu fee can be established, appropriate fee studies must be conducted to determine the appropriate fee.

CHAPTER 13: COASTAL DEVELOPMENT PERMITS

1. **Development review procedures**. Overall this chapter needs to be coordinated with City development review procedures. It is the City's desire to combine its review processes under the zoning ordinance with the CDP review process.

2. **Exceptions**. The exemptions are difficult to follow, as there are exceptions to the exemptions. A straightforward description of what projects require a CDP would be helpful. Paragraph 13.4.1B(4) and Paragraph 14.3.2A are difficult to understand, as currently written.

3. **Replacement of structures destroyed by natural disaster**. Section 13.4.6 should provide for replacement of residential uses to the standards at which they were originally approved if they were destroyed by natural disaster.

4. **Temporary events**. The temporary event requirements contained in Section 13.4.9 need to be coordinated with those of the City's temporary use permit. The definition of a temporary event as not occurring during the summer (Section 13.4.9A) implies that it is not permitted during that

time, when it is more likely intended to signify that summertime temporary events require a CDP. Modification of this section would be helpful to clarify what is actually being required.

5. **Non-conforming uses and structures**. The provisions of this Section need to be coordinated with the grandfathering provisions and non-conforming use provisions of the City's zoning ordinance.

6. **Application fees**. Paragraph 13.6.1A sounds as if the applicant can choose whether he wishes to pay a fee or not. This paragraph should be revised to require payment of any applicable fee. This paragraph should require payment of any fees required by the City.

7. **Multiple applications**. Paragraph 14.6.1C should be revised to prohibit the filing of mutually exclusive applications. As currently written, filing of additional applications required to support the first (e.g., variance application) would be prohibited unless it was filed at the beginning.

8. **Application signatures**. The landowner's permission/signature should be required on all applications. Paragraph 13.6.2C would permit a lessee to apply for permits without the consent of the property owner.

9. **Application forms**. The Implementation Plan ordinance should specify that applications are to be filed on forms supplied by the City, containing all of the information required by the City. Attempts to specify all information to be required of an applicant in the Implementation Plan could create significant problems in maintaining and updating applications forms and submittal requirements.

10. **Title report**. A title report should be specified in Paragraph 13.6.4B in lieu of a "complete title history."

11. **Contour intervals to be shown on site plans**. Appropriate contour intervals should be specified in Paragraph 13.6.4D.

12. **Drainage and Erosion Control Plans**. Drainage and Erosion Control Plans should be required as part of *grading permit* applications.

13. **Information required for applications**. A matrix format to identify what information is required for what types of applications would be far easier to follow and maintain.

14. **Section 13.7, Action on Coastal Development Permit**. A more clear organization of this Chapter in which types of permits are first identified and approval authority is assigned would be helpful.

15. **Section 13.8, Conditions of Approval**. The relationship between modifications and conditions of approval is unclear. Would there be approved conditions of approval if modifications to a project were still ongoing? Perhaps this Section is intending to address proposed modifications to a project that is already approved, but for which a CDP has not yet been issued.

16. **Section 13.9, Findings**. This Section needs to be coordinated and consolidated with other requirements for findings.

17. **Section 13.10, Determining Notice and Hearing Procedures**. The first sentence should refer to the time at which the Director determines the application to be complete, rather than when a complete application is submitted. Technically, the application is not complete until it is determined to be so by the Director, not when it arrived at the counter.

18. **Notification of Coastal Commission staff.** The notice described in Paragraph 13.10.1B should be in writing via mail, fax, or e-mail. Notice via telephone should not be used, except as a personal courtesy in addition to formal written notice.

19. **Retained jurisdiction.** The assertion of retained jurisdiction in paragraph 13.10.2B is unacceptable to the City. Upon certification of the LCP, all local rights and obligations not specifically reserved in the Coastal Act for the Commission should be transferred to the City. Any project approved by the Commission under paragraph 13.10.2D should become the responsibility of the City once it is approved. Paragraph 13.10.2E should not require the application to be withdrawn and refiled. For this option, remaining fees and project files should be transferred to the City for completion of processing.

20. **Section 13.11, Public Hearing and Public Comment.** If a single dwelling unit on a lot of record is appealable, this provision would require a public hearing, which seems excessive. City requirements are for a minimum 21-day and maximum 45-day mailed notice of public hearings.

21. **Section 13.12.1, Notice of Appealable Developments.** The time frame for notice set forth in Paragraph 14.12.1A should be from the time the application is determined to be complete and in compliance with current City requirements, rather than simply from when it is submitted. Why limit notification to a 100-foot radius? If a public hearing is required, the same notice area should be used as for the public hearing.

22. **Section 13.13, Administrative Permits.** How was the $100,000 limitation on administrative permits? It seems too low for application in Malibu. How is that value to be determined?

23. **Applications not thought to be administrative.** The provisions of Paragraph 13.13.2B should be tied to the director's initial review and determination of completeness. Since the Director does not determine the type of permit (appealable or not) and process until application is deemed complete, it would be better to consolidate all requirements for filing permits into a single section. This would better mirror the flow of the review process (i.e., application is filed, a determination is made as to the completeness of the application and applicable review process, staff review is undertaken, and a decision is made [approval or denial], certain conditions of approval are implemented, and a CDP is issued).

24. **Public notice.** The public notice provision in Paragraph 13.13.3 calling for posting on the project site that an application has been filed should not occur until after the application has been accepted as complete. In addition, the application would be filed with the City, and not the Commission. Should this type of notice be limited only to administrative permits?

25. **Criteria.** Section 13.13.4A is unclear. What does the phrase "same grounds that the planning commission may approve an ordinary application" refer to? Overall, the criteria are unclear. It would help to provide a clear description of what is required, rather than referring to the Public Resources Code and establishing an exception.

26. **Refusal to grant a permit.** Because many conditions of approval are to be implemented prior to issuance of the permit, previous comments have requested that an approval mechanism prior to permit issuance be established. If that is not accomplished, a decision on the part of the Director not to issue a permit after conditions of approval have been implemented could be a problem if the denial could be for reasons other than failure to comply with applicable conditions.

27. **Reports on administrative permits.** Section 13.3.7 should be clarified. Is the Director reporting on applications filed, approved, permits issued, or all three? The provision at the end of this

Section might not be an appeal. This provision effectively allows the Planning Commission to take over jurisdiction of Administrative Permits before they are approved. This would create real uncertainty in the process for all parties. Why not use the normal appeal process?

28. **Section 13.14, Emergency Permits.** What is the appropriate procedure if the emergency occurs and the needed work must be undertaken immediately outside of business hours?

29. **Effective date of permit.** The statement in Paragraph 13.18.2A regarding the effective date of a permit is unclear as to its relationship to the effective date of an approval (see Paragraph 13.17).

30. **Acknowledgement of approval.** Paragraph 13.18.2D should be revised to read as a definitive phrase (i.e., shall be returned...). When an applicant *should* return a form is not an enforceable provision.

31. **Permit approval and issuance.** Paragraph 13.18.2E points out the need to have an approval process separate from the issuance of a permit. Such questions as when and how conditions of approval are written and when the project is actually approved need to be answered. A process along the following lines is anticipated:

    - Application is filed.
    - A determination is made as to the completeness of the application and what the applicable review process will be.
    - Staff review and analysis is undertaken, including completion of CEQA requirements (if applicable).
    - A decision is made as to approval or denial of the project, including imposition of conditions of approval.
    - Notice of an acknowledgement is sent out and completed.
    - Conditions of approval required prior to issuance of a CDP are implemented.
    - The CDP is issued (effective date).

32. **Section 13.19, Procedures for Recordation.** Similar provisions are provided in the Coastal Access chapter. It might be preferable to consolidate these provisions into an administrative chapter.

33. **Section 13.20, Appeals.** The action of the Planning Commission in hearing an appeal of an action by the Planning Director should be final, and not itself appealable to the City Council. Paragraph 13.20.2A is unclear in that it would appear Coastal Commission members could appeal a City decision only if appeals through the City have been exhausted. This is not explained until paragraph C. However in paragraph 13.20.2.A.4 essentially makes all matters appealable directly to the Coastal Commission because the City of Malibu charges an appeal fee. This is unacceptable. It would also be better to discuss local appeals separately from appeals by Commission members.

34. **Section 13.22, Permit Amendments.** Although extensions are mentioned in this section, there are no provisions regarding how long of an extension or how many extensions may be granted.

35. **Section 13.23, Reapplication.** A new application on a site where a denial occurred should be accepted if it is substantially different from what was denied.

36. **Section 13.24, Revocation.** It is unclear what provision "(2) above" refers to in Section 13.24.2.

37. **Section 13.25, Enforcement and Penalties.** The provisions of this section need to be coordinated with the enforcement and penalties for violations of the City's zoning ordinance.
38. **Section 13.26, Variances.** The provisions of this section need to be coordinated with the variance provisions of the City's zoning ordinance.

CHAPTER 14: ENFORCEMENT PROGRAM

This Chapter conforms to existing provisions of the Malibu Interim Zoning Ordinance. No revisions are requested.

CHAPTER 15: REQUIREMENTS FOR LAND DIVISIONS

1. **Definition.** Definitions should be consolidated into a single definitions chapter.
2. **Findings, Section 15.2.** The findings in this Section set up a stringent test that must be met before a new lot may be created. The criteria established in this Section address the cumulative impacts that the TDC program attempts to address. Because implementation of these findings will address specific impact issues, and will thereby prevent the creation of new lots that could create significant cumulative impacts, the TDC program should eliminated or revised to function as an alternative to the findings in this Section. Findings related to 30 percent slopes should be revised to reflect a 2.5:1 slope standard (40 percent), as that is the standard currently being reviewed by the City.

CHAPTER 16: PLANNED DEVELOPMENT

This Chapter conforms to existing provisions of the Malibu Interim Zoning Ordinance. No revisions are requested.

CHAPTER 17: WATER QUALITY PROTECTION

1. **Malibu Stormwater Runoff Ordinance.** This Chapter should be rewritten to use existing City of Malibu stormwater runoff ordinance provisions. The existing ordinance has been recognizes as being exemplary, and does not need to be revised.
2. **Purpose and Intent.** The following should be added to the end of the first sentence: "...and the City's municipal NPDES permit requirements under the Regional Water Quality Control Board."
3. **Onsite retention and filtration measures.** The fourth bullet under Paragraph 17.1B should note that use of these measures is predicated on appropriate onsite geology.
4. **Directing rooftop runoff.** The fifth bullet under Paragraph 17.1B should be modified to add that rooftop runoff may also be directed via other structural measures (e.g. detention, filtration).
5. **Definitions.** The definitions included in Section 17.3 should be moved to the Definitions chapter.
6. **Application submittal requirements.** The application submittal requirements contained in Section 17.4 should be consolidated with other submittal requirements in a single location within the Implementation Plan.

7. **Construction phase erosion control and pollutant runoff control plan.** It should also be noted that grading over 5 acres would also require a State Stormwater Pollution Prevention Plan (SWPPP). The requirement for identifying acreage in the fourth bullet under Paragraph 17.4.1A should be revised to specify *disturbed* acreage. Prohibiting clearing and grading during the wet season will be a major problem. While it is desirable that grading occur outside of the wet season, the prohibition contained in this section is overly broad. Based on past attempts by the City to avoid grading in the wet season, it has been found to be more effective to require appropriate erosion control.
8. **Water Quality Mitigation Plan, Section 17.4.3.** The projects required for which preparation of a Water Quality Mitigation Plan will be required should be consistent with the City's existing regulations. The reference to single family hillside development should be limited to projects disturbing one acre of more of land.
9. **Approval of the WQMP.** Approval of the WQMP need only b e by the City's Department of Public Works. Additional City approvals are not needed.
10. **Issuance of discretionary permits.** The standard for redevelopment projects should refer to less than 5,000 square feet or 50 percent of the impervious surfaces.
11. **Footnote on Page 272.** The March 8, 2000 Standard Urban Storm Water Mitigation Plan (SUSMP) for Los Angeles County referred to in this footnote might not be the most recent version.
12. **Verification of ongoing BMP maintenance and conditions of transfer, Section 17.4.4.** Then City currently requires recordation of covenants, and an agreement to maintain the facility and submit to annual inspections by the City. The concept of requiring a signed statement by a public entity accepting maintenance of facilities is unacceptable to the City.
13. **Section 17.4.5.** This Section should refer to Water Quality Mitigation Plans for development agricultural and confined animal facilities.
14. **Paragraph 17.4.5Ad. The final bullet at the top of Page 275** should refer to *storm* water.
15. **Section 17.5.1B1c. Will disinfection be required?** The primary pollutant of concern is bacteria, and filters will not eliminate bacteria from water. While this requirements may sound good, it is well beyond requirements set by the Regional Water Quality Control Board for private development.
16. **Section 17.5.3.** If discharging onto slopes greater than 10 percent, then additional measures to prevent downstream erosion, such as contour drainage outlets which disperse water back to sheet flow will be needed.

CHAPTER 18: ON-SITE WASTEWATER DISPOSAL SYSTEM STANDARDS

1. **Section 18.1, Purpose and Intent.** The use of OSDS (On-Site Disposal Systems) is not in conformance with the language coming out of AB885 and in the City's Santa Monica Bay Restoration Project, CA EPA, and other recognized agencies terminology. The correct description should be; on-site wastewater treatment systems and/or decentralized waste treatment systems.

2. **Section 18.2**. Not "all" properties fall may into the Coastal Zone. What about CALVO exemptions?

3. **Definitions**. The definitions contained in this Chapter should be consolidated with other definitions into a single Chapter.

4. **Section 18.4 D7**. This Section should read "System(s) which the City *and* the Los Angeles Regional Water Quality control board have identified as presenting a threat to surface water or groundwater beneficial uses; and..."

5. **Section 18.4 D8**. An overall concern is that the Implementation Plan seems to disregard the statewide standards for the management of on-site wastewater "TREATMENT" systems and/or decentralized systems. There should be a concerted effort on the part of state agencies to make sure that language and intent of their regulations "agree." This includes the state regulations that come out of the Building Standards Commission (T-24) including the State Plumbing Code.

6. **Section 18.4 I**. This paragraph should be revised to also permit percolation tests to be conducted by a California Registered Geotechnical Engineer.

7. **Section 18.5 A5**. This Paragraph is unnecessary, and should be removed from the Implementation Plan. For conventional private sewage disposal systems, the City's Plumbing Code already requires a 100 percent future subsurface sewage effluent disposal area dedication for future use when the original subsurface sewage effluent disposal area fails. This future area is required to be shown on the approved plot plan. The Plumbing code also requires that the construction or reconstruction of anything on a property served by a private sewage disposal system obtain approval of the City of Malibu Environmental health Specialist. Therefore, the integrity of the future subsurface sewage effluent disposal area is ensured by code. The provisions of the Implementation Plan in Section 18.5 A5 place a needless and unnecessary burden on the property, along with a needless and unnecessary encumbrance on the property.

8. **Section 18.5 B**. The second sentence should be revised to also permit percolation tests to be conducted by a California Registered Geotechnical Engineer.

9. **Section 18.5 C**. The first sentence of this Section is unnecessary, and should be removed from the Implementation Plan. The City of Malibu Plumbing Code does not allow conventional private sewage disposal systems to serve commercial or multi-family land uses. Commercial and multi-family uses must be served by an alternative private sewage system offering secondary effluent treatment, or greater, prior to discharge to the subsurface sewage effluent disposal system. A subsurface sewage effluent disposal system receiving wastewater subject to secondary treatment or greater does not fail because the wastewater has a low biochemical oxygen demand, and a low total suspended solids content. Therefore, a future subsurface sewage effluent disposal system is not required. If this provision is retained, then the 200 percent expansion requirement should be confined to those commercial and multi-family uses served by *conventional* private sewage disposal systems.

10. **Section 18.6 A**. The first sentence should be revised to read "The City will develop, adopt, and implement a Wastewater Management Plan (WMP) to be approved by the City of Malibu City Council by December 31, 2004."

11. **Section 18.7 B**. The second sentence should be revised to also permit percolation tests to be conducted by a California Registered Geotechnical Engineer.

12. **Section 18.7 C.** To comply with forthcoming AB885 regulations being written by the State Water Resources Control Board, the second sentence needs to be changed to read as follows. "When a percolation test is required, no *conventional* OSDS shall be permitted to serve a new development of redevelopment if that test shows the absorption capacity of the soil is less than 0.83 gallons per square foot (33.8L/m) per 24 hours. Alternative private sewage disposal systems offering secondary treatment or greater should not be required to meet this percolation standard."

13. **Section 18.7 C.** To comply with forthcoming AB885 regulations being written by the State Water Resources Control Board, this Section should be changed to read as follows. "The proposed site for soil absorption field shall also be free from poorly drained soils and soils or formations containing continuous channels, cracks, or fractures, unless a setback of 250 feet to domestic water supply is assured, *or unless adequate wastewater pre-treatment is provided prior to discharge*.

14. **Sections 18.7 F and G.** These Sections are unnecessary. Surface discharge of sewage effluent is not allowed in California, even with tertiary treatment prior to discharge, unless the discharge can provide 24 hour per day, 7 day per week constant monitoring. Even then, the discharge must be conducted in a controlled manner.

15. **Section 18.7 L.** The horizontal setback table requires a 50-foot setback for septic tanks, a 100-foot setback for absorption fields, and a 100-foot setback for seepage pits from the ocean. Most properties along the east end of Pacific Coast Highway, Malibu Country Drive, Malibu Road, Latigo Shore Drive, Malibu Cove Colony Drive, and Escondido Beach Road will not be able to meet this requirement. To comply with the forthcoming AB885 regulations being written by the State Water Resources Control Board, an exception must be made for alternative private sewage disposal systems offering secondary treatment, or greater, prior to discharge.

    The horizontal setback table requires a five-foot setback for septic tanks, a 50-foot setback for absorption fields, and a 50-foot setback for seepage pits from a storm drainage pipe. Some properties along the east end of Pacific Coast Highway and Malibu Road have publicly owned storm drainage pipes running across the property beneath the dwelling(s) on the property, which will make compliance with this section impossible. An exception needs to be made for storm drainage pipes that are sealed against sewage effluent infiltration.

    The horizontal setback table requires a ten-foot setback for septic tanks, a 4 x height setback for absorption fields, and a 4 x height setback for seepage pits from a fill, or cut bank. To comply with the forthcoming AB885 regulations being written by the State Water Resources Control Board, an exception needs to b e be made for fill or cut banks where a California Registered Geologist states that the stability of the fill or cut bank will not be compromised by a less severe horizontal separation, and that a less severe horizontal separation will not result in sewage effluent daylighting.

    These revisions are a must for the City, as they will make already developed lots unusable.

16. **Section 18.7 P.** An exception should be made to this section where an alternative private sewage disposal system offering secondary treatment, or greater, is installed. These systems do not cause subsurface sewage effluent disposal area failure and, therefore, a 100 percent reserve area should not be required. The first sentence of this section should be changed to read, "There shall be a minimum of 100% reserve area set aside for the replacement of the soil absorption field, unless an alternative private sewage disposal system providing secondary sewage effluent treatment or greater, prior to discharge is installed."

17. **Section 18.7 Q**. An exception needs to be made to this section where adequate ventilation is otherwise provided, or where secondary treatment, or greater, is provided prior to discharge. Just about every commercial land use in the City of Malibu has its drain field located beneath its paved parking area. This section will severely impact these properties, and prevent future private sewage disposal system upgrades to secondary treatment, or greater, prior to discharge; as required by the City of Malibu Plumbing Code for new construction, remodels, or private sewage disposal renovations.

18. **Section 18.8 D**. California Registered Environmental Health Specialists are not technically, or legally qualified to design package treatment plants and, therefore, should be eliminated from this section.

19. **Section 18.10 C**. The (Los Angeles County) Department of Health Services does not have jurisdiction in the City of Malibu and, therefore, should be eliminated from this section. The City Engineer does not have jurisdiction over private sewage disposal systems in the City of Malibu and, therefore, the word "engineer" should be eliminated from this section.

20. **Section 18.9D**. The (Los Angeles County) Department of Health Services and Public Works does not have jurisdiction in the City of Malibu and, therefore, should be eliminated from this section

CHAPTER 19, LCP AMENDMENTS

1. **Section 19.2.1, Proposals**. Paragraph 19.2B makes sense in relation to the package that the City would forward to the Coastal Commission after it completes its review and hearing process. Requirements for individuals to submit LCP amendment requests prior as a means of initiating City review are needed.

2. **Section 19.3, LCP Amendment Hearing And Notice**. The basis for the timing provision for the notice of availability should be specified (i.e., prior to final action, prior to Planning Commission hearing?).

   Do the provisions of paragraph 19.3.1B include making copies at no charge, or only to making a copy available for review at specific locations or also to making copies specifically for individuals' use?

   Excluding roadways from the distance measurement for providing notice could make determining the area to be notified difficult.

3. **Section 19.6, Findings**. Findings should be consolidated into a single location in the Implementation Plan.

JULY HEARING TRANSCRIPT (Portion)

Attached is a transcript of the Commission discussion during the July hearing on the Malibu Local Coastal Program. This includes the Commission discussion portion of the meeting on July 10, 2002 and the remainder of the meeting held on July 11, 2002.

RECEIVED
JUL 3 1 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 10, 2002

Malibu Local Coastal Program

(Following the end of the public comment period, city's rebuttal time, staff remarks, and motion to continue fails.)

* * * * * * * * * *

COMMISSIONER REILLY: Madam Chair, I would move that we give ourselves two minutes each, to at least have each Commissioner be able to express themselves prior to adjournment.

CHAIR WAN: Okay, let's start at one end, and Chris -- and some of us may not have anything to say.

Commissioner Desser.

COMMISSIONER DESSER: Well, how about --

CHAIR WAN: Oh, Commissioner Neal.

COMMISSIONER NEAL: I am going to give my two minutes to Chris and John.

COMMISSIONER REILLY: No, you can't.

COMMISSIONER DESSER: And, I am going to be less than two minutes.

I think that, you know, there are a number of items that the staff has commented on where there is room for compromise.

I want to be very, very clear to the people who are mostly on this side of the room, who somehow think that we are usurping the democratic process. This is a bill that

we didn't want, that we need to comply with, because for whatever historical reasons, there has not been an LUP in Malibu. So, it falls to us. I mean, do you think we want to be here until 10:00 o'clock at night dealing with this? So, it falls to us to work with the City of Malibu to come up with an LUP that is consistent with the *Coastal Act*, and that respects the concerns and the needs and the property rights of the people who live in Malibu.

So, that is where I am on this, and tomorrow morning we will go through, and we will address things, I imagine, sort of on an item-by-item basis, and I hope that this Commission is going to come up with an equitable solution, and I am sure we are not going to make everybody happy on all sides of the issue.

But, I think it is really important to understand that the legislature imposed this upon us. This is not a group of people who are seeking to impose our will on another group of people, far from it.

And, to the extent that it is felt not to be a democratic process, you should come to our meetings on a regular basis, if you don't. It is an incredibly democratic process.

And, for people who say that they haven't had a chance to offer input into it, what do you think that we have done here all day today, that we will be doing tomorrow, that

we did last month, and we will be doing again in September. This is how democracy works.

CHAIR WAN: Commissioner Woolley.

COMMISSIONER WOOLLEY: Thank you, Commissioner Desser.

For me, I want to thank staff for putting together, I think, a great response to the numerous comments that we had. Not often do we get that kind of tracking, and I think that is really helpful, because it narrows the field quite a bit.

In particular, I was going to be raising questions around the concerns I had about when I was reading about the qualified professionals, I think it was, because that left a lot of open concerns I had, when we had it compared to the ERB, but I think your approach to it, and finding out how to define that further makes sense.

The concerns that had reached me way up in Eureka, in fact, were over the ball fields, and I think the approach that you have articulated really spells out about what we took at a look at on the field trip, how we could reach a solution to that, I think, that will keep all ball fields on that windy bluff. I know my kids would have a heck of a time hitting into that wind, and maybe that would make them a better player, but maybe I'll have them sign up for the league when they come down there.

The other things I was concerned about are, having worked with the American Indian community up north, I am concerned about language articulated about the Chumash, and how they can participate at certain levels, especially, in consultation at different levels, and I have made some notes on that, and I am appreciative of what staff has said, as well, in that we can get them more involved, probably, in a policy setting. So, I would be glad to work with staff on that, as well.

I think that is about it. I am probably going hear more of my similar concerns as we go down the row.

Thank you, very much.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: I think what I have been amazed about is the misinformation, which has done a real disservice to the citizens of Malibu, and I find that that is the biggest fault with this process, that we are all trying to go through, and I think Commissioner Desser expressed that very well, that this is probably the most democratic process, and it is a process that I don't think any of us wanted for you.

We are elected representatives. Our cities have LCPs, and we wanted you to go through the same process that we went through. But, we did our 20 years ago, so I think that the legislature finally got tired of waiting for the

City of Malibu to accomplish this. You would have been much better off to have done it a long time ago, and of course you would have been much better off doing it yourself, but that wasn't the case.

So, I think our staff, I want to compliment our staff, you have done an extraordinary job. Through this process, when we met in January, how you refined some of the conditions that were troublesome to the people of Malibu, how you have taken their concerns and really, I think, done an exceptional job in trying to meet those concerns, so the staff has done an extraordinary job, and I know that many in Malibu have worked with our staff.

But, I think to perpetuate some of these myths that have been built up around this issue has done a tremendous disservice to Malibu, and my greatest hope is that you can come in tomorrow morning, having looked at and heard what our staff is now trying to accommodate to make an LCP that is consistent with the *Coastal Act*, which is what we have to do, and you can come in tomorrow and let our staff know that most of the conditions that have been suggested are ones that your LCP can be based upon, because that is going to make your job easier, because we have to be, our staff has to be consistent with the *Coastal Act*.

So, there were many, many issues that came up during the hearing, and I was so pleased that staff was able

to go point by point, and let us know exactly -- they clarified for me many issues that had been raised by the citizens in your community.

So, right now I am predisposed to look at your LCP as one that is a cookie cutter. I have seen this LCP done up and down the state, so I hope you will take a look at it, think about it tonight and come in tomorrow morning, and let's get this job done.

CHAIR WAN: Commissioner Peters.

COMMISSIONER PETERS: Thank you, Madam Chair.

I just want to thank everyone who put in so much time, including the staff, and the public for really an incredible amount of work. I have never received mail at this rate before. It seems like every minute and a half I was getting a letter.

I wanted to also say, for the record, that I did receive the tapes of the previous two meetings on this issue, and listened to them. It was helpful, but a lot of visuals you don't get from the audio tape, so I did miss out on that, but I think I have become familiar with this to an extent that I can participate, and today was very edifying.

I want to express my sympathy to the mayor, because I imagine you are getting it from both sides, and I appreciate that it would be a lot better if you were able to do this at the local level, and generally that is my pre-

disposition, that a lot of this stuff should be done locally.

I guess I find myself here, at my first meeting, assigned the job of of providing this template, at least, and I have a lot of questions tomorrow about this happens going forward, that I will be asking, and I'll leave those for tomorrow, but I just wanted to acknowledge that I appreciate the tough position you are in, in terms of where you go from here, as a local official, but I'll leave my questions for tomorrow.

Thank you.

CHAIR WAN: Commissioner Reilly.

COMMISSIONER REILLY: Thank you, Madam Chair. With two minutes, I'll just thank everybody.

There are, at least, 10 different documents we've gotten from 10 different groups, City of Malibu, Santa Monica Mountains Conservancy, Malibu Bay Company, Santa Monica Mountains Task Force, Sierra Club L.A. Chapter, Malibu Coastal Land Company, County of L.A. Regional Planning, Coast Walk, Regional Water Board, Heal the Bay, and the Wishtoyo Foundation, each of which has very detailed and specific recommendations that we are not going to be able to get into the detail of, and I just want to know from staff tomorrow how you are going to deal with those things, between now and September?

In terms of specific issues, one thing I want to

talk about tomorrow is retained jurisdiction in a particular line between permit amendments and new permits, and how that works, and who makes that determination?

I am prepared to support staff on their recommendations across the board on water resources, and public access.

On slope issues, I think you either go with the 3:1 or you mandate a strong grading sediment and erosion control ordinance that shows you can deal with a more than 3:1 and those are your two options in terms of, you know, ag use on slopes.

On Malibu Bluffs, I am prepared to support staff and State Parks, and I would also comment that more ball fields are needed than just those two, so that doesn't exclude Trancas, and I think the city has already identified a need to do many more ball fields than they have currently, so it doesn't solve the whole problem.

On temporary use permit, I am prepared to support staff, and we have special events permits, and people finally learn about them. They learn that have to come in and get them, under certain circumstances, community education process, but over a period of time it works.

On the cultural resources, I think we need to strengthen that section, and I would refer staff to the Wishtoyo Foundation comments, that they submitted in writing.

I still have some questions about the institutional zoning, whether it is in the city plan or not, if we are going have nursery schools in churches, and we are prohibiting recreation on school grounds, I have some questions about that, as well as our change in zoning from 20 to 40 acres.

Civic center, if we -- I still have questions about whether or not that is disturbed ESHA, but assuming that staff is correct, and it is not, then I want to see if the specific plan comes back on mixed use, some flexibility about what is upstairs and what is downstairs, and also find out more about what the flood issues are through that area, particularly with FEMA, and make sure that any construction is required to be built above the 100-year flood plain, because I don't want what Dave Brown is suggesting, which is they are going to channelize Malibu Creek in order to support a bunch of expensive development there.

And, the one major problem that I have right now, with staff recommendation, has to do with the scenic recommendations. They just don't work for me. I don't think that we've put the same requirements on scenic as we put on ESHA. It is much more serious, and there are other ways to protect it with alternative mitigations on that, and I am willing to talk about that tomorrow.

CHAIR WAN: Try to be as quick as I can here, since a lot of people have said much of what I have to say.

First of all, I do want to thank staff --

COMMISSIONER REILLY: Excuse me, I forgot one thing. I am going to support staff across the board on ESHA recommendations.

CHAIR WAN: Where was I? thanks, Mike.

COMMISSIONER POTTER: I'll restart the clock.

CHAIR WAN: Gee, thanks.

COMMISSIONER POTTER: You lost a minute, though, because Reilly ran over by about a minute 10.

CHAIR WAN: I just wanted to say that staff has not only produced a remarkable document, in the space of a very short time. The amount of work that they have put in we really owe them a debt of gratitude. As several Commissioners have said, this job was forced on us. It was not one we wanted.

I would like to remind the community that, by the way, getting an LCP, regardless of who writes it, is the way you get local control. Until now, every single permit comes to this Commission, and we make the decisions. Once this is certified, your city will be making the decisions. All discretions will lie with the city, with the exception of those limited projects that can be appealed to this Commission, and it is limited. So, this is the way you get local control.

And, I am very saddened at the way that this has

1 come down in my community. It has divided the community. It
2 has been done in a negative way, when it could have been done
3 in a positive way, and that really saddens me.
4 However, let me just go to some of the specifics.
5 I would have said a lot more, if there had been a little bit
6 more time.
7 The ESHA protections are extremely important.
8 This is an important area. The Santa Monica Mountains are
9 one of the remaining areas that need to be protected.
10 Coastal access is very important, and it needs to
11 be strong. It can't be weakened in the ways that the city
12 has indicated it wants it weakened. Coastal access is
13 basically the heart of the *Coastal Act*. It is the reason we
14 have a *Coastal Act*.
15 And, by the way, like it or not, if you live in
16 the coastal zone, anywhere in the state, you do have to be
17 concerned more about you have special conditions that apply
18 to you, because you live in the coastal zone, and it is not
19 just Malibu, it is everywhere.
20 I am concerned, by the way, on the ESHA, if you
21 look at the '86 county LUP, in some ways their LUP is
22 actually -- except that we've included a broader definition
23 of ESHA, in ESHA under the county's '86 plan, both ESHA and
24 disturbed resources -- somebody talked about disturbed
25 resources in Point Dume -- on the '86 LUP in table 1, both

1 resources, and special resources, and disturbed resources,
2 you are not allowed to do anything but resource-dependent
3 uses. We are now, at least, saying that you can have some
4 development in there.
5 So, I don't find it overly restrictive, but I do
6 find it protective, and it is important, and there is very
7 good science to back this up, very good science.
8 The other thing I am concerned about is the
9 archaeology, to make sure that that is improved.
10 I am concerned about the ERB issue.
11 The zoning, as Commissioner Reilly said, along
12 Malibu Creek and the lagoon, to make sure that we've got the
13 proper zoning there, so that we don't wind up with problems.
14 And, I am concerned about the way we deal with
15 low-cost visitor serving. I am particularly concerned that
16 we say that when it is going to be replaced, it could be
17 replaced anywhere from Ventura to, basically, Orange County,
18 and it seems to me that if you are going to put in luxury
19 hotels in Malibu, you are not going to -- you shouldn't be
20 allowed to say, take your lower-cost visitor serving, and put
21 it elsewhere. You have got to have some lower-cost visitor
22 serving in Malibu, itself.
23 The last thing deals with the process, and this
24 does get to one of the things you are talking about. We need
25 to be very aware of the fact that we have a September 15

deadline, so whatever we do tomorrow, we need to do it in a way that we make changes that don't make it impossible for our staff to give us a document that we can deal with in September. That is one thing that we need to be very careful about.

Commissioner Potter.

COMMISSIONER POTTER: Yeah, I'll try to make up for lost time here.

I am going to be real brief. I have got a process concern, and that is I would like to hear tomorrow how, given the fact that the deadline is September 15, that is a Sunday. We need the week of September 10. It doesn't seem to me there is any chance for a rewrite or modifications, given the fact that we would be providing input in September.

I think there is the need for input, status reports, some sort of additional opportunity for the Commission to weigh in in the month of August.

I realize that there is a very short turnaround time on that, but on the other hand, we get addendums and changes to staff recommendations at the drop of a hat, right prior to meetings, and I think that whatever we can do to get that before the Commission, let us know how we are dealing with the city.

I heard repetitively today that we are working very well with the city, and I want to commend the city,

especially the city manager, I think has been doing a herculean task here, but if you are going to be making changes in the course of the next few weeks, or the next month or so, I think we need to know where we are next month, and I think we need to be able to provide our input again at that point, based on what agreements you have come to at that time.

CHAIR WAN: Commissioner Burke.

COMMISSIONER BURKE: I think Commissioner Desser hit the nail right on the head. I don't think anybody really wanted to do this.

Tomorrow, I am really interested in looking into a few things. The sideline thing really has me concerned, because from my perspective, if we use a sidelines as staff is recommending, you've are covering, basically, 95 percent of Malibu.

The Indian situations is, also, I think, a very, very sensitive situation, and one that we need to pay significant attention to.

On the baseball fields, I don't think that -- I don't understand. I have the feeling that we are losing one baseball field here. Now, I may not be understanding this correctly, but maybe tomorrow, or later this evening, after this breaks up, somebody can bring me up to speed on that.

The affordable housing issue is always of

paramount interest to myself.

On the ESHA thing, some people were asking me why the Department of Fish and Game didn't give us more specific definition, and I don't know if that is possible, logical, or rational.

But, those are basically my issues, and I am going to beat the clock here.

COMMISSIONER POTTER: Good man.

CHAIR WAN: Commissioner Nava.

COMMISSIONER NAVA: Yeah, following Commissioner Burke, I think the issues are public access are very important. I will be supporting staff. I think the city's approach to it is punitive. I don't believe that the Coastal Commission should be supporting, or adopting policies in an LCP that extinguish prescriptive rights. That is the role of the courts, and to incorporate that kind of language in an LCP is inappropriate, because what we would be then doing is divesting the public of their opportunity to pursue those, and to perfect those.

I, also, in going through the city's proposed language, find it incredibly hostile to public access. I think there are changes to the language that is also hostile to low-cost visitor serving. I am not really convinced that the mitigation amount that we are looking is an appropriate amount. I am going to want know what that formula was, and

whether it was current figures, and if there is any relationship to the creation of the luxury units, and the likelihood that the mitigation amount to be obtained is really going to result in an amount of money that will permit the purchase of either land or a facility in Malibu for low-cost visitor serving.

I am going to look to the staff to give us, as they said they would, a better definition of "otherwise qualified professionals" in making decisions with respect to ESHA in the City of Santa Monica. I think the notion that the city biologist is the sole, well, the only person that is going to make a decision on those issues fails to take into consideration the contributions that an environmental review board can make. They have been successful in other places. It provides the public an opportunity to participate and to add their perspective.

With the bluff parks, I am going to be supporting staff.

COMMISSIONER BURKE: Your time has run out.

COMMISSIONER NAVA: Right, and I have some other notes, and Commissioner Burke has pointed out to me that I've run over my two minutes, and so you'll hear some more about this tomorrow.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUER: Thank you, Madam Chair.

I would like to commend the staff, and the city for working together, and really narrowing it down to six or seven issues.

And, I think there has been a lot of movement on both sides. I would like to compliment -- from the first things that I've read.

The only thing I would like to briefly comment, tomorrow, I would like to understand more of what specific criteria, and how it was developed, and how you created these maps, and how do they really work, and so I understand exactly, because it is very difficult. I've done a lot of mapping in my life, and normally you do it always wrong when you are in a hurry, and I just want to make sure how you do this, what the criteria is, and how we are going to do this, because if it is ESHA we should protect it, but it is not ESHA we shouldn't put in an overlay, and just throw a net on it, and say it is ESHA.

Also, I am concerned, as one person, on the 10,000-square foot thing. This is not really staff's fault. There must be a mechanism, because of the September 15.

I think you create bad development by creating the 10,000-square thing. I can make many strong cases that in some cases it should be a lot less, in some cases it might be a little bit more, but because of the siting, the contours, where the project sits, how the landscape formation goes,

what the grading issues are, and this and that.

The last thing you want to do -- and this Commission, since I've been on it for the last three years, always makes it site by site. It makes those judgment calls, does things, you come out with a lot better product, much more sensitive, much more sensitive to the environment, much more protective of everything, and I think as long as everybody understands that, I think it is just being put there because there isn't any time. But, I think it is a big mistake, and I will discuss that tomorrow, in detail, and explain why it is a mistake.

The area of the chili cook out and the civic center, I think needs some discussion of what kind of either master plan, specific plan, or how it will come back, with some type of mixed use project --

COMMISSIONER BURKE: Time is out.

COMMISSIONER KRUER: -- or something to cut down the intensity.

And, I'll go over the other things tomorrow. I've run out of time.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: I just want to say that I am awed by all of the hard work that everybody has put into this process to get us where we are today.

And, I look forward to a patient and thoughtful

1 and deliberative process tomorrow, where I will, you know,
2 engage further in the issues that are of interest to me.
3 COMMISSIONER BURKE: Very good.
4 CHAIR WAN: Commissioner Hart.
5 COMMISSIONER HART: And, I will pass my time until
6 tomorrow.
7 CHAIR WAN: We are adjourned. We will be back --
8 COMMISSIONER MC CLAIN-HILL: What about
9 Commissioner Sweeney.
10 CHAIR WAN: Commissioner Sweeney, do you have
11 anything to say?
12 COMMISSIONER SWEENEY: Nah.
13 CHAIR WAN: With that, we will adjourn and be back
14 tomorrow at 9:00 a.m.
15 *
16 [Whereupon the hearing concluded at 9:55 p.m.]
17 *
18 Thursday, June 11, 2002; 9:10 a.m.
19 CHAIR WAN: Can I ask members of the public to
20 take their seats, and staff, we need to get started, we have
21 our quorum.
22 Before we get started, let me make a couple of
23 remarks on how we might consider proceeding this morning.
24 To begin with, I would like to remind Commission-
25 ers a little bit about the process, and the fact that we do

have a state-mandate, a legal mandate, I should say, to get a certified LCP approved by September 15.

The process that we have gone through to date was to do the LUP in depth in January, and while today we can, in fact, make any kind of changes we want to the LUP, and the LIP, I am going to ask the Commissioners keep in mind that at a certain point, if we make changes -- and I don't know where that point is, and it is up to Commissioners to keep this in mind -- if we make too many changes to the LUP that totally overhaul the LUP, we are going to make it from a practical perspective impossible for the staff to do the companion ordinances that have to carry out those policies, and make it impossible to have an LCP completed by September 15.

I am not saying, again, that we can't make whatever changes we want, but we need to keep that in mind as we go through this process.

What I am going to ask that we do, and how we deal with this is that we go through this on a chapter-by-chapter basis. I don't know if you want to do -- I guess we can do the chapters. We can either do this chapter-by-chapter on the Land Use Plan, or we can do it chapter-by-chapter with the Implementation Ordinances.

COMMISSIONER REILLY: Do the LUP first. It's easier to do the LUP first.

CHAIR WAN: It would be easiest to do the LUP

first.

Yes, Mr. Damm.

SENIOR DEPUTY DIRECTOR DAMM: Sorry to interrupt, Madam Chair, but a housekeeping matter, because we have persons in the audience that may be here for other items on the agenda that are either postponed or being moved to Consent, would you like me to go through the changes to the agenda before going --

CHAIR WAN: Yes, that will be fine, and then I'll finish.

Oh, by the way, we never called the roll.

[Roll Call and Housekeeping matters taken up for today's calendar]

CHAIR WAN: Okay, so, I go back to the discussion about how we are going to handle this.

Going to the LUP, we'll do this sort of chapter-by-chapter. My suggestion is that we try to focus on only those particular issues -- I don't want to go through this line by line, or we will never get out of here -- those issues that Commissioners may have a particular concern about, and if there aren't any concerns, then we just call that complete, and move onto the next chapter.

So, on the first chapter, which I think is not Chapter 1, Chapter 2.

COMMISSIONER DESSER: Are we going to go through

the Implementation Plan?

CHAIR WAN: We are going to go through the LUP first, because the Implementation Plan is always dependent -- this is what I was saying about the kind of changes. The Implementation Plan has to be consistent with the policies, and so you have got to deal with your policies before you know what your ordinances are.

Let's go to public access. Do I have any Commissioners who have specific concerns on public access? questions?

Commissioner Dettloff.

COMMISSIONER DETTLOFF: No, I think, didn't the City of Malibu make a comment in their presentation that they, the city and the staff were in agreement on those issues? I thought their city manager had made that statement.

CHAIR WAN: Yes, the question is, are there any Commissioners who have any? There are a number of issues that fall under public access.

Commissioners?

Let me see. I'll go through this, give us, ourselves, our chance to sort of look through this and see the --

COMMISSIONER DESSER: Sara, then how do you want -- do you want somebody move that we go per staff on --

EXECUTIVE DIRECTOR DOUGLAS: No.

CHAIR WAN: No, we don't have to, if we don't have any disagreements, let's just by -- it is by consensus, and we will just move onto the next one. It is a straw vote, anyway.

EXECUTIVE DIRECTOR DOUGLAS: Right. What we had been seeking is guidance from the Commission on issues that you have with the staff recommendation, so if what we have in here, relative to public access, is fine, then you can go onto the next item.

COMMISSIONER POTTER: Okay, and under that, so that I can get an understanding of this process.

We are going to go ahead kind of vote things up or down, or through consensus give direction to modify. Then what is staff's understanding of how we are going to go about making sure that what you heard, that translates into text, is back before the Commission so that we can give you concurrence on the fact that that is what we said, and that is how it got translated into written word?

EXECUTIVE DIRECTOR DOUGLAS: Well, what our plan was, based on discussions yesterday, revisions we've indicated we are going to make, in any event, we will make and incorporate into the revised staff recommendation that will come back to you for the September hearing.

You asked yesterday for a status report at the

1 August hearing about where we are on particular issues, and
2 we intend to do that. We'll list the issues that were in
3 contention, and we'll tell you where we are with the city, in
4 terms of whether or not we are in agreement, or what we've
5 done with it.
6 In terms of guidance from you, if there is a
7 departure from what the staff recommendation is, we will
8 prepare language that reflects what the majority of the
9 Commission indicates you would like to see, in the way of
10 changes.
11 It may or may not change the staff recommendation,
12 ultimately, but certainly you will have the language that the
13 majority of the Commission wants to accomplish what the
14 majority indicates you want to accomplish here today.
15 COMMISSIONER POTTER: So, we'll have a chance to
16 look at that draft language in August?
17 EXECUTIVE DIRECTOR DOUGLAS: No, no, it will be --
18 COMMISSIONER POTTER: I think what concerns me is
19 while there is not a whole lot of time between now and the
20 August meeting, there is absolutely no time between the
21 September time that the board convenes and reviews the
22 language, and the September 15 drop dead legislative date for
23 adoption.
24 So, I would be relatively adamant about wanting to
25 make sure that we have something that we can take a look at,

because if we can't amend text in two months, we certainly aren't going to be able to amend text in 48 hours, which is pretty much where we end up, given the fact that we probably hear this on the 10th or the 11th of September, and then the 15th is on a Sunday.

EXECUTIVE DIRECTOR DOUGLAS: Right, we have to have it to the city by Monday, the 16th, in the morning.

But, it depends on the kinds of changes that you are asking for, too. But, you have to also understand, I mean the workload is going to be incredible to do. I just don't see if there are extensive changes that we are going to be able to have language on all of those changes for the August meeting. That is just physically not possible.

CHAIR WAN: Right.

COMMISSIONER POTTER: I understand the time constraints, but I am also concerned about the quality of what we say, and how that gets translated, so I want to make sure we've got something to look at, and we can revisit this, once we are through with the deliberations, but I just wanted to get it on the record, again.

CHAIR WAN: Okay, on the chapter relative to public access, are there any concerns about public access?

[No Response]

If not, let's go onto ESHA, which I know there are concerns about.

1 COMMISSIONER DESSER: Okay, then let's be really
2 clear, a la Commissioner Potter, so what we are saying is
3 that the public access, as written by staff, stands?
4 CHAIR WAN: Right.
5 Okay, the next chapter is marine -- let's go to
6 it, Chapter 3, Marine and Land Resources, okay, which is our
7 ESHA chapter.
8 COMMISSIONER HART: Madam Chair --
9 CHAIR WAN: Oh, before we do --
10 COMMISSIONER HART: -- one question I had --
11 CHAIR WAN: Sure, go ahead.
12 COMMISSIONER HART: -- because it just popped to
13 me.
14 Does Bluffs Park fit into access?
15 CHAIR WAN: That is in that chapter, I believe.
16 EXECUTIVE DIRECTOR DOUGLAS: Yes.
17 COMMISSIONER HART: Well, then I have a concern
18 about that.
19 CHAIR WAN: Okay.
20 COMMISSIONER HART: Okay, I don't think that we
21 should be dictating to the City of Malibu their relationship
22 with State Parks. I think that that is more appropriately
23 handled between State Parks and the city. I personally don't
24 think the Commission has a statewide interest in fixing this
25 situation, and I think we should leave that out of the

1 document.

2 COMMISSIONER WOOLLEY: Could we ask Commissioner
3 Sweeney to help us address this from his perspective?

4 COMMISSIONER SWEENEY: Thank you, Commissioner
5 Woolley.

6 In talking with Ruth Coleman, who is the acting
7 director of Parks, Parks' position is that, basically, they
8 don't see the need for any language regarding Bluffs Park in
9 the document. They would, however, want to make sure that
10 Parks remains under the jurisdiction of the Commission.

11 As Commissioners will recall, Parks extended the
12 permit, vis-a-vis Bluffs Park, with the city for a year, and
13 I believe that expires in May, so Parks feels that the city
14 is motivated to work this out. Parks is certainly motivated
15 to work this out, but again, Parks doesn't see a need for any
16 language regarding the Bluffs Park in the document, as long
17 as Parks remains under the general jurisdiction of the
18 Commission.

19 Thank you.

20 CHAIR WAN: Commissioner Reilly, and then I have a
21 comment.

22 COMMISSIONER REILLY: Well, I guess my only
23 concern is if we don't reference it is reflected in here,
24 this has been the subject of prior Commission actions, and
25 you know, we do have a history in current regulations on that

1 particular property, specifically relating to the ball
2 fields, and their temporary use on the Parks property, and if
3 we don't modify that in some form, I am not sure that we can
4 comply, necessarily, with Ruth Coleman's letter asking us to
5 be able to facilitate this happening.
6 I see the Director has some comment, too.
7 CHAIR WAN: Yes, and then I --
8 Mr. Douglas.
9 EXECUTIVE DIRECTOR DOUGLAS: Well, Madam Chair,
10 let me explain again why we think it is essential that you
11 have a policy in the LCP that affects the bluffs area.
12 You asked us to try to find a solution at the
13 January meeting. We went out and we've met with the adjacent
14 property owner, and with the City of Malibu, and with the
15 State Department of Parks and Recreation, to find a
16 compromise.
17 We identified that compromise, but that requires a
18 change in the Land Use Plan that accommodates on the adjacent
19 property, the Crummer Family Trust property, that we have
20 identified for visitor-serving uses. It requires a change on
21 that property that says if they make land available to move
22 the ball fields onto the private property, then they would be
23 enabled to build up to eight single family homes.
24 The zoning would change from visitor serving to
25 residential on the land that is left outside of the ball

field area.

In addition, it would identify on the State Park land a portion of that would be retained for the access roads to the ball field parking areas that would be provided in conjunction with the ball fields to be moved.

That is why we think it needs to be in there, that it doesn't undermine that compromise. It doesn't mean that it has to happen. It just means that it allows it to happen.

CHAIR WAN: Let me make a comment along those lines.

There are a number of policies, and you might look at them almost individually, the policy that deals with what you are talking about, which is the Policy 2.81 which deals with the Crummer Trust, really has to be in there for that reason. Because it is the thing that will enable the deal to go through.

COMMISSIONER POTTER: I don't understand.

CHAIR WAN: And, that is really separate from the other policies.

COMMISSIONER POTTER: I don't understand that.

CHAIR WAN: I am going to Commissioner Hart, and then Commissioner Potter.

COMMISSIONER HART: I agree, I don't understand that, either.

We can always have an amendment to this plan that

1 would facilitate that change when that were actually a live
2 project in front of us. And State Parks, and the Crummer
3 Family, and the City of Malibu wanted to come back to us,
4 they would propose an amendment to this plan that would
5 accommodate that.
6 I don't see how changing that is necessarily the
7 right decision today, because that isn't actually the
8 preferred course of all of the parties. So, why would we put
9 something in the Land Use Plan that describes one possible
10 solution to this problem that isn't an active application?
11 I think the parallel is the situation with the
12 chili cook off site, where the folks are talking about some
13 point in the future, when you get a plan together, you come
14 forward with an amendment to the plan.
15 Well, how is this any different than that?
16 CHAIR WAN: Mr. Douglas.
17 EXECUTIVE DIRECTOR DOUGLAS: When we met with the
18 Crummer Family Trust folks, they said if we don't have this
19 option in here, they are removing --
20 CHAIR WAN: Right.
21 EXECUTIVE DIRECTOR DOUGLAS: -- the offer that
22 they have.
23 So, from our prospective, if you don't have it in
24 here, it kills that option.
25 CHAIR WAN: Commissioner Potter, then Commissioner

1 Nava.

2 COMMISSIONER POTTER: Well, it seems to me we are
3 brokering a real estate deal here, instead of doing land use
4 planning.

5 I mean, we had discussion yesterday about bringing
6 much larger items in under the amendment heading, and it
7 seems to me, just as Commissioner Hart said, this is more an
8 issue for an amendment, should this project come to be, and
9 it has actually got a, you know, basically what is probably a
10 financial life to it, rather than a land use policy issue.

11 So, I think that the city and the Parks ought to
12 be working together on this, which seems to be what is
13 happening, and I would support bringing it back under the
14 amendment heading, instead of putting it in there at this
15 moment.

16 CHAIR WAN: Commissioner Nava.

17 COMMISSIONER NAVA: I am going to support
18 Commissioner Reilly's version of this discussion, because,
19 first of all, I mean, in part we do have a connection, we do
20 have a relationship with this particular parcel, and
21 especially this issue.

22 We directed staff to go out there and fix this
23 thing, and make it happen. They've brought everybody to the
24 table, and I just don't understand how we keep our place at
25 the table if we don't have this particular language.

1 And, we've already just heard what the Crummer's
2 response is going to be, if they don't have this language.
3 It is, obviously, important enough to them that they think it
4 ought to be a part of the Land Use Plan, and if indeed we are
5 working towards resolving this issue, so that folks can
6 continue -- will have a place to engage in those recreational
7 activities, it seems to me the Crummer aspect of this is a
8 lynch pin, and they have already said if it is not included
9 in this thing, then it is dead, and I certainly don't want to
10 be in the position of depriving those kids of a place to
11 play.
12 CHAIR WAN: Commissioner Kruer, then Commissioner
13 Dettloff.
14 COMMISSIONER KRUER: Yes, I heard from staff on
15 this, and I saw a lot of movement lately.
16 I wanted to ask the city, the city manager's
17 perspective on this -- because I am a little confused at this
18 point -- some clarification.
19 MR. JENNINGS: Thank you. Jeff Jennings, the
20 Mayor of the City of Malibu.
21 The problem, from our perspective, one of the
22 problems from our perspective is that there are a number of
23 potential deals with the Crummer property owners. We refer
24 to them as Crummer 1 and Crummer 2.
25 We had a meeting with Mary Nichols, Ruth Coleman

-- this was last week, I'm starting to lose track of time. I think it was last week. Mr. Sweeney was present at the meeting. It was our clear understanding from that, as the result of that meeting, that Mary Nichols did not see Crummer 2 as a viable alternative and that it really should be off of the table. She did not see that as a favored approach.

Crummer 2 is mandated by the language that is currently in the plan. The other problem is that we are currently going through the CEQA process on both of the alternatives, and this language mandates the one alternative, and it is now the alternative that Secretary Nichols, at least, says is not the preferred alternative.

So, we don't feel that the Commission should mandate something which Parks, at least, does not seem to be, at this point, favoring.

Thank you.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Well, it was my understanding that was -- first of all, we know that the State Parks would like to have that area returned to use as a state park, and I would like to hear from staff, if they have heard that this is not the preferred use on that site?

It seems to me we were very -- and the reason I was supporting this in the LCP, is we are very close to having that issue resolved through -- and I thank the city

for doing that. They were working out, I believe, a development agreement with the trust so we could accomplish this goal, and to find out that maybe this is not going to go forward, is pretty late in the game.

Until I hear differently, I would like to see this remain, or those ball fields -- relocating ball fields, I think, for any city is extremely, if not impossible to do in an urban setting. So, without this language those ball fields are going to stay for a good long time.

And, unless we have not had the correct information, and there is word from Sacramento that this is not going to be where those ball fields are relocated, I think we should know that.

CHAIR WAN: Mr. Timm, and then I will go to Commissioner McClain-Hill.

COASTAL PROGRAM MANAGER TIMM: It is staff's understanding that State Parks still desires to restore the state parks property to a more natural state, with hiking trails, to remove the ball fields, and to hopefully build a visitor center on the site in the future.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: I've heard an awful lot about this issue, and have independently had conversations with the Resources Secretary, and I just think, you know, my understanding has been that they are not supportive

of these policies within the LUP, and I would be interested if Secretary, or Under-Secretary Sweeney could shed some light on this issue.

COMMISSIONER SWEENEY: Again, as I mentioned earlier -- and thank you for the question -- Commissioner, I did talk with Ruth Coleman again this morning, and she has reiterated that Parks sees no need to have this language, specific language regarding Bluffs Park, in the document.

Parks' only desire is to see some general language so that parks remains under Commission jurisdiction, but again, any specific reference to Bluffs Park, Parks would prefer to see removed.

CHAIR WAN: Mr. Douglas, and then --

EXECUTIVE DIRECTOR DOUGLAS: In order to accomplish that, the only way I think the Commission can do that is to just leave this part out of the LCP.

In other words, the white hole approach, where you defer action on this, in order to keep it under the jurisdiction of the Commission, because if you keep it in there, the city would have the permitting responsibility once the LCP is done, so one way to accomplish what Ruth Coleman identified is to just segment out the bluff property, which includes the state park, and the Crummer Family Trust property.

So, if that is what you want to do, then that is

1 the way, it seems to me, you just maintain the status quo,
2 and you can do it that way.
3 CHAIR WAN: Commissioner Peters, and then
4 Commissioner Reilly.
5 COMMISSIONER PETERS: What is the timing on the
6 resolution of these transactions, 1 and 2, do you know?
7 EXECUTIVE DIRECTOR DOUGLAS: There is no timing.
8 It depends on factors beyond our control.
9 COMMISSIONER PETERS: I am comfortable from what I
10 heard in not addressing it in here, but I would like to
11 accommodate it, you know, maybe by September we could put
12 something in that approves whatever transaction has been
13 negotiated, maybe that would help it along, but I think it is
14 appropriate at this time to remove it.
15 EXECUTIVE DIRECTOR DOUGLAS: Given the length of
16 the dispute about the use of the State Park property, I don't
17 see that there is going to be a resolution by September.
18 CHAIR WAN: Commissioner Reilly.
19 COMMISSIONER REILLY: Well, I am interested in
20 Commissioner Sweeney's comments, and also the position of
21 State Parks, contrary to the letter that we have in our
22 packet, I would say, asking us --
23 COMMISSIONER MC CLAIN-HILL: They are working on
24 another letter.
25 COMMISSIONER REILLY: Well, the point I would make

is that if we don't address the issue, then the zoning on the property in question remains visitor services, and somewhere, somehow, if that is not addressed through the LCP, LUP, and Implementation Plan, you know, there is no way to accommodate this particular transaction.

And, you know, it has been one of the most emotional issues that we've encountered, not from the city, necessarily, but from the citizens in Malibu, and, you know, I would like to come out of this thing with some kind of a resolution that we can show people that the kids aren't going to lose their ball fields.

CHAIR WAN: I think that Mr. Douglas has made sort of a good suggestion, and that is you leave reference to this out of the LCP, but you white-hole it so we can deal with it, if we need to deal with it.

And, I don't see the problem with doing it that way. You leave out all of the references in the LCP to this, and that accomplishes what Ruth Coleman is apparently asking, is that the Commission retain some control.

And, by a show of hands, everybody -- yeah, we've reached consensus. That is the way we do it.

CHIEF COUNSEL FAUST: Madam Chair.

CHAIR WAN: Yes.

CHIEF COUNSEL FAUST: Just to clarify, just so I am sure that the record is clear, you are intending to white

hole both the State Park property, and the Crummer property?

CHAIR WAN: Yes.

CHIEF COUNSEL FAUST: Okay.

CHAIR WAN: You have to --

CHIEF COUNSEL FAUST: I just wanted to make the --

CHAIR WAN: -- do both.

CHIEF COUNSEL FAUST: -- record clear on that.

CHAIR WAN: You have to do both.

Okay, so let's move on now.

COMMISSIONER REILLY: No, let's do a straw vote on this.

CHAIR WAN: We did.

COMMISSIONER MC CLAIN-HILL: We just did it.

COMMISSIONER REILLY: No, we didn't.

CHAIR WAN: You want to vote again?

By a show of hands.

EXECUTIVE DIRECTOR DOUGLAS: Ten.

CHAIR WAN: Ten, okay.

EXECUTIVE DIRECTOR DOUGLAS: Ten to two, I assume.

CHAIR WAN: Right.

EXECUTIVE DIRECTOR DOUGLAS: Okay.

CHAIR WAN: Can we do a straw vote on the balance of public access chapter. I think we sort of agreed that this was the only issue, okay.

So, let's go onto the next chapter, Marine and

Land Resources, okay.

Comments.

Commissioner Woolley.

COMMISSIONER WOOLLEY: In the presentation and letter from the senator and assembly member for the area, they discussed the ESHA issues from their perspectives, taking a look at, I believe, from a widespread, wide-based, constituent level, and also concerned about making sure that ESHA meets the conditions it requires.

In the letter, they discuss the role of Fish and Game. I am wondering how that fits, and I am wondering if staff could address how they see working with Fish and Game on this?

EXECUTIVE DIRECTOR DOUGLAS: We have had discussions with representatives of the Department of Fish and Game since, well, prior to and after the workshop that was held by the Commission dealing with the various habitats in the Santa Monica Mountains, and we are continuing those discussions.

I did have a conversation with Secretary Nichols two days ago, and Susan Hansch has talked to Assistant Secretary Mike Spear, and has agreed that our staff will meet with them, and representatives of Fish and Game, next week to kind of flush out what their suggestions are.

As I understand it, really, the difference seems

1 to be that there is discussion and concern about process,
2 versus substantive criteria.
3 The conversation that I've heard so far really
4 talks more in the language that Fish and Game uses, because
5 they do conservation planning. They do these natural
6 conservation community plans, NCCPs. They don't identify.
7 They don't do ESHA identification the way that the Commission
8 does ESHA identification in the regulatory program under the
9 *Coastal Act*.
10 There is a very significant difference between the
11 way that we go about identifying ESHA based on the statutory
12 requirements in the *Coastal Act*, and the practice of the
13 Commission, and the way in which NCCPs are prepared, adopted,
14 and implemented.
15 However, if the Department -- and I will ask Mr.
16 Faust to elaborate on this, if he is around, because we have
17 discussed this, and we are in close agreement, in terms of
18 the differences between the two approaches.
19 But, if for example, there are suggestions from
20 the Department of Fish and Game that identified criteria that
21 ought to be applied, substantive criteria, to determine ESHA
22 standards in the *Coastal Act*, then we are certainly open to
23 discussing that, and seeing what they have in mind, and we
24 are going to do that next week, so we will have conversations
25 with them about what that means.

1 If you look at what the city has proposed, in
2 terms of the approach that they are suggesting, they are now
3 suggesting standards that are very different, and criteria,
4 from what the Commission has used, and applied, in applying
5 the *Coastal Act* ESHA policies and requirements.
6 But, I don't want to equate what the city is
7 asking for, in terms of criteria, with what the Department of
8 Fish and Game may be telling us. So far, what we've heard
9 from the Department is more concern about process, how you
10 get to the determination of whether or not something is
11 environmentally sensitive enough to be protected, and that
12 process being reflective of the NCCP approach.
13 So, we are going to have this discussion with them
14 next week, and I can't tell you where that is going to go.
15 COMMISSIONER WOOLLEY: Thank you for that
16 response, and it sort of fits with the staff recommendation
17 memo of June 27, and your discussion, about the ongoing work
18 that is a work in progress, I guess you might say.
19 And, I can see where we have a lot of different
20 perspectives on this, and one is regulatory, and one is in
21 planning, and I think first of all the regulatory message is
22 very clear that to be consistent with how we've applied ESHA
23 over and over, that we should try and stick as close as we
24 can to what staff is recommending at this point, taking into
25 consideration, how Fish and Game looks at is, I think, is

wise, and that this bill coming from the state is something that we want to work out in the long term, anyway, so it makes sense that you continue those discussions and bring back to us in September, then, the final upshot of all of that.

CHAIR WAN: Commissioner Reilly.

COMMISSIONER REILLY: Just a technical point, Madam Chair.

I think that at some point earlier, we were going to go back through, and see if there were any ex partes between yesterday and today, and so maybe we ought to do that.

CHAIR WAN: And, I forgot to do that, and I do have an ex parte communication.

Last night, in the bar, I was talking with Ozzie Silner, and he brought up again the issue of the ERB and his concerns that the ERB is required under the city's general plan, and that if the Commission does not have the ERB in, and does not require the ERB, that because the LCP takes precedence over the city's general plan, in essence, we will have eliminated the ERB without it going to the public in Malibu to have a say about the elimination of this from their general plan.

Commissioner Reilly.

COMMISSIONER REILLY: Well, in an unnamed location

in the hotel, I had a very similar discussion with Ozzie Silner and Susan Jordan, about the ERB, and my assessment of that was the language giving the city flexibility, in terms of how they handle their environmental review, is not in conflict with having an ERB, and the ERB is still a mandate of the city's general plan, so even if we don't include it in our LUP the city is still mandated under their general plan to have an ERB, in terms of the language they have there.

CHAIR WAN: Any others?

Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: In the parking lot, I met Rod Bergman, and he literally dropped to his knees and begged me to remember the horse people, and requested that we seriously consider grandfathering in provisions, with respect to equestrian uses in the LCP.

In addition, last evening I spoke briefly with Susan McCabe regarding Bluff Park.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUER: Yes, Madam Chair, this morning walking into breakfast just before the meeting started, I ran into David Neish, and then later Mr. Remy came, and we were just talking in generality, but I did ask him some clarification points, in regards to the civic center, and areas of how the FAR works? what is the future thing? what are the symbols? what are the things that are on

the plan? what is the viewshed designation? sort of an overlay zone that is put on it? what is the intensity of the development? and issues like that that have to do with -- is it 10 or 11 years, or 12 years, before they can start it? I had some questions of that nature.

COMMISSIONER MC CLAIN-HILL: I am sorry, I have one more. I forgot.

CHAIR WAN: Okay.

COMMISSIONER MC CLAIN-HILL: I, actually, yesterday evening, also ran into David Neish, and he replaced my briefing book on the Malibu Bay Company, and then later asked me if I had any questions about it, and I told him, "No, I read it."

CHAIR WAN: Commissioner Burke.

COMMISSIONER BURKE: I met on two occasions with the staff from Malibu, and on one occasion with the mayor from Malibu, and I also met with David Neish one time on these issues.

CHAIR WAN: Any others?

[No Response]

Okay, then let's go back to where we were. Where were we? we were on ESHA, okay, Chapter 3. Any other comments?

[No Response]

CHAIR WAN: Other changes that you want to --

COMMISSIONER REILLY: I have a comment.

CHAIR WAN: Yes, Commissioner Reilly.

COMMISSIONER REILLY: Well, I just want to express my appreciation for staff for continuing to refine the map delineation. I think it is consistent with what we heard in the workshop, that you've removed some 23 fragment areas that were previously mapped, and that as we move between now and September, if there are ways in working with the city that you can further refine those maps, I would certainly encourage you to do that.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUER: This is one area I wanted to bring up. I mentioned it briefly in our two-minute thing last night.

I think it is 3.12, if I remember, and 3.14 on this development area, the 10,000-square feet. I think that this is something that is something that I am concerned about, because it is different, and it is sort of a mechanism set up because of the September 15 deadline.

I think it is something that really is not going to work to the city's advantage, or to the Coastal Commission, or to the coastal resources. I think it is very important that flexibility be kept in this area.

I can think of many times that you don't want to even allow a 10,000-square foot house, depending on the

1 siting, depending on the natural slope, the contour, where
2 the house is on the ridgeline, the elevations, how much
3 horizontal it is, what is the massing, the grading issues,
4 and everything.
5 We, as a Commission, have never had anything that
6 -- I think that when you just say, this is going to foster
7 the wrong type of -- I think it is a mistake to have this
8 type of thing in there. I'd rather have it on a case-by-case
9 basis, and not try to come up with something that is like
10 anti-mansion, or for-mansion, because what it is going to do,
11 in effect, is create some bigger parcels, and bigger
12 projects, and when you have, maybe, two parcels together --
13 or the size of a parcel should affect what you can put on it.
14 And, to say the same rule applies to 10,000-square
15 feet, or an acre, or 20 acres is unrealistic, and is not good
16 planning. Or, if you have separate parcels, and you want to
17 consolidate those parcels, and like the example of the
18 gentleman here yesterday here gave. He was so right.
19 What will happen is, it will take away the
20 flexibility and the planning that you should do, and I want
21 to keep and be for the ESHA designation, and make sure that
22 what is ESHA is ESHA, but I don't want to come up and concoct
23 some rule to make me feel better because I am trying to stop
24 mansions, or something like that, and in effect I create bad
25 planning.

1 And, I can tell you, unequivocally, that this is
2 not the way to do it, to put in this type of size thing,
3 because in many cases I would never even agree, as one
4 person, to suggest that you could even do something of that
5 size or nature.
6 CHAIR WAN: Staff.
7 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair,
8 Commissioner Kruer is right, and this is a concern that we've
9 had. We spent a lot of time addressing it, and how we came
10 to where we are is that we are looking at a situation where
11 an entire property, an entire parcel, is environmentally
12 sensitive habitat. That is the starting point.
13 Under the *Coastal Act* you can't allow development
14 on that parcel. Under the Constitution, and the provision in
15 the *Coastal Act*, that you have to allow some economically
16 viable use, or else there would be a taking of private
17 property, you have to permit an override of the provision
18 that says you can't build a house in an ESHA.
19 So, and we were responding also to the concerns by
20 the city, because the approach would be, if you do it on a
21 case-by-case basis, you would have to do an analysis, a
22 takings analysis, in each case, and that involves an
23 extensive series of factors and elements that you would have
24 to look at, in terms of investment-backed expectations, and
25 you know what is normal in the area, or what is reasonable.

1 And, so we came up with a conclusion of 10,000-
2 square feet as a way of saying we think that that is an
3 economically viable use, to meet the takings provision. And,
4 that is how we came up with that number, in part.
5 CHAIR WAN: Yes, Mr. Faust.
6 SENIOR DEPUTY DIRECTOR DAMM: Just --
7 CHIEF COUNSEL FAUST: Madam Chair --
8 CHAIR WAN: Oh, okay, Mr. Damm --
9 CHIEF COUNSEL FAUST: Do you want to go first? go
10 ahead.
11 CHAIR WAN: -- and then Mr. Faust.
12 SENIOR DEPUTY DIRECTOR DAMM: Just to augment what
13 the Executive Director mentioned, also with regards to the
14 10,000-square foot development area, that is, as I mentioned
15 yesterday, something that the Commission has applied on
16 permits numerous times because it is included in the 1986
17 Land Use Plan that the county prepared, and was certified by
18 this Commission for a large area of the Santa Monica
19 Mountains, in the unincorporated area, primarily, but also
20 partially within the city prior to incorporation. And, it
21 limits the development area to 10,000-square feet, the same
22 as what staff is recommending.
23 CHAIR WAN: Commissioner Potter.
24 COMMISSIONER POTTER: I have a question on that,
25 and it is the --

1 CHAIR WAN: I'm sorry.
2 COMMISSIONER POTTER: I'm sorry.
3 CHAIR WAN: Mr. Faust has been trying to speak,
4 and then --
5 COMMISSIONER POTTER: My apologies, counsel.
6 CHIEF COUNSEL FAUST: Madam Chair, I just wanted
7 to add one thing, with respect to this.
8 I agree with what has been said so far. There is,
9 basically, a conflict here between the *Coastal Act* ESHA
10 requirements and the *Fifth Amendment*. And, the Commission
11 has faced this conflict on numerous occasions before, and
12 they have dealt with it, in your permitting jurisdiction, on
13 a case-by-case basis.
14 What you do, as you are familiar with in the pygmy
15 forest, in the Monterey and Asilomar Dunes, various other
16 places up and down the state, is look at the particular
17 parcel, and make a case-by-case decision about what is the
18 minimum development that must be allowed on that parcel under
19 Constitutional principles in order to avoid a taking? And,
20 that is how you've dealt with it in your permitting juris-
21 diction.
22 In your planning jurisdiction, the Commission has
23 certified a number of LCPs where it has placed detailed
24 policies into the LCP, in order to provide for the local
25 government to make that kind of a determination, as well.

1 So, those policies exist.
2 What staff was attempting to do here, as Mr.
3 Douglas and Mr. Damm indicated, was take a different
4 approach, which is also a valid approach. Instead of a
5 quasi-adjudicatory approach, it is also possible for
6 government to take a quasi-legislative approach, to define a
7 standard in the plan, and say, this is the standard. Staff
8 was attempting to do that.
9 My understanding is that this is something that
10 the city preferred, because it vastly decreases the amount of
11 work that is required in the permitting actions, themselves.
12 It defines the answer, if you please.
13 But, from a legal perspective, either one is
14 possible. The policies exist. We can take direction on one
15 or another, and we can write policies that will achieve
16 either one.
17 It is a question of what this Commission and the
18 city best think will solve this dilemma about the conflict
19 between the ESHA policies and the *Fifth Amendment*.
20 CHAIR WAN: Commissioner Kruer, you want to finish
21 up, and then I will go to Commissioner Potter.
22 COMMISSIONER KRUER: Right.
23 I just think that we have been doing this, and I
24 think we have tried to do as good a job as possible, all of
25 us to do this, and so has staff. And, I think we deal with

these takings issues, and deal with these things, and economic viability, and everything on a case-by-case basis, and look at a project, anyway.

I just think that to develop a standard like this, and put this in, creates bad planning, and to have another legal backstop that I don't think you need here, it takes the creativity out of planning. It creates the pressure of where you are going to site the project, what you are going to do, what you are going to allow the massing, horizontal, all of the different issues that when you have this flexibility.

And, it is just, as a person, who has been through this many, many times, you are always better to not have a defined amount, so that you can reserve your rights. Because I can tell you, a lot of times, you don't even want to allow 10,000-square feet.

CHAIR WAN: Commissioner Potter.

COMMISSIONER POTTER: Yeah, I just have a couple of questions.

First of all, is this development definition. I thought I heard yesterday that the 10,000-square foot had some flexibility in and around the road aspect. Chuck, I think you talked about that. Does road translate to driveway, because, I mean, in certain parcels, based on the configuration of the parcel, I could do 10,000 feet of development in the driveway and never get to the house.

1 And, the other issue I have is what is this do to
2 existing residences, that may fall within that 10,000-square
3 foot site development area, and then go ahead and want and
4 make some sort of minimal expansion to it? Are they falling
5 into some new definitions, and they are precluded from being
6 able to expand?
7 My guess is that an overwhelming majority of
8 Malibu certainly falls within this 10,000-square foot
9 definition, if it includes all site development impact,
10 instead of just structure. I mean, I agree with Commissioner
11 Kruer, in a way, in that big is not necessarily bad, but if
12 it is based on, you know, the form of architecture and the
13 quality of construction.
14 But, I think, just saying 10,000-square foot of
15 site development is very limiting.
16 SENIOR DEPUTY DIRECTOR DAMM: In response,
17 Commissioner, you are correct in that the staff recommend-
18 ation for the 10,000-square foot development area does not
19 include, as we mentioned yesterday, the extension of
20 roadways. It also does not include any fuel modification
21 requirements, and in the staff's recommendation, when we
22 mentioned extension of roadways, it is the equivalent of --
23 if you have to construct a long driveway, we consider that in
24 the Santa Monica Mountains extending the roadway. It is not
25 included in the 10,000-square foot development area.

The portion that would be is just the small portion of the driveway that is associated with the garage, itself, and that is the way the Commission has treated this in the past on coastal development permits in the Santa Monica Mountains.

[General Discussion]

CHAIR WAN: No, fire clearance is not, is not included.

SENIOR DEPUTY DIRECTOR DAMM: Is not included.

CHAIR WAN: It is not included in the 10,000.

SENIOR DEPUTY DIRECTOR DAMM: Correct.

CHAIR WAN: I am going to urge the Commission to stick with this.

We have been, since 1986, dealing with this as the mechanism, the planning mechanism in this area for how you deal with limiting development in sensitive areas. It has worked pretty well up until now. Yes, there are a number of ways that you can handle it, but this is one way, and this is one way that we have dealt with it in this area, and I am going to urge us to stick with this.

Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: Yeah, I just want to register my concurrence with Commissioner Kruer on this issue.

There are times when certainty is the preferred

1 mechanism, and bright lights, or bright lines are the most
2 conducive way to resolve conflict. But, in my mind, this is,
3 essentially, the heart of a planning process, and the cookie-
4 cutter approach I just don't believe is the best way to
5 proceed, and I absolutely believe, and just am committed to
6 the idea that both the city, and to the extent that any of
7 this is in our appellate jurisdiction, the Commission needs
8 to maintain the flexibility to apply good judgment to these
9 decisions.
10 And, so to prescribe a specific envelop, I think,
11 is inappropriate and unnecessary, and as Mr. Faust just
12 pointed out, we've approached this in other ways up and down
13 the state, and dealt with these issues with great success,
14 without prescribing or putting constraints on what we can, or
15 cannot approve.
16 CHAIR WAN: Commissioner Reilly, and then if you
17 want to make the change, make a motion, but let's move on.
18 COMMISSIONER REILLY: I am going to support
19 Chairwoman's suggestion that we retain this.
20 You know, it was part of the 1986 LCP - LUP, and
21 we have used it as a standard. It has standing with this
22 Commission. It is not, in my mind, cookie-cutter, because
23 for one thing it is setting a maximum, not a minimum, and
24 besides that it does have provisions in it to be able to vary
25 with increased acreage.

1 And, again, I think we have to remember that it
2 only applies to those parcels -- and I think we are down to
3 about 14 percent -- that would be assessed as 100 percent
4 ESHA, for parcels that are partially ESHA, or not ESHA, so
5 that doesn't have any application at all, but it has been the
6 standard we've used, and I think that it certainly makes it
7 easier for the city to implement their portion of it, when
8 they get it in their lap.
9 COMMISSIONER POTTER: That's said, I would like to
10 hear from the city.
11 And, as you stroll to the mike, I tend to concur
12 with Commissioner McClain-Hill that this is a dance we are
13 already doing, in and around ESHA definitions, and site
14 impacts, and the square footage limitation just seems to me
15 to be, you know, trying to dictate bulk and mass, not
16 actually site-specific planning.
17 So, what is the city's thoughts?
18 MS. LICHTIG: Well, the city's position is that
19 we'd like to have the 10,000-square foot limitation removed.
20 The '86 LUP included the 10,000-square foot
21 definition of the building pad. It didn't include all of
22 those other items.
23 And, then the Implementation Plan, in Section
24 4.7.1, the definition of a development area, it does not
25 specifically exclude those items that Mr. Damm indicated were

excluded, and so at a minimum we believe that the exclusions would need to be codified in the Implementation Plan, if it is not the Commission's will to take out the 10,000-square foot limit.

CHAIR WAN: Well --

COMMISSIONER POTTER: And, I guess --

EXECUTIVE DIRECTOR DOUGLAS: And, if that was --

COMMISSIONER POTTER: It was I that called you up. I mean, that is my point, is that you have the 10,000-square foot referenced earlier on, but it is not specific to the new restrictions which would deal with things outside of the general footprint of the building.

I don't have a problem with being where we were before. I think we just expanded the definition of site development.

CHAIR WAN: Mr. Damm, if we do not have those included, that is something that should be included.

EXECUTIVE DIRECTOR DOUGLAS: Absolutely, and we will take care of that, because that shouldn't be included in the 10,000-square feet, and if it is not clear, we will make it clear.

COMMISSIONER REILLY: Can we also clarify what staff said earlier, that you have also taken out of that 10,000-square foot development area the confined animal things, and allowed that to be in the fuel modification area?

SENIOR DEPUTY DIRECTOR DAMM: That is correct, Commissioner, and then --

COMMISSIONER REILLY: Subject to slope.

SENIOR DEPUTY DIRECTOR DAMM: -- since you brought that up, the provision for the fuel modification was modified so that equestrian confined animal areas are allowed in the irrigated fuel modification zone, which is -- there are three zones as part of fuel modification. It is the first two zones, the closest to the home.

CHAIR WAN: Okay, if we want to make a change, then make a motion. Is there a motion to make this as a change?

Commissioner Hart.

COMMISSIONER HART: I just have one clarifying question.

Somebody yesterday in the hearing mention the situation with two adjacent properties. A property owner would say, "If I can do 11,000-square feet of development, I won't do anything on the other adjacent property."

Does this provide any mechanism at all to get to that place?

CHAIR WAN: And, then Commissioner Dettloff reminds me that I overlooked her.

[No Response]

COMMISSIONER HART: Shall I just ask again, since

now you are able to listen, Chuck?

SENIOR DEPUTY DIRECTOR DAMM: Too many things going on.

COMMISSIONER HART: You have six things at once, I guess.

SENIOR DEPUTY DIRECTOR DAMM: I believe you are asking a question that one of the speakers --

COMMISSIONER HART: Yes, exactly.

SENIOR DEPUTY DIRECTOR DAMM: -- Norm Haynie raised yesterday, and I did read his handout, and staff, from our perspective, where you have more than one property that is contiguous, and you want to combine those, and in doing that, you cluster the development, it certainly makes sense that you get a larger development area, and the benefit to the environment is that you are not having two homes spread over the sites.

So, we would concur with that approach, and we have actually, since yesterday, been thinking of revisions for the September meeting that would allow for that.

COMMISSIONER HART: Okay, well, as long as that is a consensus --

COMMISSIONER POTTER: Or the August meeting.

COMMISSIONER HART: -- amongst the Commission, I think that is an appropriate change.

Can we agree to that? do we need to vote?

CHAIR WAN: Commissioner Dettloff.

EXECUTIVE DIRECTOR DOUGLAS: We'll make that change. It is a good suggestion, and we will incorporate that.

COMMISSIONER DETTLOFF: My question to staff is can you define how you would modify the policy, as you have heard the discussion up here? are you now, from Commission comments, going to go more towards the policy suggested by the city? and come up with new standards to meet that? what is the policy that you are now describing.

EXECUTIVE DIRECTOR DOUGLAS: We are going to continue, unless given direction to revise what is in the staff recommendation, we are going to maintain it, with the exception of the contiguous parcels. If somebody wants to combine them, and get a larger than 10,000-square foot house, we are going to accommodate that.

CHAIR WAN: Yes, you --

COMMISSIONER DESSER: Actually, you can find the definition with regards to animals in --

CHAIR WAN: Yes, and you are going to clarify that.

EXECUTIVE DIRECTOR DOUGLAS: Yes, and that is -- and we'll make sure that the roads, driveways, are not included in the 10,000-square feet.

CHAIR WAN: And, that was the obvious answer to

the two parcels, is that, basically, when you combine, you can do a certain amount of transfer of the development credit, if you want to say, from one parcel to the next, so you can get larger on the second one.

COMMISSIONER KRUER: Madam Chair, I would like to have a vote on that, because this is really an important issue that I don't think everybody understands the ramifications that you are only dealing with mass, and architecture, and not siting, and planning, and grading, and contours, and all of the other things, and we are much better off to stay where we are.

So, I would like a straw vote to either remove it, the 10,000-square feet --

CHAIR WAN: You want to make the motion?

COMMISSIONER KRUER: I'll make the motion to remove it, the 10,000. Just a straw vote to remove it.

CHAIR WAN: Okay, those who want to remove it?

COMMISSIONER KRUER: Show of hands.

[Commission Response]

EXECUTIVE DIRECTOR DOUGLAS: Five.

CHAIR WAN: Those who don't -- well, I guess it is the balance.

EXECUTIVE DIRECTOR DOUGLAS: Right.

CHAIR WAN: So, it is seven to five, okay. So, we are going to keep it in, but we are going to -- as modified,

as the modifications have been discussed, okay.

Next, are there any other ESHA --

COMMISSIONER POTTER: Are we ESHA? or are we Chapter 3?

COMMISSIONER REILLY: We are still Chapter 3.

CHAIR WAN: Chapter 3.

COMMISSIONER POTTER: Okay, well it seems to me that there are a variety of things that are falling under Chapter 3, and I think there is a fairly significant zoning issue in and around Chapter 3, unless I am wrong.

And, then there is the implementing aspect of this, which seems to have quite a few nuances that are subject to additional interpretation, so maybe we could, if we are going in that direction, we could have some discussion around that.

CHAIR WAN: Well --

COMMISSIONER KRUER: There is a lot of stuff in Chapter -- you can spend an hour --

COMMISSIONER POTTER: That would be my point.

COMMISSIONER REILLY: We'd better do it now.

CHAIR WAN: Better do it, be specific, which one do you want to?

COMMISSIONER POTTER: Well, let's go to the zoning aspects of the Chapter 3 --

COMMISSIONER DESSER: Specifically call out the

page -- (not on mike, voice fades out of hearing range.)

CHAIR WAN: Call out the section, the page, and the document.

COMMISSIONER POTTER: Well, I am looking at the Implementation Plan. I am at 3.3 on page 35 where we start looking at the miscellaneous zoning districts.

There has been extensive discussions about what should be happening in the civic center area, and it seems to me that we had some testimony yesterday about the fact that was, or was not, the second floor recommendations for -- and let me scratch my head -- I think it was banks, bakeries, and what was the other item that seemed to be recommended for second floor use?

I fall on the side of, you know, second floor commercial is not too good. Second floor business is fine, but commercial uses -- ah, the other one was dry cleaners, I think. It doesn't seem to me to be, you know, an appropriate use on a second floor.

And, also in the general area of the civic center, it seems to me we could be looking at a different mix than what is suggested. I would suggest something around the ratio of a 70 percent commercial, 30 percent visitor serving, something like that. That seems to me to be more appropriate for that site.

And, I kind of hate, deep down inside, to be

getting into being the planning commission for the City of Malibu, because these are zoning issues, but -- why is it called the chili cook-off site? how many chili cook offs do you guys have there a year? I mean, one?

CHAIR WAN: One.

COMMISSIONER POTTER: I mean, it must have some other use.

But, it seems to me that that area is pretty much the prime development piece there, and I would think that if it was a 70 - 30 there it would be more appropriate.

I think there is a need for some visitor-serving use in that area, and I think, you know, the definition, or the consideration of theaters, and those kinds of things, are must certainly visitor serving.

COMMISSIONER KRUER: Madam Chair.

CHAIR WAN: Yeah, does staff want to comment on that, and then I'll go to Commissioner Kruer.

SENIOR DEPUTY DIRECTOR DAMM: Thank you, Madam Chair.

First of all, just to make sure there is no confusion, Chapter 3, dealing with zoning designations, some of those do relate to the question of environmentally sensitive habitat. Some of them relate to other issues in the city, including the civic center.

Commissioner Potter's discussion about the civic

1 center, and the mix of commercial use and visitor-serving
2 type commercial use really isn't -- it is in Chapter 3 of the
3 Implementation Plan. Chapter 4 is the ESHA overlay portion.
4 But, unless the Commission subsequently finds that
5 there is area in the civic center that is ESHA, this
6 discussion, with regards to the type of commercial, or
7 visitor commercial, and the percentages, really won't affect
8 the question of the ESHA determination.
9 Nevertheless, we have indicated that for the civic
10 center, there should be, approximately, 50 acres of visitor-
11 commercial use. We indicated flexibility in that regards, if
12 the overall comprehensive plan is done, and it could be more,
13 it could be less. We also indicated in, just that 50 acres
14 of visitor commercial, that on the ground floor it should be
15 visitor commercial, and you could have other non-visitor
16 serving on the upper floors.
17 Certainly, if the Commission feels that there
18 should be more flexibility, or additional provisions, with
19 regards to dealing with the mix of non-visitor commercial,
20 with visitor commercial, we are prepared to hear that
21 direction.
22 But, I am thinking there might me a little
23 confusion here, because in the Land Use Plan Chapter 3 deals
24 with ESHA, but in the Implementation Plan Chapter 4 deals
25 with it.

COMMISSIONER POTTER: I am very much aware of that.

I just don't want to pass up an opportunity to surface these issues, and get the debate going, because I do think that you are right, there is basically two or three documents here before us, and we've had, you know, the drafts and the revised drafts, so I am walking around with an entire suitcase of paperwork specific to this LCP.

CHAIR WAN: Okay, I am going to go to Commissioner Kruer, but I would like to go back to the LUP, and take it in that order, which we would get to zoning later on, but let's deal with this, since you brought it up.

Commissioner Kruer.

COMMISSIONER KRUER: Yes, I was going to -- the concern I have on this, Commissioner Potter, I concur with, is that one of the big problems is that this is the center of a community. This is the center of their town.

And, I think it is something that staff, we should look at the flexibility. After all, I guess there has been no development, or agreement, on this site for 10 years or so, and it has the lowest FAR that they are talking about, from .15 to .25. Most cities allow 2.0. So, the intensity of the development is very low.

But, my message is one thing: we don't know what is going to happen in 10 years. You don't know what the

1 market driving forces are going to be. They might not be
2 luxury hotels. You can have visitor serving, and foster
3 visitor serving, and that is what we are supposed to do.
4 But, to make it all visitor serving is sort of like down
5 zoning the property. It is like making the property not as
6 feasible to create something good.
7 And, one thing in development on a site like this
8 it is like in any redevelopment area, or the heart of any
9 town, you want to be so flexible so if something comes in,
10 you can create little areas, and create what the community
11 wants, and what the people there want, et cetera.
12 Intensity of development is not the problem with
13 this deal at this point, with these FARs, and with the hold
14 for 10 years. But, I think to say you want 100 percent
15 visitor serving is, in affect, de facto, saying this parcel
16 is not going to be a very viable project to do anything but
17 hotels, restaurants, high intensity uses, high parking
18 things, a lot more average daily trips on the streets of
19 Malibu, and these are the things that cities, and planners,
20 and regional planners, and everybody try to mitigate these
21 affects, and they can only do it, if you keep the
22 flexibility. And, you are not keeping the flexibility by
23 making this whole site, or pushing it to visitor serving.
24 So, I would encourage you to think about it, and
25 look at trying to make it different, and make it a lot more

flexible and let the city and the community come up with a plan. It is their city. It is the heart of their town. And, then, come up with something like that, a mixed-use project, not all visitor serving.

CHAIR WAN: Commissioner Reilly, and then Commissioner Dettloff.

COMMISSIONER REILLY: Thank you, Madam Chair.

You know, I would certainly agree with Commissioner Kruer if I thought this was going to be the be-all, end-all, designation for this particular property. But, I've heard staff say, on numerous occasions -- and I think we need to have it on the record -- that, in some ways, the designation of commercial visitor serving is a place holder until we can get a specific plan from the city for that particular property, and that we would entertain a mixed use specific plan for that property that reflected the community priorities, and gave much more flexibility.

And, in fact, staff has even built into the regulations an incentives relative to FAR, and increased FAR, if a specific plan does come back to us, that provides for a more flexible use for that property.

In them meantime, I think one of the things that we have seen, you know, for me, personally, at least, two issues I've been most concerned about, in terms of the Malibu Local Coastal Program is one, public access, and two some

accommodations for visitor services in the area, that have been basically lacking, and there has been a reluctance, it seems, on the part of the city to move in that direction.

So, by putting commercial visitor-services designation on that, at least in the interim while a specific plan is being developed, at least we retain some leverage to have at least some commercial visitor services in the ultimate specific plan, it seems to me, and that seems to me to be important.

CHAIR WAN: Commissioner Dettloff, then Commissioner Nava.

COMMISSIONER DETTLOFF: We have requested, but cannot demand that a specific plan be done for that area, but we have asked the city, during part of this process, that that be provided to us, because I agree that I think there could be more, a little more, flexibility. I think visitor serving is extremely important, but I think there are other demands being made in that downtown area that may be best accommodated there.

Is your information that we have requested a specific plan? because that will be so helpful, then we will know exactly what is going to happen in that area, and do you look upon the policy language that you have provided as just a place holder until that is prepared, so we really know what is going to be happening in that area?

EXECUTIVE DIRECTOR DOUGLAS: We have encouraged and asked for a comprehensive plan for that area, which would be a specific plan, which would take into account the various uses and, obviously, policies that we are concerned about.

We just can't require it here, but as Commissioner Reilly indicates, you can take the position of creating a place holder that, in effect, provides an incentive for them to come up with --

COMMISSIONER DETTLOFF: But, does our --

EXECUTIVE DIRECTOR DOUGLAS: -- a specific plan.

COMMISSIONER DETTLOFF: -- policy language, then, allow for that? or what is --

EXECUTIVE DIRECTOR DOUGLAS: Yes.

COMMISSIONER DETTLOFF: -- what are they --

EXECUTIVE DIRECTOR DOUGLAS: And, I'll ask Mr. Damm --

COMMISSIONER DETTLOFF: -- what if a specific plan does not come forward? then the use of the land would be all visitor serving, without the ability to do other things?

EXECUTIVE DIRECTOR DOUGLAS: Let me ask Mr. Damm to respond to that.

SENIOR DEPUTY DIRECTOR DAMM: Yes, if I may, as the Director indicated, and as Commissioner Reilly has indicated, the Local Coastal Program encourages a comprehensive approach, whether you call it specific plan, or

1 through development agreements, but through some mechanism to
2 deal with the civic center in a comprehensive way.
3 Our legal counsel had advised us that we cannot
4 force the city to do a specific plan. We had meetings early
5 on, and they indicated at that point that they were not
6 prepared to do some sort of comprehensive plan.
7 But, I want, from a factual standpoint, the civic
8 center area has, roughly, 150 acres, or a little more. The
9 staff, whether you call it a place holder, or whatever term
10 you want to use, the staff, until there is a comprehensive
11 plan is suggesting that on 50 acres of that roughly 150 acres
12 that it be designated for visitor commercial use, and in the
13 Implementation Plan, even in that visitor commercial use, 50
14 acres, we are allowing for a very wide range of uses, many of
15 those -- it becomes fuzzy whether they are strictly visitor
16 commercial, or whether they are actually neighborhood and
17 community commercial, because they include things such as
18 book stores, and convenient stores, stationery supplies,
19 hardware. It includes a wide range. It is not strictly
20 limited to traditional restaurant or hotel use, because we
21 wanted to provide the city with that flexibility.
22 The last thing I want to indicate is that in the
23 visitor commercial area, the staff is not recommending that
24 the floor area ratio be increased above what the city's
25 requirements are right now. Whatever the commercial use is,

1 whether it is neighborhood commercial, or community
2 commercial, or visitor commercial, the floor area ratio
3 remains the same.
4 CHAIR WAN: Commissioner Nava.
5 COMMISSIONER NAVA: Yeah, I want to thank Mr. Damm
6 for that, because I think it is important to recognize that
7 we are talking about 50 acres out of a 150, and the language
8 that he pointed to provides a fair amount of flexibility,
9 with respect to visitor serving.
10 I think the point that he made is that we are not
11 just talking about restaurants and t-shirt shops. But, there
12 are the kinds of things that, in fact, the residents of that
13 area would use, as well as visitors. So, I am satisfied with
14 that.
15 I would also going to suggest that if we are going
16 to proceed in any sort of orderly manner, that we try to
17 stick to going through each particular document, as were
18 presented. We are supposed to be working through the Land
19 Use Plan, and I understand that the zoning issues, in some
20 aspects, are important, and thank you Mr. Potter, Commission-
21 er Potter, for bringing that up, but if we not careful we are
22 going to kind of meander through all three of these
23 documents, and not leave a clear trail for staff with respect
24 to our directions.
25 CHAIR WAN: On the visitor serving, it is 50 out

1 of 150. There is no magic number as to how much should be
2 visitor serving, we can be flexible on that, and we should be
3 flexible on that.
4 I think that what staff is doing right now,
5 basically, particularly if we get a specific plan allows for
6 that, and we can be flexible on how much becomes visitor
7 serving. We have to have some visitor serving. There is no
8 magic number or specific amount that is required.
9 Commissioner Hart.
10 COMMISSIONER HART: Well, I know that there is a
11 specific interest in at least including movie theaters as a
12 visitor serving use, and I think that that certainly, within
13 the range of uses as described by staff, that kind of fits
14 that dual category. Clearly a movie theater, folks go to
15 places, they visit, and one of the things they like to do is
16 go to the movies. I think that that seems like a practical,
17 reasonable accommodation for this area.
18 CHAIR WAN: Staff.
19 SENIOR DEPUTY DIRECTOR DAMM: Well, certainly this
20 question came up yesterday, and staff did respond indicating
21 that we can see where that is a type of use that crosses
22 over. It serves the community, but it can also serve
23 visitors, and yesterday we indicated that we were going to
24 look at adding that as a use that could be allowed in the
25 visitor commercial.

Also, I think it was mentioned, amphitheater, some small amphitheater use. We had discussions with the Malibu Bay Company, who raised this very issue, and we told them the same thing, as of last week, that yes, we are going to look at that, because we understand the merit to it.

COMMISSIONER REILLY: Would the movie theater have to upstairs? or downstairs?

COMMISSIONER POTTER: Yeah, that is -- I think this upstairs downstairs component needs to go.

I couldn't agree more with Commissioner Nava. I mean, I am perfectly happy to go through, you know, the LUP piece, and then go back to the implementing portion, that's fine. I just want to make sure we are not missing a whole lot here.

I would just point out that we are talking about 50 acres out of 150 acres, site specific. That 150 acres happens to be out of several thousand acres which makes up the general Malibu community, or the city thereof, and I think what we are trying to do is park a whole bunch of visitor-serving uses on one site, when we should have been looking at the community as a whole.

I think Commissioner Reilly makes a point, that we don't have a whole lot of visitor units in this area for overnight accommodations. That is a generic problem city wide, not something we ought to resolve on one specific site.

I would be happy to discuss, you know, try to make more units available within the city as a whole, but on this site I just don't see it as being a very visitor-friendly site for overnight stays. It is not exactly the best place in the town to spend the night, no matter how you develop it.

So, I think there is a shortage in the community. That is one topic. This specific site I would rather broaden the availability for appropriate development.

CHAIR WAN: Staff, comments?

COMMISSIONER REILLY: Madam Chair, I would ask for a straw vote to incorporate Commissioner Hart's suggestion that we add the movie theater and auditorium.

EXECUTIVE DIRECTOR DOUGLAS: Oh, that we'll do.

COMMISSIONER REILLY: So, you are already doing that?

CHAIR WAN: They are already doing that.

COMMISSIONER REILLY: And, also Commissioner Potter's suggestion that we eliminate the upstairs downstairs kind of discussion that we have in the current LUP.

EXECUTIVE DIRECTOR DOUGLAS: Are you talking about eliminating that altogether? or looking at percentages? or?

COMMISSIONER HART: Just eliminating it.

COMMISSIONER MC CLAIN-HILL: Eliminating it.

COMMISSIONER DESSER: Leaving it to local discretion. I mean, do we really care upstairs and down -- I

1 mean, I don't know what the deep policies are on that one,
2 but they don't seem obvious to me.
3 EXECUTIVE DIRECTOR DOUGLAS: Right.
4 Chuck.
5 CHAIR WAN: Mr. Damm.
6 SENIOR DEPUTY DIRECTOR DAMM: If I may, what the
7 staff was attempting to do was that even in the area of the
8 50 acres designated for visitor serving, was to allow on the
9 upper floor for other commercial uses, that are not included
10 in the visitor-serving use category, even though that is a
11 broad category. There are other uses, such as office use, or
12 medical type use that we were saying could still go in on the
13 upper floors.
14 That was our intent, not to say that the upper
15 floors have to be a certain type of visitor commercial, but
16 they could be something other than visitor commercial.
17 COMMISSIONER DESSER: So, how do we maximize the
18 opportunity for the city to determine the uses that belong
19 there?
20 I mean, and one way to do it would say, anything
21 but the following uses, if there are some uses that are not
22 acceptable to us, and the other way is to leave it to their
23 discretion.
24 SENIOR DEPUTY DIRECTOR DAMM: What the staff is
25 recommending is that the ground floor be limited to the

visitor-commercial use in the visitor-commercial designation, and then other uses can occur on the upper floor. We would recommend staying with that.

And, again, under a comprehensive plan we have indicated that we would be willing to be flexible and look at the whole question of visitor commercial as part of an overall plan, but in the meantime we would recommend staying with what the staff has.

COMMISSIONER HART: Madam Chair, I think I understand where staff is going with this, and I actually have had this experience in Santa Barbara and our HRC 1 and 2 zone.

As a practical matter, I think there are things that people do as visitors, that they are willing to walk upstairs to, that regular commercial businesses find very difficult.

For example, if you are going to a restaurant, and the entrance to the restaurant is on the ground floor, but you walk up a series of stairs, you take an elevator to the second floor, and have the restaurant, which is elevated with a view, that is probably a more attractive situation for that restaurant, which provides the opportunity for the ground commercial to be something that serves the neighborhood.

You could even do the same thing with a movie theater, with the steps upstairs. You could do the same thing with a hotel on the second floor, but the dry cleaners,

1 people don't walk upstairs to take their laundry upstairs.
2 They just don't walk like that, when they are going to
3 regular, commercial businesses.
4 And, I think this is the practical reality that
5 city people understand, that I think we should provide
6 flexibility in our plan to accommodate, you know,
7 specifically, when this is all going to come back to us in
8 the form of a specific plan in the future. So, why are we
9 trying to decide that in the year 2002, now?
10 CHAIR WAN: Mr. Douglas.
11 EXECUTIVE DIRECTOR DOUGLAS: We don't disagree
12 with what you are saying, and if what you are saying is give
13 them the option of deciding whether the visitor serving is up
14 on top, or below, fine. We don't have a problem with that.
15 It is the designation that some of this has to be
16 visitor serving, that's our concern, and we will make the
17 change --
18 CHAIR WAN: Okay, it sounds to me --
19 EXECUTIVE DIRECTOR DOUGLAS: -- relative to the
20 movie theater and the amphitheater.
21 CHAIR WAN: -- like the Commission is -- do we
22 need a straw vote on this?
23 COMMISSIONER KRUER: On what? which part?
24 CHAIR WAN: Oh which part, shall we -- let's get
25 specific, okay.

COMMISSIONER REILLY: Is staff saying that they are going to make a requirement that 50 percent of the floor space be visitor serving, regardless of whether it is on the first or second floor?

EXECUTIVE DIRECTOR DOUGLAS: Yes.

COMMISSIONER REILLY: Thank you.

CHAIR WAN: Okay.

COMMISSIONER MC CLAIN-HILL: And, we are broadening the definition of what that is, et cetera, et cetera.

EXECUTIVE DIRECTOR DOUGLAS: Yes, to include movie theater, amphitheate use.

CHAIR WAN: Okay, so we are pretty much in agreement, all right, we don't even need a vote on this.

COMMISSIONER POTTER: Well, I am not in agreement.

CHAIR WAN: Oh.

COMMISSIONER POTTER: I think on, you know, the specific site we are talking about, in and around the general civic center area, I don't think that a 50 percent visitor serving, necessarily, makes economic sense in that area.

I think that I would rather have more flexibility in the community services area, and a lowered percentage of visitor serving. And, I did mention, you know, like a 70 - 30 something like that, because I just don't think that the visitor-serving aspect works in that area, even if you

broaden the definition of visitor serving.

COMMISSIONER HART: Do you want to eliminate visitor serving?

COMMISSIONER POTTER: Well, I would go to, you know, the issue of overnight accommodations, which seems to be what we are missing in that community, and take a look at opportunities to find that experience elsewhere rather than being restrictive site specific.

CHAIR WAN: Commissioner Kruer, and then I am going to make a comment.

COMMISSIONER KRUER: I agree with Commission Potter. I mean, this is the heart of the community, and for us to be sitting here -- if I was a lender, or anybody out in the audience thinking 10 years down the line, I would just be aghast with some of these things that we are trying to put into place here.

You want to keep 100 percent flexibility. If you want to put some visitor serving in, put some visitor serving in. I think we've taken care of part of it by the first floor, second floor, and some of those things that were just really ludicrous.

But, I think that, still on this site, and this particular area of Malibu and to take this thing and say that when there isn't a hotel market for luxury units, when there isn't this, or that, and what knows what the market will be

ten years from now, there isn't anybody that would take this, if this was their little redevelopment area, and their little city, and impose disincentives like this, and create this kind of overlay.

And, on top of this, there is an overlay zone that says for viewing, or something, on a map in here, the same site, the chili cook off, I don't know what that means. But, I am telling you we are creating disincentives, and we should be doing things to protect the coastal resources, and at the same time let the city plan the center of their town.

And, I am going to agree with Commissioner Potter, this is not right.

CHAIR WAN: Commissioner Hart.

COMMISSIONER HART: Perhaps another way out of this box is to look at some of the other designated visitor-serving locations.

In fact, probably the most logical place is to look at the existing approved hotels, and think about how we could up zone those parcels to get more visitor-serving facilities. We've already got a property owner who is interested in building a hotel. My understanding is that there has actually been a hotel that was approved in the City of Malibu that was actually produced in its density by the city, and maybe there is a way to talk to that property owner about putting those rooms back on that hotel, to get some

live rooms in the City of Malibu.

CHAIR WAN: I think visitor serving is a lot more than just hotels, and I think that the community -- and I am not necessarily in agreement with them -- but, the community doesn't want hotels.

And, there are a number of places --

COMMISSIONER HART: Maybe we have some leverage here, Chair Wan. Maybe we have an opportunity to make some things happen.

CHAIR WAN: No, there are some places out in west Malibu that could stand a hotel, frankly.

I mean, there is a property owner in west Malibu who sent us a letter saying they'd like it rezoned for that purpose --

COMMISSIONER HART: Well, maybe we ought to look at that.

CHAIR WAN: -- the Kissel Company, and, and I don't know if we could get to that today.

This is kind of a place holder. I am not set on what the percentages are, but to eliminate visitor serving in the civic center is totally really inappropriate. That is the place where visitors do come, and that is a logical place to have visitor serving, that this Commission is, in fact, obligated under the *Coastal Act* to have.

Commissioner Nava.

COMMISSIONER NAVA: Can we vote? Let's just vote. Let's just stop flogging this thing, and let's vote.

CHAIR WAN: Yes.

COMMISSIONER PETERS: What are we voting on?

COMMISSIONER MC CLAIN-HILL: Potter, what do you want to vote on?

COMMISSIONER REILLY: Madam Chair, the straw vote, I think, is to say "Yes" or "No" to the modified staff recommendation of commercial visitor serving for the chili cook off site, and the alternative, I think, would probably be commercial general.

So, a "Yes" vote I would think on straw vote would be to support staff as they have modified their proposal, but keep the commercial visitor serving, and a "No" vote would be to go to CG.

COMMISSIONER POTTER: On clarification on that, then, is that on a fixed percentage? I hear 50 - 50 right at the moment. There seems to be some percentage here. I don't know why we want to dictate percentage.

I mean, if we want to say, "Okay, you can have community commercial, and you can have visitor serving," and not fix the percentage, I am not objecting to that. But, I think a fixed percentage tries to drive the market, and the market may not be there.

EXECUTIVE DIRECTOR DOUGLAS: Well, what we had

said is that under our proposal, as modified, is that 50 of the 150 acres would be for mixed visitor serving and non-visitor serving use, and that it would be 50 percent, could be upstairs, downstairs.

So, if you were going to give us guidance to change that, as I understand, the straw vote would be that you would tell us to delete that particular requirement.

COMMISSIONER REILLY: And, I think we are just talking about the chili cook off parcel, right?

COMMISSIONER MC CLAIN-HILL: No.

SENIOR DEPUTY DIRECTOR DAMM: No, Commissioner, the 50 acres includes more than just --

COMMISSIONER REILLY: Okay --

SENIOR DEPUTY DIRECTOR DAMM: -- the chili cook off site.

COMMISSIONER REILLY: -- all right.

EXECUTIVE DIRECTOR DOUGLAS: So, just to clarify, though, the staw vote, as we understand it, would be direction to us to change our recommendation, and so it would be those who want to agree with Commissioner Potter would vote "Yes" on it, and those who would leave it with the staff would vote "No."

CHAIR WAN: And, you are talking about changing this from visitor serving to general commercial, and in essence, not requiring visitor serving.

EXECUTIVE DIRECTOR DOUGLAS: That is what I --

COMMISSIONER MC CLAIN-HILL: Well, no, actually what Commissioner Potter indicated was that he would just prefer to see the percentage. He has trouble with the 50 percent.

CHAIR WAN: Well, can we come up with some percentage? Because if you leave it open, you could wind up with a 1 percent.

COMMISSIONER POTTER: Since my name is being thrown here --

COMMISSIONER MC CLAIN-HILL: A 70 - 30?

COMMISSIONER POTTER: -- let me speak up and try to interpret what I was saying, which I am not exactly sure where I was.

I thought I heard 50 of 150, that is a third of the site, so we are frightfully close to the ratio that I was discussing, which was 70 - 30. The difference is I am saying 70 is community commercial, whatever, and the other is visitor serving. Is that correct?

CHAIR WAN: No.

COMMISSIONER POTTER: Here we go.

COMMISSIONER REILLY: Some is institution.

COMMISSIONER POTTER: Yes, but I thought I heard 50 acres of 150, but it was going to be the 50 acres was --

SENIOR DEPUTY DIRECTOR DAMM: The staff was, based

on the Commission discussion, the 50 acres for visitor commercial out of the total 150 acres, roughly, in the civic center, would be visitor commercial. Of that 50 acres, 50 percent would be developed with visitor serving uses, regardless of first floor, second floor, it is 50 percent.

COMMISSIONER POTTER: And, I --

SENIOR DEPUTY DIRECTOR DAMM: And, that also includes the --

COMMISSIONER POTTER: -- am still staying on --

SENIOR DEPUTY DIRECTOR DAMM: -- movie theater and --

COMMISSIONER POTTER: -- the 30 percent visitor, 70 percent community commercial.

CHAIR WAN: Within the 50 --

COMMISSIONER POTTER: On the site.

COMMISSIONER REILLY: Within the 150 acres.

CHAIR WAN: Within the -- you see, actually, because it is 50 acres out of 150 acres, on the total --

COMMISSIONER REILLY: Institutional, the whole city --

CHAIR WAN: In the total area, you are down to below 30 percent. You are actually down below 30 percent with what staff is doing.

COMMISSIONER POTTER: Okay.

CHIEF COUNSEL FAUST: Can I take a crack at this,

just to see whether --

CHAIR WAN: Yes.

CHIEF COUNSEL FAUST: -- I can articulate what I think Commissioner Potter is suggesting.

There are 50 acres out of 150 that receive the general designation, and within that 50 acres, staff is proposing that 50 percent be visitor-serving commercial, which would be 25 acres.

Commissioner Potter, I think, is proposing -- I'm getting a "No" here, so I guess I don't have it.

What I thought Commissioner Potter was proposing was that instead of 50 percent it would be 30 percent, so that, effectively, instead of 25 acres, it would be 15 acres. That is what I thought he was proposing -- it is of the use.

[General Discussion]

EXECUTIVE DIRECTOR DOUGLAS: Let me try this.

Mr Faust is right, except it is not acres, it is of the area, and the use.

And, if what Commissioner Potter wants, he would say, rather than 50 percent of the 50 acres visitor serving, it would be 30 percent of that 50 acres, of the uses.

COMMISSIONER POTTER: On the cook off site.

CHAIR WAN: It is not done by the --

EXECUTIVE DIRECTOR DOUGLAS: It is not limited to --

CHAIR WAN: It is more than just --

COMMISSIONER HART: Maybe we should ask the city, if they have any thoughts on this matter.

COMMISSIONER POTTER: It is the general civic area, is what I am talking about.

CHAIR WAN: Yes.

COMMISSIONER POTTER: And, if we could have -- let's get the city up to get clarification on this site specific issue.

MS. LICHTIG: Yes, because we think we might be as confused as all of you are.

COMMISSIONER POTTER: That wouldn't be surprising.

MS. LICHTIG: We believe that in Policy 5.18 the staff proposed taking out the 50-acre designation, correct?

SENIOR DEPUTY DIRECTOR DAMM: As part of an overall comprehensive plan, because we felt that that provided flexibility to the city, and the Commission, we did not need to indicate that there needs to be 50 acres of visitor commercial, but that is in the context of an overall plan.

MS. LICHTIG: And, so there are numerous property owners in the civic center area, so we thought that you were talking about a specific parcel, and that is where we got lost, because then you went from 50 percent -- we thought you were talking about a parcel, and then we went to 50 percent

of the acreage.

What we are proposing, or what we would want to make sure you take into account, is that there are numerous property owners. There is a development agreement on the table with the Malibu Bay Company that exists today, and that that necessarily needs to be taken into account in your decision-making process.

And, then in terms of other issues that would --

MR. JENNINGS: As I said, in listening to the conversation, it seems to me that, one, there is confusion between the chili cook off site, which is a portion of the civic center area, and the entire civic center area, which is much larger, and which is largely developed in many areas with visitor-serving uses.

I haven't done the calculations, but if I did I think I would find that there are -- if you include the Adamson hotel, but is up on the bluff towards Pepperdine there -- that there are 50 acres of visitor-serving uses already. There is that commercial stuff, John's garden, all of those little areas right there, plus or minus, it might be right around in there.

So, keep in mind that you don't want to confuse just the chili cook off site, with the entire civic center area.

CHAIR WAN: Yes, we understand that.

MR. JENNINGS: Secondly, we have done abundant work on the specific planning process, and working towards consensus is a difficulty, you know. It came on an election issue two elections ago, but we are working on the specific plan process.

The third point I want to make is if you are remove -- our planning for the civic center now includes some second story residential, possible bed and breakfast use, trying to develop lower-cost residential use above, in a mixed-use situation, and in fact, that is part of our housing element, so if you eliminate that, you have now put us in violation of our housing element problems.

And, so we would like to echo the request that you keep it as flexible as possible, so that you don't create other problems by trying to solve this one.

CHAIR WAN: I think we have made it clear, that by consensus we've eliminated the first floor upstairs, downstairs, issue, okay.

MR. JENNINGS: If I have been confused about that, I hope you will forgive me.

CHAIR WAN: Okay.

So, I think that that has kind of been -- am I right?

COMMISSIONER NAVA: Madam Chair.

CHAIR WAN: Yes.

1 COMMISSIONER NAVA: It sounds to me, I mean, we
2 may be like beating each other up over nothing here, because
3 in fact they may have satisfied the percentage that we are
4 talking about already by existing use.
5 And, so when they do the inventory of what they
6 have done, it may indeed meet what it is that this section is
7 attempting to do.
8 And, it seems to me that what the city is talking
9 about is there is a variety of uses that they are
10 contemplating for the civic center area, then we need, I
11 think, to make a decision today suppporting staff, so that
12 once the city finalizes its proposals, on its anticipated use
13 within the civic center area, that then is subject to an
14 amendment to this Commission.
15 I don't think that we can, today, say, well, okay,
16 we want visitor-serving commercial, except that we think that
17 they may be doing some housing, so we want to leave that over
18 to the side, and there may be some other stuff that we think
19 they are bringing, so we'd better leave room for that today.
20 So, I think the best decision that gets us out of
21 this position, is to adopt staff's proposal, with the
22 discussion that we've had here, understanding that the city
23 is going to come back to us with an amendment. And, then we
24 take a look at that amendment, after they have resolved their
25 issues at the city, which allows them to do their planning

and yet amend this thing.

CHAIR WAN: Commissioner McClain-Hill, did I see your hand up?

COMMISSIONER MC CLAIN-HILL: Yeah, I just had a quick question to staff, because I saw someone shake their head.

With respect to the existing uses on the site, I mean, I assume that these criteria, or percentages, could be satisfied by existing uses. We are not intending, by virture of adoption of this document, to have it apply only to new use, are we?

SENIOR DEPUTY DIRECTOR DAMM: The Local Coastal Program addresses the entire civic center. That includes existing development in the civic center.

So, where there is existing uses that qualify as being visitor serving, they meet, and that would --

COMMISSIONER MC CLAIN-HILL: Count against --

SENIOR DEPUTY DIRECTOR DAMM: -- count as part of the 50 acres.

COMMISSIONER MC CLAIN-HILL: Then, that is fine. While I am not entirely, supportive of Commissioner Nava's point of view, I do think that we need to just -- but, I was going to vote with you.

COMMISSIONER NAVA: I'm amazed.

COMMISSIONER MC CLAIN-HILL: I was going to vote

with you. Keep insulting me, and I may not.

But, in any event --

COMMISSIONER NAVA: No, this is payback for the rest of stuff I've been listening to for the last few months.

COMMISSIONER POTTER: Let me tell you, the insulting will not stop.

COMMISSIONER MC CLAIN-HILL: In any event, I don't know that, as we go through this document, that the best approach is to constrain flexibility, and say the city should come back with an LCP amendment. It is not like, you know, that is an inexpensive or, you know, uncomplicated process.

So, I would just encourage us to try to be as accommodating as we can, so that we can come up with a document that they can live with for a minute, and that isn't subject to amendment immediately upon adoption.

CHAIR WAN: You know, I think that the reason we are getting into this situation is we are splitting hairs here. We are arguing over minor points. We are trying to, as Commissioner Nava said, we are trying to somehow do this planning.

I think it should be pretty clear to everybody that whatever is finally planned, the Commission is going to be fairly flexibility about it. Nobody is set in concrete about the percentages. They'll be a specific plan. We'll look at it then, and I think that is the way to leave it.

1 COMMISSIONER POTTER: And, I am not going to
2 argue, but let me just say that a bunch of the testimony
3 yesterday was about minutia.
4 I mean, we had testimony about garbage disposal,
5 using local acorns, and you know tree replacement ratios. I
6 think that one of the things that has been a bit inflammatory
7 is that absolute minute detail that the staff has gone into,
8 and that is what has incensed the community to some extent,
9 so I don't want to just act that we didn't notice these
10 things that are very, very community inflammatory.
11 COMMISSIONER KRUER: Madam Chair.
12 CHAIR WAN: Can you just move on -- yes.
13 COMMISSIONER KRUER: The only thing is, you summed
14 up and said it is no problem, you know, we'll just put it in
15 the LCP.
16 For years I've been here, and every time somebody
17 tries to amend the LCP we get these arguments about
18 precedent-setting nature, this and that, and everything else.
19 So, what really concerns me is this socalled
20 parking, and setting it here, and saying we are going to put
21 the whole thing in, and they can just come in for an
22 amendment in the LCP.
23 If I was an elected official, and this was my
24 city, that is crazy. This is something that they should have
25 the right to come in, and come up with plans, and do, et

1 cetera, and we are sitting up here trying to tell them that
2 you come back with -- just amend the LCP, there is nothing to
3 amending an LCP. We all know, that is sitting up here, that
4 that is disingenuous to say it is easy to amend an LCP.
5 So, I would like a vote on this, and I just don't
6 think it is this parking, or this thing, a place holder. I
7 mean, that is ridiculous.
8 CHAIR WAN: Commissioner Hart, and then
9 Commissioner Reilly.
10 COMMISSIONER HART: Boy, Commissioner Kruer is so
11 right on this.
12 I tell you, not only is it a struggle here, but it
13 is a struggle at the local level. People get married to the
14 words in these documents. These become lawsuits every single
15 time, so the idea that what we are -- if the goal here from
16 the Commission and the staff, and I am really getting this
17 very clearly, that this is another place holder thing, we
18 ought to be looking at a white hole here, too. And, when the
19 project comes back, specifically, we will be able to address
20 it then.
21 CHAIR WAN: Commissioner Reilly.
22 COMMISSIONER REILLY: Well, two things, Madam
23 Chair.
24 One, is that staff has put into this incentives,
25 in terms of the potential for increasing FAR if the city can

1 come back with a comprehensive plan for this area. So, it is
2 very clear that, in my mind at least, that that is the
3 intention here.
4 Staff has said a number of times that had the
5 city, at its local discretion, adopted some specific plan, or
6 entered into a development agreement, that is what we would
7 be looking at here, instead of what we are looking at, and
8 the only reason we are not looking at that is because the
9 city has not completed that process.
10 CHAIR WAN: I am not going to take any more
11 testimony.
12 If somebody wants to make a motion, make a motion,
13 and be very specific about it.
14 [No Response]
15 Somebody want to make a motion?
16 COMMISSIONER HART: I'll move that we white hole
17 this whole area.
18 COMMISSIONER REILLY: Let's do a straw vote on it.
19 COMMISSIONER POTTER: Yes, I'll second.
20 CHAIR WAN: Okay.
21 COMMISSIONER REILLY: Just to clarify, would that
22 also, then, give credence and some ability to go back and do
23 the environmental kind of work to find out whether this is
24 ESHA or not?
25 COMMISSIONER HART: Sure.

1 CHAIR WAN: Yeah, it stays under our jurisdiction
2 is what this does.
3 Am I correct, staff, this removes this area from
4 the LCP, and the entire thing stays under our jurisdiction.
5 I would, personally, not going to support that,
6 and the reason is I do think the city needs to get started
7 with their process.
8 COMMISSIONER DESSER: Not only that, I think it is
9 inconsistent with the legislation.
10 I mean, the idea is not to come back with, to
11 bring a lot of things back to the Commission. The idea is to
12 locate the stuff in the City of Malibu, and to the extent
13 possible, have the decisions be made there.
14 What we are needing to do is figure out how to
15 structure this thing in a way that is consistent with the
16 *Coastal Act*, and I think we are punting if we leave a lot of
17 white holes in this thing, and we are not going to have
18 really complied with the spirit of the legislation, which
19 again, occurs, because for whatever reason, historically,
20 there hasn't been a plan that was done at the local level.
21 COMMISSIONER HART: Well, then as an alternative,
22 let's just -- I think we've had an interesting conversation
23 here, and I don't know that we necessarily have to do
24 anything today, other than encourage the city, and all of the
25 property owners and our staff to keep talking about this for

a little bit longer. We don't have to decide right now --

COMMISSIONER KRUER: That works.

COMMISSIONER HART: -- but we clearly have articulated a lot of concerns that are legitimate on both sides of this discussion, and I think we've done enough on this for now.

EXECUTIVE DIRECTOR DOUGLAS: And, we are prepared to do that.

CHAIR WAN: Okay.

COMMISSIONER POTTER: And, I agree, as the person who prolonged this debate, I agree. I think that is a good suggestion.

I think it is a very sensitive piece of the community, but I think that it needs a little bit more flesh on the bone here --

CHAIR WAN: Okay.

COMMISSIONER POTTER: -- so I think that is a good suggestion.

CHAIR WAN: All right, let's move on, then.

COMMISSIONER POTTER: We have consensus.

CHAIR WAN: We have consensus, and we have a request for a five-minute break.

Then, when we come back, we are going back to Chapter 3.

COMMISSIONER POTTER: Yes.

COMMISSIONER MC CLAIN-HILL: Good.

COMMISSIONER KRUER: What is the consensus on?

COMMISSIONER MC CLAIN-HILL: That they are going to keep talking.

COMMISSIONER KRUER: They are going to keep talking.

CHAIR WAN: Just going to keep --

COMMISSIONER NAVA: I'm sorry --

CHAIR WAN: Going to leave it as is, and the staff will just keep talking to the city about how to deal with it.

Okay, when we come back, we are still on Chapter 3 of the LUP.

[Recess]

CHAIR WAN: Everybody is here, even though we could, legally, let's see if we can't get everybody up at the dais.

Yeah, I know, but given the way things are, I think we need to have everyone here. I don't want the vote to be by accident of who is not in, if discussion has started. If somebody could go look for the other Commissioners.

Okay, Commissioner Reilly.

COMMISSIONER REILLY: Question to staff, yesterday we heard some testimony about the provisions about native trees, and arborist requirements, what have you and stuff,

and staff had indicated that was an issue that they were going to continue to work with the city on.

Can you extrapolate a little bit on what your thinking is there?

SENIOR DEPUTY DIRECTOR DAMM: Yes, Commissioner, and more specifically, the draft Local Coastal Program includes an in lieu fee mitigation program for native trees, and I did, as you mentioned, indicate yesterday, that concern has been raised with that, and that we did want to look into that further, and discuss that with our legal staff, because of the concerns that have been raised.

COMMISSIONER REILLY: So, that is going to be something that you are working on between now and September?

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER REILLY: Okay, that is what I wanted to know.

CHAIR WAN: Okay, anything else. We are on Chapter 3.

Commissioner Hart.

COMMISSIONER HART: I had a specific question, and I think maybe you addressed this yesterday in your changes, but I understand that the Point Dume property proposed for ball fields, Policies 3.25 and 3.26, regarding the buffers, you've changed that now? and does that work for this development agreement, and the ball fields?

1 SENIOR DEPUTY DIRECTOR DAMM: Staff, Commissioner,
2 did not change that.
3 We did meet with the Malibu Bay Company, and in
4 meeting with them they showed us a site plan for ball fields
5 that did stay out of the drainage areas, but that did not
6 have what staff has recommended as a 25-foot setback in the
7 Point Dume area, from the top of the slope.
8 In our meeting with the Malibu Bay Company,
9 considering it is not a structural use, not a residential
10 use, we did tell them that we felt that we needed to look at
11 that further, because ball fields won't trigger fuel
12 modification requirements. They don't burn. So, we felt that
13 was an issue that we should look at further.
14 COMMISSIONER HART: So, the answer to my question
15 is, it is going to work the way we have it now, or not?
16 SENIOR DEPUTY DIRECTOR DAMM: We want to talk to
17 our biologist, based on our meetings with the Malibu Bay
18 Company, but we indicated to them that we are open at looking
19 at whether the 25-foot setback ought to be reduced.
20 COMMISSIONER HART: Okay, if that is the direction
21 you are going --
22 SENIOR DEPUTY DIRECTOR DAMM: It is.
23 COMMISSIONER HART: -- that is the direction I am
24 going, and I don't know about the rest of the Commission, but
25 is there any concerns up here.

CHAIR WAN: No, we will leave it to our biologist and staff to look at this and see if this is appropriate.

COMMISSIONER REILLY: And, then rather than eliminate the 25-foot top of bluff setback, are you talking about making accommodation for things such as recreation fields, that would not require some fuel modification?

SENIOR DEPUTY DIRECTOR DAMM: That is correct, Commission.

I think, if there was confusion there, I need to correct that. We are not recommending that the 25-foot setback be eliminated for structures, such as residential structures, but in looking at their proposal for a ball field, our concern about fuel modification is different. It is not the same as for structures.

So, we would not be suggesting to get rid of the 25-foot setback, but we may be recommending, maybe, an exception to deal with the ball fields.

CHAIR WAN: Okay.

SENIOR DEPUTY DIRECTOR DAMM: You look puzzled. I am not sure I answered your question.

COMMISSIONER REILLY: Well, I tend to agree with Commissioner Hart, that if it is a maybe, you know, we may need to move for some Commission direction on it. If it a probably, then maybe we don't.

COMMISSIONER HART: Well said, Commissioner

1 Reilly.

2 SENIOR DEPUTY DIRECTOR DAMM: Well, the reason

3 that I said maybe is because the staff does feel that we

4 still need to work with our biologist to make sure that if

5 the ball fields have no setback there, that in their opinion,

6 the habitat in the blue line stream is not adversely

7 affected.

8 CHAIR WAN: Okay?

9 All right, any other issues in this chapter?

10 COMMISSIONER POTTER: I don't know if it is

11 another issue, or one that we didn't bring closure on, or I

12 just missed it, but where are we on the ERB piece? did we

13 bring some Commission consensus on that?

14 CHAIR WAN: No, we haven't discussed it. That was

15 the one I wanted to.

16 COMMISSIONER POTTER: Okay, well, my understanding

17 from what I heard yesterday, was that we can't mandate it,

18 but that we wanted to get some further definition around the

19 term of professional consultant, professionalism in that

20 field.

21 And, I would like to hear from the city about what

22 their take on, you know, why the ERB process doesn't work?

23 and I would like to hear how you configure the ERB, exactly,

24 what is the makeup of that?

25 I don't know who, from the city.

1 MR. JENNINGS: The process is we have had an ERB
2 for all of our existence, and one of the difficulties --
3 CHAIR WAN: Even though, we know your name, you
4 have to state it for the record.
5 MR. JENNINGS: I'm Katie Lichtig. I am the city
6 manager -- I am Jeff Jennings.
7 We have had an ERB for all of our history. It is
8 not the existence of the ERB that we object to. It is
9 mandating the makeup and the function and so forth.
10 We have had some difficulties, as I think many
11 organizations have had, because these are volunteer
12 professionals who come from a wide area, getting a quorum is
13 sometimes difficult, meetings -- projects get dragged on for
14 unconscionable lengths of time because we can't get a quorum
15 together to discuss it.
16 There are other problems that have to do with
17 having experts who have expertise in a particular area,
18 doesn't necessarily mean that that expertise translates into
19 another area. If you have a biologist, they may not be
20 particularly knowledgeable about coastal morphology, and so
21 there are some problems with that.
22 We are very anxious to get the best quality,
23 technical help we can get, on each of these areas where it is
24 indicated as being appropriate.
25 The problem is that we want to have the

1 flexibility to arrange that in a way that makes the most
2 sense, that allows for us to meet our requirements under the
3 Permit Streamlining Act, and so forth.
4 COMMISSIONER POTTER: And, I am not objecting to
5 that. And, I think what I thought I heard was that you and
6 staff were working towards some further resolution, or
7 definition of what this ERB would look like.
8 I, personally, don't want have it end up in the
9 hands of the planning director, or something like that --
10 MR. JENNINGS: No.
11 COMMISSIONER POTTER: -- but, if you can come to
12 consensus on how it should be configured so that it doesn't
13 have quorum problems.
14 And, my underlying concern is that it does not
15 become a political body --
16 MR. JENNINGS: That is also very important.
17 COMMISSIONER POTTER: -- some hybrid of a planning
18 commission, that has an underlying agenda, instead of just
19 hard core, you know, biological and technical capabilities
20 and expertise. That is what I would like to see.
21 MR. JENNINGS: What we are looking for are the
22 technical capabilities and expertise, and would be happy to
23 work with staff to define the disciplines that might be
24 appropriate.
25 I mean, other technical experts could include

lawyers, so we are happy to limit it to those who have relevance. .

CHAIR WAN: They are not technical experts on biology, I am afraid.

Commissioner Reilly.

COMMISSIONER REILLY: Just a question of the mayor.

Is it your understanding that with the flexibility that we have in the current version of the staff language that the city would still be required to have an ERB under your own general plan?

MR. JENNINGS: We have an ERB requirement under our general plan, yes.

COMMISSIONER REILLY: And, that would not change?

MR. JENNINGS: No.

COMMISSIONER REILLY: Thank you.

COMMISSIONER KRUER: Madam Chair.

CHAIR WAN: Was that your question, Commissioner Woolley?

COMMISSIONER WOOLLEY: Yes.

CHAIR WAN: Commissioner Kruer.

COMMISSIONER KRUER: Just a quick suggestion to the mayor on the environment review committee, or board, in Rancho Santa Fe, something that has really worked -- they changed it, and that is make sure that you have an architect,

1 besides biological, and that way you can address all of the
2 siting issues, contouring issues, massing issues, everything
3 that will make the biggest difference, if you are going to
4 develop something there, is to have an architect part of
5 that, and make it mandatory.
6 That has made the biggest difference in my
7 community of Rancho Santa Fe.
8 MR. JENNINGS: That is a good suggestion,
9 Commissioner. We do have an architects and engineers
10 committee, but we don't use them in exactly the same way, but
11 I think your suggestion is a good one.
12 CHAIR WAN: Commissioner McClain-Hill, you had
13 your hand up?
14 [No Response]
15 Cynthia, you had your hand up?
16 COMMISSIONER MC CLAIN-HILL: Yes, I am just
17 interested in -- and I am sorry I missed the opening part of
18 this dicussion -- just a little clarification, as it relates
19 to what the city would be required to do to meet the staff's
20 -- to comply with the LUP as drafted by staff, with respect
21 to the environmental review board.
22 Is there the flexibility for the city to comply
23 without there being a specific environmental review board? or
24 will that become mandated under the LCP, if we stick with
25 these policies?

SENIOR DEPUTY DIRECTOR DAMM: In response, Commissioner, in the draft Land Use Plan --

COMMISSIONER MC CLAIN-HILL: I mean, I see other "qualified professionals", so is that staff's effort to be it?

SENIOR DEPUTY DIRECTOR DAMM: Yes, the environmental review board, or other qualified professionals --

COMMISSIONER MC CLAIN-HILL: Okay.

SENIOR DEPUTY DIRECTOR DAMM: -- that gives flexibility, even though the general plan does, as was mentioned, calls for an environmental review.

COMMISSIONER MC CLAIN-HILL: Okay, that is -- my interest in that regard, in maintaining it that way, is simply that I just don't think that we ought to dictate to the city how they achieve a particular goal here, and I think that we need to be clear that they achieve it, the municipal vehicle that they used should not be something that we are mandating.

SENIOR DEPUTY DIRECTOR DAMM: The only other thing that I would add, though, is that I thought I did hear a previous Commissioner indicate a desire that the city and Commission staff work together to try and better define what is meant by qualified professional.

CHAIR WAN: And, I was going to bring that up

right now.

COMMISSIONER MC CLAIN-HILL: Yes, I understand that, and I am fine with, again, with our being more specific with respect to what we seek to achieve, and more specific with respect to the level of expertise that should be brought to bear on the decision.

But, then, how the city does that, whether it is through an environmental review board, whether it is through contracting with professionals, or with folks that have that expertise, whether they have -- how they do that, I think needs to be left to the city, because, you know, that becomes a matter of, you know, how the municipal government conducts itself, and lives up with, and complies.

So, in my mind, in my view, it is appropriate for us to set the standard in the LCP, and it is even appropriate for us to be specific as to, you know, to the extent that we need to be, as to the technical expertise that needs to be brought to bear.

But, how the city then achieves that, in my mind, has to be left to, you know, the city's discretion, and I mean, the government gets to choose how they do it.

CHAIR WAN: Okay.

I'd like to get to the question of what is an "other qualified professional" because I agree, the city has a choice -- the city, actually, does not have a choice,

because their general plan requires it, but they could change there general plan, and then they have this in place as an alternative, that is correct.

I do think, in looking at what consitutes other qualified professionals, and as you go through thinking about how you define that. One of the concerns that I have is to make sure that those othe qualified professionals are not the experts paid for and hired by the applicant. They have to be independent of the applicant. They have to be somebody that the city, like an EIR consultant that the city hires and that the city or they need to be independent.

I would hate to see this become a review by the applicants' hired agents. That is the only thing that I am talking about. We need to have this as indepedent review, as possible.

So, keep that in mind, when you are looking at what constitutes a qualified professional.

Next issue.

Commissioner Potter, you have got a list here.

COMMISSIONER POTTER: I just want to make sure, are we clear on where we are going with the new ESHA definition, versus the '86 maps? I mean have we got that flushed out entirely?

I am under the impression that what was an alternative proposal was this, you know, sort of an

1 independent site analysis. The '86 was acknowledged for
2 many, many years as being ESHA. There is a new definition
3 out there of might be ESHA. I have a problem in the Point
4 Dume area, where we have what are very obviously infill lots,
5 and that the connectivity argument would be hard to make in
6 that area, but certainly would be a debate that might go on
7 for a long period of time.
8 I would like to have some Commission discussion
9 around the infill aspect of it, and the possibilities of
10 recognizing that certain areas just are very, very clearly
11 infill pieces of property, that really aren't, or don't
12 necessitate a long ESHA debate.
13 CHAIR WAN: Am I correct, that in the Point Dume
14 area, the ESHAs that you are talking about, are primarily the
15 riparian canyon bottoms, canyon slopes, not the developed
16 areas?
17 MR. JENNINGS: That is correct.
18 COMMISSIONER POTTER: Then, it becomes a setback
19 and top-of issue --
20 CHAIR WAN: Right, right.
21 COMMISSIONER POTTER: -- and that is another area
22 for a discussion, I think.
23 CHAIR WAN: Commissioner Kruer.
24 COMMISSIONER KRUER: Just briefly, I would think,
25 between now and the next month or so, I would encourage a

suggestion is that staff work with the California Fish and Game and make sure to take a look at the criteria, and how we developed it, and make sure, I think, that that is one of the areas -- when you just take maps, and put maps on, and we are doing this so quickly because of the deadline on September 15, I think it would be good for the community, good for us, good for every body if we look at this and make sure we did it right, that these maps are accurate, that the field analysis is right, that in fact they are ESHAs and that they really are.

And, I would ask Secretary Sweeney, maybe, is it possible for Fish and Game to work with the staff and get something done?

CHAIR WAN: Mr. Douglas answered it originally, so let him answer it, and then we can go to --

COMMISSIONER KRUER: Well, can't I ask him a question --

CHAIR WAN: Okay, go ahead.

COMMISSIONER KRUER: -- if I want to ask him a question.

EXECUTIVE DIRECTOR DOUGLAS: Okay, two things.

One, Commissioner Kruer and Commissioner Potter, relative to Point Dume, Dr. Dixon and I have had a discussion on this, and staff, and we are going to go back and look at some of the drainages there, that are included in the maps

now, but that may not actually be ESHA when you do a site-specific kind of a review. So, we are going to be doing that. And, we will be meeting with the Department of Fish and Game, and Resources Agency to talk about both issues relative to criteria, and process.

And, as I had indicated, my understanding is that the way that Fish and Game has been approaching this is through a process of the NCCP program. If they suggest to us certain criteria to determine whether something is ESHA under the *Coastal Act*, we are certainly going to be open to discussing that, and maybe factoring that into our deliberations.

CHAIR WAN: Commissioner Sweeney.

COMMISSIONER SWEENEY: Thank you, Madam Chair.

We, at Resources, of course are happy to work with, and facilitate discussions between Fish and Game and Commission staff. And, of course, it is helpful to hear from the Commission that they would like that to occur.

As Mr. Douglas stated, Ms. Hansch has been working with the Department of Fish and Game, and again we are happy to continue to facilitate those discussions, to make sure that the criteria are as strong as possible. And, there is as little daylight as possible between Fish and Game's views, and the staff's views.

Thank you.

CHAIR WAN: Commissioner McClain-Hill.

.COMMISSIONER MC CLAIN-HILL: I have a couple of concerns, but at the outset I just want to say that, you know, I think that staff and the city have worked extremely hard, and both in good faith trying to wrestle with this issue, and would encourage them to keep working.

I have some concerns about -- some pretty significant concerns about the mapping process that we are currently following, and the implications for property owners, when it, you know, they have got to essentially prove that they are not.

And, I think that there is some merit to the city's approach, although I am not prepared to buy into it in total, but I do believe that between what staff is doing, and what the city is suggesting, that if we continue to look at it, we may be able to get to something that is better reflective of what is on the ground that will be less difficult for the community to work with, once the LCP is adopted.

I also have a specific question, though, about the California Native Plant Society, and as -- I am on page 17 for anybody that is interested. Oh, I am sorry. You know what? I am actually looking at this in the matrix thing, so I am looking at Policy 3.4, and I don't know what page it is in our book. I guess I could find it over here too.

1 COMMISSIONER DESSER: Page 58.
2 COMMISSIONER MC CLAIN-HILL: Page 58, okay,
3 thanks.
4 Where we talk about, you know, the staff's
5 language with respect to areas --
6 CHAIR WAN: I'm sorry, I went to 3.40 instead of
7 3.4.
8 COMMISSIONER MC CLAIN-HILL: Well, we say similar
9 areas supporting plant of animal species designated as rare,
10 threatened or endangered, under state or federal law -- which
11 I've got no issues with -- and areas supporting significant
12 populations designated 1(b) rare or endangered by the
13 California Native Plant Society, shall be considered ESHA,
14 unless there are compelling site-specific evidence to the
15 contrary.
16 I need somebody to explain to me why the
17 California Native Plant Society would be looked upon as
18 authoritative on these issues -- well, let me just -- you can
19 tell me why, but and I am happy to hear why, but I wanted to
20 say at the outset that I have real significant concerns about
21 what I believe is a private, nonprofit entity, being held up
22 as a standard to establish an ESHA criteria, as opposed to
23 relying on state and federal law.
24 In the same way that I would have great difficulty
25 with and LUP or an LCP indicating that, you know, you have

1 got to comply with standards set by Heal the Bay, a group
2 that I have great respect for, but again, they don't set
3 policy, from my perspective for the State of California, and
4 I would need to hear some real compelling reasons and just-
5 ifications for utilizing this particular entity as a
6 threshold for establishing ESHA.
7 STAFF ENVIRONMENTAL SPECIALIST DIXON: The
8 standards for ESHA under the *Coastal Act* have to do with the
9 rarity. Listing is evidence of rarity, not listing is not
10 evidence of not rarity.
11 The California Native Plant Society has
12 established a rare plant committee that is made up of
13 academics and agency experts, who bring their expertise to
14 this to identify plants in different categories of rarity,
15 and they work very closely with the California Department of
16 Fish and Game.
17 As a matter of fact, I recently took a class in
18 vegetation mapping by Dr. Todd Keeler-Wolf that was sponsored
19 by the Native Plant Society. He, of course, is the chief
20 vegetation ecologist for the California Department of Fish
21 and Game. The Plants Society works closely with Fish and
22 Game, and it is generally recognized that their 1-B species
23 are plants that are technically eligible for listing.
24 Listing, of course, has a big political overlay
25 and has a lot of things to do other than rarity.

1 The 1-B species are also widely recognized under
2 CEQA analysis, as rare plants, and so I don't think it is
3 outside of general practice in the State of California, at
4 all.
5 CHIEF COUNSEL FAUST: Madam Chair.
6 CHAIR WAN: Yes.
7 CHIEF COUNSEL FAUST: May I add one comment to
8 this.
9 CHAIR WAN: Yes, and then I am going to go to
10 Commissioner Peters.
11 CHIEF COUNSEL FAUST: Mr. Dixon alluded to the
12 controversy. There is a controversy that has existed for
13 some time, with respect to the legal categories of listings,
14 and there is a lot of tension in that, and there has been
15 quite a bit of litigation on it.
16 There is certainly an ongoing tension between the
17 efforts of environmental groups to obtain the legal status of
18 listing, and the inclinations of the agencies that actually
19 do the listings. And, so there have been a variety of
20 settlements. There has been quite a bit of controversy. It
21 is reflected both at the federal level and at the state
22 level.
23 This Commission -- and this is really my point --
24 this Commission, in its interpretation of Section 3017.5,
25 which is the definition of environmentally sensitive areas,

which it uses to apply the criteria of 30240, the ESHA criteria in the *Coastal Act* has not traditionally looked at a limitation upon its designation of ESHA as being based upon the legal criterias that are set by Fish and Wildlife Service, or Fish and Game.

It has generally, in its permitting actions, taken a more broad view, and looked at both rarity and value. It has not set any specific criteria on that. It has done that on a case-by-case basis. But, it has certainly looked in the past at, for example, the 1-B list of the Native Plant Society, and other evidence as it may be brought to bare in those determinations. It has not considered itself limited by the Fish and Wildlife or Fish and Game legal determinations.

COMMISSIONER MC CLAIN-HILL: And, I thank you for that, and I guess that, you know, I will conclude with this observation: I certainly believe that the Commission has an absolute right to consider whatever factors it wishes to consider at the time that it is making determinations with respect to ESHA.

However, I am troubled, significantly, by a policy which would, essentially, codify a nonprofit private organization as setting forth a standard for what is, or isn't, ESHA than can be affirmatively disproved. I think it significantly alters the balance of influence and is just,

1 frankly, inappropriate and I, you know, there are lots and
2 lots and lots of folks who would hold themselves out as
3 experts on any number of issues. And, while it may be
4 somewhat political with respect to designations, that process
5 also does carry with it some broader level of consideration,
6 and protection.
7 So, while I would certainly not object to, when
8 staff makes it presentations, as it has in the past, is
9 asking us to consider what the California Native Plant
10 Society believes is relevant, with respect to issues, I just
11 don't believe it is appropriate with respect to creating ESHA
12 policies for the City of Malibu, to give them the status, the
13 same status that we give state and federal law, with respect
14 to these determinations.
15 CHAIR WAN: Commissioner Peters.
16 COMMISSIONER PETERS: Yes, I really agree with
17 that, with Commissioner McClain-Hill.
18 The thing that struck me about it, when I was
19 listening to it on the tapes, is that, although if you picked
20 a nonprofit organization to do this function, it would
21 certainly be this nonprofit organization, but a lot of the
22 due process protections that we have are lacking in any of
23 these types of organizations.
24 We don't know what their policies are, as to
25 providing notice to affected people, an opportunity to be

heard. We know there is no judicial review. So, I am inclined to think that what we would even insist on having the input of the California Native Plant Society, when we make these decisions, we shouldn't codify their decision. We shouldn't assign the responsibility to them, because they just don't have the procedural, the due process protections that I think we would afford this kind of process.

CHAIR WAN: Does staff have any additional comments?

EXECUTIVE DIRECTOR DOUGLAS: Just that it has been practice to rely on the 1-B list of the California Native Plant Society by both State Fish and Game, and U.S. Fish and Wildlife, and the Commission --

COMMISSIONER PETERS: But, that is a different thing.

EXECUTIVE DIRECTOR DOUGLAS: -- to identify --

COMMISSIONER PETERS: That is not codifying it, in addition.

What you've said there is that the state and federal organizations rely on the California Native Plant Society --

EXECUTIVE DIRECTOR DOUGLAS: And, the Commission.

COMMISSIONER PETERS: -- which they should, I think we should, I just don't think we should codify their decision in the LUP.

1 COMMISSIONER MC CLAIN-HILL: Moreover, while they
2 may rely on it, they do not list every plant that -- I mean,
3 there are differences of opinion.
4 I mean, they may look to them. They may rely on
5 their expertise. They may consult them. But, they do no
6 adopt wholesale their determinations, and what you are doing
7 here is you are seeking to cause their determination to have
8 the same status as a determination made by a state or federal
9 agency. They are not the same. Those lists are not
10 identical.
11 CHAIR WAN: Commissioner Desser.
12 COMMISSIONER DESSER: I wonder if we could change
13 the language here so that it is less directed, but that
14 somehow says that guidance should be provided by the
15 California Native Plant Society, but not dispositive.
16 But, I also want to say, and I think it is
17 important for people to understand -- and I don't know a lot
18 about the California Native Plant Society, per se -- but it
19 isn't like just any old other NGO, just in the same way that
20 the triple AS, the American Association of Scientists is not
21 just like any other NGO.
22 I mean, I am assuming that this is peer-reviewed
23 material, and that these are experts in the field, who -- it
24 is not a -- I don't know to what extent it lobbies for
25 designations of threatened species, and the like, but I think

1 it isn't just another nonprofit organization that gets pulled
2 out of a hat.
3 I mean, it is an organization that has demon-
4 strated expertise, the members of the association are people
5 who are experts in the field. They have a close relationship
6 with government, so I think it is important to make a
7 distinction. I mean, it is not like saying we are going to
8 rely on the Sierra Club, for example, and what they think
9 about something. It is much more of an academic kind of
10 organization, and therefore a very different thing.
11 Having said that, I agree with the due process
12 issues, so I think that maybe if this language could be, you
13 know, softened to the extent that this is the advice, but it
14 is not going to be determinative.
15 CHAIR WAN: Let me say I don't agree with that,
16 and here is why.
17 We are using this as how you define ESHA. We are
18 putting the ESHA definition here. We have to explain in this
19 what we think constitutes ESHA. The fact is that if you just
20 use this as advice, it is conceivable that the definition of
21 ESHA will then become only those list species that are
22 actually listed as threatened or endangered, and we all know
23 that that is way too narrow, when you are dealing with the
24 definition of ESHA.
25 Our mandate is much broader than that. That is

one of the differences between the Commission and the Department of Fish and Game, for example, whose mandate is to protect only those species that are formally listed.

So, I would urge us to keep this language in here, because we want to have the type of definition that we have been using -- whenever we deal with ESHA, we deal with it on this basis -- and I would urge us to keep this.

I saw Mr. Faust had his hand up.

CHIEF COUNSEL FAUST: Madam Chair, staff may want to jump in, as well, but I wanted to make a comment with respect to what I understand the structure of these sections to be.

Section 3.1, for example, really is an attempt to define ESHA, to lay out what the criteria are for ESHA, and my understanding is that that is a section that, in light of Mr. Douglas' comments, is subject to continued discussion with Fish and Game, an attempt to tighten the criteria for the definition, or as one Commissioner put it, to narrow the gap. But, in any event to clarify exactly what the definition of ESHA is.

The reference to the Native Plant Society's 1-B list, does not appear, if I understand it correctly in Section 3.1. It appears in Section 3.4. Section 3.4, I think, serves a slightly different purpose. What that is intended to do is to be one of the ways in which you

1 determine whether or not there is some site-specific
2 determination that needs to be made, and if I am understand-
3 ing the reference to list to 1-B, correctly, the way it works
4 is that if there are plants or animals designated on the 1-B
5 list on a site, then it is ESHA, unless there is a site-
6 specific determination to the contrary. So, basically, it
7 acts as a triggering or screening device.
8 And, if it meets the screening device, then
9 presumably whoever the property owner is goes out and gets a
10 site-specific study, and the scientists say whatever the
11 scientists say, with respect to that site.
12 If the list is removed from this set of criteria,
13 then you have, if you please, vastly opened up the size of
14 the holes in the screen for when you are looking at site-
15 specific determinations.
16 It is really a question of how the process works
17 here, rather than what the definition of ESHA is. And, if I
18 am understanding staff's proposal correctly, what they are
19 intending to do is to include this list, in order to include
20 parcels that have plants or animals that are on this list on
21 them, to be ones where it is considered ESHA unless a site-
22 specific determination comes to the opposite conclusion.
23 CHAIR WAN: Mr. Douglas.
24 EXECUTIVE DIRECTOR DOUGLAS: Trying to craft a way
25 to address all of the concerns raised here, and one

suggestion Dr. Dixon and I just came up with, is that we would add substitute language for that language that is troubling to some of the Commissioners, that would read something like the following:

"Or, for which there is other compelling evidence of rarity," And, then you could say, "for example", do it that way.

COMMISSIONER KRUER: That's fine.

EXECUTIVE DIRECTOR DOUGLAS: Okay.

COMMISSIONER KRUER: That is fine, then.

COMMISSIONER DESSER: Example.

EXECUTIVE DIRECTOR DOUGLAS: Thank you, just trying to help.

CHAIR WAN: All right, next.

EXECUTIVE DIRECTOR DOUGLAS: We'll do it.

CHAIR WAN: Next.

[No Response]

If nothing can we go on?

COMMISSIONER MC CLAIN-HILL: When, you say "next" do you mean --

CHAIR WAN: Next, no is there another issue.

COMMISSIONER MC CLAIN-HILL: Any other issue?

CHAIR WAN: In this chapter.

COMMISSIONER KRUER: Oh, in this chapter.

COMMISSIONER MC CLAIN-HILL: Yes.

CHAIR WAN: Okay, let's keep moving.

COMMISSIONER KRUER: Let's go on, yes.

COMMISSIONER MC CLAIN-HILL: Okay, well, if no one has any, I'll start with, I just have a question about how this chapter affects the continued use of -- I can't say the word now, the horses, equestrian uses in Malibu Canyon.

I am very interested in what we think we've achieved, and the degree to which we have at least -- we are at least not prejudicing existing uses.

EXECUTIVE DIRECTOR DOUGLAS: It is my understanding, and Mr. Damm can correct me if I am wrong here, that the designation of ESHA does not affect existing uses for equestrian purposes.

Obviously, if you have a corral, or a barn, it is not going to be ESHA. The question is, the real issue comes up is if you want to install a facility that is not currently there.

And, with respect to that, as we've indicated, in the fuel modification area, we are saying you can have some new facilities, but this does not affect existing equestrian uses, unless you want to expand them out into ESHA area.

Is that right, Chuck?

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER MC CLAIN-HILL: Okay, and can somebody just explain to me, I am looking again at, you know,

at the Commission's language, versus the city's language, and this may have been all cleared up in the context of the discussion yesterday, and the discussion earlier this morning, and this is in Policy 368. What is the significance of our --

EXECUTIVE DIRECTOR DOUGLAS: Which policy?

COMMISSIONER MC CLAIN-HILL: It is 368.

EXECUTIVE DIRECTOR DOUGLAS: On what page are you looking? Are you looking on the matrix?

COMMISSIONER MC CLAIN-HILL: I am looking at the matrix. It is on page 29.

EXECUTIVE DIRECTOR DOUGLAS: Okay, thank you.

COMMISSIONER MC CLAIN-HILL: Okay.

And, I just need to understand the difference between the irrigated fuel modification area, versus the fuel modification zone. I mean, what is that? what are they getting at?

COMMISSIONER NAVA: Commissioner McClain-Hill, if I can.

COMMISSIONER MC CLAIN-HILL: Yes.

COMMISSIONER NAVA: Just for the rest of the Commissioners, if you looking at the Land Use Plan, it is page 63.

CHAIR WAN: And, the -- okay.

EXECUTIVE DIRECTOR DOUGLAS: Chuck will respond to

1 that.

2 SENIOR DEPUTY DIRECTOR DAMM: Commissioner, every
3 project in the Malibu Santa Monica Mountains area, due to the
4 high fire hazard, has requirements for fuel modification to
5 reduce that fire hazard.

6 In the initial draft of the Land Use Plan, this
7 past fall, the staff recommended that in the environmentally
8 sensitive habitat area that is mapped, that the confined
9 animal, or equestrian uses, would have to occur on the
10 development area.

11 There was a lot of concern expressed by the city,
12 and by members of the public, with regards to that, because
13 there was concerns that you could not have corrals, or barns,
14 or stables, within 50 feet of the residence.

15 Subsequently, in looking at this issue further,
16 the staff has revised the policy language with regards to
17 ESHA to allow for new equestrian facilities, such as corrals,
18 within the fuel modification area, and as you mentioned, that
19 would occur in what is referred to as the wet zone, or
20 irrigated portion of the fuel modification area.

21 There are three zones, A, B, C, that are part of
22 the typical fuel modification plan. The first two zones,
23 which are closest to the home, are the irrigated areas, and
24 those extend, approximately, 100 feet around all the
25 structures, so it is a very substantial area that is

available for equestrian use.

The reason the staff has made that change is because that area has to be maintained for fuel modification purposes. Its habitat value is, essentially, lost in any event. So, in listening to the comments, we felt that that was a good soluton.

The final zone, the non-irrigated zone, allows for less thinning, no irrigation, and for native plants to be utilized. They still have to be kept thinned, and there is maintenace, but that is an area that staff is not suggesting be available for the equestrian type uses.

COMMISSIONER MC CLAIN-HILL: Okay, just from my, just so I understand, you know, what is being suggested here.

What is the difference between -- I mean, you have, essentially, cleared for areas A and B. You said that the third area, C, what are we talking about, in terms of additional footage?

SENIOR DEPUTY DIRECTOR DAMM: The third zone, Zone C, is an additional 100 feet. The typical fuel modification requirement is a total distance of 200 feet around the structures.

CHAIR WAN: Commissioner Kruer, and then Commissioner Reilly.

COMMISSIONER KRUER: Do you have -- I was looking for it in here, and maybe it has been cleared up.

Do you have any requirements, as far as other than the slope, the size of the corral facility? or the type? or anything else? I am trying to go through here and find where that -- because I was concerned at one time, because, to me, the horses are a big part of any rural community, and big part of anything. That is what makes it. At least, where I live, that is what makes everything, and it is how the people maintain, and the city maintains, and people take care of those horses is what does something.

And, I just want to make sure that what we are doing here, that, basically -- maybe I should ask somebody from the city, now, if there is anything that I missed yesterday. I just want to make sure that the horses are grandfathered in, and that there isn't going to be a problem here when somebody want to put in -- other than in an ESHA area, and the things I read in 3.64 and 68, but everything is cleared up on the --

COMMISSIONER MC CLAIN-HILL: It is 2.5 and -- [not on mike and voice fades out of hearing range]

COMMISSIONER KRUER: Yes, explain the slopes difference to me. There is some, you know, that are 2.5, some 4.1, and please explain that to me.

SENIOR DEPUTY DIRECTOR DAMM: Okay, in response, just a couple of points.

Number one, again, existing legal equestrian uses

absolutely remain. There is nothing in the Local Coastal Program that requires their removal.

Secondly, only -- and again we are talking only in the areas designated as environmentally sensitive habitat -- that new equestrian uses would be limited to the development area, and to the fuel modification Areas A and B zones.

And then thirdly, with regards to the slope, the staff is recommending that for confined animal equestrian use, that those occur on areas that do not exceed 25 percent slope, or 4:1, and the city is suggesting that that be modified to allow these uses on slopes up to 2.5 to 1, or 40 precent slope, and staff does not believe that is appropriate, since most of these sites do drain into drainages and streams.

COMMISSIONER KRUER: Okay, so the 10,000-square feet definition comes into play here, and again that is excluding all driveways, fire turnarounds, and none of that is in the 10,000.

So, it is the 10,000-square feet, plus the fuel modification area, is that correct?

COMMISSIONER MC CLAIN-HILL: Plus 100 feet.

COMMISSIONER KRUER: Plus 100 feet.

[No Response]

I am just trying to understand what you could create, could you have one horse? half a horse? two horses?

1 SENIOR DEPUTY DIRECTOR DAMM: With regards to the
2 size of the corral, or the number of horses, or any other
3 confined animals, the staff has not dealt with that issue.
4 We simply have indicated the area in which they can occur.
5 So, as I said, the fuel modification Area A and B,
6 or Zone A and B, is generally 100 feet around the structure,
7 so that is a sizable area.
8 COMMISSIONER MC CLAIN-HILL: You are going to need
9 more than 100 feet -- [not on microphone, voice fades out of
10 hearing range]
11 COMMISSIONER KRUER: Well, my point is, the reason
12 I wanted to get to this, is if you have a larger parcel, just
13 as an example, and you have horses, most people don't put
14 their barn next to their house, or 100 feet away. So, that
15 is something that really doesn't usually work.
16 So, I am trying to understand -- and I don't want
17 to belabor the point, but I am trying to understand if we
18 have thought the process through enough that we make sure
19 that when we adopt this, that we don't find out that
20 practicality is that anyone who wants horses, or building a
21 new house, has to stick their horse barn, or their corral,
22 right next to their house. That is not going to work.
23 SENIOR DEPUTY DIRECTOR DAMM: And, again,
24 Commissioner, it depends on how large a home you are
25 building, number one, because that potentially allows you

1 somewhat more area.
2 Secondly, though, I want to emphasize again we are
3 talking about the area that is designated as environmentally
4 sensitive habitat area. That leaves another, approximate 50
5 percent of the city that does not have that designation, and
6 you can have much larger areas available for equestrian use.
7 COMMISSIONER KRUER: I am not trying to get into
8 the percentages of what is left in the rest of the city.
9 I am trying to just understand, if the mechanics
10 that we've put in place here, work. I understand what you
11 are trying to achieve. I am trying to achieve the same
12 thing, but I want to make sure we thought it out that really
13 a horse, somebody can have something the way this is written
14 now, and it isn't something -- you've got your 10,000-square
15 feet, you build your house, you take out your driveways --
16 you tell me you don't take out your driveways -- you don't
17 take out your fire turnarounds, you don't take out your
18 accessory facilities, and then you calculate your horse
19 facility in that calculation, that is what you are telling
20 me, in the 10,000-square feet.
21 EXECUTIVE DIRECTOR DOUGLAS: Was that a question?
22 COMMISSIONER KRUER: It is a question, yes, does
23 it?
24 EXECUTIVE DIRECTOR DOUGLAS: Okay, as far as I
25 understand it, if your entire parcel is ESHA, the 10,000-

square foot footprint does not include the driveway to get to the house --

COMMISSIONER KRUER: Or fire turnaround, or anything else.

EXECUTIVE DIRECTOR DOUGLAS: Well, no, it depends on the design. I don't know the answer to that, but --

COMMISSIONER KRUER: Oh, oh, there is the problem, guys. That is what I am trying to get to here.

EXECUTIVE DIRECTOR DOUGLAS: Okay.

COMMISSIONER KRUER: If you don't have the fire turnaround --

CHAIR WAN: You are talking about the fire turnarounds.

COMMISSIONER KRUER: Well, a fire turnaround could be 10,000-square feet.

EXECUTIVE DIRECTOR DOUGLAS: No, no.

COMMISSIONER KRUER: Come on, this is the stuff that gets us all in trouble, you know.

EXECUTIVE DIRECTOR DOUGLAS: Well, I am trying to be accurate, here, okay.

But, the barns, relative to the equestrian facility, if you have all ESHA, that would not be permitted.

COMMISSIONER KRUER: Okay, I am willing, on the horse thing, I am only asking staff to talk to the Farm Bureau, or other people here, between now and then, and just

make sure, because I am still confused on this, that whether or not this is going to work, you know.

CHAIR WAN: Peter, I am confused by what you just said.

I was under the impression that you could have barns, and that since the fire clearance is not included, it can be beyond the 10,000-square foot pad, in fact, you could have that outside, in addition to it, am I wrong?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, if I may, I think I understand the confusion.

The stable, or barn, or tack shed, can occur in the fuel modification area. The criteria for that stable, or barn, is that it be built of non-flammable type materials. This is something the Commission has done on permits. It does not result in having to extend the fuel modification further, but it does allow for the barn, or the stable.

CHAIR WAN: Right.

COMMISSIONER REILLY: Question on that, Madam Chair.

CHAIR WAN: Commissioner Reilly.

COMMISSIONER REILLY: Just a couple of questions on it.

You are saying that they can 100 feet out in Zones A and B. We heard testimony yesterday that it has to be at least 50 feet from the house.

1 SENIOR DEPUTY DIRECTOR DAMM: Correct.
2 COMMISSIONER REILLY: So, you are really talking
3 about a 50-foot strip then, within which they are allowed to
4 do that, if you don't include the entire fuel modification
5 area, is that correct?
6 SENIOR DEPUTY DIRECTOR DAMM: A 50-foot area that
7 surrounds the development.
8 COMMISSIONER REILLY: It has to be at least 50
9 feet away from the house --
10 SENIOR DEPUTY DIRECTOR DAMM: That is per --
11 COMMISSIONER REILLY: -- and you --
12 SENIOR DEPUTY DIRECTOR DAMM: -- the health
13 department.
14 COMMISSIONER REILLY: -- are saying it can't be
15 more than 100 feet away.
16 SENIOR DEPUTY DIRECTOR DAMM: Correct.
17 COMMISSIONER REILLY: Okay.
18 The other question I have -- and somebody may want
19 to do something about that part of it -- but, the other
20 question I have is how do you build an accessory building on
21 a 4:1 slope with absolutely no grading?
22 SENIOR DEPUTY DIRECTOR DAMM: With absolutely no
23 grading, you are clearly going to have to have footings to
24 construct that, and you may have very minimal grading, but
25 you are going to have to have footings, Commissioner.

1 COMMISSIONER REILLY: You preclude grading in your
2 --
3 SENIOR DEPUTY DIRECTOR DAMM: Well, we can
4 certainly draft a change to that, but the point being that
5 you minimize the grading.
6 I understand what you are saying. You can't have
7 a structure without some sort of footings for the structure,
8 absolutely.
9 COMMISSIONER REILLY: So, you will modify that
10 language --
11 SENIOR DEPUTY DIRECTOR DAMM: But, it will
12 indicate that it should be minimal.
13 COMMISSIONER REILLY: That's fine.
14 CHAIR WAN: Okay.
15 Commissioner McClain-Hill.
16 COMMISSIONER MC CLAIN-HILL: Yeah, I would propose
17 that we modify the staff's language to permit the location of
18 these accessory structures within the fuel modification
19 zones, or area, as opposed to simply the irrigated fuel
20 modification area.
21 I don't believe that the added environmental
22 benefit associated with this particular limitation, is
23 significant. And, I do believe that this is a significant
24 quality of life issue for the community.
25 And, again, I want to, you know, as we go through

this process, just to reiterate that I am completely grateful to staff for the work that they have done, because I do believe that staff has tried in every instance, in good faith, to do the right thing, and to accommodate the community.

I also believe that the city has made some valid points, and some good recommendations, and that we should be amenable to accepting some of those. And, this is one where, while I appreciate staff's rationale, and I am, you know, prepared to -- I don't know that I would totally agree with the slope issue, but I am parpared to live with that, provided we address Commissioner Reilly's issues, with respect to grading.

But, I think that we significantly impact the quality of life and the anticipated uses of properties in this area by being rigid with respect to -- or by creating this fine distinction with respect to irrigated versus non-irrigated fire zones -- or fuel modification area.

So, I would propose that we direct staff to expand the envelope with respect to where these accessory facilities can be built.

CHAIR WAN: Two things, first of all I would like to hear from Dr. Dixon, and his comments about what he thinks the impacts of this would be on -- because these are the properties that are in ESHA, 100 percent ESHA.

And, then, Commissioner Nava has a question.

COMMISSIONER NAVA: That is what I wanted. I wanted to hear from Dr. Dixon.

CHAIR WAN: Okay.

STAFF ENVIRONMENTAL SPECIALIST DIXON: As I understand the direction of the discussion that this would take the outer fuel modification zone, which is currently native vegetation that is thinned, and would convert it into a usage zone where the vegetation would be removed, and you would have animals there with the attendant problems with animals.

From an ecological point of view, what you are doing is simply moving the development further out, and if that is what the intent is, that's fine. It is just increasing the footprint in one way or another.

There may be more direct, and better ways, to increase a footprint, if that is what you wish to do, but that is what --

COMMISSIONER MC CLAIN-HILL: No, I --

STAFF ENVIRONMENTAL SPECIALIST DIXON: -- it would do --

COMMISSIONER MC CLAIN-HILL: -- no, I fully --

STAFF ENVIRONMENTAL SPECIALIST DIXON: -- to the environment.

COMMISSIONER MC CLAIN-HILL: -- understand what we

1 are talking about here, and I guess, from my perspective, I
2 just do not believe that the benefit derived -- I mean, you
3 are talking about putting animals on this property, and we
4 are going to permit that the uses we know are there, and we
5 know the property is bought often to support those uses.
6 I don't believe that we are going to gain
7 significant, you know, environmental benefit by creating this
8 strip, and I don't believe that whatever benefit we gain
9 outweighs the burden that we are placing on the quality of
10 life with respect to the property owners in this community.
11 So, and with respect to our dealings with this
12 issue, it was my view, at least among the things that we have
13 discussed, is really a broad approach to how we deal with
14 these issues, as opposed to little strip approaches, and I
15 just think that this is one of those situation, where if you
16 have got a horse community, or you just got one, and there
17 are going to be impacts, and if we are going to permit the
18 use, on the one hand, we don't want to permit in a way that
19 makes it, you know, to suggest that it is permitted in a way
20 that makes it not really viable on the ground, and in the
21 community.
22 So, you know, I think we need to be very genuine
23 about this, and if we are permitting it in the fuel
24 modification zone, I don't think we pick up enough by
25 excluding the irrigated area to justify the burden that we

are placing on the property owners.

And, you know, that is the reason for my suggested amendment. I just believe that the city, on this point, is -- I think that their perspective, and their approach is superior to ours.

CHAIR WAN: Commissioner Nava.

COMMISSIONER NAVA: Two questions, the first one is to staff and Dr. Dixon, we specifically identified language in 3.68 that refers to the irrigated fuel modification area.

Now, the irrigated fuel modification area, and obviously there are portions that are not irrigated, so what was the thinking that caused staff to identify that specific language?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, I'll respond to that question.

The staff's reasoning for limiting the confined animals area to Zones A and B of the fuel modification, is that those two zones require far more extensive thinning. The first zone, essentially, requires removal of native vegetation. The second zone still requires very extensive thinning, and irrigation. The third zone, which is 100 feet, or more from the structures requires far less thinning, and for that reason we did not feel it was appropriate within the ESHA designation to have confined animals.

1 COMMISSIONER NAVA: Then, for Dr. Dixon, what is
2 the environmental benefit, if any, to the third zone, which
3 has a minimum amount of thinning? is there any significant
4 contribution that it makes? or, is the third zone rendered as
5 relatively sterile as the first and second?
6 STAFF ENVIRONMENTAL SPECIALIST DIXON: It
7 certainly is not rendered as sterile as the first and second.
8 It is significantly degraded, but generally
9 speaking, what happens is the fuel is removed, and low-lying
10 and herbecous plants are removed, and so we end up with some
11 of the larger scrubs that provide an effective buffer area,
12 and it provides some habitat that will be used by wildlife.
13 COMMISSIONER NAVA: Another question, do we know
14 if this change is made and the accessory structure is allowed
15 in the third zone that the fire department won't revisit the
16 plan, and require additional thinning?
17 EXECUTIVE DIRECTOR DOUGLAS: That is part of the
18 criteria that only those kinds of uses would be permitted
19 there, that would not extend the fuel modification area, even
20 further. So, that I understand from Commissioner McClain-
21 Hill's comments isn't being changed.
22 COMMISSIONER NAVA: And, I assume then that the
23 rest of the language of the Commission's recommendations is
24 that it be constructed of non-flammable material, and also
25 with respect to no instream siltation or pollution, is that

correct?

EXECUTIVE DIRECTOR DOUGLAS: It is our understanding that wouldn't be changed by what is being suggested.

COMMISSIONER NAVA: Thank you.

CHAIR WAN: Commissioner Potter.

COMMISSIONER POTTER: I am just curious if an expansion to an existing equine facility necessitates conformance with the new policies?

EXECUTIVE DIRECTOR DOUGLAS: Expansion beyond the foot print?

COMMISSIONER POTTER: If you have, basically, what would be, with the adoption of this, a facility that is existing nonconforming, you go for an expansion of that facility, and that expansion would play by the new rules, does that expansion necessitate bringing the old portion of the facility into conformance with the new policies?

EXECUTIVE DIRECTOR DOUGLAS: If you are saying, can it be expanded into the fuel modification area, as identified here?

COMMISSIONER POTTER: No, I am not talking about the dynamics of the expansion, itself.

If you have a facility that is, you know, a corral stable facility, and you are wishing to increase that size, simply make it larger, do you have to bring the old portion

1 of the facility into conformance with the new rules? It
2 seems pretty self-explanatory what I am talking about.
3 EXECUTIVE DIRECTOR DOUGLAS: I am not sure. I am
4 trying to picture a situation under which --
5 COMMISSIONER MC CLAIN-HILL: You are 300 feet out,
6 so you are beyond the fuel modification area, and you want to
7 expand, and so what you are going to do is, rather than
8 expanding in the wrong direction, you are going to expand
9 into the direction that brings you into the fuel modification
10 areas, so you can do that.
11 The question is, do you have to pull everything
12 back into conformity?
13 EXECUTIVE DIRECTOR DOUGLAS: No, no, you wouldn't
14 because that is not ESHA. I mean, so the answer is "No".
15 CHAIR WAN: But, by definition it is not any
16 longer.
17 Commissioner Dettloff.
18 COMMISSIONER DETTLOFF: I am not going to be
19 supporting the motion. I think, in the policy language as
20 written by staff, we have accommodated the fact that somebody
21 is going to be building in an ESHA, and so they are giving
22 them the square footage for their home, and then even
23 expanding out to where they can have facilities for their
24 horses, but then going beyond that when the LCP is supposed
25 to be a protective document on the resources in the area, I

1 think the accommodations that have been made in the staff
2 language goes further than I would want to go in the
3 protection of this invaluable resource.
4 And, if we keep making these accommodations, for
5 someone because of a lifestyle, I think we are making a
6 mistake.
7 CHAIR WAN: And, I am going to echo that.
8 These are only the parcels that are completely
9 ESHA. We continue to push this out further and further into
10 the ESHA to degrade more and more.
11 As Dr. Dixon says, that second 100 feet, not the
12 first hundred feet, but the second hundred feet does have
13 some function as buffer, and as some habitat, and as push out
14 further and further, we degrade more and more the Santa
15 Monica Mountains.
16 Do we want to take a straw vote on this?
17 COMMISSIONER KRUER: Madam Chair.
18 CHAIR WAN: Yes.
19 COMMISSIONER KRUER: I'll support the motion.
20 I think it is really --
21 CHAIR WAN: We don't have a motion.
22 COMMISSIONER KRUER: Well, a straw vote.
23 CHAIR WAN: Are we going to? okay.
24 COMMISSIONER KRUER: I think it is really
25 interesting because everybody is talking about let's protect

the ESHA, and everything, and that is what we are trying to do here.

But, the 100 feet, where the thinning is, the horses are going to eat that anyway, if they are out in that area. And, we talk about this thinning, and it is ridiculous. And, then we are fighting to protect this.

This is not going to work. We are going to find out that -- from someone who has horses, and that knows the size of horse barn, that needs corrals and everything else, I am telling you, this isn't going to work.

So, everybody can use the language we are protecting in the LCP, and we are doing this and that, I am supporting the motion, because -- one more time -- we are creating something up here that doesn't work.

CHAIR WAN: Commissioner Hart.

COMMISSIONER HART: Perhaps the representatives of the city could give us some examples of some real world situations that they encounter like this.

MR. JENNINGS: There is one bit of information, which I understand a little differently than what I've heard up here so far.

And, I am sorry, Jeff Jennings, again.

First of all, the A and B zones, the irrigated zones are not fixed. They can vary in size depending on the type of plant material that they find. So, they can, and

1 particularly in ESHA, and as I understand it in the moister
2 forms of ESHA, they can be as little as 50 feet, so they do
3 vary considerably, as does the C zone.
4 Secondly, we appreciate the fact that existing use
5 is protected, and I think that relieved a lot of the fears of
6 some of the people in the community. The question, of
7 course, is what happens when you need a Coastal Development
8 Permit for some other portion of your property? And, I think
9 you've touched on that.
10 But one that really scares me, the one that really
11 bothers me is this, 3.67 talks about new confined animal
12 facilities in ESHA. And, we've talked about all of the
13 changes that staff has made with regard to that, and how they
14 have expanded and allowed the building of new areas, but if
15 you turn over to 3.68, it talks in virtually the identical
16 language about -- except that it doesn't talk about ESHA. It
17 doesn't talk about anything. It just says in general you can
18 only build these accessory structures within the A and B
19 zones.
20 And, what I would like to have clarified is that
21 if it is not ESHA, why is that restriction in there? And,
22 our suggestion is that in 3.68 we just add "in ESHA" to the
23 beginning of the sentence, so that we are making it clear
24 that we are just talking about ESHA here.
25 Finally, the other point is that there are not

similar exceptions written into the view protection part of the ordinance, which --

CHAIR WAN: We will get to view, when we get to view, please.

COMMISSIONER REILLY: Wait awhile.

CHAIR WAN: Okay, staff, is that an oversight?

SENIOR DEPUTY DIRECTOR DAMM: Madam Chair, it is either an oversight, or just an outright error on the part of the staff.

But, this section is intended to deal with environmentally sensitive habitat. We will make it clear that if you are not in environmentally sensitive habitat area, and you are not on steep slopes, that confined animal equestrian uses are permitted in those areas anywhere on the property.

EXECUTIVE DIRECTOR DOUGLAS: This restriction only applies to ESHA and steep slopes.

CHAIR WAN: Okay, and let me just make a comment, sort of relative to what Commissioner Kruer said about it is true that the animals will eat whatever there, which is why they should be confined to the first 100 feet, or the irrigated zone, where you essentially have nothing.

If you put them out in the second 100 feet, where you do have some native plants, that is where they will be eating. They should be in the area where, basically, there

is nothing significant.

Commissioner Reilly, and then let's call for a vote.

COMMISSIONER REILLY: Madam Chair, I am prepared to support Commissioner McClain-Hill's recommendation if we can vote soon.

COMMISSIONER DESSER: All right, then let me continue this conversation then.

COMMISSIONER HART: That is called a filibuster.

CHAIR WAN: Here is how I understand it, Commissioner Peters, and if I am wrong, okay.

What she is saying is the change to this should be to allow the confined animal facilities to be within the fuel modification zone, and not just the irrigated fuel modification zone.

Is that correct?

COMMISSIONER MC CLAIN-HILL: Yes, that is correct, and staff has indicated that they would make a specific reference to this policy being in ESHA, which I just assumed was the case.

CHAIR WAN: Yes, that we are assuming is part of it.

COMMISSIONER MC CLAIN-HILL: Yes, that is the only change.

CHAIR WAN: Does everybody understand it?

COMMISSIONER KRUER: Yes.

CHAIR WAN: All right, those in favor of the motion, one, two, three, four, five, eight.

Okay, you have guidance.

Any others?

[No Response]

Or can we finish with this chapter and go to lunch?

COMMISSIONER DESSER: Yes, go to lunch.

COMMISSIONER POTTER: I would just point out it would be 1:30 a.m. if we were doing this yesterday.

CHAIR WAN: All right, we are on Chapter 4 when we come back.

COMMISSIONER KRUER: Wait a minute, wait, I just wanted to ask.

There was something Commissioner Reilly brought up yesterday, and I want to make sure it is not in here, and that is on the scenic, is that on 6?

CHAIR WAN: That is another chapter.

COMMISSIONER KRUER: That is another chapter.

EXECUTIVE DIRECTOR DOUGLAS: And, so what time are we coming back?

CHAIR WAN: Hopefully, 1:00 o'clock.

COMMISSIONER DESSER: Sara, Sara, you know she

1 just came and picked up the menus. I bet our lunches are not
2 even going to be ready for half an hour. I think we should
3 go for another half an hour, because we are going to be
4 sitting out there without food.
5 CHAIR WAN: You, know let's at least go for
6 another 15 minutes, maybe somebody can find out when we are
7 going to be served.
8 EXECUTIVE DIRECTOR DOUGLAS: Okay, I was going to
9 suggest that we do hit the waste water issues, because Dr.
10 Gregg is going to have to leave us.
11 CHAIR WAN: Okay, let's do that. Which chapter is
12 that?
13 EXECUTIVE DIRECTOR DOUGLAS: It is the next one, I
14 believe.
15 CHAIR WAN: Okay, let's go to the next chapter,
16 which is waste water, and let's do that, then take public
17 comment.
18 SENIOR DEPUTY DIRECTOR DAMM: It is still in
19 Chapter 3.
20 COMMISSIONER POTTER: Water quality is in 3.
21 EXECUTIVE DIRECTOR DOUGLAS: Oh, it is still -- I
22 am sorry, it is still in Chapter 3.
23 COMMISSIONER KRUER: Yes, water quality is in 3.
24 EXECUTIVE DIRECTOR DOUGLAS: So, you didn't have
25 any -- no, sorry, fine.

1 COMMISSIONER KRUER: It's in 3 and 7, water
2 quality.
3 CHAIR WAN: We've done it.
4 EXECUTIVE DIRECTOR DOUGLAS: Thank you, very much.
5 [Public Comments Received, and then Recess Taken]
6 CHAIR WAN: What I would like to do, because we
7 have got a bunch of folks that have items on Consent that are
8 probably sitting around waiting for us to get through all of
9 this.
10 So, what I am going to do is trail the Malibu LCP
11 until after we take the Consent Calendar items -- we will
12 trail everything. I just want to take up the Consent
13 Calendar items.
14 [Regular Agenda Items addressed]
15 CHAIR WAN: Staff, Mr. Faust, you understand what
16 I did?
17 CHIEF COUNSEL FAUST: Yes.
18 CHAIR WAN: Okay, all right.
19 So, now that that is the case, we will go back to
20 the regular agenda, the LCP.
21 SENIOR DEPUTY DIRECTOR DAMM: And, if I may just
22 make one additional comment, Madam Chair.
23 CHAIR WAN: Yes.
24 [Regular Agenda Item Discussed]
25 CHAIR WAN: Thank you.

Okay, folks, that brings us to Chapter 4.

COMMISSIONER DESSER: Not on 4 yet.

COMMISSIONER NAVA: Madam Chair.

CHAIR WAN: What.

COMMISSIONER NAVA: We are not done. If I can --

CHAIR WAN: We are not done?

COMMISSIONER HART: We are never done.

COMMISSIONER NAVA: Yes, with respect to I think there are still, apparently, some language in Chapter 3.

But, I also think that I want to ask staff, because part of what we didn't discuss in the LUP, with respect to the horses, is the number of horses, either per parcel, per acre, per however they are designated, because I didn't see any language in the Land Use Plan that made any reference to that.

And, it is my understanding, that there is language in the Implementation Plan, and maybe we can get some clarification so that we understand what it is that we are actually buying off on.

SENIOR DEPUTY DIRECTOR DAMM: And, Barbara Carey of staff will respond to that.

COASTAL PROGRAM ANALYST CAREY: Yes, if you want I can find the specific reference, but there is a provision for a maximum of eight horses per acre, and that comes out of the city's code, the sections that they gave us.

CHAIR WAN: Commissioner Kruer, eight horses per acre, do you have any comments on that one?

COMMISSIONER KRUER: That is a lot of horses per acre, that is all I can say. That is a lot of stuff. I would be the fly guy in that area, I think.

COMMISSIONER NAVA: Madam Chair, if I could just --

CHAIR WAN: Yes, Commissioner Nava.

COMMISSIONER NAVA: Yes, with I guess questions of staff.

Do we have any ability to evaluate whether or not the eight horses per acre is a realistic figure? and what the likelihood of potential environmental impacts are? and whether that creates any management issues, relative to the equestrian uses?

CHAIR WAN: Particularly, relative to waste, you know, pollution issues, okay.

SENIOR DEPUTY DIRECTOR DAMM: In response Commissioner and Madam Chair, I think the best the staff can indicate at this time is we will be discussing with our water quality unit, and --

[Discussion Off Microphone]

-- okay, but whether or not there has been studies or evaluations done as to that issue, and if there have, we'll let you know.

CHAIR WAN: I think what Commissioners are saying is they want you to take a look at it, and see if that is appropriate, and if not bring back a recommendation based on what and why you find that to be appropriate or not.

Okay, can we now proceed?

COMMISSIONER HART: Madam Chair, just sort of as a catch-up thing in this chapter.

CHAIR WAN: Yes.

COMMISSIONER HART: I just wanted to make sure that if the city had anything that they would like to talk about in this chapter, that they get a chance just to draw our attention to it, sort if you have any objections, speak now, or forever hold you peace, kind of thing.

MS. LICHTIG: The waste water sections in this chapter, we would like there to be some additional reference to AB 885, which is incorporated into the matrix in our suggested language.

The restrictions on grading during the rainy season that are contained in this section that are of particular concern to the city, and there are some other miscellaneous references in the waster water sections to the county health department, and the regional water quality board that are, essentially, irrelevant to the management of waste water systems within the city, because we manage our own waste water systems.

1 And, I think the mayor is going to add.
2 MR. JENNINGS: Pardon me, Jeff Jennings, and we
3 had some concerns about Policy 3.47, the LUP which requires
4 monitoring of any landscaping or revegetation, not
5 necessarily revegetation required by the *Coastal Act* or
6 anything else. It is just anything that you do pursuant to a
7 landscape plan has to be monitored for five years, which we
8 didn't see the need, or the purpose of.
9 COMMISSIONER HART: Could the staff address that,
10 while -- instead of having a big laundry list, if there is
11 quick staff fixes, maybe you can just acknowledge that.
12 MR. JENNINGS: The introduction indicates that
13 3.47 says, cut and fill slopes, and other areas disturbed by
14 construction activities shall be landscaped or revegetated.
15 Well that means everything.
16 I mean, if you disturb the earth at all, in the
17 construction of a house, you are going to have to be subject
18 to this monitoring plan, even if it is nothing particularly
19 sensitive.
20 You know, cut and fill gives the impression you
21 are talking about dramatic, but it is really not. It is
22 talking about anything, any construction.
23 CHAIR WAN: Staff, this is in the ESHA policies,
24 right?
25 MR. JENNINGS: This is 3.47.

1 CHAIR WAN: I am asking the staff, okay.
2 MR. JENNINGS: I'm sorry.
3 SENIOR DEPUTY DIRECTOR DAMM: In response, Policy
4 3.47 which deals with landscaping, incorporates the same
5 provisions that the Commission has used on dozens, and dozens
6 of permits, including the monitoring requirement.
7 The reason for the monitoring requirement,
8 especially within the environmentally sensitive habitat area,
9 is to insure that the plant pallet that is used for land-
10 scaping utilizes plants that are primarily native drought
11 tolerant, and non-invasive type of plants, because there is a
12 great deal of scientific evidence now that one of the really
13 significant problems in preserving native habitat, is
14 invasives that spread through the landscaping that occurs
15 with exotic plants.
16 Again, this is something the Commission has been
17 requiring for quite some time, including the monitoring
18 provision, with the idea that after a period of years, the
19 landscaping is mature, and it will remain, and it will be the
20 type of plants that are not invasive, and harm the environ-
21 mentally sensitive habitat.
22 MR. JENNINGS: We have no objection to --
23 COMMISSIONER HART: And, let me --
24 MR. JENNINGS: -- Mr. Damm's characterizations, if
25 it were limited to ESHAs replantings.

COMMISSIONER HART: Okay, can we do that? staff can you make that limit?

SENIOR DEPUTY DIRECTOR DAMM: It would be limited to the environmentally sensitive habitat and areas that are adjacent to environmentally sensitive habitat.

COMMISSIONER HART: That makes sense.

COMMISSIONER DESSER: That would be fine.

COMMISSIONER HART: And, then, in reference to the mayor mentioned, or actually the city administrator did, the AB 885 reference, is that a big deal, or is that something that you can incorporate, as well?

COASTAL STAFF ANALYST DUFFY: Thanks, Chuck, in response to that, 885 is currently being drafted by the State Water Board, those regulations are being drafted, and not expected to be out until January of 2004, yet, so we can't necessarily require them to comply to regulations that are not existing, but what we can do is make a mention that they will be in there, and just refer to the fact that AB 885 will be coming forward.

And, we have the staff that wrote those policies. He is involved in the process at the state level of drafting the AB 885 regulations, and so all of the things that are being taken into consideration for AB 885 were also considered in our policies.

COMMISSIONER HART: Sounds like that works.

COASTAL STAFF ANALYST DUFFY: That is fine.

COMMISSIONER HART: Okay, good.

SENIOR DEPUTY DIRECTOR DAMM: And, just in case the Commission was wondering, this is Tracy Duffy of our water quality unit.

COMMISSIONER HART: That you, Tracy.

Then the other item that Ms. Lichtig mentioned was the restriction on the grading in the rainy season. It sounds like we need to talk about that. I understand completely why you would want to have that restriction.

On the other hand, there might be places that are not steep slopes, that might not present the same kinds of issues, if they were best management practices and used. Is there a way we can craft this that it relates to steep slopes, where you know, significant runoff into important habitat is protected, but still provide some flexibility?

EXECUTIVE DIRECTOR DOUGLAS: It is my understanding it is limited in its application to ESHA and steep slopes.

COMMISSIONER HART: Okay, well, that seems reasonable to me, too.

SENIOR DEPUTY DIRECTOR DAMM: And, I was looking for the citation, Commissioners, it is Policy 3.44 in the revised Land Use Plan, and that is what it indicates.

COMMISSIONER HART: And, then, I think somebody

said something about the county health department --

EXECUTIVE DIRECTOR DOUGLAS: If that is not what it says, that is what it will say.

COMMISSIONER HART: Okay, that is an important clarification, thank you.

COMMISSIONER POTTER: That would be very good.

COMMISSIONER HART: And, then, I forget, mayor, were you the one talking about the county health department issue, something about that? I just wrote a little note here about the county health department?

MR. JENNINGS: I believe that was -- city manager.

MS. LICHTIG: There are references in the waste water sections to the county health department, and the county health department has no role or responsibility in the city --

COMMISSIONER HART: Can you fix that, too, staff? can you just recognize that the city is their own sanitation district?

COMMISSIONER REILLY: One question on that.

You also mentioned references to regional board, and said they don't have jurisdiction within the city, is that correct?

MS. LICHTIG: Not for the actual inspection, and installation, and monitoring of waste water systems, of individual on-site waste water systems.

In general, they do, but the way that the references are in here are about specific responsibilities that they don't have.

COMMISSIONER REILLY: They don't have the authority to monitor individual waste water systems?

MS. LICHTIG: Not as it relates to the policies that they are referred to in the LUP. The specific responsibilities are vested with the city.

CHAIR WAN: Commissioner Nava.

COMMISSIONER NAVA: If we are going to go back, and take a look at language in these policies, I think we ought to have the page number, the policy number, so that we aren't just doing broad stroke changes to language.

CHAIR WAN: Staff, yes, can you find the policy that you are talking about, so I can understand, and then can you explain to me how the city could have jurisdiction over this, but the Water Quality Control Board could not?

So, that is why Commissioner Nava is correct, what is the specific policy, so we can look at the language.

[Pause in proceedings.]

I'm waiting for it, right.

MS. LICHTIG: It is Policy 3.125.

COMMISSIONER NAVA: It is page 74 on the draft Land Use Plan.

MS. LICHTIG: And, the reference in that policy is

generally acceptable, though the policy is redundant if you go back to Policies 3.118 and 3.119.

CHAIR WAN: This says that -- so you are saying that -- this says that it has to be in full compliance with the building and plumbing codes and the requirements of the L.A. Regional Water Quality Control Board, and you say it doesn't have to be in compliance with their requirements?

MS. LICHTIG: No, what I said was that it is an acceptable reference, though this policy is redundant of 3.118 and 3.119.

CHAIR WAN: Yes, that is not what you originally said, okay.

You originally talked about jurisdiction relative to what you have jurisdiction over, versus what Water Quality Control Board has jurisdiction over, and that is the policy that I am trying to look at, and this is actually not totally redundant, by the way, but --

COMMISSIONER NAVA: Yeah, good idea.

CHAIR WAN: Yes.

COMMISSIONER NAVA: I mean, I guess we've got the rest of the day.

And, I'm wondering whether or not this is the sort of thing that ought to be worked out staff to staff, because I read the language of 3.118, and it is far more specific than what is on the other page.

CHAIR WAN: Right.

COMMISSIONER NAVA: It makes reference to coastal streams, wetlands, estuaries, and the ocean. It is not redundant in my opinion, and the 3.119 makes reference to poorly or excessively drained soils, shallow water tables, and high seasonal water tables. It is not redundant.

CHAIR WAN: All right, let me make a suggestion on this one, then, Commissioner Hart.

COMMISSIONER HART: Yes.

CHAIR WAN: If your concern is that there is, for some reason or other, an issue relative to jurisdiction, and there is something in here that is not their jurisdiction, and it is yours. That is clearly something you can work out with staff.

COMMISSIONER HART: I totally agree.

CHAIR WAN: Yes, we don't need --

COMMISSIONER HART: We don't need to talk about it anymore, so let's keep going on.

MS. LICHTIG: We concur.

COMMISSIONER HART: There are other things, I think, in this chapter. I stopped the mayor at that page, but I think that covers everything that you folks brought up. We've got a process going.

MR. JENNINGS: It does, and I may have been distracted, but my under -- 8.4 is the seasonal restrictions

on grading, and the rainy season is October 1 to April 15, which as we know exceeds our actual rainy season, but my understanding is that is going to be limited to ESHA, did I hear that correctly?

COMMISSIONER HART: Yes, that is what --

COMMISSIONER HART: All right, fine.

SENIOR DEPUTY DIRECTOR DAMM: And, steep slopes.

COMMISSIONER HART: And, stuff adjacent to ESHA, too.

CHAIR WAN: Steep slopes.

SENIOR DEPUTY DIRECTOR DAMM: And, steep slopes.

COMMISSIONER HART: And, steep slopes.

EXECUTIVE DIRECTOR DOUGLAS: Right.

SENIOR DEPUTY DIRECTOR DAMM: Just so the Commission understands there have previously been requirements that said if there was over 1000 yards it also applied. We have removed that.

COMMISSIONER KRUER: Yes.

MR. JENNINGS: The only other point I wanted to make in this chapter, was that I know we've had some reference to further discussions on the Point Dume area.

Actually, in general terms, our concerns with the ESHA rules and regulations are much more directed to the developed areas, chief among them, Point Dume, rather than the undeveloped areas.

But, I understand that staff is going to go back and have further discussions with regard to examination of those areas, and if we could be invited to participate in those discussions, we would certainly be delighted to do so, if that is acceptable to you.

CHAIR WAN: Okay.

COMMISSIONER HART: And, you know -- actually, Madam Chair -- thank you. That was very helpful. I think that is probably a pretty good process, is for us to go through these chapters.

You know, the reality is here we are working with the local government to try and draft their Land Use Plan, and I think it is perfectly appropriate to have them participate in this a little more actively.

I think that without that interaction we have a tendency to get off in the weeds, as a body up here, and I think we would get to the goal line a lot quicker, if we did what we just did, chapter by chapter.

COMMISSIONER POTTER: Second.

CHAIR WAN: Okay, let's go to the next chapter, Chapter 4.

Any comments and concerns on the part of Commissioners on this one? This is shoreline bluffs, structures, and hazard.

COMMISSIONER POTTER: I just want to make sure

that repairs to existing, that has been modified to include those, is that correct?

CHAIR WAN: Which one is this?

COMMISSIONER POTTER: The shoreline protective devices.

CHAIR WAN: So, which policy?

COMMISSIONER POTTER: Well, it would be under, if you look at the index here, it is Chapter 4, shoreline development, shoreline erosion protective devices, C-3, page 86.

CHAIR WAN: Page 86, okay, so which policy, and what is your concern?

COMMISSIONER POTTER: Well, there was amongst all of the paper work, I believe there was a refinement submitted by staff, or spoken to yesterday at the beginning of the meeting.

Mr. Damm, am I correct on that?

You said there had been a modification made to that language? I've searched around. I am not exactly sure where it is.

SENIOR DEPUTY DIRECTOR DAMM: Well, Gary Timm, yesterday, certainly indicated that we had modified the LCP policy language, with regards to the program for beach replenishment, and fee mitigation, in light of the regional nature, rather than just simply being the city. I am not

1 sure that is the same policy that you are referring to.
2 COMMISSIONER HART: Can you talk about the numbers
3 you are -- reference the numbers you are talking about?
4 CHAIR WAN: Yes.
5 COMMISSIONER POTTER: That is just the problem, I
6 can't right at this time. That is what I'm trying to do.
7 CHAIR WAN: Well, what policy are you --
8 SENIOR DEPUTY DIRECTOR DAMM: It is addressed in
9 Policy -- actually a couple of policies, but I think the
10 relevant one is 4.22 and you will see that is entirely
11 stricken.
12 CHAIR WAN: It is stricken.
13 EXECUTIVE DIRECTOR DOUGLAS: That was on page 86.
14 CHAIR WAN: Okay.
15 Commissioner McClain-Hill.
16 COMMISSIONER MC CLAIN-HILL: And, again, I want to
17 ask about a specific policy, and what I would like to do is I
18 would like to look at our language, and the city's language,
19 just because I am trying to understand what it is that they
20 are trying to achieve, and whether or not we, in fact, can
21 achieve it, or what the disagreement and misunderstanding is.
22 So, if we start with 4.15, and in their matrix it
23 is page 38, and it is -- they speak to add language that
24 says:
25 "Consistent with the requirements of

1 the grandfathering requirements of the
2 zoning ordinance."
3 Now, I probably have the zoning ordinance, and you
4 know, just have gotten lost and confused, but I am not
5 certain what they are trying to do here. I mean, help me,
6 with respect to staff, is it my understanding that what we
7 are trying to address here, with respect to grandfathering
8 structures, or nonconforming structures, is we are trying to
9 do that, but to also address those issues, or situations,
10 where folks come in with major remodels, leaving little
11 pieces of the nonconforming structure. So, is that what we
12 are trying to do in 4.15?
13 COASTAL PROGRAM MANAGER TIMM: Commissioner
14 McClain-Hill, the second sentence in Policy 4.15, which I
15 think is, well, one of two questions here, provides that
16 where a structure built along the shoreline is demolished --
17 and that is defined by removing more than 50 percent of the
18 exterior walls -- that then that structure will have to come
19 into conformance with the existing policy of the LCP.
20 In other words, it will be reviewed as a new
21 structure.
22 COMMISSIONER MC CLAIN-HILL: Right, so,
23 essentially, this is to address the issue with specificity
24 that we confronted on Monday, where we had a nonconforming
25 structure that we couldn't touch, even though by virtue of

1 the LCP language, even though they were replacing a
2 significant portion of the structure, because we grand-
3 fathered in the nonconforming structure.
4 So, I assume here that if a significant portion,
5 more than 50 percent is being replaced, then in our minds
6 that is new development, and there is no grandfather clause
7 with respect to that.
8 COASTAL PROGRAM MANAGER TIMM: That is correct.
9 COMMISSIONER MC CLAIN-HILL: Okay, all right, and
10 the city is seeking to maintain, or repair, and so I see, so
11 from our perspective if it is 50 percent that is being
12 changed, then it is not being maintained or repaired?
13 EXECUTIVE DIRECTOR DOUGLAS: Well, we are saying
14 that if it is more than 50 percent, it is new development.
15 And, we don't know, unless Gary knows, what the
16 grandfathering requirements of the current zoning ordinances
17 are. I don't know.
18 COMMISSIONER MC CLAIN-HILL: Okay, so none of us
19 know what is --
20 COASTAL PROGRAM MANAGER TIMM: I am not sure what
21 they are. I have an understanding that their grandfathering
22 ordinance has indicated that any structures that were
23 existent prior to the date of the city's incorporation is a
24 legal structure. Now, I could be wrong, and the city can
25 certainly correct me if I am, or elaborate on that.

1 I would note, however, though that the grand-
2 fathering requirements that are in the city's ordinance is
3 not being recommended to be included in the LCP in the
4 implementation section.
5 CHAIR WAN: Okay, can we move on.
6 COMMISSIONER MC CLAIN-HILL: Well, just --
7 CHAIR WAN: Okay.
8 COMMISSIONER MC CLAIN-HILL: -- with respect to
9 the -- does this policy supersede, or not, structures that
10 are destroyed as opposed to demolished?
11 I assume that this doesn't --
12 EXECUTIVE DIRECTOR DOUGLAS: No, this only applies
13 to --
14 COMMISSIONER MC CLAIN-HILL: -- in fact --
15 EXECUTIVE DIRECTOR DOUGLAS: -- this only applies
16 to voluntary --
17 COMMISSIONER MC CLAIN-HILL: -- voluntary
18 demolition --
19 EXECUTIVE DIRECTOR DOUGLAS: -- demolition and
20 rebuild, right.
21 COMMISSIONER MC CLAIN-HILL: -- okay, all right,
22 thanks.
23 CHAIR WAN: Commissioner Peters.
24 COMMISSIONER PETERS: I just might suggest, in
25 light of the discussion we had Monday, that the degree of

1 nonconformity may contain some ambiguity, and perhaps what
2 you mean is the quantity of nonconformity? Perhaps the word
3 quantity, rather than degree, is better, but I just offer
4 that for you to think about, because we had that whole
5 discussion about extending the life of something as
6 increasing the extent of nonconformity and that was an
7 interpretation with which most of us disagreed, but I would
8 hate to see that recur, when we could be clearer from the
9 outset.
10 CHAIR WAN: So, what you'd like is more clarifi-
11 cation on the language.
12 Staff can look at it to see if there is a way to
13 clarify it.
14 EXECUTIVE DIRECTOR DOUGLAS: You are saying
15 quantity versus degree, and that there is a distinction here
16 with a difference?
17 COMMISSIONER PETERS: Well, I think that was the
18 discussion we had Monday. We wouldn't want to have the
19 discussion again in two years --
20 EXECUTIVE DIRECTOR DOUGLAS: Right.
21 COMMISSIONER PETERS: -- since we just had the
22 benefit --
23 EXECUTIVE DIRECTOR DOUGLAS: I was out of the
24 room, when you had it, so I just wanted to make sure.
25 COMMISSIONER PETERS: Okay, and the point is,

again, that the staff had maintained that by extending the lifetime of a nonconformity you had increased it in degree, and we disagreed with that, as a group.

I think really the word we want here is the quantity of nonconformity is what we are really talking about, because I just wouldn't want to repeat that discussion every year, or so.

EXECUTIVE DIRECTOR DOUGLAS: Okay, we'll take a look at that, and figure out what changes we need to make.

CHAIR WAN: Take a look at that language, and you would rather have amount than degree is the word?

COMMISSIONER PETERS: No, quantity.

COMMISSIONER DESSER: Or, maybe, the nature and amount, or something, because there is a million ways to be nonconforming, so if you are just talking about -- well, a million may be a slight exaggeration, but there is more than one -- so if you are just talking about the amount, in terms of how far over a line we are, or something like that, there could be other kinds of nonconforming uses that aren't measurable in quite that way, so.

CHAIR WAN: All right.

Any other?

[No Response]

Next one.

COMMISSIONER HART: Are you saying we go to the

next chapter?

CHAIR WAN: Well, if there is no more in Chapter 4, let's go to Chapter 5.

COMMISSIONER HART: No, I agree, but I just still think that it is a good process to just check back in with the city, and make sure that there isn't something else that -- they are scrambling over there.

MR. PERVIS: Drew Pervis, Planning Director with the City of Malibu.

I want a clarification from staff that this does, indeed, apply to shoreline protective devices, also?

CHAIR WAN: Yes, I think that is what they are talking about completely.

All right, let's hear what staff has to say.

SENIOR DEPUTY DIRECTOR DAMM: Madam Chair, we had difficulty hearing --

CHIEF COUNSEL FAUST: Could the person come up and repeat? we could not hear what he was saying over at this table.

CHAIR WAN: Okay, repeat it.

MR. PERVIS: My name is Drew Pervis. I am the Planning Director for the City of Malibu.

We wanted clarification from staff that this grandfathering provisions also applies to shoreline protective devices -- only shoreline protective devices,

excuse me.

SENIOR DEPUTY DIRECTOR DAMM: The staff, in our recommendation for the LCP Implementation Plan is not recommending the city's grandfathering provisions with regards to shoreline structures, or other portions of the LCP. We do not agree with the city's grandfathering provision.

MR. PERVIS: Well, we maintain that we would like to propose the city's current grandfathering as proposed for the shoreline protective devices, only.

COMMISSIONER MC CLAIN-HILL: Okay, let me just understand something.

Go ahead, because I think I got it.

MS. LICHTIG: I think that one of the difficulties that we have is that this section is in the shoreline and bluff structures chapter of the LUP, and there is no clarity in there as to whether it applies only to those types of structures, or it is broadly interpreted to apply to all structures.

EXECUTIVE DIRECTOR DOUGLAS: It applies to all structures --

MS. LICHTIG: Though it is in this particular --

EXECUTIVE DIRECTOR DOUGLAS: -- which includes shoreline --

MS. LICHTIG: -- section.

1 EXECUTIVE DIRECTOR DOUGLAS: Yes, and since it
2 does refer to walls, I mean, that means buildings, but it
3 also applies to shoreline protective works.
4 COMMISSIONER DESSER: And, that was why I made the
5 comment that I made. I was assuming that it doesn't only
6 apply to shoreline protective devices.
7 MS. LICHTIG: And, I think that one of the
8 challenges that we face, in terms of being able to implement
9 this after September 15 is that sometimes there are policies
10 that apply to ESHA that don't say this only applies in ESHA,
11 about structures, and so we are interpreting it that it
12 applies to every structure, not necessarily only in an ESHA,
13 and so that is why bringing clarity to the discussion helps
14 us in terms of implementation in the long term.
15 EXECUTIVE DIRECTOR DOUGLAS: And, those are the
16 kinds of things we need to work on between now and --
17 CHAIR WAN: Right, that you do need to --
18 EXECUTIVE DIRECTOR DOUGLAS: -- the next time, to
19 clarify those --
20 CHAIR WAN: -- work, for that kind of clarify, you
21 do need to work together.
22 EXECUTIVE DIRECTOR DOUGLAS: -- because we want
23 that, too.
24 CHAIR WAN: Right.
25 CHIEF COUNSEL FAUST: One thing that I wanted to

add, I think we will be looking at, is my understanding from staff is that one of the differences that you are facing here is, to the extent you are grandfathering in illegal development, under the *Coastal Act*, and that would certainly be not something we would want to be an unintended consequence of any policy we adopted.

CHAIR WAN: Okay, can we move onto 5, so we can be out of here tonight.

[General Discussion]

Okay, this is one we probably will have some questions on, okay.

Commissioner Kruer, because I have some, too.

COMMISSIONER KRUER: On 5.28 in, as far as that goes, the TDCs 5.25, 6, 7, 8, 9, 28, 29, 38, but my understanding here is that if there is any additional lots created out of a lot, say for instance the city wants to develop a senior housing project, or a multifamily project, or an affordable housing project, or anything else, the TDC comes into play, is that correct? there is no exemption for -- because the mandate to create affordable housing in the city, that the city would have, you know, there is nothing, there is no waiver in here.

Would they still, again, to create affordable housing you've got to have incentives, not disincentives, so what I am asking is how does this apply, if on an affordable

housing project, if one came forward in the City of Malibu, how would you make this work with this language?

SENIOR DEPUTY DIRECTOR DAMM: The language in the Local Coastal Program, Commissioner, does apply to all the projects that would be creating new, additional, lots through subdivisions.

So, in response to your question, the staff mitigation is aimed at cumulative impacts of development on resources and infrastructures in the City of Malibu, and it does not differentiate with regards to the type of project, nor does the *Coastal Act* deal with issues related to affordable housing any longer.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, if I may, we are prepared to change that to --

COMMISSIONER KRUER: Yes, please.

EXECUTIVE DIRECTOR DOUGLAS: -- say that if it is an affordable housing project, that would not apply. We did that in --

COMMISSIONER KRUER: Right.

EXECUTIVE DIRECTOR DOUGLAS: -- Half Moon Bay, relative to the TDC requirement there, and we would be prepared to make that change here.

COMMISSIONER KRUER: Thank you, Mr. Douglas, because what happens is, if you don't do that, you create a de facto moratorium on building anymore affordable, and they

1 won't be able to make their requirement at the housing
2 community development at state, because you cannot buy TDCs
3 to create low-income housing, get the subsidy, find the land,
4 and make it economically feasible, so okay, we've got that
5 cleared up.
6 COMMISSIONER REILLY: Well, one additional
7 question on that, if I might.
8 Are we talking about 100 percent affordable
9 projects?
10 COMMISSIONER KRUER: No, let me, no, because you
11 can't do that, because again the only way you can to 100
12 percent affordable projects today is to make them right, to
13 get nine percent tax credits. If you don't get nine percent
14 tax credits, and you get four percent tax credits, or you get
15 any other kind of subsidies from nonprofits, et cetera, you
16 need to blend the market rate units with the affordable
17 units, or you couldn't make them feasible, you couldn't do
18 it.
19 EXECUTIVE DIRECTOR DOUGLAS: What we would have in
20 mind would be affordable housing units that meet their
21 requirements by whatever HCD requires. If it qualifies for
22 those, it would be exempt from the TDC.
23 COMMISSIONER REILLY: That's fine.
24 CHAIR WAN: Okay, we need to look at some kind of
25 standards, and how, you know, it has to be a truly, yes.

Work on how this should be applied.

I think we are all in agreement, that this should be done for affordable housing units. I think Commissioner Reilly --

COMMISSIONER KRUER: Maybe Secretary Neal would have some suggestions.

COMMISSIONER NEAL: Yes, Chairman Wan, we have those outlines and requirements to have their housing element into compliance, so we spell out both low and moderate and the median, in relationship to the median income, they are spelled out.

I am glad you are discussing this, because if you don't include the affordable housing it rather makes AB 2158 -- that Mr. Douglas and I have now agreed upon -- moot, so I am very pleased to see you bringing this discussion up.

CHAIR WAN: I have one question, and maybe I am not understanding this as well as you are, because I am in agreement that when it is an affordable housing project we ought to do it, but is there something that we look at, relative to when it is an affordable housing project, that means a certain -- is there a standard relative to what percentage of the units --

COMMISSIONER NEAL: Yes.

COMMISSIONER KRUER: Yes.

CHAIR WAN: That's the part that concerned me.

COMMISSIONER KRUER: Yes, there is a standard.

COMMISSIONER NEAL: They are very clearly defined, low-low, low, and moderate and percentages insofar to make the development pencil out as Commissioner Kruer has said, yes, and we do define that, and we do define it.

When we get to Carpinteria this afternoon, I will have some information on that, too.

CHAIR WAN: So, it is a percentage of the units that are --

COMMISSIONER NEAL: Yes, that is correct. We have percentages, too, and as Commissioner Kruer has said, you can have 20 percent low, and you could have the rest at market rate, and still come into, as AB 2158 says, if we do agree on affordable housing in an area -- if this measure passes all the way through -- those would stay affordable, so that we would not run into the problems we have in the past, and they expire and are not affordable.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, in the area of affordable we had a discussion yesterday, or certainly comments by our speakers, on affordability, but how that would be met, if projects weren't available, or portions of projects weren't available, affordable, did we discuss in lieu fees, and was that rejected that we would not have the ability to enforce that type of a program? and also the

1 question of going outside of the boundaries of Malibu to meet
2 that requirement?
3 And, the reason I bring up meeting that require-
4 ment, state law has certain requirements each local entity,
5 each city has to meet to meet their own affordable housing
6 requirements, and I really can't find the language, I am
7 looking for in this document. Is it in the other document?
8 EXECUTIVE DIRECTOR DOUGLAS: What we've just
9 agreed to change is that the requirements for TDCs would not
10 be applicable for affordable units in the city.
11 In terms of any in-lieu fee program, what we said
12 was, as I recall, we eliminated it for purposes of non-
13 visitor serving commercial. We have an in lieu fee for
14 hotel, but there is a question about the amount of that.
15 But, I don't know that there is any in lieu fee relative to
16 affordable housing.
17 CHAIR WAN: Yes, I think what I was --
18 COMMISSIONER KRUER: There shouldn't be.
19 CHAIR WAN: -- talking about yesterday was
20 visitor-serving commercial, and not --
21 EXECUTIVE DIRECTOR DOUGLAS: No.
22 COMMISSIONER DETTLOFF: Okay, well, I thought we
23 discussed meeting the requirements outside of --
24 CHAIR WAN: Yes, it was --
25 EXECUTIVE DIRECTOR DOUGLAS: Now, that is another

1 issue relative to the TDC requirement, itself, that those can
2 be met outside the city limits, relative to the retirement of
3 lots, because we are looking at it on a regional basis, so
4 that was a different reference, I think.
5 COMMISSIONER NEAL: Chairman Wan.
6 CHAIR WAN: Yes, Commissioner Neal.
7 COMMISSIONER NEAL: We do not have any in lieu of
8 when we are giving a community their housing element, and
9 their requirements for providing housing.
10 CHAIR WAN: Okay, next issue.
11 Commissioner Reilly.
12 COMMISSIONER REILLY: I believe this chapter
13 contains all of the zoning categories and stuff, and
14 descriptions of those, and there was a question yesterday
15 about the institutional classification, what is allowed, and
16 what is not allowed there, and there was testimony that
17 nursery schools were excluded, although churches were in the
18 institutional category, and that there is a prohibition on
19 recreation, but the schools are in the institutional
20 category.
21 Can staff comment on those things.
22 COASTAL PROGRAM ANALYST CAREY: Yes, the chart was
23 actually prepared by the city's consultant, and unless the
24 uses that they specified in some way implicated *Coastal Act*
25 policies, we didn't change them. We kept what they had in

the chart, and so the nursery school provision would be one of those.

COMMISSIONER REILLY: Could anybody from the city respond to that. Do you have a bunch of illegal nursery schools in your town?

MS. LICHTIG: Yes, I wish I could say that we do, because it is a product and a service that every community needs.

We are trying to do some research, real quick, right now. One of the challenges was matching our current chart to what was proposed by the Commission staff, and so if we've done any mismatching in the chart, that is a correction that we can make, certainly.

And, let me just see if staff has any additional --

COMMISSIONER REILLY: Well, let me just say this, it sounds like if it is not the intention of the city to outlaw those uses, recreation on school grounds, and nursery schools in churches, that it certainly is not anything that our staff has an investment in.

MR. MIGGITT: Hi, Glen Miggitt, Associated Planner for the City of Malibu.

What we have, essentially, done is just carried through all of the uses that are allowed in our zoning ordinance for the institutional zone, just to be carried

through to the Implementation Plan. So, we could add other uses, if it is your desire.

EXECUTIVE DIRECTOR DOUGLAS: Well, we certainly have a problem with adding it, and we can make that change to address that concern, and if the city has a problem with that, we'll try to work that out, and hopefully we will bring back a solution.

COMMISSIONER REILLY: Okay.

Another issue that I had, had to do with second units, and the difference between the staff and the city request for square footage between 750 and 1200-square feet. I don't have any strong feelings about this, but I'll just tell you that in our county we went ahead and, I think, increased it to about 900-square feet because what we were finding out is when we kept it at 700 or 750, as soon as the place got done, the garage got converted, and a lot of the times the wiring wasn't up to code, and it actually created more hazards than allowing people another 100 or 150-square feet and not having them do that conversion, so that is just something to think about.

COMMISSIONER KRUER: Madam Chair.

CHAIR WAN: Mr. Douglas, and then Commissioner Kruer.

EXECUTIVE DIRECTOR DOUGLAS: Well, again, our only concern was not to create a situation where you have second,

you know, primary residential unit. If you have some alternative solutions to that.

CHAIR WAN: Commissioner Kruer, and then I want to say something on that.

COMMISSIONER KRUER: I think Commissioner Reilly has hit on a very good point.

It isn't a big one for me, either, but I will tell you something, you are much better to allow somebody to go to 900-square feet than 750-square feet, and I'll tell you why: it takes about 875-square feet to build a regular unit, with a nice bathroom, storage area, and everything else, and what happens is exactly what Commissioner Reilly said.

All of these sub-contractors and everybody will tell you, they will build you 750-square feet, but I guarantee there is plumbing on the garage wall, and they are going to convert one of the garage units over, et cetera, and I think you are better, it is just better planning, because it is a problem.

And, I think you are better, as Commissioner Reilly says, 900-square feet would make a really smarter move than staying at 750 because it doesn't fit.

CHAIR WAN: On this issue, I am not wedded to a particular number, and I don't know that there is a big difference between 750 and 900.

Let me give a little background of explanation as

to where the 750 came from, and what some of the *Coastal Act* issues have been, and that is we've had the 750 in the county LUP all this time, on the basis of most of these get rented out, and the difference between 750 and say 1250 is the difference between a rental unit to one or two people, and as Mr. Douglas said, a full second unit that basically doubles the density of the neighborhood, and all of the cumulative impacts.

But, I don't see a great difference, as far as the impacts, between 750 and 900, okay, and maybe I am wrong, but you might want to take a look at that.

EXECUTIVE DIRECTOR DOUGLAS: We are willing to do that, and --

COMMISSIONER MC CLAIN-HILL: Can we just go to 900 and just consider the issue closed?

EXECUTIVE DIRECTOR DOUGLAS: Well, I'd just like to find out what the difference is, in terms of consequences.

CHAIR WAN: Right.

EXECUTIVE DIRECTOR DOUGLAS: Why wouldn't people break through to the garage with 900 feet, when they do with 750?

COMMISSIONER KRUER: Let me tell you why.

You lay out 750-square feet, you put in a lobby, put in a little living room, you put in a bedroom, you put in storage area, that is a very tight space for a granny unit.

1 People are jumping now to 850 or 880 something like that.
2 What happens is, there is consequences, the consequences are
3 you do it at 750, most cases, somebody is going to convert
4 the garage over, and you've got another unit, and you have go
5 two rental units instead of one, or one granny unit.
6 So, if I was the city, I would give people up to
7 900-square feet, 885, whatever the number is, but 750 is --
8 I'll tell you, what Commissioner Reilly says does happen, and
9 it happens all of the time.
10 COMMISSIONER MC CLAIN-HILL: Commissioner Wan.
11 CHAIR WAN: Yes.
12 COMMISSIONER MC CLAIN-HILL: I would just strongly
13 encourage staff to move from 750 to 900.
14 This is, again, another one of those cases where,
15 you know, we are kind of locked into this is the way we have
16 done it, this is the way it has been done, and, you know, we
17 are now doing an LCP. It is not a huge difference as it
18 relates to what can take place there --
19 EXECUTIVE DIRECTOR DOUGLAS: We'll do that.
20 COMMISSIONER MC CLAIN-HILL: Thank you.
21 EXECUTIVE DIRECTOR DOUGLAS: We are willing to
22 learn from experience.
23 CHAIR WAN: Commissioner Reilly.
24 COMMISSIONER REILLY: Yes, the last one that I
25 have is just a question about the staff recommendation that

some of the steep slope lots that are currently rural residential 20-acre minimums, be made to rural residential 40-acre minimums, and a couple of question about that.

Are any of those lots currently split? or are they all under the same ownership? I mean, are there actually formalized 20-acre lots there that are owned by different people, or not?

SENIOR DEPUTY DIRECTOR DAMM: Just one moment, Commissioner.

[Pause in proceedings.]

COASTAL PROGRAM ANALYST CAREY: I can't swear to every one, but for the most part, I would have to say that they are not 20-acre lots. They are 40 or over.

COMMISSIONER REILLY: Well, my concern is that if -- I guess, if you have a 20-acre lot, and you make it a minimum 40, then you have got a nonconforming lot, then. Is that basically what you are saying.

COASTAL PROGRAM ANALYST CAREY: No, that is not. I agree that that would be the case, but that is not the case in the lots that we designated as RR-40.

COMMISSIONER REILLY: So, none of those are currently 20 acres?

COASTAL PROGRAM ANALYST CAREY: We can look at it. I can't swear to each and every one, but that was our intention.

1 COMMISSIONER REILLY: I'd appreciate it if staff
2 would look into that.
3 CHAIR WAN: Any others?
4 COMMISSIONER MC CLAIN-HILL: We are still in 5,
5 right.
6 CHAIR WAN: We are still in 5.
7 COMMISSIONER MC CLAIN-HILL: I just wanted to
8 follow up on something that Commissioner Reilly mentioned
9 yesterday -- and again this may have been resolved in all of
10 the conversation -- but there were some questions about the
11 retained jurisdiction issue, and I just want to understand
12 it, and we've talked about it over and over and over.
13 From staff's perspective, there is no policy
14 relative to retained jurisdiction.
15 Staff, hello, hey.
16 EXECUTIVE DIRECTOR DOUGLAS: We are listening.
17 COMMISSIONER MC CLAIN-HILL: Okay, good.
18 The city has proposed a language, is on page 45 of
19 their matrix, and they are proposing that a section be added
20 with respect to retained jurisdiction.
21 Could staff just look at that, and tell me, either
22 A, if you have problems with the language, what your problems
23 are, or B, if you simply think it is unnecessary, why that
24 would be, and/or C, if you have a different intention, or
25 seeking to accomplish something different than what this

1 language seeks to accomplish, what is your understanding of
2 the current way that this all works, with respect to retained
3 jurisdiction?
4 EXECUTIVE DIRECTOR DOUGLAS: We certainly will
5 take a look at that, because that is a question that has been
6 raised a number of times before, and we --
7 COMMISSIONER MC CLAIN-HILL: I am sorry, it is on
8 page 45 of the Matrix. One of the Commissioners, I just
9 heard say, "What number" so I it is on page 45 of the Malibu
10 Matrix.
11 EXECUTIVE DIRECTOR DOUGLAS: Okay, then --
12 COMMISSIONER MC CLAIN-HILL: There is no current
13 code, there is current language proposed by staff at all.
14 EXECUTIVE DIRECTOR DOUGLAS: This would be the
15 proposed new policy suggested by the city --
16 COMMISSIONER MC CLAIN-HILL: By the city.
17 EXECUTIVE DIRECTOR DOUGLAS: -- and Mr. Faust has
18 a comment on this.
19 CHIEF COUNSEL FAUST: Well, let me just say that I
20 would be opposed, at a minimum, to the phrase, "including
21 modifications to previously approved projects."
22 That is contrary to this Commission's practice
23 throughout its history, and would -- part of the reason the
24 Commission keeps jurisdiction over permits it has previously
25 issued, is to insure that mitigation, or acts of mitigation

1 that have been undertaken are not compromised in some future
2 action.
3 So, the Commission has always taken the position
4 that if it has previously issued a permit, any amendment to
5 that permit needs to be given by the Commission.
6 So, I would, at a minimum, suggest that you not
7 adopt that portion of that language.
8 COMMISSIONER MC CLAIN-HILL: Okay, you know, I
9 think, and I understand that.
10 I am sorry, go ahead.
11 EXECUTIVE DIRECTOR DOUGLAS: Well, my comment was
12 that we need to take a look at that, because it has come up
13 in a number of other contexts, as well, not just here in
14 Malibu, and there may be a way we can address the concern
15 that Mr. Faust just raised, as well as the concern that the
16 Commission not continue to have permitting over things that
17 we really don't want to be looking at.
18 COMMISSIONER MC CLAIN-HILL: You know, I
19 appreciate that, and that was going to be my ask, that you
20 simply reconcile, try to reconcile, Mr. Faust's concern,
21 which I appreciate, with the reality here, which is we've
22 issued a whole lot of permits, and we don't get out of this
23 if we retain jurisdiction over every single amendment to
24 every single one of them.
25 EXECUTIVE DIRECTOR DOUGLAS: We hear you.

CHAIR WAN: Commissioner Reilly.

COMMISSIONER REILLY: Just to tag onto that.

In seeking some resolution and clarification around that, the other question that comes up, is sort of a gray area question, I guess, is for new things being proposed on a lot, when does that require a new permit, and when is it an amendment to an old permit?

And, I guess that is a judgment call that needs to be clarified both for the Commission and for the city.

EXECUTIVE DIRECTOR DOUGLAS: That will be part of our review here.

CHAIR WAN: Any other comments?

[No Response]

I have one on the zoning maps. Okay, this is the area, if we are looking at the Land Use Maps, and the zoning, where I have concerns, relative to the zoning of the parcels along Malibu Creek and Lagoon, which the underlying zoning right now, the only zoning -- let's put it this way, the only zoning that has been certified by the Commission is the zoning that would exist in the '86 LUP.

The city's general plan zoning was never brought to -- they made changes to the Commission's certified zoning, which is the zoning they have in their general plan, but they have not brought that to us for certification, so the zoning this Commission has recognized is the one that it has

1 certified.

2 My understanding is that the zoning that we
3 certified is different from the zoning in these maps, in the
4 sense that the current zoning actually up zones parcels, and
5 when we are talking about parcels immediately adjacent to
6 Malibu Creek and Malibu Lagoon -- that is what Commissioner
7 Reilly, I think, mentioned yesterday, too -- you are worried
8 about what the implications of additional development might
9 mean to such things as armoring of the creek, so maybe you
10 could address that concern.

11 COASTAL PROGRAM ANALYST CAREY: Yes, that has been
12 raised at previous hearings, and we did go back and take a
13 look at that.

14 In fact, we did later go back and change an area
15 on the north side of the creek. We changed that back to
16 RR-5. I believe the area that is being discussed is the area
17 that is designated RR-1 rural residential one-acre parcel,
18 and we went back and checked, and with the exception of one
19 parcel, the existing parcels are not of such a size as to be
20 allowed to be split by this designation.

21 The one exception is what was previously approved
22 by the Commission for a parcel called the O'Connor parcel.
23 That is a 14-acre parcel that is just to the east of Serra
24 Retreat Road. That, we went back and checked the permit
25 history on that, and the site is developed, and the remainder

of the site, including the slopes down into the creek, have been open space deed restricted, so we felt that it was okay for that designation, because it wouldn't allow for any intensification of use.

CHAIR WAN: Okay, that does answer those questions then.

Then, when the gentleman who was up here yesterday, Dave Brown, mentioned the RR-20, there aren't parcels like that? or zoning like that? I am trying to figure out what he is talking about.

COASTAL PROGRAM ANALYST CAREY: He is talking about, I believe, under the 1986 Land Use Plan this area was designated for 20-acre minimum parcels.

CHAIR WAN: But, you are saying it doesn't matter, because they are all one-acre parcels?

COASTAL PROGRAM ANALYST CAREY: Correct.

CHAIR WAN: Okay, fine, that is what I needed to know.

COMMISSIONER HART: Anything else left, from the city?

MR. JENNINGS: Let me just make one comment. This is with respect to the zoning of the RR-40 areas.

I just want you to be aware that the city has a fairly stringent slope density formula, which, effectively, would make these areas that have been changed one residence

1 per about 80 acres, so I just want you to be aware of it.
2 CHAIR WAN: Okay, Chapter 6 is scenic, right.
3 We are in scenic, Mr. Douglas.
4 EXECUTIVE DIRECTOR DOUGLAS: Thank you, very much,
5 that is quite a compliment.
6 What I would like to do --
7 CHAIR WAN: I didn't make any comments about you,
8 but go ahead.
9 EXECUTIVE DIRECTOR DOUGLAS: Oh, okay.
10 What I would like to do is indicate that the staff
11 is going to go back and revise the recommendations relative
12 to scenic protections.
13 We did hear the comments, yesterday, and we do
14 think that we need to accommodate some of those concerns, and
15 if Mr. Damm can give you some idea of the direction in which
16 we might go, I think it is one that we have to revisit.
17 SENIOR DEPUTY DIRECTOR DAMM: Well, the only
18 additional comment that I would have, Commissioners, is that
19 there has been a great deal of concern, with regards to the
20 provision in the scenic resource policies dealing with the
21 10,000-square foot development area limitation.
22 And, having listened to the concerns that were
23 expressed yesterday, and prior to yesterday, unlike the
24 environmentally sensitive habitat area, the staff does
25 believe that there should be, with regards to scenic

1 resources, a greater flexibility to look at ways to minimize
2 visual impacts, and not simply have a policy that says that
3 the development area, under any circumstance, is limited to
4 10,000-square feet.
5 So, we do want to have time to work with the city
6 on the scenic resource policies. We also are going to do
7 further research with regards to what other local
8 jurisdictions that have either similar, or somewhat similar
9 scenic quality issues in their jurisdiction, as to how they
10 have addressed the question of visual resources.
11 So, I did want to make it clear that, since that
12 has been a very controversial aspect of our staff recommend-
13 ation that we are going back and relooking at that, and we
14 are going to come up with language that provides for a range
15 of ways to deal with scenic resources.
16 CHAIR WAN: I am going to go back to Commissioner
17 Reilly, to deal with this, as he has some other questions,
18 but I have to apologize, I forgot to deal with archaeology
19 and Chapter 5.
20 So, Commissioner Reilly.
21 COMMISSIONER REILLY: On the scenic resources,
22 Madam Chair, one of my concerns is that you address the issue
23 of infill.
24 In other words, if you are looking out from PCH
25 and you are seeing, you know, 200 homes high on a hillside

1 and somebody is coming in below that to do something that you
2 define what scenic qualities you are protecting in a
3 situation like that, or at least is clear about it, and I
4 guess the one project down in Trancas is probably a good
5 example of that.
6 Another, obviously, is protecting ridgelines, and
7 those sorts of things, but there is a lot of language that is
8 in there, still, about accessory buildings, or animal
9 buildings, or stuff like that, it is not clear, and I just
10 would hope that whatever we come up with, in terms of the
11 scenic impacts only apply to those structures that actually
12 are creating the scenic impact, and not associate structures
13 that are not part of that.
14 And, I am assuming that also under the scenic
15 thing, we are not restricting crops or agriculture, is that
16 correct? or we won't be?
17 SENIOR DEPUTY DIRECTOR DAMM: That is correct.
18 Again, with regards to agriculture, it is the
19 limitations that staff has recommended deal with ESHA and
20 steep slopes, and that is it.
21 COMMISSIONER REILLY: Okay, and you are going to
22 be looking for alternative mitigations, in terms of scenic
23 impacts, as of array of things that people can do, rather
24 than just the one.
25 SENIOR DEPUTY DIRECTOR DAMM: Yes, as I said,

1 based on the comments that we've heard, including from the
2 Commission, it is clear to us that we need to work on this,
3 and that the approach is simply saying 10,000-square feet is
4 the answer isn't going to work.
5 COMMISSIONER REILLY: That's great, thanks.
6 CHAIR WAN: Commissioner McClain-Hill.
7 COMMISSIONER MC CLAIN-HILL: Also, this is sort of
8 a reoccurring thing for me, but we have indicated here that
9 we are protecting views from a variety of places, including
10 state waters, and I am interested in where that comes from?
11 And, I know that we've had this discussion before,
12 Commissioner -- I mean, I am sorry.
13 EXECUTIVE DIRECTOR DOUGLAS: No, I do --
14 COMMISSIONER MC CLAIN-HILL: Jesus Christ --
15 EXECUTIVE DIRECTOR DOUGLAS: -- not want to be --
16 COMMISSIONER MC CLAIN-HILL: -- I'm done.
17 EXECUTIVE DIRECTOR DOUGLAS: -- promoted.
18 CHAIR WAN: Okay.
19 COMMISSIONER MC CLAIN-HILL: Or, demoted, whatever
20 the case may be.
21 But, Mr. Douglas, we have had this discussion
22 before --
23 EXECUTIVE DIRECTOR DOUGLAS: Right.
24 COMMISSIONER MC CLAIN-HILL: -- with respect to
25 protecting views from the water, because once --

1 EXECUTIVE DIRECTOR DOUGLAS: I think --
2 COMMISSIONER MC CLAIN-HILL: -- you get out into
3 the water and start looking about looking up, you signifi-
4 cantly increase the envelop.
5 EXECUTIVE DIRECTOR DOUGLAS: I think that one we
6 can revisit, because the intent, really, there was in the
7 rural portions of the state, where you don't have human-
8 built landscapes along large reaches of shoreline.
9 And, this area doesn't really qualify for that.
10 COMMISSIONER MC CLAIN-HILL: No.
11 EXECUTIVE DIRECTOR DOUGLAS: So, we will delete
12 that. That was really intended for the much more rural
13 portions of the state's shoreline.
14 CHAIR WAN: Okay, can we go back to archaeology,
15 and I don't want to get too specific about this, but the
16 native Americans were here yesterday, and they made some very
17 good points, and I think we need to go back and take a look
18 at this, and deal with some of their issues.
19 In particular, I mean I don't have the language
20 that they were suggesting, in front of me, but I would like
21 you to look at those for ways to include those.
22 In particular, I know that one of the things that
23 they are very concerned about is the way in which both the
24 archaeologists and the site monitor is selected, and that
25 they would prefer that whoever is selected for these

1 positions be either selected by the Native Chumash,
2 themselves, or through the lists that are maintained by the
3 Native American Heritage Commission, rather than having the
4 selection of the archaeologist, for example, be done by the
5 applicant.
6 And, that is something that I think we really do
7 need to look at, because they are very concerned about it.
8 That is how they feel that their rights gets removed from
9 them. So, I would hope that we would be able to do that kind
10 of thing.
11 EXECUTIVE DIRECTOR DOUGLAS: This was a portion,
12 as I understand it, drafted by the city, and if the city has
13 some suggestions as to how we might respond we would be
14 willing to listen to that.
15 CHAIR WAN: Commissioner Kruer, and then I will go
16 to the city.
17 COMMISSIONER KRUER: One suggestion would be the
18 easiest suggestion that does work, is that the city go to the
19 people that were here yesterday, and you know, agree on a
20 list. That is the way most people do it, and there is an
21 approved list that you can use, of professionals, and just
22 pick anyone on that list.
23 CHAIR WAN: Yeah, but it is more than that.
24 They had some specific recommendations, and
25 language changes that they wanted --

1 COMMISSIONER MC CLAIN-HILL: The fact that -- if
2 they work with the --
3 COMMISSIONER KRUER: It was about who they hire.
4 CHAIR WAN: Yes, who they hire, right.
5 COMMISSIONER MC CLAIN-HILL: I think if the city
6 does some consultation with the Native American Heritage
7 Commission, and with the tribes, that they will be able to
8 come up with something that makes some sense, and that
9 typically is how this is done these days.
10 CHAIR WAN: Right, and --
11 You can come up.
12 -- but I would hope that staff would take another
13 look at this language that was submitted, and work with the
14 city --
15 If you will come up, that is fine.
16 -- to find a way to deal with this issue.
17 This is a major issue for the tribes, and we are
18 aware of that, and I think you need to be working with them
19 to figure out what is the best way to deal with this.
20 COMMISSIONER MC CLAIN-HILL: Say, "Yes."
21 MR. JENNINGS: Yes.
22 What was I saying "Yes" to?
23 We have a long history on this subject. We have
24 worked hard -- as a matter of fact, I was the one who drafted
25 the second version of our cultural resources ordinance.

1 There have been subsequent redrafts done by our cultural
2 resources committee, which includes members of the Chumash
3 organizations on it as members.
4 It is, potentially, a very, very contentious area,
5 because there is money to be had in being monitors. And, we
6 found out that it came down to money in a lot of cases, and
7 so we've tried to take the money out of it, but we are happy
8 to discuss with staff various ways in which we can come up
9 with approved lists of archaeologists -- as a matter of fact,
10 we do have an approved list, and we can work through the
11 methodology with staff, and would be happy to come back.
12 CHAIR WAN: Right, and we hope that you will work
13 with them, and --
14 MR. JENNINGS: And, we will take into consider-
15 ation the recommendations.
16 But, just please bear in mind that the Chumash
17 community is not entirely unified on these, and there are
18 various groups --
19 CHAIR WAN: And, I am aware of it, and that is why
20 I made the comment about the Native American Heritage
21 Commission, which is quite different from --
22 MR. JENNINGS: Right.
23 COMMISSIONER MC CLAIN-HILL: Yes, do that, go
24 there, it works.
25 CHAIR WAN: Commissioner Desser, did you want to

speak on this?

COMMISSIONER DESSER: I guess not. I am glad it is all -- [not on microphone, voice fades out of hearing range] -- I just want to point out that there is money to be made in all kinds of relationships in developing the process, so this is only --

CHAIR WAN: Okay, but --

COMMISSIONER DESSER: -- among them -- [not on microphone, voice fades out of hearing range].

CHAIR WAN: -- but it is a concern that we do deal with this in as sensitive way as we can.

Okay, now where are we. We were at 6, and what is after 6?

COMMISSIONER POTTER: Seven, public works.

CHAIR WAN: Seven, thank you. What time is it?

Public works, any comments?

[No Response]

Commissioners, can we get this finished?

What is your comment, Commissioner Kruer.

COMMISSIONER KRUER: None, zero.

CHAIR WAN: Zero.

Anything? we are on consensus?

We are finished. Are we finished?

Okay, Commissioner Hart.

COMMISSIONER HART: Just my, now, generic comment,

1 does the city have anything before we move on?
2 CHAIR WAN: We are in 7.
3 MS. LICHTIG: The city was just concerned about
4 some of the definitions that were incorporated into the
5 sections, and we can work with staff.
6 There was also a desire to have an exemption for
7 signs that relate to public safety type signs, so that if we
8 need to put up a stop sign some place, that we don't have to
9 get -- there is no exemption right now in the language, so
10 those are the main issues with Chapter 7.
11 EXECUTIVE DIRECTOR DOUGLAS: And, we'll work with
12 them on that.
13 COMMISSIONER HART: Thank you.
14 CHAIR WAN: Okay.
15 COMMISSIONER KRUER: Thank you.
16 CHAIR WAN: All right, we've completed the LU --
17 is there anything else after that?
18 COMMISSIONER POTTER: No.
19 CHAIR WAN: No, okay, we've completed --
20 COMMISSIONER HART: Actually, Madam Chair, I think
21 there was one little detail, and that was in the scenic
22 section, there were specific spots noted on maps as public
23 viewing areas, and if we could just have some more
24 clarification of why those specific sites were selected, and
25 what it is that they are intending -- what you are intending

to view from those areas, that would help us a little bit.

You don't have to do that right now, but I think as far as I've seen, and there is no real description in the narratives as to why those are relevent.

CHAIR WAN: So, you just want some description when they come back, it should be in there, okay.

We also have an Implementation Plan, and I don't know if anybody has any comments on the Implementation Plan.

COMMISSIONER POTTER: It seems to me, Madam Chair, that given the direction of today, that a fair amount of modifications would occur to the IP, subsequently, and I think as long as we have staff working in concert with the city that document would get modified accordingly.

My only concern is that there are some items in there that seem to get just a little bit beyond the norm, and I am just going to touch on things that I consider to be a little heavy.

One is in the area of the tree replacement ratio, 10:1 plus a fee for the tree loss seems a little draconian to me. I am used to a ratio more in the area of 5:1, some lots wouldn't even accommodate a 10:1 ratio, if the trees grow to maturity.

The flag limitations sounded a little humerous --

CHAIR WAN: That wasn't ours, and it has been dropped.

COMMISSIONER POTTER: I know, I know, I realize that. The area, as far as the septic issue, I already brought that up earlier. I think the less we can get into that level of micro-management the better off we will be, but I think we have given enough direction today that it will come back in its new state.

CHAIR WAN: Yes, Commissioner Nava.

COMMISSIONER NAVA: Yes, the specific language with respect to low-cost visitor accommodations when there is development of luxury hotel rooms, is that in the LIP?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, I guess I am getting tired, I can't recall if it is in the Land Use Plan or the Implementation Plan, but it is in one, or both.

COMMISSIONER NAVA: Okay, then my concerns with my reading as it relates to the fee. There was an in lieu fee, and there was a specific dollar amount identified.

I think we need to be very careful about insuring that whatever figure we settle, that it is adequate to develop, either to develop the replacement of those low-cost visitor-serving accommodations, or that money will end up sitting in a fund, and not appropriately applied.

This happened to us on another occasion when we had a fee that was too low, and the other issue that we've discussed is we have been accepting, for example, elimination

1 of low-cost visitor-serving, in exchange for a bed. We have
2 not been doing a room-for-room. We have been doing the
3 elimination of a room, and then we accept a bed, usually a
4 youth hostel.
5 The nature of the experience is clearly different
6 from someone staying in a youth hostel than a working family
7 that takes advantage of a low-cost hotel room.
8 There was just an article that appeared in the
9 Santa Barbara paper making reference to time shares, and the
10 projected amount that was expected to be received for those
11 time shares, and they ranged from $150,000 to $500,000 for
12 certain periods of time.
13 So, there is clearly, it seems to me, if we are
14 going to permit the either elimination or destruction of low-
15 cost visitor serving --
16 Sorry, Gary, are you guys done? Okay, well, just
17 talk behind Gary.
18 We need to make sure that whatever amount that we
19 receive is adequate, so that we can actually do a replacement
20 of room for room, because I don't think that we have been
21 getting enough money in the past, and clearly the economics
22 surrounding the new development are lucrative enough that a
23 fee to be obtained in exchange for that ought to be able to
24 get us what we need in the community.
25 CHAIR WAN: By the way, it is on page 203 of the

1 Implementation Plan and it is in Chapter 2 of the LUP, and
2 this was the one that I made the comment on, some of these
3 need to be located within Malibu, itself. We need to make
4 sure that we have got some low-cost overnight visitor-serving
5 accommodations in that community as well.
6 So, I don't know that they all have to be there,
7 but we have to have some located in this community. They
8 can't just be moved down the road.
9 COMMISSIONER REILLY: May I comment on that?
10 CHAIR WAN: Commissioner Reilly.
11 COMMISSIONER REILLY: Has staff provided a
12 definition for luxury?
13 EXECUTIVE DIRECTOR DOUGLAS: For what?
14 COMMISSIONER REILLY: Luxury?
15 [No Response]
16 I mean, it is only luxury hotels that have to pay
17 this fee, right?
18 EXECUTIVE DIRECTOR DOUGLAS: Well, that is a
19 challenge for us. What is luxury to one may not be luxury to
20 another.
21 COMMISSIONER REILLY: Yes, I knew you were going
22 to say that Mr. Executive Director.
23 EXECUTIVE DIRECTOR DOUGLAS: My sense is that we
24 are much better off in terms of looking at what lower cost
25 is, which is geared to an average cost of an overnight

accommodation at facilities like hostels in the region, and if it is above that -- I don't know that we have a definition that it has to be $200 a night in order to be luxury.

COMMISSIONER REILLY: What your policy says is new development of luxury overnight visitor-serving accommodations, and I just want to know if you know what luxury is, or if anybody else can figure it out to know who to charge and who not to charge.

EXECUTIVE DIRECTOR DOUGLAS: Right.

CHAIR WAN: Commissioner Kruer, he knows about luxury.

COMMISSIONER KRUER: Thank you for that, some of us has to bear with it, but, it is a penalty in life I've had to put up with.

I would like to say that I have been today very impressed with staff, and the way they have worked with the city, and I would like to ask the city, maybe, to think about, when you go back to your community, and especially you elected officials, et cetera, is that, you know, from my perspective here there has been a lot of past rhetoric in the past, and I am not pointing any fingers at anybody, but, you know, I've seen a lot of movement today by staff, and by the Commission, and people working with you, and I would like to see tone reflected -- as one person who reads all of these newspaper stories and stuff. You might get the word out that

the Coastal Commission is really trying to work with you, and work with your needs.

Keep moving forward on this tone. Keep working with the staff, and I think maybe this won't, when September 15 comes, you'll have a better plan than maybe half of the naysayers, and people, thought you had.

But, I have been impressed with staff in a lot of this stuff, and movement that they've made, and also with city, but I think it is your job to get the word out that we are trying to work with you.

CHAIR WAN: Commissioner Desser.

COMMISSIONER DESSER: I just wanted to give the staff a chance to respond, or ask us if there were any other areas of controversy, or anything else that we hadn't discussed, which you are going get to and think, "What did they mean here?"

EXECUTIVE DIRECTOR DOUGLAS: Okay, while Chuck is thinking about that, I wanted to respond to Commissioner Reilly's concern, too.

What we will be doing is looking at what Santa Barbara has done, Santa Monica has done, in looking at defining lower cost accommodations, and then that will get us to the point of what is a higher cost accommodation. It would be above a certain point. So, I get your point, and I think that it is important that we be as clear as possible

1 here, and we will address that.
2 Chuck, are there any other areas on which we need
3 guidance, beside getting it done in time.
4 CHAIR WAN: And, I have a number of Commissioners
5 who want to speak, so.
6 EXECUTIVE DIRECTOR DOUGLAS: Okay, I think, unless
7 something comes up, I think we have received the guidance
8 that we need to now work on revisions with the city, and
9 bring back a status report at the August meeting, and if
10 there are areas in which you would like to see language, I
11 just would hope that it would be limited, and not in all of
12 the changed areas that we are going to be working on.
13 What we can try to do is to see if we can have
14 some language in particular areas for the August meeting, but
15 that's --
16 COMMISSIONER DESSER: While I have the floor,
17 briefly, then I just want to thank the staff. It seems like
18 many, many, many, members of our staff were involved in
19 creating this thing. It is an amazing document. Thank you
20 for all of your hard work.
21 And, also to the City of Malibu for -- I mean, I
22 don't know what it was like down and dirty in the meetings,
23 but it seems like you guys work in a very, sort of good way.
24 CHAIR WAN: Commissioner Nava, then Commissioner
25 McClain-Hill.

1 COMMISSIONER NAVA: Yeah, Mr. Douglas answered one
2 of my questions, with respect to the methodology to determine
3 low-cost visitor serving, and then not low-cost visitor
4 serving.
5 And, I also want to express my appreciation to
6 staff for the work they did on this -- well, for the work
7 that they have done, and the investment that they have made
8 in preparing a document involving lots of complicated issues,
9 and lots of moving parts, and thank you very much.
10 CHAIR WAN: Commissioner McClain-Hill.
11 COMMISSIONER MC CLAIN-HILL: I just want to say
12 both to staff and to the city that I am absolutely amazed at
13 how much progress has been made since we started this.
14 And, I recall our very first meeting, and
15 specifically recall the, then I think mayor pro tem, address-
16 ing this body, and being really, really, really, unhappy with
17 us, and you know, asserting that we were impossible to work
18 with, and that our staff couldn't do this, that, and a third
19 thing.
20 And, I know, from first-hand experience, that this
21 entire endeavor seemed hopeless when we began. And, I am
22 just -- I think that this is an example of people performing
23 the public's business in the most exemplary fashion. There
24 have been a lot of very, very difficult issues. There
25 remains a lot of very, very difficult issues.

The environment has been outside of the room more than inside incredibly difficult and hostile. I appreciate that the city can't control how people feel. There is so much history, we are not going to turn it around in this process. But, given all that you have worked against, you have done a remarkable job, and I just appreciate and want to encourage you to continue, both parties, to work in good faith towards solution.

And, at the end of the day, I don't think that, you know, there is going to be a love fest, but you know, I was always confident that if people put their minds to the business of getting an LCP done, that we could get one done, and I am absolutely confident that that is where we are going to be in September, and I just want to thank you both very, very much.

CHAIR WAN: Commissioner Peters.

COMMISSIONER PETERS: Yeah, I did want to note one substantive thing, and I didn't know whether this was resolved.

But, in my own mind, I thought that the fire turn around was part of a driveway, so I know you continue to refine that concept, but I just wanted to let you know that was my understanding of it, and I would be happy to hear any ways to minimize the affect of that, but, anyway, I just want to make sure that was clear.

And, I would just say, also, to the staff and to the city, that I haven't seen the press outside of the room. It seems like you are all getting along well. I know there are a lot of loose ends to tie up, and you can't under-estimate the amount of effort that is going to be required to finish this off, and there will be a lot of additional work, but it does seem like things are progressing towards a situation that people will be able to live with, and work with into the future.

So, I congratulate you all on that.

CHAIR WAN: Let me just follow up on what Commissioner Kruer said.

I think that we have come a long way, both the Commission and the city. If this is -- we are going to have an LCP in September. If this is going to work the way it ought to work, we need to be doing this in a positive way, which means that both the Commission and the city have to make the efforts to find a way to get the community now to come together in a positive way, because that is the only way anything can work. That is the only way, in the end, once this document is accepted that it can work for the community.

The community has to have a positive perspective, and that is going to take leadership from the city, and I am hoping that the city is going to move forward after this to do just that.

At this point, I would like to express my thanks to everybody involved. I know that the city staff has worked very hard on this, as well. I know what my staff has done, as far as long hours. I am sure that is also true of you, and we appreciate it.

And, above all, I would like to express my thanks to our staff members, who have just gone above and beyond the call of duty, and represent the finest of public servants.

COMMISSIONER NAVA: I just want to make sure that the August meeting, while it will be a status report, will still allow for Commission comment at that time, just specific to direction that it seems to be going in.

If there seems to be a wrong turn that has been taken, I want to be able to make sure that the Commission can register their comments on that, so the final document that appears in September is 100 percent reflective of what we've done today.

I want to do two things, one is to commend my fellow Commissioners for having had the patience, the endurance, and overall intelligence to work through this very, very complex pile of paper. And, I think you have done a very, very good job, and been very professional today.

Under the area of professionalism, also, along with our staff, I would like to commend the Mayor of Malibu for having sat in there today, having been very jovial and

1 understanding and patient with the process.
2 And, sir, you have a very professional staff. I
3 am impressed with your planning department, and those people.
4 And, sort of the constant professional on your team seems to
5 be your city manager. She has been doing an excellent job,
6 really has been answering the tough questions, and seems to
7 have a very, very good overall knowledge of the issue, which
8 has made it a lot easier to get through today.
9 I think it would have probably been about 5:00 or
10 6:00 o'clock in the morning, if we'd stayed here last night.
11 I apologize to those people who have had to wait
12 today, for their item to be heard, but this has been a big
13 issue, and I think we made an awful lot of headway today as a
14 team, all three participants.
15 Thank you.
16 COMMISSIONER HART: Madam Chair.
17 CHAIR WAN: Any other comments? Yes.
18 COMMISSIONER HART: Just one little brief comment.
19 I just want to thank Commissioner Potter for last
20 month suggesting that we allocate two days for this effort,
21 because I frankly think last night at 10:00 o'clock had we
22 attempted to do what we just did today, we would not have
23 come up with the good product that we did.
24 CHAIR WAN: Okay, anything else.
25 COMMISSIONER REILLY: You forgot to ask us to

allocate two days for today's meeting, though.

CHAIR WAN: We are going to take a five minute break.

*

*

[Whereupon the hearing concluded at 2:45 p.m.]

ATTENTION ALL BUSINESS OWNERS

TO:

Pet Stores	Trainers	Landscapers
Garden & Nursery	Fence Installation	Gardeners
Paint & Hardware	Stables	Veterinarians
Plumbing	Horseshoers	
Tack & Feed	Lumber	
Farm Suppliers	Contractors	

The California Coastal Commission has proposed a new Land Use Plan for the City of Malibu that will affect many small businesses throughout the Santa Monica Mountains. Also, this Malibu Plan is probably a preview of what we can expect for the soon-to-be-released plan for the unincorporated (County) area surrounding the City of Malibu.

This plan will effect your business in many ways:

- Non-native plants will be prohibited.
- Horses and farm animals are largely banned from the area.
- Only earthtone colors will be allowed.
- Agricultural activities (vineyards and orchards) are banned.
- No new farming or ranching activities will be allowed.
- Garbage disposals are illegal.
- Dogs, cats and birds could be banned on a case by case basis.
- Office and Commercial parking must be permitted for use by beach visitors.
- A maximum floor-area-ratio of 0.15 is allowed in the Malibu Civic Center
- Demolition of more than 50% of the exterior walls in order to remodel requires conformance with the plan.
- Internally illuminated signs shall not be permitted.

There is still time to fix this ill-conceived plan. Join the Recreation and Land Use Preservation Foundation today and bring local control back to the City of Malibu.

RECREATION & LAND USE PRESERVATION FOUNDATION
P.O. BOX 472
MALIBU, CA 90265
818-880-8977
RECLUPF@EARTHLINK.NET

WHAT THE MALIBU L.U.P. MEANS TO EXISTING HOMEOWNERS

The LUP effects every homeowner who needs a permit for work on their property. Installing a new fence, adding a room, building a pool, removing existing improvements and planting a vineyard or orchard all require Coastal Commission permits. The Plan will require every homeowner to bring their property into compliance in order to get a permit. Most significantly, the plan will require that all property improvements including guesthouses, pools, corrals, barns, tennis courts and landscaping be confined to an area not more than 10,000 square feet. (A regulation size tennis court is 7200 square feet.) On larger parcels, the fire department's required 3000 square foot turnaround is included within the 10,000 square foot limitation.

These conditions apply even if your property was built before the Coastal Commission was created in 1976.

How is the Coastal Commission able to impose such strict regulations? They have declared all the open spaces, and a few developed areas, in Malibu as Environmentally Sensitive Habitat Area (ESHA). They are banning all development within ESHAs and requiring a 100" buffer zone around all ESHAs. And, although no scientific data exists to support these designations the Commission is using it to drive all the policies in the plan in order to minimize Malibu impact on the surrounding ESHAs.

WHAT DOES ALL OF THIS MEAN TO YOU? HERE'S HOW THE NEW PLAN WILL EFFECT YOUR PROPERTY.

FOR THOSE NOT ADJACENT TO UNDEVELOPED AREAS....

Garbage disposals are now illegal in Malibu and will need to be removed. All non-native landscaping will need to be replaced with native, drought tolerant fire resistant vegetation. Any landscaping which blocks views will need to be removed. All paint will have to be earthtones and the Commission can insist that you have no cats, dogs, or birds.

FOR THOSE WHO ARE ADJACENT TO UNDEVELOPED AREAS...

In addition to all of the above, no perimeter lighting is to be allowed. If fuel modification is required for fire safety, you will have to pay into a fund each year for destroying habitat. If persons currently cross your property to a trail or beach, you will have to allow that to continue. Building heights will be limited to 18 feet. Horses must be kept inside the irrigated fuel modification zone of 50' from a building.

IF YOUR PROPERTY MEETS ANY OF THESE CONDITIONS YOU ARE NOW "NON-CONFORMING" TO THE MALIBU PLAN. If you try to sell your property, you will have to disclose to the buyer the non-conforming status of the property. Further, a buyer may insist that you bring the property into conformance. To do so will require months of time and thousands of dollars, just to secure the permits.

WHY YOU SHOULD OPPOSE THE COASTAL COMMISSION LAND USE PLAN FOR MALIBU

1. Almost everyone in Malibu will own a "non-conforming" home which will require existing improvements (pools, tennis courts, vineyards, stables and landscaping) to be removed at some future date.

2. Homeowners will not be able to determine, and will be unable to completely disclose to future homebuyers, all the "non-conforming" elements of the property. (Garbage disposals are illegal.)

3. Tens of thousands of dollars will be expended, and months of delays encountered, obtaining permits to remove existing improvements. (None of the work will be allowed between November 1st and March 31st.)

4. The Coastal Commission will now decide if you should be allowed to have a cat, dog, bird or horse. (They have already begun prohibiting them in new single family home permits)

5. Everyone will have to allow hikers, bikers, riders and visitors to cross their private property unless they can prove no one has crossed it before.

6. Everyone's existing landscaping will ultimately have to be replaced, including lawns, eucalyptus trees, groundcover etc., with native, fire retardant, drought tolerant plants.

7. Fees will have to be paid to a habitat mitigation fund for "habitat" removed for the required fire department 200' fuel modification zone around structures.

8. Public access will be mandated on all beaches, regardless of capacity, or the availability of parking, restrooms, refuse removal or lifeguards.

RECREATION AND LAND USE PRESERVATION FOUNDATION
P.O. BOX 472
MALIBU, CA 90265
818.880.8977 RECLUPF@EARTHLINK.NET

TEN CHANGES TO FIX THE MALIBU LUP

1. KEEP THE CURRENT, ADOPTED ESHA DESIGNATIONS. UNDERTAKE AN ESHA STUDY WITH CITY OF MALIBU AND COUNTY BIOLOGISTS, WORKING WITH A SCIENTIFIC PANEL, TO DETERMINE ANY NECESSARY CHANGES TO THE BOUNDARIES AND BUFFERS.

2. ELIMINATE THE 10,000 SQUARE FOOT "DISTURBED AREA" LIMITATION.

3. REMOVE THE PROVISIONS WHICH MAKE MOST OF THE EXISTING DEVELOPMENT "NON-CONFORMING".

4. REMOVE ALL LIMITATIONS ON AGRICULTURE INCLUDING DEFINING IT AS "NEW DEVELOPMENT'. MAINTAIN THE CURRENT COASTAL ACT EXEMPTION FOR AGRICULTURE.

5. REMOVE ALL LIMITATIONS ON DOMESTIC PETS, LIVESTOCK, UNGULATES AND CONFINED ANIMAL FACILITIES.

6. REINSTATE THE MULTI-FAMILY ZONING DESIGNATIONS ON THE COAST. IT IS THE MOST AFFORDABLE BEACHFRONT HOUSING IN THE CITY.

7. PREPARE A SEPARATE COASTAL ACCESS PLAN THAT OPENS ONLY THOSE RIGHT-OF-WAYS WHERE BEACH CAPACITY EXISTS AND NECESSARY PUBLIC SERVICES CAN BE PROVIDED SUCH AS PARKING, RESTROOMS, LIFEGUARD, ETC.

8. REMOVE THE BAN ON GRADING AND EARTHWORK DURING THE "RAINY SEASON."

9. DEVELOP A CLEAR POLICY ON ACCESS FROM MALIBU INTO THE NATIONAL RECREATION AREA AND CLARIFY "SUBSTANTIAL EVIDENCE" OF PROSCRIPTIVE RIGHTS FOR TRAILS AND ACCESS.

10. REVISE THE "WETLANDS" TERM FROM "LANDS COVERED PERIODICALLY WITH SHALLOW WATER" TO A BIOLOGICALLY APPROPRIATE DEFINITION.

RECREATION AND LAND USE PRESERVATION FOUNDATION
P.O. BOX 472
MALIBU, CA 90265
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Rec'd 6/2

RECREATION AND LAND USE PRESERVATION FOUNDATION

P.O. Box 472 • Malibu • California • 90265 • (818) 880-8977

FOR IMMEDIATE RELEASE June 10, 2002
Contact: Ray Slayton 310-317-4292

MALIBU REACTS TO COASTAL COMMISSION MANDATES.

A coalition of community organizations have announced the formation of the Recreation and Land Use Preservation Foundation to organize a high profile battle against the Malibu Land Use Plan recently released by the California Coastal Commission.

"The Plan sets some of the worst precedents and most restrictive property development standards ever conceived in the state of California," said Foundation President Brain Boudreau. "The Coastal Commission has gone so far as to ban garbage disposals, require the removal of mature landscaping, dictate exterior colors of all homes, ban the planting of vineyards and orchards and regulate horses out of Malibu. Not only will this plan destroy the rural and cultural heritage of Malibu, it amounts to a regulatory seizure of private property and an unwarranted intrusion into homeowners personal property rights."

Foundation Executive Director, Ray Slayton commented, "We think that Governor Davis, Senator Burton and Speaker Hertzberg made a serious mistake when they permitted the Coastal Commission to adopt a plan for Malibu without approval of the local elected officials. They need to know just how out-of-touch their Commissioners have become."

The Foundation steering committee consists of representatives of homeowners, Realtors, recreation, equestrian, agriculture, labor and construction associations.

"The Commission disregarded a locally developed consensus plan submitted by the City of Malibu, and they ignored the testimony of hundreds of people who attended their September and January hearings," said Ruth Gerson, President of the Recreation and Equestrian Coalition and a board member of the Foundation. "They are not going to be able to ignore us at the July hearing." Slayton added, " We are alerting the residents of Malibu and we are mobilizing the people around the state who will be next if the Coastal Commission is able to get away with the crazy ideas in this plan."

The plan calls for personal residences and all ancillary uses such as corrals, pools, tennis courts and guest houses, including any graded slopes, to be confined to 10,000 square feet of area on parcels 40 acres or less. All grading and earthwork construction is banned from November through March. Without a grandfathering clause, more than half of the homes in Malibu will become "non-conforming", making it impossible to adequately disclose to a potential buyer what will be required to bring the property into compliance with the plan.

The Foundation has formed a steering committee to coordinate community efforts to amend the plan. Everyone is welcome. Call 818-880-8977 for information or e-mail at reclupf@earthlink.net.

Attachments

#0001

Dr. Hillary Adams
P. O. Box 1936
Mendocino, CA. 95460

July 5, 2002

California Coastal Commission
89 south California Street
Ventura, CA. 93001-2891

Via FAX: (805) 641-1732
and mail

Dear Commissioners:

I strongly support the California Coastal Commission's draft Local Coastal Program for the City of Malibu. Although I now live in northern California, I lived in Southern California for eight years, and am very concerned about coastal issues there. Moreover, what happens with Malibu's LCP could provide a precedent elsewhere. The protection of wetlands, riparian corridors, public access and water quality are all critical.

ESHA's need to be specific to the area. Coastal sage scrub and chaparral in the Santa Monica Mountains should be protected as an environmentally sensitive habitat area. Allowing development with ESHAs would set a destructive precedent all along the coast. In Mendocino County there is a move by developers and realtors to influence the consultants working on the update of our LCP to lower the 100 foot ESHA buffer to 50 feet. That would be devastating for our native plants and wildlife. In Malibu, the Civic Center development appears to be far too intense for the area. Army Corps standards are notoriously weak and cannot be relied upon for adequate protection. The Commission needs to provide strong wetland and riparian protection not only in Malibu, but all along the coast.

Public access is being lost along the ocean everywhere on the coast. The claim of private property rights is attempting to take away age-old access rights belonging to the community under California state law. including access to the beach and to fishing areas. Public access must be reinforced in Malibu as elsewhere.

Please support the staff draft LCP and provide strong protections for the future of Malibu and coastal California.

Sincerely,
Hillary Adams
Dr. Hillary Adams

RECEIVED
JUL 0 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ATTN: GARY TIMM
FOC-641-1732

July 5, 2002

California Coastal Commission
89 South California St.
Ventura, CA 93001

Chairperson Wan and Commissioners:

The Coastal Act was established to protect the public trust along the entire California coast. Without it scenic vistas would have been destroyed, wetland values diminished, public access eliminated and all the beauty Californians, as well as Kansans, hold dear degraded.

In order to prevent the above scenario strong LCPs with strong commissioners to enforce them are essential. We find the same efforts to weaken coastal protection here in Mendocino County.

I urge you to keep strong protection for the city of Malibu and the surrounding area by approving the draft LCP.

Sincerely yours,

Joan Curry
PO Box 457
Mendocino, CA 95460

RECEIVED
JUL 0 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

NANCY M. DONAVEN
4831 LOS PATOS AVENUE
HUNTINGTON BEACH, CA 92649
714/840 7496

July 2, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

FAX: 805 641 1732
ATTN: Gary Timm

Chairperson Wan and Commissioners,

I am writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. I am particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. I feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with the allowance of a 10,000 sq. ft. development envelope in all types of ESHA. I believe that this is not appropriate in riparian corridors. Riparian corridors are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. We urge the Commission to do likewise in Malibu.

In addition, I support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, I am very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. I also urge a careful examination of the wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands, not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, I applaud your efforts to increase public access to the coast in Malibu and in particular, I support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet is more restrictive to beachgoers than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate

enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

In conclusion, I urge support of your staff draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

We DO have only one coast!

Sincerely,

Nancy M. Donaven

Nancy M. Donaven

Copy to: Malibu Coastal Land Conservancy
Attn: Ozzie Silna
Fax: 310-456-5681

ENDANGERED HABITATS LEAGUE

Dedicated to Ecosystem Protection and Improved Land Use Planning

Dan Silver • Coordinator
8424-A Santa Monica Blvd., #592
Los Angeles, CA 90069-4267
TEL 323-654-1456 • FAX 323-654-1931
dsilverla@earthlink.net

July 4, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

RE: Malibu Local Coastal Program

Dear Chairperson Wan and Commissioners:

The Endangered Habitats League (EHL) supports the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. Due to our particular expertise, we will focus comments upon the treatment of Environmentally Sensitive Habitat Area (ESHA). For your reference, EHL is a Southern California organization dedicated to ecosystem protection, sustainable land use planning, and collaborative conflict resolution. Beginning in 1991, EHL was an early participant in State of California Natural Community Conservation Planning (NCCP), and has since served on stakeholder advisory committees for NCCPs and large scale Habitat Conservation Plans (HCPs) in San Diego, Los Angeles, Riverside, and Orange Counties.

Our review shows that the proposed ESHA designation is based upon the sound application of the principles of conservation biology. For example, the effects of habitat fragmentation on species viability and the need for connectivity are considered. Also, as you know, inconsistencies between the protections of ESHA and those under NCCPs/HCPs have been of concern to the Commission and other parties. While the standards of NCCPs and HCPs are not identical with the objectives of the Coastal Act – and should defer to the Coastal Act – it is nevertheless highly desirable that ESHA reflect the same underlying principles of conservation biology that operate in NCCPs and HCPs. Thus, the Malibu LCP's scientific treatment of ESHA will help to reconcile NCCPs and HCPs with the Coastal Act in the future, as they will then be "speaking the same language." This is one important reason why the Malibu methodology is a good model for the rest of the State, as LCPs are updated.

There are areas, however, where the draft LCP should be improved. Protections for highly sensitive riparian corridors should be strengthened beyond that of other ESHA. Also, we support the water quality policies contained in the original draft LCP. Finally, using State rather than federal standards for wetland delineation would result in improved and desirable protections.

In conclusion, we strongly urge support of the staff draft LCP and particularly of its sound scientific treatment of ESHA.

Sincerely,

Dan Silver, MD
Coordinator

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 3, 2002

California Coastal Commission
South Central District Office
89 South California Street
Ventura, CA 93001-2801
Attn: Gary Timm
By Fax: 805-641-1732

Subject: Support for Draft Local Coastal Program (LCP) for the City of Malibu

Dear California Coastal Commission, Chairperson Wan, and Commissioners,

As a former Malibu resident (Las Flores Canyon), I am writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu.

I support that staff's recommendations regarding public access, water quality, and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA), and feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are, however, some areas where the LCP is weak and needs improvement. One of these areas is the proposed allowance of a 10,000 sq. ft development envelope in all types of ESHA. I believe that this is not appropriate in riparian corridors. My former residence in Las Flores Canyon was built only about ten to fifteen feet from the bank of Las Flores Creek. During the rainy season, the creek threatened the building. Ignoring appropriate riparian setbacks can be harmful to both habitat and development. Furthermore, riparian corriders are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. I urge the Commission to do likewise in Malibu.

In addition, I support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu --in particular, the area surrounding Malibu Creek in the Civic Center. I am very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated.

Also, I urge a careful examination of the wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands, not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The unusual mediterranean climate of California requires wetland delineation standards that recognize the intermittent and seasonal nature of California's wetlands and riparian habitat areas.

The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so in Malibu as well.

Finally, I applaud your efforts to increase public access to the coast in Malibu and support the establishment of a route for the California Coastal Trail along the 27-mile stretch of Malibu coastline. This section of California's coast is a resource of statewide importance.

Setting a goal for at least one vertical accessway every 100 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

I have a vivid memory of visiting a beach near Pt. Dume as a child (in the 1960's). My parents had friends who lived on the point and had access to a beach that was protected with a locked chainlink fence and gate. I also remember visiting a well-known exclusive gated beach community in Malibu when I was about 21 (pre-Coastal Act). Both of these beaches were private, and I doubt that I will ever visit them again.

In conclusion, I urge support of your staff's draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

Sincerely,

Renee Flower

Renée Flower
1747 King Street
Santa Cruz, California 95060

Cc: Malibu Coastal Land Conservancy, Attn: Ozzie Silna – By Fax: 310-456-5681

CALPIRG
California Public Interest Research Group

STATE OFFICE
Los Angeles
3435 Wilshire Blvd. #380
Los Angeles, CA 90010
(213) 251-3680
(213) 251-3699 Fax
Http://www.calpirg.org

LEGISLATIVE OFFICE
Sacramento
926 J St. #523
Sacramento, CA 95814
(916) 448-4516
(916) 448-4560 Fax

July 8, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Dear Chairperson Wan and Commissioners:

I am writing on behalf of the California Public Interest Research Group (CALPIRG) in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. CALPIRG is particularly concerned that the staff's recommendations regarding public access, water quality, and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. We feel that the Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas, however, where the LCP is weak and needs improvement. The first area has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. We believe that this is not appropriate in riparian corridors. Riparian corridors are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. We urge the Commission to do likewise in Malibu.

In addition, we support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, we are very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. We also urge a careful examination of the wetlands delineation that should be performed to determine where development might be allowed. Use of the State standard for wetlands, not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, we applaud your efforts to increase public access to the coast in Malibu and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet will provide less access to the coast than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

Berkeley
2034 Blake St. #9
Berkeley, CA 94704
(510) 644-3454

San Diego
3980 Park Blvd. Ste A
San Diego, CA 92103
(619) 297-5512

San Francisco
3486 Mission St.
San Francisco, CA 94110
(415) 206-9338
(415) 206-1869 Fax

Santa Cruz
149 C Josephine St.
Santa Cruz, CA 95060
(831) 469-0553

Santa Barbara
1129 State St. #10
Santa Barbara, CA 93101
(805) 564-1207
(805) 965-8939 Fax

In conclusion, we urge support of the draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

Sincerely,

Teresa Olle
Toxics Program Director
California Public Interest Research Group
terlolle@calpirg.org

Rec'd 6/20/02

Recreation & Land Use Preservation Foundation
P.O. Box 472
Malibu, California 90265
(818) 880-8977
reclupf@earthlink.net

HOW THE MALIBU LOCAL COASTAL PROGRAM APPLIES

The Malibu LCP consists of two documents containing policies and ordinances the City of Malibu will have to apply in deciding what use you will be permitted to make of your land. The Land Use Plan ("LUP") is a collection of policy statements that set forth the governing parameters. It has 144 policies dealing with the use of "land resources" alone. The Local Implementation Plan ("LIP") consists of over 300 pages in ordinances that implement in detail the policies in the LUP.

The bulk of the regulation centers on the designation of most of the land in the City as Environmentally Sensitive Habitat Areas or ESHAs. This summary is a step by step review of how the ESHA designation works and how it restricts the use of your land.

What is an ESHA?

Coastal Act section 30107.5:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

What does it mean when property is designated as an ESHA?

Coastal Act section 30240

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

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

What land is designated ESHA in the Plan?

Virtually all land in the Santa Monica Mountains is an ESHA under the Commission's interpretation in the LCP. **LUP Policy 3.1** states, *"ESHA types include riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs and wetlands."*

The Commission's Ecological Findings for Malibu confirms that *"all relatively undisturbed habitats in the Malibu area constitute ESHA under the Coastal Act"* and that all such habitats in Malibu are considered ESHA until site-specific analyses prove otherwise.

The ESHA regulations apply not only to land that is designative as such, but also to adjacent land that is not ESHA. **LIP Sections 4.1 & 4.2** state, *"The environmentally sensitive habitat overlay zone shall extend not only over an ESHA area itself but shall also include buffers" which consist of "those areas within 100 feet of designated ESHA."*

Even if your land is not initially designated an ESHA, the City may be required to later declare your property to be ESHA when you apply to build on your property. Under **LIP Section.4.4.2** when you apply to the City to build on your property, you will be required to pay for site inventory, which will determine *"the presence or potential for sensitive species or habitat."* It either is found, you must then pay for an expensive site-specific biological study that will examine the biological resources on your site, the soil types, microclimate and wildlife corridors among other things. Under **LIP Section.4.3**, the City may declare your property to be an ESHA based on that site-specific biological study.

Can someone get their land out of an ESHA designation?

It is possible, but not likely. Getting out of an ESHA will entail an extremely expensive process that will require you to run the gauntlet of both the City and the Coastal Commission.

LUP Policy 3.7 states: *"If s site-specific biological study, prepared pursuant to Policy 3.35 [requiring a complete inventory of the plant and animal species on the property as a prerequisite to any permit application] contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6 [when the habitat has been illegally removed, degraded or a species of concern has been eliminated] the City Biologist and the Environmental Review Board shall review all available site-specific information to determine if the area in question should no longer be considered ESHA."*

LIP Section 4.1 states any modification of an ESHA designation in the LCP will require a LCP amendment subject to Commission approval.

Thus, after spending enormous sums on a biological study and further substantial sums at multiple public hearings between two separate agencies that could take more than a year, your fate will be left to the discretion of the Commission who declared your land to be an ESHA or ESHA buffer in the first place.

What if I can't get out of an ESHA?

You will not be able to develop any portion of your land that is designated ESHA.

LUP Policy 3.8 states that *ESHAs "shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas."*

LUP Policy 3.9 states, *"Public accessways and trails are considered resource dependent uses."*

Furthermore, the portion of your property that is adjacent to an ESHA will be restricted, including a 100 foot setback from the ESHA in which no development can occur. **(LIP Section 4.6.1)** Plus any new development must provide a buffer of no less than 100 feet from the outer edge of the tree canopy for oak and other native woodland. **(LIP Section 4.6.1)**

What if all of my land is an ESHA?

LUP Policy 3.10 states, *"If the application of the policies and standards contained in this LCP regarding use of property designated as ESHA, including the restriction of ESHA to only resource dependent use, would likely constitute a taking of private property, then a use that is not consistent with the ESHA provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking. In determining the minimum amount of development to be allowed, the City shall use the 'economically viable determination' section of the implementation portion of the LCP"* Note that the standard the Commission is using is not the standard established by the U.S. Supreme Court. The Supreme Court says you cannot be denied all reasonable investment backed expectations, which is not as limited as "economically viable use."

LUP Policy 3.11 states, *"Applications for development of non-resource dependent use within an ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property and shall include information necessary for the City to determine whether application of the ESHA policies and standards would result in a taking."*

LUP Policy 3.12 states, *"The maximum allowable development area (including building pad and all graded slopes, if any, as well as any permitted structures) in ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less, provided that the conditions enumerated in parts a-c of Policy 3.13 are met. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1 acre) in size, provided that the conditions in parts a-c of Policy 3.13 are met. These maximum development areas shall be further reduced if necessary to protect sensitive resources, particularly in riparian ESHA. Mitigation of unavoidable adverse impacts to ESHA shall be required."*

LUP Policy 3.13 states, before approving your project in an ESHA, the City must find based on evidence before it *"(a) a resource dependent use would not provide an economically viable use of the project site, (b) the amount of development represents the minimum necessary to provide the applicant with an economically viable use of the property, and (c) the project is the least environmentally damaging alternative that satisfies [the foregoing finding]."*

LIP Section 4.7.1 states that even if you can meet this burden, *"The development area shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance."* Thus, if the City or the Commission declares use of your property to be a nuisance, you have nothing.

Can I have horses in an ESHA?

LIP Section 3.11.2.A states, *"New confined animal facilities for keeping of horses or other ungulates for personal recreational use shall be prohibited in ESHA, or ESHA buffer, except as otherwise provided in Section 4.7."*

LIP Section 4.7.4 states, *"Development permitted within coastal sage scrub or chaparral ESHA may include one accessory animal structure such as a stable within the approved development area. A stable may be included within the approved development area or within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater that 4:1, does not require additional grading, and does not result in any expansion to the required fuel modification area."* Note, that this section allows horses in only two types of ESHAs. It does not allow for horses in riparian woodland, coast live oak, valley oak savanna or grassland ESHAs.

Where you can have a stable as an accessory structure, **LIP Section 3.11.2.G** states, that the *"animals shall be maintained in an area a minimum of 50 feet from any building used for human habitation."*

Under **LIP Chapter 5,** you cannot locate a stable within or near the protected zone (defined as five feet of the drip line or 15 feet from the trunk) of an oak, California Walnut, Western Sycamore, alder or toyon that has trunk 6 inches or more in diameter or two or more trunks measuring a total of eight inches or more in diameter. **LIP Section 5.4.B** states that *removal of such trees "shall be prohibited for the construction of accessory structures."* **LIP Section 5.4.B** states that *structures "shall be sited to prevent any encroachment into the protected zone and to provide an adequate buffer outside the protected zone of individual native trees...except where no other feasible alternative exists for the construction of one primary structure permitted under the applicable zoning."* Remember that a stable is an accessory structure and not a primary structure. There is no process to allow a stable within the protected zones of these trees.

These provisions essentially eliminate horses in the ESHA. Given the confined development area permitted, it will be the unusual property that will be have land in the limited development area that is more than 50 feet from the house. Stables are permitted only as accessory uses, so you cannot have a barn on a lot by itself. It will be the unusual situation where you can have a barn in the fuel modification zones (which extend up to 100 feet from a structure) that will not

increase the fuel modification area. If any grading is involved, no matter how little, the barn is banned in the fuel modification zones outside the limited development area.

Can I have an orchard or a vineyard in an ESHA?

LIP Section 3.11.1.A states, *"The conversion of vacant land in ESHA or ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard or other agricultural use shall be prohibited, except as otherwise provided in Section 4.7."*

LIP Section 4.7.3 states, *"Development permitted within coastal sage scrub or chaparral ESHA may include limited orchard or vineyard use within the irrigated fuel modifications area (Zones A and/or B if required) for approved structure(s) only if such use is not located on slopes greater than 3:1, does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides."*

Once again, this use is permitted in only two types of ESHAs. It will be limited to an area within 100 feet of your residence and only on a limited basis.

What if I am in an ESHA and I don't meet these standards?

Under **LIP Section 13.5.A** you have a non-conforming use or structure. As a result, the following restrictions will apply.

LIP Section 13.5.B states, *"Non-conforming uses as defined by 13.5(A) shall not be intensified, or expanded into additional locations or structures."*

LIP Section 13.5.C states, *"Non-conforming structures as defined by 13.5(a) may be repaired and maintained if it does not result in enlargement or expansion of the structure. However, demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including any demolition and/or reconstruction that was previously undertaken, is not permitted unless such structures are brought into conformance with the standards of the LCP."*

LIP Section 13.5.G provides that if the structure is damaged or destroyed by a natural disaster it can be repaired or replaced only if it meets the conditions in Section 13.4.6. **LIP Section 13.4.6** provides that you can replace a damaged structure (which is defined to include landscaping) only if it *"conforms to existing zoning requirements applicable at the time of replacement."* In the case of property in a ESHA overlay zone, it means the property must meet the extreme limitations of the zone.

This means that what you have today on your property you probably cannot sell because any substantial renovation will require the new owner to remove what you have that is non-conforming and to comply with the ESHA restrictions. Plus, any buyer would have to factor into

the price the risk of losing the value of the improvements if the property is destroyed by fire or other disaster.

Do I really have to pay a fee to clear vegetation on my land?

LIP Section 4.8.1 states that you will have to "mitigate" for *"unavoidable impacts to ESHA from removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance."* The section gives you three choices: (1) paying for the restoration of another degraded habitat of equivalent size, (2) acquiring land that is an intact habitat of equivalent size and converting it to deed restricted open space, or (3) an in-lieu fee that will go into a fund administered by the Santa Monica Mountains Conservancy.

July 5, 2002

RECEIVED
JUL 0 5 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To: Gary Timm

From: Allen D. Frankel
e-mail: allendfrankel@earthlink.net

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

Dear Mr. Timm:

Would like to see All ESHA and "significant watersheds" in the Santa Monica Mountains be protected as originally planed. I strongly believe based on scientific evidence that the public has a right to see these areas protected.

Incidentally, I hike in the Santa Monicas & I do NOT want to see a lot of oversized development that is out of place & a "channelized Lower Malibu Creek!! Thank you, Allen D. Frankel

California Regional Water Quality Control Board

Los Angeles Region

Winston H. Hickox
Secretary for Environmental Protection

Over 50 Years Serving Coastal Los Angeles and Ventura Counties
Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.swrcb.ca.gov/rwqcb4

Gray Davis
Governor

July 5, 2002

Mr. Jack H. Gregg
Water Quality Unit, Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Mr. Gregg:

Comments on Coastal Commission's City of Malibu Local Coastal Program; Land Use Plan and Implementation Plan

We thank you for the opportunity to review and comment on the draft City of Malibu Local Coastal Program (LCP) Land Use Plan (LUP) and Implementation Plan (IP). First of all, we strongly support the Coastal Commission's efforts to protect coastal waters in the City of Malibu and utilize the Local Coastal Program process to assist us to attain water quality standards in the Malibu area.

Despite our general support for the LUP and IP, we still have some concerns:

1. The LUP and IP must fully acknowledge and specify the legal regulatory jurisdiction and activities of the Regional Board. The California Regional Water Quality Control Board (Regional Board), Los Angeles Region, is the public agency with primary responsibility for the protection of ground and surface water quality in Los Angeles and Ventura County, including the City of Malibu. The California Water Quality Control Plan, Los Angeles Region (Basin Plan) sets water quality standards for the Los Angeles Region, which include beneficial uses for surface and groundwater, numeric and narrative objectives necessary to support beneficial uses, and the state's anti-degradation policy, and describes implementation programs to protect all waters in the region. The Basin Plan establishes water quality control plans and policies for the implementation of the Porter-Cologne Water Quality Act within the Los Angeles Region and, along with the Water Quality Control Plan for Ocean Waters of California (California Ocean Plan), serves as the State Water Quality Control Plan applicable to the Santa Monica Bay including the Malibu beach area, as required pursuant to the federal Clean Water Act (CWA). The LUP and IP must meet all applicable regulations of federal and other state agencies. The LUP and IP should specify the coordination mechanism with the Regional Board to avoid any conflict with federal and state regulations.

2. Pursuant to section 13260 of the California Water Code (CWC), any person discharging waste, or proposing to discharge waste that could affect the quality of the waters of the state, shall file a report of the discharge with a regional board. All discharges of wastewater to land are required to obtain Waste Discharge Requirements (WDRs) from

the Regional Board. The LUP and IP must indicate the authority of the Regional Board regarding wastewater discharges.

3. Senate Bill (SB) 390, signed into law October 6, 1999, requires each regional board to review or terminate, as appropriate, their waiver policies by January 1, 2003. This Regional Board has four existing waivers, including a waiver for individual onsite domestic sewage disposal systems (septic systems). Currently, Regional Board staff are considering whether to renew or terminate those waivers. Any implementation of the revised waivers may change the scope of the LUP and IP. The LUP and IP must acknowledge any possible waiver for the City of Malibu that will be adopted pursuant to SB 390.

4. Assembly Bill (AB) 885, adopted September 27, 2000, requires the State Water Resources Control Board to adopt statewide regulations for permitting and operation of onsite septic disposal systems on or before January 1, 2004. Currently, the State Board is drafting regulations, with input from a wide spectrum of stakeholders including local government, industry and environmental organizations. When the regulations are adopted, all individual, commercial and community onsite septic disposal systems will be required to meet the standards. The City of Malibu may be authorized to manage local single family individual septic systems consistent with AB 885 through the Regional Board. The LUP and IP must acknowledge the possible formal relationship between the Regional Board and the City of Malibu.

5. The Santa Monica Bay Restoration Project (SMBRP) established a septic system management task force (Task Force) in order to improve the management of septic systems and reduce the impacts from septic systems in Malibu. The Task Force has developed recommendations for septic management and incorporated these into SMBRP's Bay Restoration Plan. The Task Force is composed of the major stakeholders in the region, including the Regional Water Quality Control Board, the Coastal Commission, the California Department of Health Services, the Los Angeles Departments of Public Works, Health Services, and Regional Planning; Los Angeles County's 3rd Supervisorial District Office, the City of Los Angeles, the City of Malibu, the Santa Monica Bay Restoration Project, and Heal the Bay. In addition, these recommendations are consistent with the EPA's decentralized wastewater guidance document that lays out a five-tier plan for managing wastewater. The recommendations match closely with the third tier that is based on the premise that individuals own and operate their systems privately, but that there is a centralized authority that ensures adequate permitting, maintenance, and groundwater monitoring.

We recommend that a wastewater management plan (WMP) which is consistent with EPA's guidance be developed within six months of implementation of AB 885 and submitted to the Coastal Commission and the Regional Board for review and comments. The WMP should have an implementation schedule acceptable to the Coastal Commission and the Regional Board. The WMP shall be a dynamic document that allows modifications based on findings of current and future investigation projects and changes in any federal and state regulations. The implementation of the WMP should

first focus on critical areas with impaired water quality and impaired beneficial uses, such as the Civic Center, Malibu and Surfrider Beach area. We suggest that the WMP include the following elements:

- A statement of compliance with all Regional Board water quality objectives and standards;
- Funding structure;
- Compliance assurance program including an inspection program and penalties for non-compliance;
- Monitoring of treatment system, regional groundwater, and receiving water;
- A database management system; and
- Legal requirements for the siting, operation and maintenance of wastewater management system.

The City of Malibu should submit updates of the WMP to the Commission and the Regional Board every five years.

6. Currently, the Regional Board is developing a Total Maximum Daily Load (TMDL) for bacteria at Santa Monica Bay Beaches, including the Malibu beach area. On June 27, 2002, the Regional Board held a public workshop regarding a preliminary draft of the Santa Monica Bay Beaches Wet-Weather Bacteria TMDL. Also, a number of TMDLs are currently under development, including Malibu Creek nutrients and Malibu Creek pathogens. The Malibu Creek nutrient and pathogens TMDLs are in the preliminary draft stage and will be available for review by September 2002. The LUP and IP need to ensure that implementation of the TMDLs is incorporated.

7. In Section e. Agriculture and Confined Animal Facilities of the LUP, there is no mention of Waste Discharge Requirements for a "confined animal facility" (Title 27 of the California Code of Regulations). Item 3.142 of the LUP only indicates that confined animal facilities use Best Management Practices (BMPs) to insure that waste is not introduced to surface runoff or groundwater. Pursuant to Subchapter 2, Confined Animals, Title 27 of the California Code of Regulations, confined animal facilities shall be designed and constructed to retain all facility wastewater generated, together with all precipitation on, and drainage through, manure areas during a 25-year, 24-hour storm. The LUP must include the regulations for a "confined animal facility".

8. Item 3.124, Page 72 of the LUP, states that, "Under no conditions shall the leach field distribution lines be within five feet of groundwater." Please change "the leach filed distribution lines" to "the bottom of the disposal area".

9. Item 3.129, Page 72 of the LUP, states, " ... a report prepared by a registered groundwater hydrologist and sanitarian that addresses the ability...". These qualifications for technical report preparation are limited. We request that the qualifications be expanded to appropriate professionals including, Registered Civil Engineer in the environmental/geotechnical field.

10. The IP, which includes On-site Wastewater Disposal System Standards Ordinance (Chapter 18), has some conflicts with the Regional Board's regulations. On February 22, 2001, the Regional Board issued general Waste Discharge Requirements, entitled *General Waste Discharge Requirements for Small Commercial and Multifamily Residential Subsurface Sewage Disposal Systems* (Order No. 01-031). In addition, the Regional Board has issued General Waste Discharge Requirements, entitled *General Waste Discharge Requirements for Private Subsurface Sewage Disposal Systems in Area Where Groundwater is Used or May be Used for Domestic Purposes* (Order No. 91-94). Both WDRs require that any part of a sewage disposal system shall not be closer than 150 feet to any water well or closer than 100 feet to any stream, channel or other water course. Setbacks in item 18.7. M., Page 299 of Chapter 18, are not consistent with our requirements. The setbacks must be reconsidered to avoid any conflict.

With the LUP and IP, there are bound to be points where it will be essential for our agencies to cooperate and coordinate. We hope that by the inclusion of these above-mentioned recommendations in the LCP, we mutually accomplish the respective goals of our agencies.

In addition, there are still many minor issues that need to be addressed and discussed with the Regional Board staff, including wordings, definitions, and clarifications on our concerns. For further discussion on the issues please contact Orlando H. Gonzalez at (213) 620-2267.

If you have any questions concerning this letter, please call Kwang-Il Lee or Paula Rasmussen at (213) 620-2269 and (213) 576-6791, respectively.

Sincerely,

Dennis Dickerson
Executive Officer

cc: Mark Gold, Heal the Bay
Vic Peterson, City of Malibu
Marianne Yamaguchi, Santa Monica Bay Restoration Project
Medlina Becker, California Regional Water Quality Control Board – Los Angeles

RECEIVED
JUL 0 8 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Point Dume Community Association
P.O. Box 4122
Malibu, CA 90264
July 8,2002

California Coastal Commission
South Central Coast District
889 South California Street, Suite 200
Ventura, California 93001

Re: Draft City of Malibu Local Coastal Program Land Use Plan ("LUP")

Dear Coastal Commissioners:

After many years of public debate and extensive local planning, the 1986 Malibu/Santa Monica Mountains Land Use Plan(LUP) was certified by the Coastal Commission.

The 1986 (LUP) identified various types of resource areas with specific goals and development standards. The highest level of protection was given only to undeveloped areas designated as ESHA . These were unique areas containing major riparian corridors, specific oak woodlands, wetlands, certain shoreline rocky areas and offshore marine resources.

The only areas identified and mapped as ESHA on Point Dume were the sensitive marine resources. Coastal Act Section 30230 mandates that marine resources be maintained, enhanced and restored with special protection given to areas and species of special biological significance. In compliance with the Act, the 1986 LUP contained area specific and habitat specific policies for each individual beach area with detailed policies to protect each area. Please reinstate Policies 111,112,116,121,122 and 124 which provide protectiion for the seabird nesting area, marine mammal hauling grounds and sensitive tidepools at Point Dume. The 2001 Coastal Commission draft Malibu Land Use Plan LUP does not identify or define site specific beach protection standards, nor does it contain specific implementing measures to protect these areas .

The Coastal Commission draft Malibu Land Use Plan (LUP) assigns an arbitrary "top of slope" policy to the Point Dume gullies. No other area in Malibu, not even the steep, undeveloped land in the recognized Canyons of Malibu has this "top of slope" development restriction.

Coastal Act Section 30250 requires that new residential development be clustered within existing developed areas . The Point Dume neighborhood was subdivided in 1946, and is an old established and fully developed residential neighborhood that must be made exempt from ESHA designation as ESHA is defined in the Coastal Act as a resource dependent use only . The court ruling in Bolsa Chica vs Superior Court found that areas designated as ESHA in an LUP have no residential use.

There is no scientific evidence indicating the existence of any rare or endangered habitat in the gullies therefore the gullies do not meet the statutory definition of ESHA. Only areas proven to be of exceptional ecological significance with long term viability and thus deserving of special protection should be designated as ESHA .

We respectfully ask that you direct staff to delete the phrase "top of slope" from all draft LUP Policies or implementing measures regarding Point Dume and to amend the draft ESHA map to reflect the deletion of ESHA from Point Dume residential parcels.
Sincerely,

Judy Decker, co chair

John Mazza, co chair

SLO Coast Alliance

Post Office Box 14422 • San Luis Obispo, CA 93406 • (805) 782-4012

July 5, 2002

Sara Wan, Chair
California Coastal Commission
South Central District Office
89 South California Street
Ventura, CA 93001-2801

Dear Ms. Wan:

SLO Coast Alliance, a consortium of 31 organizations dedicated to the protection and preservation of our precious coast, strongly encourages the California Coastal Commission to support staff recommendations for the Malibu Local Coastal Plan (LCP). With supporters (voters) in excess of 12,000 environmentalists, we see the Malibu LCP as key to strong coastal protection.

We are concerned about protection not only of the coast, but of the neighboring Santa Monica Mountains and its extensive wildlife habitat as well. Further, we are strong supporters of the California Coastal Trail (CCT) which some in Malibu seem to think is an avenue for mountain lions to invade their community. The CCT now has official status. It is more than just a dream to consider a trail from Mexico to the Oregon border. A large portion of the CCT passes through San Luis Obispo County. We want it to be completed, including through Malibu, and as soon as possible.

The Coastal Act requires that Environmentally Sensitive Habitat Areas (ESHA) be protected, so it is extremely important to strengthen them in the Malibu LCP. There will be homes built in ESHA habitats. That is a given. However, any protection at all is better than none, and without strong, science-based LCP language such as that recommended by Coastal Commission staff, Malibu will become a disaster area as far as the environment is concerned. Strong habitat protection will be good for property values.

Thank you for urging your fellow Commissioners to cast their votes on the side of good planning and for protecting ESHAs as much as possible.

Sincerely,

Doug Buckmaster

Doug Buckmaster
Secretary-Treasurer
SLO Coast Alliance

MEMBER ORGANIZATIONS

Santa Lucia Chapter, Sierra Club • Friends of the RanchLand • San Luis Bay Chapter, Surfriders Foundation • Cambria Forum • Life on Planet Earth
ECOSLO • Santa Margarita Area Residents Together • Ventana Wilderness Alliance • Citizens for a Vehicle Free Nipomo Dunes • CALPIRG
Planning and Conservation League • Coastwalk • SLO County Chumash Council • Environmental Action Committee of West Marin
Save Our Shores • People for the Nipomo Dunes • Canyons and Streams Alliance • Wild Nature, Inc. • Access for All • Friends of Point Sal • Wild Nature, Inc.
Friends of Black Lake Canyon • New World Baroque Orchestra • Friends of Nipomo Community Park • Blue Dolphin Alliance • Pelican Network
Santa Barbara Chapter, Surfriders Foundation • Coastal Alliance on Plant Expansion • The Ocean Conservancy, Santa Barbara Field Office

STEPHEN D. CUMMINGS
155 Bucknell Avenue
Ventura, CA 93003
Ph & Fax (805) 644-3286
sc@cummingsresearch.com

RECEIVED
JUL 0 8 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 5, 2002

ATTN: GARY TIMM
OZZIE SILVA

California Coastal Commission
89 S. California Street
Ventura CA 93001-2801

RE: Malibu Local Coastal Program

Chairperson Wan and Commissioners:

This letter is in support of the California Coastal Commission's draft Local Coastal Plan (LCP) for the City of Malibu. The city of Malibu has been given every opportunity to come up with their own plan and has failed miserably. It's time to implement AB988 and allow the Coastal Commission to do its work as required by law. Let's not allow the temper tantrums of an irresponsible municipality threaten the administration of the Coastal Act and divert the limited resources protecting the rest of our coastline into the LCP-less black hole that is Malibu.

Sincerely,

Steve Cummings

Gary Timm

From: Alan Levine [alevine@mcn.org]
Sent: Sunday, July 07, 2002 12:45 PM
To: Sjordan51@aol.com
Subject: Re: Statewide Alert: Malibu Environmentalists Need our Help to Get at Strong LCP

Susan:

My fax is not functional. Perhaps you can pass this on.

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Chairperson Wan and Commissioners,

We are writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. We are particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. We feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. We believe that this is not appropriate in riparian corridors. Riparian corriders are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. Riparian corridors provide wildlife habitat (including instream habitat for fish and aquatid organisims) and a necessary water filtration corridor that must be maintained to help filter pollution and meet coastal water quality standards (Basin Plan - Water Quality Standards, and Clean Water Act/CZARA mandates). We urge the Commission to support maintinance of functional riparian corridors in Malibu - and the rest of the state.

In addition, we support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, we are very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. We also urge a careful examination of the
wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands (CDFG Code - Coastal Act mandates), not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, we applaud your efforts to increase public access to the coast in Malibu and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

In conclusion, we urge support of your staff draft LCP and strong protections

for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

Sincerely:

For Coast Action Group

Alan Levine
Coast Action Group
Box 215
Point Arena, CA 95468

707/542-4408
707/882-2484

July 7, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801
RE: Wednesday, July 10 South Central Coast District: #10 a. Malibu Local Coastal Program.

JUL 08 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Chairperson Wan and Commissioners,

I am writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. I am particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. I feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. I believe that this is not appropriate in riparian corridors.

In addition, I support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, I am very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. I also urge a careful examination of the wetlands delineation that should be performed to determine where development may be allowed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, I applaud your efforts to increase public access to the coast in Malibu and in particular, I support having the City establish a route for the California Coastal Trail. Setting a goal for at least one vertical accessway every 1000 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

In conclusion, I urge support of your staff draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act. Thank you!

Sincerely,

Barbara Livingston

Council Member Barbara Livingston
City of Carmel-by-the-Sea
Carmel, CA. 93921

Dr. Hillary Adams
P. O. Box 1936
Mendocino, CA. 95460

July 5, 2002

California Coastal Commission
89 south California Street
Ventura, CA. 93001-2801

Via FAX: (805)-641-1732

Dear Commissioners:

I strongly support the California Coastal Commission's draft Local Coastal Program for the City of Malibu. Although I now live in northern California, I lived in Southern California for eight years, and am very concerned about coastal issues there. Moreover, what happens with Malibu's LCP could provide a precedent elsewhere. The protection of wetlands, riparian corridors, public access and water quality are all critical.

ESHA's need to be specific to the area. Coastal sage scrub and chaparral in the Santa Monica Mountains should be protected as an environmentally sensitive habitat area. Allowing development with ESHAs would set a destructive precedent all along the coast. In Mendocino County there is a move by developers and realtors to influence the consultants working on the update of our LCP to lower the 100 foot ESHA buffer to 50 feet. That would be devastating for our native plants and wildlife. In Malibu, the Civic Center development appears to be far too intense for the area. Army Corps standards are notoriously weak and cannot be relied upon for adequate protection. The Commission needs to provide strong wetland and riparian protection not only in Malibu, but all along the coast.

Public access is being lost along the ocean everywhere on the coast. The claim of private property rights is attempting to take away age-old access rights belonging to the community under California state law. including access to the beach and to fishing areas. Public access must be reinforced in Malibu as elsewhere.

Please support the staff draft LCP and provide strong protections for the future of Malibu and coastal California.

Sincerely,

Hillary Adams

Dr. Hillary Adams

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JUL 0 8 2002
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

FRANK ARATA
23038 P.C.H.
MALIBU, CA.
90265

310 456 7866

CALIFORNIA
COASTAL COMM.
SOUTH CENTRAL COAST

JULY 2, 2002

CALIF. COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST. SUITE 200
VENTURA, CA. 93001

805 585 1800
FAX 805 641 1732

PHASE III REHABILITATE MALIBU PIER

CONCERNING:
APPLICATION PERMIT #4-02-161

MALIBU PIER, MALIBU LAGOON S.P.
HEARING DATE & LOCATION:
DATE: JULY 11, 2002
TIME: 9:00 AM
PLACE: WATERFRONT HILTON RESORT HOTEL
21500 P.C.H., HUNTINGTON BEACH, CA.
PHONE 714 960 7873

AGENDA ITEM #Th 10b

DEAR COMMISSION:

I HAVE A RESIDENTAL PROPERTY ON THE BEACH JUST WEST OF THE MALIBU PIER, AT 23038 P.C.H. AND MY CONCERNS ARE AS FOLLOWS; (1) IN THE PAST I HAVE HAD PEOPLE STAYING AT MY PROPERTY COMPLAIN OF THE NOISE FROM THE PREVIOUS REMODELING OF THE PIER. THEREFORE WOULD I BE COMPENSATED FOR ANY LOSE OF RENT DURING THE CONSTRUCTION PERIOD? OR IF I HAVE TO RENT AT A REDUCED RATE BECAUSE OF NOISE WOULD I BE COMPENSATED?' (2) MY OTHER CONCERN IS THE 'SPORT FISHING BOAT'.WHEN THE FISHING BOAT OPERATED IN THE PAST, THEY WOULD TIE THE BOAT TO THE PIER, WITH THE STERN POINTING TO THE SHORE AND OUR PROPERTY & WHILE LOADING OR UNLOADING PASSENGERS SEVERAL TIMES A DAY, THEY WOULD LEAVE THE MOTOR RUNNING FOR AN HOUR OR MORE, MAKING IT HARD TO SLEEP OR ENJOY THE FRESH AIR OF THE BEACH. I AM NOT APPOSED TO THE FISHING BOAT, BUT COULD EITHER HAVE THEM POINT THE STERN OUT TO THE OCEAN, OR TURN THE ENGINES OFF WHILE TIED UP? AS IT ISN'T JUST THE NOISE BUT ALSO THE SMELL OF THE EXHAUST THAT IS UNHEALTHY AND UNPLEASANT!!!

HOPING THAT YOU CAN RESOLVE THESE CONCERNS,

RESPECTFULLY YOURS,

Frank Arata

FRANK ARATA

ENDANGERED HABITATS LEAGUE

Dan Silver • Coordinator
8424-A Santa Monica Blvd., #592
Los Angeles, CA 90069-4267
TEL 323-654-1456 • FAX 323-654-1931
dsilverla@earthlink.net

July 4, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

RE: Malibu Local Coastal Program

Dear Chairperson Wan and Commissioners:

The Endangered Habitats League (EHL) supports the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. Due to our particular expertise, we will focus comments upon the treatment of Environmentally Sensitive Habitat Area (ESHA). For your reference, EHL is a Southern California organization dedicated to ecosystem protection, sustainable land use planning, and collaborative conflict resolution. Beginning in 1991, EHL was an early participant in State of California Natural Community Conservation Planning (NCCP), and has since served on stakeholder advisory committees for NCCPs and large scale Habitat Conservation Plans (HCPs) in San Diego, Los Angeles, Riverside, and Orange Counties.

Our review shows that the proposed ESHA designation is based upon the sound application of the principles of conservation biology. For example, the effects of habitat fragmentation on species viability and the need for connectivity are considered. Also, as you know, inconsistencies between the protections of ESHA and those under NCCPs/HCPs have been of concern to the Commission and other parties. While the standards of NCCPs and HCPs are not identical with the objectives of the Coastal Act – and should defer to the Coastal Act – it is nevertheless highly desirable that ESHA reflect the same underlying principles of conservation biology that operate in NCCPs and HCPs. Thus, the Malibu LCP's scientific treatment of ESHA will help to reconcile NCCPs and HCPs with the Coastal Act in the future, as they will then be "speaking the same language." This is one important reason why the Malibu methodology is a good model for the rest of the State, as LCPs are updated.

There are areas, however, where the draft LCP should be improved. Protections for highly sensitive riparian corridors should be strengthened beyond that of other ESHA. Also, we support the water quality policies contained in the original draft LCP. Finally, using State rather than federal standards for wetland delineation would result in improved and desirable protections.

In conclusion, we strongly urge support of the staff draft LCP and particularly of its sound scientific treatment of ESHA.

Sincerely,

Dan Silver, MD
Coordinator

santa monica mountains
task force/sierra club
angeles chapter

Box 344 • Woodland Hills, California 91365-0344

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 1, 2002

Sara Wan, Chair
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

re: Testimony on Draft Malibu LCP

Dear Chair Wan and commissioners,

Malibu's LCP is one of the most important planning decisions the Commission will be called upon to make, not because of the "celebrity factor", but because Malibu offers to the ten million-plus people of the Los Angeles region – and to visitors to the state – a quality coastal experience in a beautiful natural setting.

Malibu is one of only three or four places in the continental United States where a sizeable mountain range rises directly out of the sea, yet views of that sea and mountainous coastline are increasingly being blocked by private development along Pacific Coast Highway and mountain roads and marred by unsightly mansionization.

Access to the beach and to upland viewsites and trailheads is increasingly being blocked by development. Even on public streets there is a lack of parking places for visitors, even adjacent to public parklands such as Point Dume.

As the Commission saw last month, Malibu and the Santa Monica Mountains still contain rich and diverse populations of wildlife, but the wildlife of Malibu's hills, riparian habitats, wetlands, and offshore waters continues to be under mounting development pressure.

Controlling the buildout of Malibu and keeping its unique resources available to the regional poipulation and visitors is a daunting task and will take a major effort of will by the Commission.

The development pressure that threatens to overwhelm the beauty and natural resources of Malibu is a result of the same scenic beauty, open space, and recreational opportunities that makes it an attractive destination for the public. In a sense the LCP is part of a contest to see whether Malibu will become a largely private place for the privileged or will remain open to the public.

There is another side to Malibu, a result of the large number of people who want to live there. **Malibu is a leading contender to be the disaster capital of the United States.** Homes are built on sandy beaches, steep and unstable hillsides, flood plains (see part II of our comments), and in fire-prone chaparral which, under extreme wind and low humidity conditions generates in 40 to 100 acres the heat of the Hiroshima bomb. Residents tell stories of having to plunge into the ocean to escape the intense heat of hillsides burning hundreds of feet away.

Malibu's disasters are a direct result of poor planning, and they cost the rest of us tremendous amounts of public and private funds that are taken from other, more socially productive uses. Between 1992 and 1995 the federal government alone spent **$78.6 million** on disaster loans and grants for three flood events and one fire in Malibu and adjoining areas of the Santa Monica Mountains, much of it in the City of Malibu (see enclosed data sheet). The disaster-prone nature of much Malibu real estate lends additional urgency to the need for strict land use and development controls in the LCP. We hear much about "property rights", but it's not a private property issue alone when the public is repeatedly asked to bail out the builder, the buyer, and the lender.

We are enclosing a copy of the latest **Sierra Club Book** entitled **"The Magnificent Santa Monica Mountains",** available commercially in a larger book called **Wild L.A.** About half the pictures in the book were taken in the Coastal Zone of the Santa Monicas. At least 12 were taken in the **City of Malibu**.

The photograph on page 20 gives a good overview of land uses and topography along the Malibu Coast. It was taken from the hills above Pacific Coast Highway in western Malibu looking southeast toward Point Dume, with the Palos Verdes Peninsula in the distance. The Broad Beach area is in the foreground. The open, west-facing beaches are publicly-owned **Zuma and Westward beaches** The rocky tip of **Point Dume** is publicly-owned and contains a cormorant colony, seal haul-out areas, and some of the best coastal bluff vegetation remaining in Los Angeles County. However, street parking at the point Is very limited, making it difficult for the public to enjoy this unique area.

At present only a small part of this picture – Point Dume and a handful of riparian woodlands such as the one at the base of the hill in the foreground - are designated as ESHAs. The **Draft LCP** would add ESHA protection to the sage-covered hills in the foreground only, leaving the remainder of the area open to development under plan policies. People could plant orchards or vineyards or keep horses on the level, gently-sloping green lots in the center and background.

Note how much steeper the sage-covered hills proposed as ESHA are compared to the rest of the areas shown in the picture. Note the loose, broken rock on steep slopes in the foreground. These apparently unstable hilltops would be likely building sites. Grading for large pads for building sites would be followed by clearance of sage for 200' in all directions from all structures. Try to envision how much coastal sage/ESHA would be left after site preparation and fire clearance.

During fire season this area is periodically lashed by gale force, bone dry, hot Santa Ana winds roaring down canyons and over ridges from the northeast. Under such conditions this area burned in October, 1978, destroying a large number of homes seaward of Pacific Coast Highway in the Broad Beach area to the right. Homes on the hilltops in the foreground would be even more vulnerable.

Pages 36 and 37 have pictures of **Giant Coreopsis,** a large perennial flower of limited distribution found only in the Channel Islands and a few sites along the nearby mainland.

In Malibu **Giant Coreopsis** appears to be confined to westward-facing coastal bluffs close to sea level west of Point Dume. A few, but not all, of these bluffs are designated as ESHAs. Many stands of Giant Coreopsis are not designated as ESHAs.

Page 51 is a view of **Point Dume** from the east. Rounding this point from public beaches to the west is very hazardous, and is not an option for most ordinary citizens. Access to this site is possible only from a private visitor-serving area (Paradise Cove – designated CV-1 in the LCP) 1.5 miles east of Point Dume. All beaches between Paradise Cove and Point Dume are private.

Page 70 contains a photo of **Solstice Creek,** a perennial stream in the City of Malibu. This segment of the stream is owned by the **National Park Service** and is open to the public. However, just off the picture to the left is a privately-owned slope that, if developed without careful controls, could send large quantities of sediment into this stretch of the creek, lined with White Alders.

Solstice Creek supported a small run of the now endangered **Southern Steelhead** until access to the creek was blocked by construction of Pacific Coast Highway in the late 1930's. The **National Park Service** has obtained funds to modify or remove the barriers and intends to restore the Steelhead run in the near future. To maintain this restored run, it is critical that development not be permitted to encroach on the 200 yards of privately owned riparian habitat between the Park Service holdings and the beach.

We have mixed feelings about the plan to designate undeveloped **chaparral** and **coastal sage** as **ESHA.** On the positive side, there is no question of the high value of these natural communities as cover and forage for wildlife. There is also no question of the benefit to the public interest of maintaining this natural watershed cover on the steep slopes and canyons inland of Pacific Coast Highway. As was pointed out at the workshop last month, studies have shown repeatedly that clearance of chaparral on steep hillside and mountain slopes greatly increases the risk of erosion, mass wasting, and mudflows during heavy rains (as shown on the enclosed record of peak rainfall events, the Santa Monicas occasionally experience periods of exceptionally heavy short-term rainfall). The resulting erosion and sedimentation damages property, streams, riparian habitat, and tide pools downhill and downstream from the site.

Also, construction in coastal sage and chaparral communities exposes residents and their property to the horrifying holocaust of brush fire (according to Chief Anthony of the Los Angeles City Fire Department, 40 to 100 acres of mature chaparral will generate the heat of the Hiroshima atomic bomb!). Mitigation of this hazard is achieved by removal – some times to mineral earth – of up to 200 feet of coastal sage and chaparral cover around each structure, decimating three to five acres of habitat for each residence approved, putting downhill properties and habitats at risk and decimating the natural communities affected.

With large areas of relatively common chaparral and coastal sage now proposed for ESHA designation, putting it on the same level as much more threatened habitats such as riparian habitats, wetlands, dunes, and stands of giant coreopsis, how will the City of Malibu deal with a situation where the applicant decides the best place on his property to put his 10,000 square feet of development is a riparian woodland or a well-developed oak woodland. Does the Draft LCP give the City guidance as to how to handle such a situation and where the priorities should lie?

An alternative could be to identify exceptionally well-developed stands of coastal sage and chaparral containing high species diversity and/or unusual or uncommon species of special scientific value and limit the ESHA designation to those stands.

In any case, the ESHA designation should be retained for streams, riparian woodlands, wetlands, and other natural communities that have been largely eliminated from coastal areas of the Los Angeles region. There should also be special watershed protection and buffering for Malibu Lagoon and for streams designated "significant watersheds" in the 1986 LUP (Tuna Canyon, Malibu Canyon, Corral and Solstice Canyon, and Zuma and Trancas Canyons).

Riparian habitats, by their linear nature, provide good connectivity, serving as travel corridors for wildlife and linkage between upland habitats and coastal wetland, beach, and bluff habitats. We support the **100' buffer** of native vegetation beyond the outer canopy of riparian woodlands because birds and animals that live in riparian woodlands forage in adjoining areas and because it buffers the riparian habitat from the impact of human development and activity.

We also support the set back of all new developments at least 100' from the edge of natural park areas. Without this set back requirement park agencies would be put to the expense of clearing protected habitat within the park at public expense, diminishing the value of the public's investment in habitat protection and creating conflicts between residents and park users.

Lower Malibu Creek and Lagoon do not easily conform to the policies governing riparian ESHAs and wetlands in other parts of Malibu. Because of the large drainage of Malibu Creek and the corresponding very high peak flood flows in the **Serra Retreat** and **Civic Center** areas, the **flood plain** and **riparian habitat** has spread out hundreds of feet westerly, creating a "sycamore savanna" and patches of wetland in several parts of the Civic Center area, while the mapped ESHA along Malibu Creek where it joins the Lagoon is far narrower than the extent of riparian habitat bordering the stream that should be designated ESHA.

The **Draft LCP,** as a result of the above unusual conditions, has designated several properties in the flood plain for commercial urban development, one of them borders directly on the floodway, in well into the flood plain, and partially, if not entirely should be defined as riparian ESHA.

In a couple of cases, the **Draft LCP** intensifies the use over that permitted in the 1986 LUP on properties with a critical buffer relationship to the lower creek and lagoon. These cases will be discussed in more detail in the attached **part II** and accompanying photos and maps.

Finally, we strongly support relocation of the **Little League ballfields** off of **state park land** on **Malibu Bluffs.** These ballfields are not the "Malibu Community Park"; they are state park land purchased with **$7.2 million in state park bond funds** in the late 1970's. The ballfields and the sign are a deterent to public access to and use of this important coastal view site, which the state and the National Park Service would like to develop into a major visitor contact facility.

Sincerely,

David M. Brown, Conservation Chair
Santa Monica Mountains Task Force

santa monica mountains
task force/sierra club
angeles chapter

Box 344 • Woodland Hills, California 91365-0344

Draft Malibu LCP, comments, part II

Malibu Lagoon Area – Land Uses inconsistent with Plan Policies

- **Between Malibu Creek at the head of Malibu Lagoon and Cross Creek Road just south of the "Arizona Crossing".**

This large parcel is several hundred feet inside the **Flood Plain** of Malibu Creek, directly adjacent to the creek and upper lagoon, adjacent to state park land, and was designated "significant watershed" in the 1986 Malibu LUP (maximum permitted density 1du/20 ac). The property was flooded in the floods of February 16, 1980 and sprouted a large number of saplings of California Sycamore after that event, indicating it is riparian habitat. (See the enclosed maps for location of this property in relation to the flood plain boundary, "significant watershed", state park ownership, and the creek and lagoon.)

Malibu Creek is not a typical Malibu canyon with a narrow flood plain and a narrow riparian habitat. It drains over 100 square miles of the Santa Monica Mountains and the Simi Hills and can carry up to 45,000 cfs in a peak storm event. After dropping 150' to the mile through Malibu Canyon, the creek drops only 25' in the mile between the canyon mouth and the lagoon, causing the creek to drop sediment and boulders in this area. This causes the flood plain to spread out hundreds of feet westerly into the eastern half of the Civic Center area (see enclosed map).

Malibu Creek and Lagoon support a run of the **endangered southern steelhead**, a species that is significant not only because it is endangered, but also because it can tolerate somewhat higher water temperatures than more northerly varieties of steelhead. This gives it special genetic significance in the survival of the entire species in the event global warming continues.

Malibu Creek and Lagoon also support a population of the **endangered tidewater goby.**

In spite of all of the above constraints on development of the above property, the **Draft Malibu LCP** designates the above property as **"Community General"**, a designation that permits **"more intense commercial, visitor serving uses, and light industrial uses."**

Clearly, any commercial or industrial uses developed on this property will be exposed to major risk of flooding. Given the lack of sewers in Malibu, there will also be a risk that such development so close to Malibu Creek and Lagoon will carry a substantial risk of water quality impacts. The flood hazard will probably be mitigated by "armoring" the creek bank and straightening the channel. There will be mounting pressure to protect millions of dollars in new, urban development by concrete channelization within the creek and lagoon ESHA and to dredge sediment from the creek channel ESHA. The impact of the **armoring, dredging, and channelization** on the **endangered southern steelhead, the endangered tidewater goby,** and other creek and lagoon biota that will result from the decision to designate this **flood plain** property for commercial and light industrial uses should not be too difficult to imagine.

Designation of the subject flood plain property for commercial and light industrial uses is contrary to **Sections 30231, 30236, 30240(a), 30240(b), and 30253(1) of the Coastal Act.**

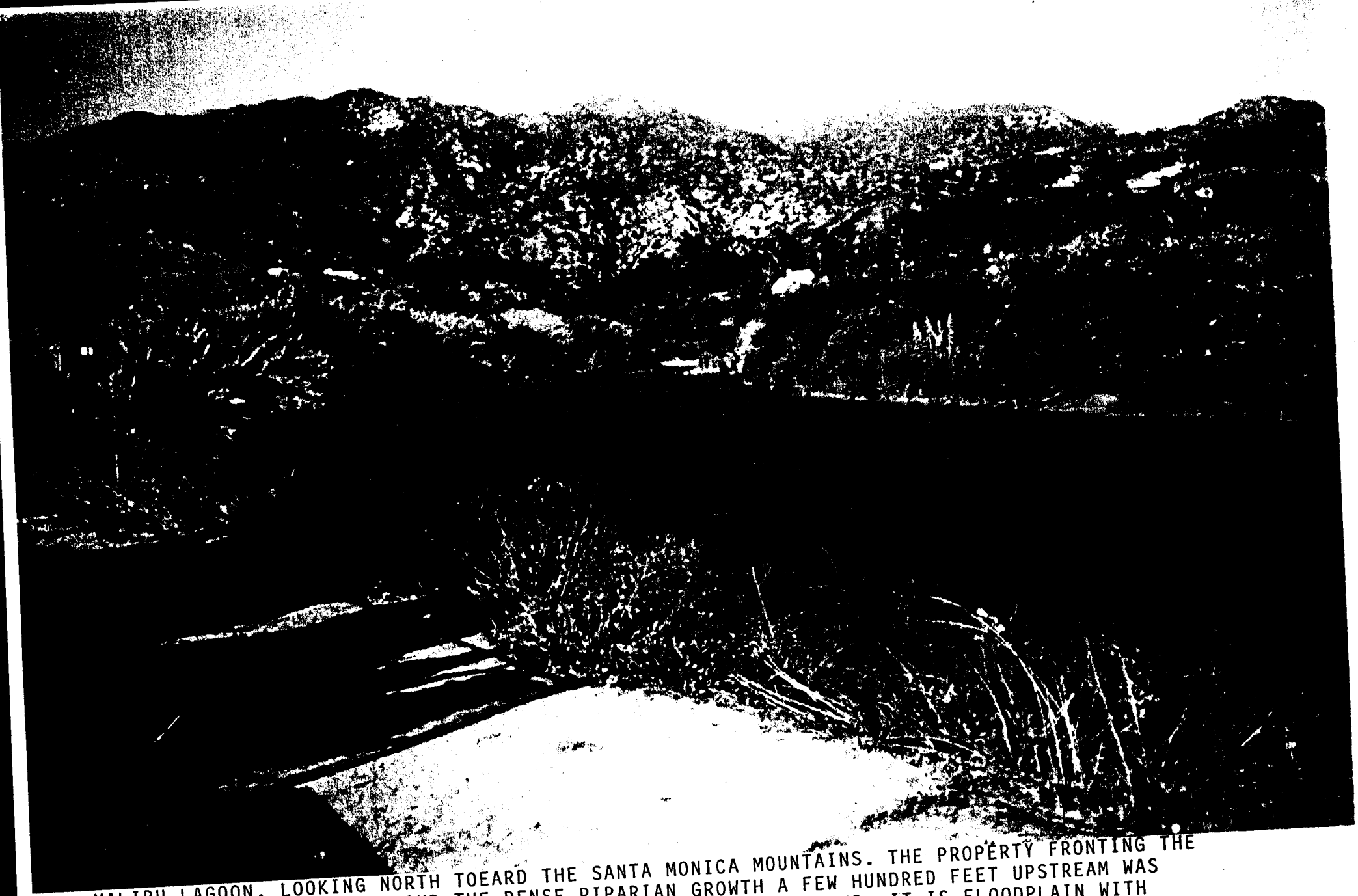
- **West slope of Sweetwater Mesa adjacent to Malibu Lagoon**

  Sweetwater Mesa is a low hill rising directly out of the eastern border of **Malibu Lagoon** just north of Pacific Coast Highway. It represents upland habitat directly adjacent to the Lagoon and is possibly the only remaining habitat linkage – outside of Malibu Creek itself – that connects the Lagoon to the upland habitat of the **Santa Monica Mountains** a mile to the north. (This connection was pointed out to us by Dr. Tom Howell of UCLA, ornithologist Lloyd Kiff, and Dr. Camm Swift of the Los Angeles County Museum over 20 years ago, and I have personally seen mule deer coming down to the Lagoon on this slope.

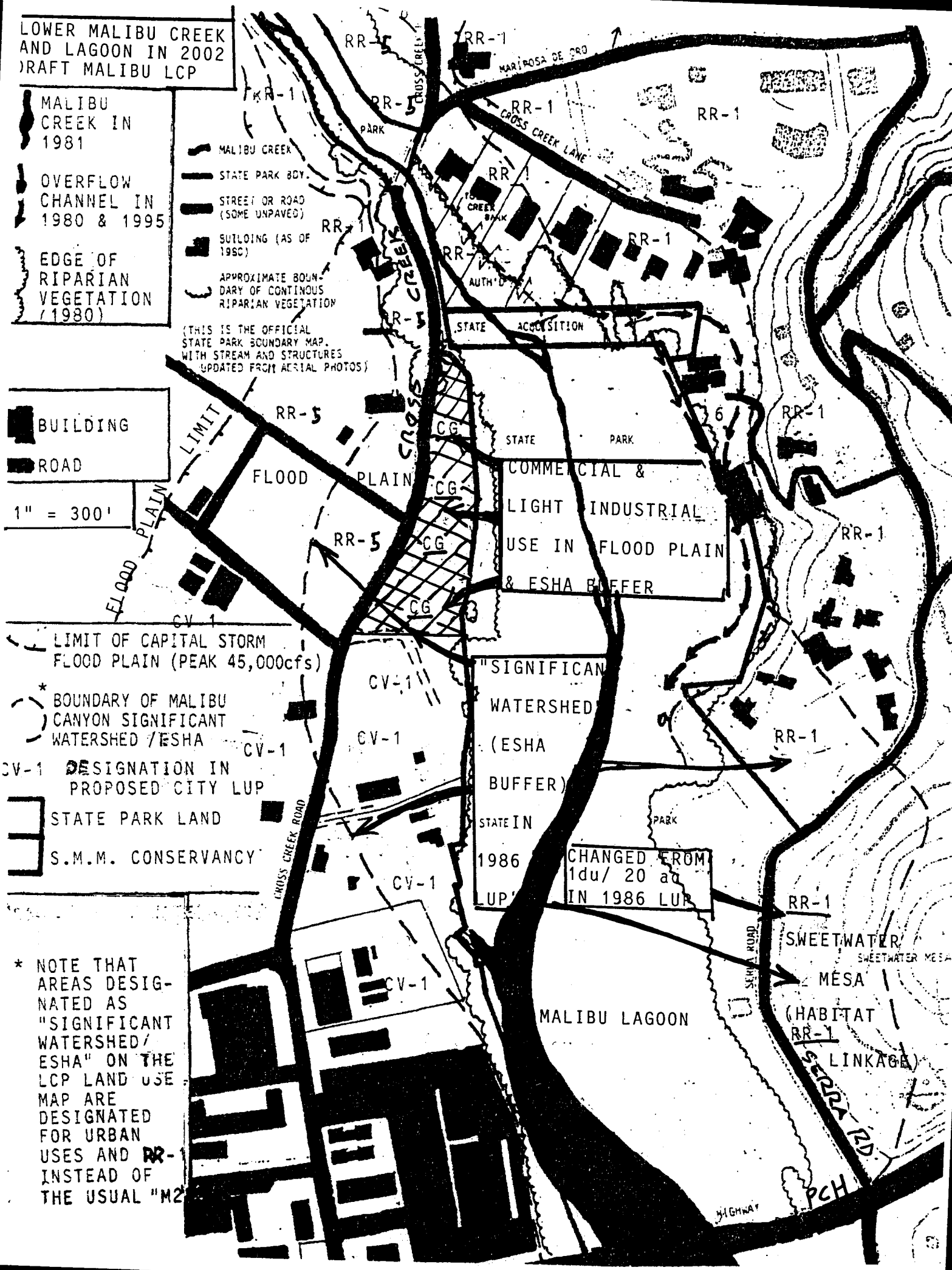
  The 1986 Malibu LUP designated this western slope as part of the **Malibu Canyon/Lagoon Significant Watershed** with a land use of 1du/20 acres. The current **Draft LCP** has changed that designation to the near-urban density of **one du/acre.** Development of the west slope of Sweetwater Mesa at one du/acre will virtually obliterate the habitat linkage, severing a last connection between Malibu Lagoon and adjoining uplands.

  The **West Slope of Sweetwater Mesa** should continue to be designated for very low densities, consistent with **Section 30240(b) of the Coastal Act.**

MALIBU LAGOON, LOOKING EAST A FEW HUNDRED FEET NORTH OF PACIFIC COAST HIGHWAY. WEST SLOPE OF SWEETWATER MESA IN BACKGROUND. THE LAGOON AND THE RIPARIAN HABITAT ON THE EAST BANK ARE STATE PARK LAND. THE WEST SLOPE OF THE MESA, AN IMPORTANT BUFFER AND HABITAT LINKAGE, WAS DESIGNATED "SIGNIFICANT WATERSHED" IN THE COUNTY'S 1986 LUP. THE 2002 DRAFT MALIBU LCP DESIGNATES THE SLOPE "RR-1" (1du/ac). THIS DENSITY ON THIS SLOPE WILL VIRTUALLY URBANIZE THE ENTIRE SLOPE AND DESTROY THE HABITAT LINKAGE, THREATENING THE INTEGRITY OF THE LAGOON HABITAT AS WELL.



MALIBU LAGOON, LOOKING NORTH TOEARD THE SANTA MONICA MOUNTAINS. THE PROPERTY FRONTING THE CREEK AND LAGOON JUST BEYOND THE DENSE RIPARIAN GROWTH A FEW HUNDRED FEET UPSTREAM WAS DESIGNATED "SIGNIFICANT WATERSHED" (1du/20 ac) IN THE 1986 LUP. IT IS FLOODPLAIN WITH RIPARIAN TREES (SYCAMORE). IN THE DRAFT LCP THE DESIGNATION HAS BEEN CHANGED TO "COMMUNITY GENERAL", AN URBAN USE THAT PERMITS COMMERCIAL AND LIGHT INDUSTRIAL USES! THE PROPERTY BORDERS ON STATE PARK LAND. MALIBU CREEK/LAGOON SUPPORT A RUN OF THE ENDANGERED SOUTHERN STEELHEAD AND THE ENDANGERED TIDEWATER GOBY.


LOWER MALIBU CREEK AND LAGOON IN 2002 DRAFT MALIBU LCP
MALIBU CREEK IN 1981
OVERFLOW CHANNEL IN 1980 & 1995
EDGE OF RIPARIAN VEGETATION (1980)
MALIBU CREEK
STATE PARK BDY.
STREET OR ROAD (SOME UNPAVED)
BUILDING (AS OF 1980)
APPROXIMATE BOUNDARY OF CONTINOUS RIPARIAN VEGETATION
(THIS IS THE OFFICIAL STATE PARK BOUNDARY MAP. WITH STREAM AND STRUCTURES UPDATED FROM AERIAL PHOTOS)
BUILDING
ROAD
1" = 300'
LIMIT OF CAPITAL STORM FLOOD PLAIN (PEAK 45,000cfs)
BOUNDARY OF MALIBU CANYON SIGNIFICANT WATERSHED / ESHA
CV-1 DESIGNATION IN PROPOSED CITY LUP
STATE PARK LAND
S.M.M. CONSERVANCY
* NOTE THAT AREAS DESIGNATED AS "SIGNIFICANT WATERSHED/ ESHA" ON THE LCP LAND USE MAP ARE DESIGNATED FOR URBAN USES AND RR-1 INSTEAD OF THE USUAL "M2"
RR-5
RR-1
CROSS CREEK
MARIPOSA DE ORO
CROSS CREEK LANE
PARK
STATE ACQUISITION
STATE PARK
COMMERCIAL & LIGHT INDUSTRIAL USE IN FLOOD PLAIN & ESHA BUFFER
CG
FLOOD PLAIN LIMIT
FLOOD PLAIN
CV-1
"SIGNIFICANT WATERSHED" (ESHA BUFFER) IN 1986 LUP
CHANGED FROM 1du/ 20 ac IN 1986 LUP
CROSS CREEK ROAD
SWEETWATER MESA
SWEETWATER MESA (HABITAT LINKAGE)
MALIBU LAGOON
SERRA RD.
PCH
HIGHWAY

FROM EIR FOR LOS ANGELES COUNTY SPECIFIC PLAN FOR MALIBU CIVIC CENTER IN THE PERIOD 1985-1988.

DESIGNATIONS IN PROPOSED MALIBU CITY LUP
CV-1, CV-2 - VISITOR=SERVING COMMERCIAL
RR-1 ONE d/U PER ACRE I - INSTITUTIONAL
CG - COMMUNITY GENERAL CC - COMMERCIAL

SP STATE PARK

FLOOD PLAIN

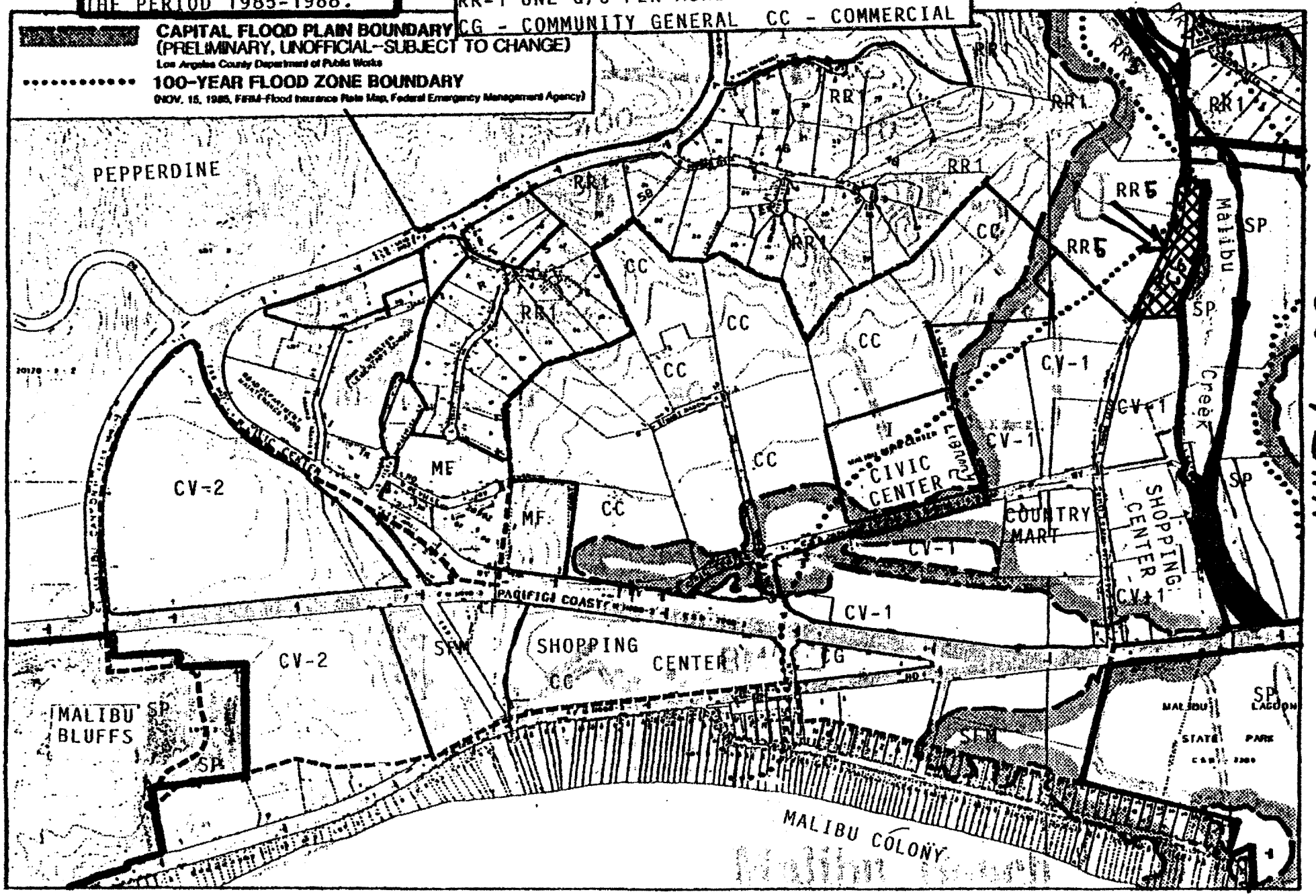


FIGURE 12 **FLOODPLAIN BOUNDARIES**

PARCEL IN FLOOD PLAIN & ESHA BUFFER DESIGNATED "COMMUNITY GENERAL" (COMMERCIAL/LIGHT INDUSTRIAL)

SCALE 0 400 800 1200 FT

NORTH

24 HOUR AND SHORT-TERM SANTA MONICA MOUNTAINS RAINFALL RECORDS

- PRECIPITATION GREATER THAN 5"/24hrs, 1927 to 1980

* RUNOFF FROM THESE STORMS PASSES THROUGH THE SERRA RETREAT AND CIVIC CENTER AREAS OF THE CITY OF MALIBU

DATE	745' el TOPANGA	*800' el MALIBU LAKE AREA	ZUMA CANYON
*2/16/80 *2/17/80	7.70" 2.35 - *10.05"	3.65 4.66 - *8.31"	- **
2/14/27 2/15/27	-	5.75" 5.85" - 11.60"	-
12/31/33 1/1/34	8.82" 6.86" - 15.68"	6.19" 6.63" - 12.82"	-
3/1/38 3/2/38	3.08 7.98" - 11.06"	2.90 6.25 - 9.15"	4.18 6.00 - 10.18"
1/22/43 1/23/43	12.44" 4.03 - 16.47"	-	14.68" 4.45 - 19.13"
1/25/56 1/26/56	2.15 6.31" - 8.46"	-	2.90 7.47" - 10.37"
2/10/62 2/11/62	5.82" 4.26 - 10.08"	-	7.78" 3.48 - 11.26"
11/16/65 11/17/65	3.10 4.30 - 7.40"	2.90 6.33" - 9.23"	3.50 6.82" - 10.62"
12/29/65	6.83"	10.00"	10.40"
1/20/69 1/21/69	6.04" 2.80 - 8.84"	5.80" 4.72 - 10.52"	7.48" 2.94 - 10.78"
*** 1/25/69 1/26/69	9.42" 2.46 - 11.88"	10.61" 3.35 - 13.96"	8.68" 2.45 - 11.13"
11/29/70	7.96"	8.40"	7.46"

Some other rainfall records:

* **38.45"** at Malibu Creek State Park in **60 days** (1/3/78 to 3/5/78)

* **30.49"** at Malibu Lake in **8 days!** (1/19/69 to 1/26/69)

22.59" at Zuma Canyon in **3 days!** (1/21/43 to 1/23/43)

*Because rain gauges are read at different hours, especially in the flurry of a major storm, two-day readings are recorded in most cases.

**Zuma Canyon station was burned out in 1978 fire.

***Most of this rain fell between 3pm on the 25th and 7pm on th 26th

MALIBU/SANTA MONICA MOUNTAINS DISASTER COSTS, 1992-1995*

THE FIGURES BELOW ARE A PARTIAL LIST OF THE COST TO THE U.S. TAXPAYER OF FOUR DISASTERS THAT STRUCK THE MALIBU/SANTA MONICA MOUNTAINS AREA FROM 1992 TO 1995, THE FLOODS OF 1992, THE FLOODS OF 1993, THE FLOODS OF 1995, AND THE FIRES OF 1993.

THE FIGURES ARE INCOMPLETE BECAUSE THEY DO NOT INCLUDE STATE AID AND GRANTS (ABOUT 25%), LOCAL PAYMENTS (UP TO 7%), REPLACEMENT OF PRIVATE UTILITY INFRASTRUCTURE, USE OF FIRE EQUIPMENT AND PERSONNEL FROM CITIES AND STATE AGENCIES OUTSIDE THE AREA, AND USE OF SHERIFF PERSONNEL TO GUARD ROADS IN BURNED OUT AREAS, AND SUBSIDIZED INSURANCE RATES UNDER FAIR PLAN.

THESE FIGURES DO NOT INCLUDE CONSIDERABLE AID AT THE TIME OF THE NORTHRIDGE EARTHQUAKE OF JANUARY, 1994, AS THAT WAS A DISASTER OF A DIFFERENT CHARACTER NOT RELATED TO CONSTRUCTION IN KNOWN HAZARD AREAS.

FIGURES OBTAINED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND THE SMALL BUSINESS ADMINISTRATION. LOS ANGELES COUNTY TOTALS FOR PUBLIC ASSISTANCE WERE PROVIDED BY LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS THROUGH THE OFFICE OF SUPERVISOR ZEV YAROSLAVSKY.

THESE FIGURES ARE FOR ONLY FOUR ZIP CODES - 90265 (MALIBU), 90290 (TOPANGA), 91302 (CALABASAS), AND 91301 (AGOURA). THEY INCLUDE PUBLIC ASSISTANCE COSTS FOR LOS ANGELES COUNTY WITHIN THOSE ZIP CODES AND FOR THE CITIES OF MALIBU, CALABASAS, AND AGOURA HILLS.

DISASTER	INDIVIDUAL ASSISTANCE (FEMA)	DISASTER LOANS (SBA)	PUBLIC ASSISTANCE (FEMA)	TOTAL
1992 STORMS	$ 89,915	$ 5,372,096	$ 2,175,646	$ 7,637,657
1993 STORMS	55,542	1,559,700	7,949,553	9,564,795
1993 FIRES	1,895,462	32,167,698	12,281,219	46,344,379
1995 STORMS	882,449	7,848,091	6,385,301	15,115,841
TOTALS	$ 2,923,368	$46,947,585	$28,791,719	$78,662,672

$78,662,672 IN FEDERAL GRANTS AND LOANS TO SANTA MONICA MOUNTAINS FIRE AND FLOOD VICTIMS IN JUST 3 YEARS!

Would it be possible on an experimental basis for instance to set up a prescribed area to try controlled burning?

Don - Well, I do believe the County does this . There has been legislation in the past to do this. Topanga State Park was interested in us trying some up there. We were not. Even in our days of just burning the grass we had some rather unfortunate incidents where houses were burned and trees that should not have been and so forth. I think you have to weigh the whole thing, but there is such a program. In fact, from Central in through Northern California this is done quite extensively all the time. They even do it to clear farm land.

Question - But when we're talking about a mosaic pattern here, we are also talking about controlled burning.

Don - I would think that the Fire Department would be adamantly opposed to controlled burning of standing brush in the City of Los Angeles. Even under controlled conditions, you can't get it to do what you want it to do when you want it to do it. It is a problem. I think we would have some concerns that are very deep concerns.

Question - I also have a concern about the steepness of slopes. Do you have any statistics about burning regarding slopes?

Don - The steeper the slope, the faster burned but I can't tell you just how fast. I can give you just a brief overview that a good stand of 20 to 30 year old brush such as you might have out in the Pacific Palisades area can generate as much as 30 tons of burnable brush per acre and 40 of those acres generate the same heat as the atomic bomb that was dropped on Hiroshima as an example. That is a proven fact. NOT!

Questioner - Thank you - no more questions.

Don - I'm not here to scare you.

We have another speaker, Jim Kitchman.
Is Mr. Kitchman here?
Jim - I'll have to back up most of the things that the Chief indicated or said, but a few of them if we were running for office I would have to refute. I'm a professional forester from the U.S. Forest Service but I've specialized in fire and prior to taking over the chaparral management program a year ago, I was the Fire Management Officer on the Sequoia National Forest. The Chaparral Management Program has been established and is being developed in this past year and continuing to answer some of the problems that the Chief has indicated existed as far as the actual vegetative management of chaparral. I wanted to show you a few pictures to tell you why this program is being developed and some of the progress to date. Actually, the progress is minimal to date. While we're getting set up here, I do want to indicate one thing. Chief Anthony mentioned the vegetative type change from our normal chaparral brush species to a fire resistant species. I will have to say that as far as California native brush is concerned, there is no such thing as a fire resistant species and we do not even examine that in the program. When the east wind is blowing and the temperature is 100 degrees and you're on a steep slope I think that probably everything down to the greens on the golf course will probably burn and so that is one aspect of management in chaparral that we do not address. Chief, if you want I'm really going to go through these in a hurry and there are several of the slides that do not apply

C. W. Carson
P.O. Box 116
23233 W. Mariposa de Oro
Malibu, CA 90265-0116

(310) 456-8652 Tel
(310) 456-2204 FAX
jlcarson@earthlink.net

July 1, 2002

California Coastal Commission
South Central Coast District
89 S. California Street, Ste. 200
Ventura, CA

Attn: Gary Timm, District Manager
Subject: Proposed changes to ***Section 9.4*** **Development Standards** of the June 2002 **Draft City of Malibu Local Coastal Program Local Implementation Plan**

Dear Mr. Timm:

This is a follow up on my letter of June 25 concerning non-residential building in streams.

We recommended a separate section be written covering requirements for non-residential activities in special flood hazard areas..

The National Oceanic and Atmospheric Administration propagated rules concerning "Endangered and Threatened Species; Salmon and Steelhead; Final Rules" on Monday July 10, 2000 (50 CFR Part 223). I draw your attention to Volume 65, No. 132 of the Federal Register, July 10, 2000, page 42462 that enunciates the NOAA rules on stream crossings. See the attachment.

In part this allows work in the flood plain as long as we can pass "the flow level and debris associated with a 100 year flood event; and meet the ODFW or WDFW criteria.". I believe that the NOAA phrasing provides an excellent starting point for any new section that the Coastal Commission may determine are needed.

Sincerely,

C.W. Carson, Vice President, Serra Canyon Property Owner's Association

Federal Register

Monday,
July 10, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Species; Salmon and Steelhead; Final Rules

riparian area, particularly where a restoration component is necessary. The basic goal of riparian management is to establish management that allows the riparian area to proceed on a growth and succession pathway toward a mature riparian condition. As noted earlier, mitigation should be developed for functions that cannot be maintained or restored at the site level and may likely require watershed-scale planning. As several commenters requested, this allows different jurisdictions the flexibility to tailor riparian and wetland management to match local needs and conditions.

Comment 258: A large number of commenters addressed the appropriate width of urban riparian management areas. Many comments focused on management area width without regard for location, riparian composition, or management strategy. One comment noted that the width of the urban riparian management area was greater than for lands affected by the Washington forest practice limit.

Response: There are differences in ecological function among riparian areas in the MRCI and forest management settings. These include the relative importance of pollutant and runoff control, the distribution of nutrient cycling and energy flow, and the efficiency of natural recovery mechanisms. However, the need to define properly functioning condition based on the salmon's biological requirements does not vary by land use type.

NMFS' evaluations of MRCI development are significantly influenced by a body of science indicating that essential habitat functions are affected to varying (but significant) degrees by streamside activities conducted within a distance equal to the height of the tallest tree that can grow on that site (known as the site potential tree height). This was the basis for the example in the preamble to the proposed rule that used 200 feet (60.9 meters) as the approximate span of a site potential tree height. The distance is measured not from the stream itself, but from the edge of the area within which a stream naturally migrates back and forth over time (the channel migration zone).

NMFS believes that the most effective way to ensure PFC is to manage MRCI development activities in riparian areas so that their impacts on habitat functions are minimal at the streamside, but may gradually increase with distance from the stream. For example, the riparian area is often managed with two zones, an inner zone that has the highest level of protection and is managed primarily to provide stream function by avoiding disturbance, and an outer zone managed for both stream function and as a transition to more heavily used upland areas. The width of each zone should be commensurate with the functions they are intended to provide and, in MRCI settings, reflect the need to buffer an upland disturbance regime that may be more severe than in forest lands; e.g., more frequent entry by humans and domestic animals or exposure to large amounts of nutrients, pesticides, and sediment.

Comment 259: Several commenters supported a preference for using native riparian vegetation.

Response: NMFS agrees that to meet the final rule's intent, existing native trees and other native vegetation in riparian areas should be protected and native vegetation should be used for restoration plantings wherever appropriate native stock are available to meet the project needs. Non-native stock or seed should only be used after a good faith attempt has been made to locate native materials. If native materials are unavailable, ecologically functional equivalents that are known not to be aggressive colonizers may be substituted. When the scope of an MRCI redevelopment activity may include modifying a riparian site with existing, non-native vegetation, it may be important to restore native vegetation on the site in order to generate the essential habitat functions discussed above.

12.i.D. Stream Crossings

Comment 260: Several commenters requested clearer criteria for culvert installation and bridge crossings. Some wanted the referenced guidance document to be included in the final rule.

Response: Activities such as road and stormwater system design and construction or placement of utility corridors should avoid stream crossings wherever possible in order to prevent soil disturbance and sediment and flow problems in the stream. Where a crossing is unavoidable, the condition of the crossing should minimize its affect by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the flow level and debris associated with a 100-year flood event; and meet ODFW or WDFW criteria (ODFW's Oregon Road/Stream Crossing Restoration Guide, Spring, 1999 and WDFW's Fish Passage Design at Road Culverts, March 3, 1999). These two documents will be included in a guidance document to be published by NMFS at the same time as this final rule.

Comment 261: Many commenters stated that new and existing linear facilities—such as utility corridors—that cross rivers and streams should be included in this section. Other commenters wanted the language "wherever possible" used in the sentence "avoid stream crossings by roads wherever possible" to be strengthened or deleted because it creates a loophole. In general, they desired that NMFS establish criteria to determine if a crossing is necessary.

Response: Linear facilities will be included in the stream crossing section of this final rule. As to the necessity of individual crossings, NMFS believes the city or county jurisdictions should perform the lead role in developing these criteria. The applicable state fish and wildlife agency can provide considerable guidance in developing these criteria—both through their existing codes and regulations and in their guidance documents (listed previously in this rule).

12.i.E. Channel Migration Zones

Comment 262: One commenter requested an explanation of the term "channel migration zone" (CMZ) and asked that it be linked to landscape features that developers and planners can understand.

Response: A CMZ is defined by the lateral extent of active channel movement along a stream reach over the past 100 years. Evidence of active movement over the 100-year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics and it was chosen for that reason. Also, this time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two bankfull widths, is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is no field evidence of secondary channels with recent scour from stream flow or progressive bank erosion at meander bends.

Comment 263: One commenter requested that no bank hardening be allowed within the CMZ.

Response: Gradual bank erosion and meander migration within the CMZ are important ecological processes that provide geomorphic diversity and enable habitat development. Constructing rigid bank protection structures within the CMZ can prevent properly functioning conditions from being attained because it disrupts natural channel processes and initiates

C. W. Carson
P.O. Box 116
23233 W. Mariposa de Oro
Malibu, CA 90265-0116

(310) 456-8652 Tel
(310) 456-2204 FAX
jlcarson@earthlink.net

June 25, 2002

California Coastal Commission
South Central Coast District
89 S. California Street, Ste. 200
Ventura, CA

Attn: Gary Timm, District Manager
Subject: Proposed changes to ***Section 9.4*** **Development Standards** of the June 2002 **Draft City of Malibu Local Coastal Program Local Implementation Plan**

Dear Mr. Timm:

We have been conducting analyses, design and coordination with interested parties in the design of a bridge, in the flood plain, to replace the existing Arizona (low flow) crossing of Malibu Creek at Cross Creek Road. The National Marine Fisheries Service has given preliminary approval to the design. We believe that the concept complies with FEMA requirements for non residential activities. LIP Section 9 – Hazards and particularly Sections 9.4.G and H concerning special flood hazard areas appear to deal only with residential buildings in the floodway.

We recommend a separate section be written covering requirements for non-residential activities in special flood hazard areas..

Alternately a minor modification to LIP Section 9.4.H.17 would help clarify this issue. Section 9.4.H.17 is ambiguous concerning application to other than buildings. The bridge we are proposing in accordance with Section C.1.d.3.32 of the January 10, 2002 Draft City of Malibu Land Use Plan. We propose that the first sentence of **9.4.H.17.a** be revised to read:

> "a. ***For buildings,*** ~~The~~ ***the*** bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is elevated at or above the base flood elevation; or"

Sincerely,

C. W. Carson, Vice President, Serra Canyon Property Owner's Association

Post-It™ brand fax transmittal memo 7671	# of pages ▸ 1
To GARY TIMM	From E. BROWN
Co. CCCommission	Co. LGB, Inc.
Dept.	Phone # 949-494-8190
Fax # 805-641-1732	Fax # 949-856-9008

THE LAGUNA GREENBELT, INC.
a non-profit corporation
Box 860, Laguna Beach, California 92652

July 2, 2002
California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Chairperson Wan and Commissioners,

The Laguna Greenbelt, Inc., is a grassroots organization in Laguna Beach, California, that has promoted the preservation and acquisition of Orange County open space for the benefit of the public since 1967.

We support the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. We were impressed by the staff's use of conservation science to support the land use policies in the LCP, and urge the Commission to maintain or improve the draft LCP's protection of riparian corridors, wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek

Recently, the Orange County Board of Supervisors and the Laguna Beach City Council between them accepted about four dozen expiring beach access easements in the Laguna Beach-South Laguna coastal area. These lateral and vertical easements over beach front property ensure continuing public access to blufftops and beaches. These actions manifest local government commitment to preserve and maintain coastal access for the public in Orange County. We support similar efforts in the Malibu area, including the establishment of the California Coastal Trail.

In conclusion, we urge support of your staff draft LCP and strong protections for ESHA, water quality and public access that the public mandated by the Coastal Act. Finally, where not otherwise specified in this letter, we support the positions of the Malibu Coastal Land Conservancy in their advocacy of a strong LCP.

Thank you for considering these remarks. If there are questions, we may be reached at lgreenbelt@aol.com, at 949-494-8190, or at our website: www.lagunagreenbelt.org.

Sincerely,

Elisabeth M. Brown

Elisabeth M. Brown, Ph.D, President
Laguna Greenbelt, Inc.

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

United States Department of the Interior

NATIONAL PARK SERVICE
Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, California 91360-4207

RECEIVED
JUL 0 8 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

In reply refer to:
L76 (SAMO)

July 8, 2002

Mr. Gary Timm, District Manager
California Coastal Commission, South Central Coast District
89 S. California St., Suite 200
Ventura, CA 93001

Dear Mr. Timm:

The National Park Service thanks the Coastal Commission for the opportunity to comment on the June 11,2002, Draft Implementation Plan (IP) for the City of Malibu's Local Coastal Program. We would appreciate permission to submit more detailed comments within the next 30 days to allow for a recent change in staffing. Our main comment at this time is to require Environmental Review Board (ERB) review of projects within the Environmentally Sensitive Habitat Area (ESHA) overlay. The draft IP language currently references Environmental Review Board review as an option in conjunction with input from the City Biologist or other environmental specialist. As was demonstrated at the June 13th Coastal Commission workshop on native habitats in the Santa Monica Mountains, there is a wide breadth of knowledge regarding the interrelationship of habitats. Successful implementation of the Malibu LCP will depend heavily on the input of the ERB, as well as the willingness of the decision makers to implement ERB recommendations. The staff recommendation about the ESHA-worthiness of a property proposed for development should come from an expert panel rather than relying on the expertise of one staff member.

We continue to support measures that protect the sensitive resources of the Santa Monica Mountains National Recreation Area. The National Park Service considers all remaining undeveloped native habitat within the national recreation area to be sensitive owing to several factors, including impacts from habitat fragmentation, rarity of species, and decimation of native habitat types. We appreciate the Coastal Commission's efforts to accord the best protection of the native ecosystem while acknowledging development rights.

Thank you for considering the National Park Service's comments. If you have questions, please call Ray Sauvajot, Chief of Planning, Science and Resource Management, at (805)370-2339.

Sincerely,

Melanie Beck

Melanie Beck
Outdoor Recreation Planner

cc: Joe Edmiston, Executive Director, Santa Monica Mountains Conservancy
Russ Guiney, Superintendent, Angeles District, State Department of Parks and Recreation
Margo Murman, Executive Officer, Resource Conservation District of the Santa Monica Mountains

LA COSTA BEACH HOMEOWNERS ASSOCIATION

FAX COVER PAGE

TOTAL PAGES FAXED INCLUDING COVER: 4

7-8-02 12:40 PM: SLIGHTLY REVISED VERSION. PLEASE DISCARD EARLIER FAX. Thank you. JCS

July 8, 2002

TO: THE CALIFORNIA COASTAL COMMISSION

FROM: JODY CUKIER SIEGLER
President, La Costa Beach Homeowners Association

CC: Governor Gray Davis
Senator John Burton
Assemblymember Herb Wesson, Jr.
Resources Agency Representative Mary Nichols

OVERVIEW:

I have prepared a set of remarks and questions on the Public Access component of the LIP for the July 10th CCC hearing in Huntington Beach. I would like to share this with you and urge you to carefully consider the issues presented.

I hope this critique can provide a few useful thoughts as you deal with a very sensitive and complex set of issues. My involvement in these community matters has had a profound impact on my knowledge of and respect for those who choose public service. It's much harder than it looks, and I don't envy you.

With only 3 inaccessible miles out of nearly 24 coastal miles in Malibu, it seems mathematically and philosophically impossible to argue that public access goals aren't already reasonably well achieved. Additionally, public access goals that are focused on pathways between private homes, as opposed to larger expanses of beach (such as Dan Blocker) seem ill conceived, expensive, unsafe, unable to provide basic services and fraught with day-to-day management complexities.

More importantly, the CCC has already characterized PCH as a road that "regularly exceeds capacity on summer weekends." How does it make any sense to increase these levels of traffic? The City of Malibu's Public Safety Commission has had meetings wherein testimony was obtained from emergency medical service providers (lifeguards, police and firefighters) expressing their concern about their ability to deliver responsive, effective service if PCH gets any busier. As a tax-paying resident or a visitor, isn't it appropriate to expect that a vehicle responding to a 911 call can actually get there? What exposure does that present to the City or the State?

Resident parking appears to be completely forsaken in public access goals. It is a tremendous and unsafe burden on PCH residents to be faced with the prospect of

C/O Pug Yorkie Productions
433 South Beverly Drive, Beverly Hills, CA 90210
Ph. (310) 556-2500 Fx. (310) 556-2509

available street parking being overrun by beach visitors. This is asked of no other residents who live in communities with commercial traffic. Regulated hours and Permitted Parking are commonplace in Santa Monica, West Hollywood and Beverly Hills so that shoppers and tourists don't unduly trample the rights of nearby residents or create an unbearable nuisance. Can't there be some discussion to create permitted parking areas on the residential sections of PCH so that residents and their guests can actually get in and out of their homes?

I hope the itemized discussion that follows achieves its intended purpose -- to help further evaluate an extremely complex and frustrating process. Please let me know if you have any questions or if I can be of any further assistance.

Thank you for your time.

ISSUES RAISED BY THE LOCAL IMPLEMENTATION PLAN OF THE PROPROSED MALIBU LCP RELATED TO PUBLIC ACCESS

1. In Chapter 2 titled GENERAL DEFINITIONS on page 23, the definition of Sandy Beach Area makes reference to "privately owned sandy areas fronting on coastal waters" yet there are no implementation ordinances that specifically address the protection or separation of this privately owned land from that which is available for public use. How does this comply with the specific directive in the Coastal Act to take the rights and needs of private property owners into account when there are no implementation ordinances addressing such?

2. In Section 3.12. titled PARKING REGULATIONS on pages 84 through 95, specific parking space requirements are detailed for residential and commercial uses such as homes, preschools, libraries, churches, offices, car washes, lumber yards, and boat sales establishments. Why aren't there any parking regulations and/or requirements for existing or proposed public access points? If the CCC is going to attempt to open public access within immediate adjacencies to private residences, what provisions or guidelines have been developed to accommodate both intended uses? Historically, commercial development, either by private establishments or the State, makes some provision for nearby residents. Isn't it appropriate for a homeowner or tenant to have a reasonable expectation of proximate street parking and to what extent does public access interfere with that expectation? Shouldn't an implementation plan give some thought to this issue? Don't communities such as Beverly Hills, West Hollywood and Santa Monica serve as precedents whereby parking by permit or restricted parking hours are developed to protect the fundamental needs and rights of residents?

3. In Chapter 12 titled PUBLIC ACCESS ORDINANCE in Section 12.1.D on page187, the implementation plan specifically characterizes this ordinance as being "given the most liberal construction possible so that public access to the navigable waters shall *always* be provided and protected" without repeating any

reference to the rights of property owners. Is it appropriate or even legal for the CCC to create an ordinance that unilaterally favors or more heavily weights certain Coastal Act provisions or policies versus others? Is it their job to achieve public access goals at the expense of legitimate private property rights?

4. In section12.2.2 (b) on page 188, exceptions for New Development include single-family residences that remodel by not more than 10% of the original structure and are cited in the same location as the original structure as long as "the reconstructed residence does not block or impede public access," without referencing whether or not there was ever public access on this property to begin with. As currently stated, doesn't that mean that any home that is demolished and rebuilt will wind up preventing public access and doesn't that open the door for the CCC to require an offer to dedicate in order to comply with the ordinance? Isn't this exactly what Nollan and Dolan said they couldn't do? No nexus and no proportionality?

5. In 12.3 titled TYPES OF PUBLIC ACCESS AND RECREATION on page 189 item 12.3.C defines Vertical Access as "the connection between the first public road… and the publicly owned shoreline." Doesn't the phrase "publicly owned shoreline" clearly imply that there is privately owned shoreline and why is this distinction not made in 12.3.A. when defining lateral access, which provides the public with access and use along the shoreline, and not specifically defined as public, private or otherwise? When did it become within the jurisdiction of the CCC to offer private property for public use without consent or compensation? Isn't this a massive contradiction to constitutionally protected rights? It appears that the CCC is only willing to uphold those rights as a result of litigation brought about by property owners.

6. How does section 12.5. titled "ACCESS REQUIRED" on page 190 avoid violating the basic tenets of the Nollan decision? Don't the LCP and its related implementation ordinances require consistency with existing case law and established Supreme Court rulings? Can the CCC create policies that supercede the Supreme Court? Additionally, references in that paragraph to Section 13.8.1(b) and 13.8.3 (a) through (d) are nowhere to be found. Page 220 has a one paragraph section 13.8, with no supporting sub-points. Can these be provided?

7. On page 191 in 12.6.B(1), exceptions to public access are defined as those that are "inconsistent with the public safety, military security needs, or protection of fragile resources." In the opinion of the CCC, when is public access ever ***inconsistent*** with public safety and why is the protection of the privacy and rights of adjacent property owners, as required by the Coastal Act, always deleted? In 12.6.B(2), another exception is "adequate access exists nearby." What objective standard has been developed to characterize what this means? If 3 miles out of 24

LA COSTA BEACH HOMEOWNERS ASSOCIATION

Malibu coastline miles are inaccessible who's to say that maximum public access hasn't already been achieved?

8. On page 191, 12.7.1.A discusses lateral access and states that "in some cases controls on the time, place and manner of uses,...may be justified." What are some examples in which those cases may exist? Are there any cases in which the CCC truly believes in the regulation of time, place and manner or is this a phrase whose inclusion gives the appearance of complying with the requirements of the Coastal Act?

9. On page 192 in 12.7.2 .A in the MINIMUM REQUIREMENTS FOR VERTICAL PUBLIC ACCESS, the locations for such access are referenced in the LCP or on "an application for a development permit... and is required pursuant to the access and recreation policies of the Coastal Act." Doesn't this essentially say 'anywhere the CCC says so, previously stated in the LCP or not?' Doesn't this make absolutely any permit applicant a contender for a public access requirement?

10. On page 196 in section 12.7.8.A. "a grant for easement may be recorded instead of an offer to dedicate..., if a government agency or private association is willing to accept the grant of easement..." Are there any standards of review for selecting such an association? What historical operating expertise do they need? What levels of funding or staffing are required to be approved as such an entity? There appears to be no guideline developed for the review and approval of said association. In section 12.7.8.D on page 197 it goes on to grant "the Executive Director of the Commission the authority to approve the entity that seeks to accept the offer or grant of easement" without one detail on the basis on which that can be done.

11. In section 12.7.8.C on page 197 it states "access facilities constructed on access easements...shall be as wide as necessary to accommodate the numbers and types of users." What studies or analyses have been conducted to project such usage rates? How many "types of users" are there and in what ways do the varying "types" have differing access width requirements? Who designs and builds the walkways and what role, if any, do property owners have? Does the property owner still own that property or is the OTD a gift? Is it tax deductible? Are property taxes still based on the full lot square footage or are the taxes reduced to coincide with the owners new lot size?

Respectfully Submitted,
Jody Cukier Siegler
President
La Costa Beach Homeowners Association
(310) 476-1286
jodycs@yahoo.com

Doug Ardley

From: "Doug Ardley" <dardley@gol.net>
To: "susan jordan" <sjordan51@aol.com>
Sent: Monday, July 01, 2002 5:43 PM
Subject: Re: Statewide Alert: Malibu Environmentalists Need our Help to Get a Strong LCP

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Chairperson Wan and Commissioners,

Surfers' Environmental Alliance (SEA) is writing in support of the California CoastalCommission's draft Local Coastal Program (LCP) for the City of Malibu. SEA is an organization of hundreds of users of the California coast. We are particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. We feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. We believe that this is not appropriate in riparian corridors. Riparian corriders are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. We urge the Commission to do likewise in Malibu.

In addition, we support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, we are very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. We also urge a careful examination of the wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands, not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, we applaud your efforts to increase public access to the coast in Malibu and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local

residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach

In conclusion, we urge support of your staff draft LCP and strong protections
for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act

Sincerely,

Douglas Ardley

Douglas Ardley

Board member, Surfers
Environmental Alliance

C. W. Carson
[illegible]
[illegible] Malibu Canyon Rd
Malibu, CA [illegible]

(310) 456-8[illegible]52 Tel
(310) 456-2204 FAX
jlcarson@earthlink.net

June 25, 2002

California Coastal Commission
South Central Coast District
89 S. California Street, Ste. 200
Ventura, CA

Attn: Gary Timm, District Manager
Subject: Proposed changes to *Section 9.4* **Development Standards** of the June 2002 **Draft City of Malibu Local Coastal Program Local Implementation Plan**

Dear Mr. Timm:

We have been conducting analyses, design and coordination with interested parties in the design of a bridge, in the flood plain, to replace the existing Arizona (low flow) crossing of Malibu Creek at Cross Creek Road. The National Marine Fisheries Service has given preliminary approval to the design. We believe that the concept complies with FEMA requirements for non residential activities. LIP Section 9 – Hazards and particularly Sections 9.4.G and H concerning special flood hazard areas appear to deal only with residential buildings in the floodway.

We recommend a separate section be written covering requirements for non-residential activities in special flood hazard areas..

Alternately a minor modification to LIP Section 9.4.H.17 would help clarify this issue. Section 9.4.H.17 is ambiguous concerning application to other than buildings. The bridge we are proposing in accordance with Section C.1.d.3.32 of the January 10, 2002 Draft City of Malibu Land Use Plan. We propose that the first sentence of **9.4.H.17.a** be revised to read:

> "a. ***For buildings,*** ~~The~~ ***the*** bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is elevated at or above the base flood elevation; or"

Sincerely,

C.W. Carson, Vice President, Serra Canyon Property Owner's Association

8. For structures [illegible] adequate drainage paths shall exist around structures [illegible] floodwaters around and away from said structures.

9. Floodproofing of a nonresidential structure shall use a design and or methods of construction that are in accordance with accepted standards of practice for floodproofing or which will extend the floodproofing to an elevation that is required pursuant to the provisions of this chapter.

10. All new and replacement water [illegible] systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters.

11. All on-site waste disposal systems shall be located to avoid impairment to them, or contamination from them, during flooding.

12. All electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and or located so as to prevent water from entering or accumulating within the components during flooding.

13. All fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters with designs certified by a registered professional engineer or architect; or will have at least two openings no more than one foot above grade with a total net area of at least one square inch per square foot of flooded area.

14. New development shall not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been established. For purposes of this section, "adversely affects" shall mean that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood elevation more than one foot at any point.

15. New development shall not be sited and designed so as to require the construction or installation of flood protective works.

16. Construction or substantial improvement shall not involve the use of fill for structural support of buildings.

17. New construction or substantial improvements shall be elevated on pilings or columns such that:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is elevated at or above the base flood elevation; or

b. The pile or column foundation and the attached structure is anchored to resist flotation, collapse, or lateral movement due to the effect of wind and water loads acting simultaneously on all building components

18. New construction or substantial improvement shall have the space below the lowest floor, if said floor is elevated above grade, free of obstruction or constructed of lattice supporting frame, latticework, open wood lattice work or insect screening intended to collapse under wind and water load without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such enclosed space is not useable for other than parking of vehicles, building access, or storage.

19. The following restrictions shall apply for properties located in areas designated as being located within a Special Flood Hazard Area pursuant to the provisions of this Chapter:

a. It shall be prohibited to store or process materials that, in a time of flooding, may become buoyant, flammable, explosive, or could be injurious to human, animal, or plant life.

b. The storage of other material or equipment may be allowed if the storage area will not be subject to major damage by floods and if the stored material is firmly anchored to prevent flotation or is readily removable from the area within the time available after a flood warning.

I. Where feasible, development shall be sited outside of potential tsunami inundation zones. Tsunami inundation zones shall be defined as those areas identified as such on maps released by the California Office of Emergency Services, as they become available. If no such map is available, a Registered Civil Engineer with coastal experience shall make a determination, through wave run-up analysis, whether the site may reasonably be expected to be subject to inundation during a tsunami. If it is not feasible to site development outside of a tsunami inundation zone, new development shall be in conformance with all of the provisions set forth in this chapter with regard to Special Flood Hazard Zones. In addition, development shall be constructed to resist lateral movement due to the effect of water loading from the maximum expected tsunami, to the greatest extent feasible.

J. All development that lies within, or partially within, a designated Earthquake Fault Zone as identified by the Alquist-Priolo Earthquake Fault Zoning Act for protection from

[illegible]
[illegible]
Malibu, CA 90265-[illegible]
8[illegible]
email: Kdaruty@aol.com

June 2[illegible], 2002

Gary Timm, District Manager
South Central Coast District
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

First let us thank you for your wonderful presentation last night at the Las Virgines Homeowners Meeting. You cleared up a lot of issues for us, and showed rare courage in facing that crowd.

As homeowners in the unincorporated L.A. County area of the Santa Monica Mountains, we've been very concerned about the Malibu LUP. We still feel that the new ESHA designations are excessive and need modification. In addition, we'd like to make two recommendations that may reduce homeowner opposition to your plan:

1. Your remarks regarding the Disaster Recovery Exemption for current development were very encouraging. Our worry has been that if there were a major disaster we might be unable to rebuild what we now have. Other homeowners are also very concerned about this. You will be able to diffuse much homeowner opposition by explicitly stating that the Disaster Recovery Exemption will be observed even in the new ESHA's. This will go a long way towards reducing homeowner opposition to your plan.

2. It was clear to us after the meeting that CCC inspectors in the field are perhaps overzealous and are going beyond what you stated the parameters to be. There is no doubt that several homeowners have been asked to meet requirements that exceed what you said we should expect. It is imperative that inspectors be reined in, and perhaps with better training, they will be helpful rather than causing more opposition to the plan.

Again, thank your for all your work to preserve and perpetuate the natural beauty we all enjoy in this special area.

Sincerely yours,

Kathy Daruty and Ron Remsburg

Kathy J. Daruty and Ron Remsburg
437 Lofty Hill Drive
Malibu, CA 90265-2730
818-706-3769
email: Kdaruty@aol.com

June 21, 2002

Gary Timm, District Manager
South Central Coast District
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

First let us thank you for your wonderful presentation last night at the Las Virgines Homeowners Meeting. You cleared up a lot of issues for us, and showed rare courage in facing that crowd.

As homeowners in the unincorporated L.A. County area of the Santa Monica Mountains, we've been very concerned about the Malibu LUP. We still feel that the new ESHA designations are excessive and need modification. In addition, we'd like to make two recommendations that may reduce homeowner opposition to your plan:

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2. It was clear to us after the meeting that CCC inspectors in the field are perhaps overzealous and are going beyond what you stated the parameters to be. There is no doubt that several homeowners have been asked to meet requirements that exceed what you said we should expect. It is imperative that inspectors be reined in, and perhaps with better training, they will be helpful rather than causing more opposition to the plan.

Again, thank your for all your work to preserve and perpetuate the natural beauty we all enjoy in this special area.

Sincerely yours,

Kathy Daruty and Ron Remsburg

Los Angeles County
Department of Regional Planning

June 26, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: COMMENTS ON THE PROPOSED LOCAL IMPLEMENTATION PLAN FOR CITY OF MALIBU LOCAL COASTAL PROGRAM
AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Dear Chair Wan:

Thank you for the opportunity to review and comment on the City of Malibu draft Local Implementation Plan (LIP), prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The Department recognizes the great burden that the legislative mandate has placed on your staff to prepare a comprehensive program. It is also recognized that your staff was required to prepare and present a document to Malibu that included all issue areas considered by the Coastal Act, as well as other items of concern to the Commission.

These comments are intended to convey the Department's position on specific issues discussed in the LIP chapters, and are summarized for the Commission's consideration in the following paragraphs.

Chapter 3 – Zoning Designations and Development Standards
This chapter, together with Table B, addresses permitted uses and specific development standards for each zone district. Some uses that could be found compatible and appropriate with similar permitted uses are prohibited in certain zone districts (e.g., restaurants, health clubs and hotels are not allowed in the Commercial Recreation zone district). Certain standards are unclear or questionable, while other standards are very specific and could overlap with existing municipal code standards.

Table B — The following identifies some specific uses prohibited from compatible, appropriate zone districts:

PRIVATE RECREATIONAL FACILITIES ZONE DISTRICT: Equestrian riding and training facilities and activities including boarding of horses, domestic animals, etc.; Raising of horses and other agriculture-related animals; Boarding of animals as a commercial use; Restaurants; and Camping.

COMMERCIAL RECREATION ZONE DISTRICT: Plant nurseries; Restaurants; Visitor-oriented goods, such as recreational equipment and clothing; Health clubs; and Hotels.

COMMERCIAL NEIGHBORHOOD ZONE DISTRICT: Bars, and Refreshment stands fixed location outdoor food vending stands

OTHER QUESTIONABLE DESIGNATIONS OF USES: Community stage theaters are *not allowed* in any commercial zone district. Bed and breakfast inns are *not allowed* in any residential zone district, although Large Family Day Care is allowed with a permit; and Educational institutions are *only allowed* in Institutional Zone District

3.5.H It is unclear why residential development must be "...contained within a convex-shaped enclosure that shall not exceed two acres..."

3.8.3.2.c There is only one value given for rear yard setbacks

3.11.2.B Animal waste should also be included for consideration when ensuring that increased pollution does not occur from a permitted corral.

3.11.2.C There is no discussion of how "appropriate sized parcels" for equestrian riding and training facilities and activities will be determined.

3.12 Regulations for parking are extensive and very detailed, and would normally be addressed in the municipal code. There is also no mention or discussion of handicap-accessible parking. Consistent formatting should also be applied, and typographical errors should be corrected.

3.13 **Regulations for signs are extensive and very detailed, and would normally be addressed in the municipal code. Consistent formatting should also be applied, and typographical errors should be corrected.**

Chapter 4 – Environmentally Sensitive Habitat Area Overlay

This chapter is fatally flawed because it is in direct conflict with the provisions of the Coastal Act related to ESHAs. The provisions of this chapter would allow non-resource development in an ESHA contrary to Section 30240 (a) of the Coastal Act that allows "...only uses dependent on those resources..." In contrast, the provisions are overly restrictive in regards to buffers around ESHAs by prohibiting all development, including vegetation removal. Section 30240 (b) of the Coastal Act allows development in areas adjacent to ESHAs but requires it to "... be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas..."

4.3.B.3 The reference to the California Native Plant Society should be eliminated.

4.4.2.F The reference to the California Native Plant Society should be eliminated.

4.6.1 This section should contain siting and design standards in buffers to minimize impacts on ESHAs rather than prohibit all development.

4.7 This entire section is invalid because it violates Section 30240 of the Coastal Act.

4.8.A The only new development allowed in an ESHA should be resource dependent.

4.8.1.C.2 The in-lieu fee should be broadened to allow the funds to go to other State and Federal agencies that are property owners in the Santa Monica Mountains.

Chapter 6 – Scenic, Visual, and Hillside Resource Protection Ordinance
The provisions regulating types of night lighting seem overly restrictive in their prohibiting most types of lighting in residential areas.

6.5.G Parameters should be set for the specific types of night lighting prohibited in residential areas, as it could be interpreted that all lighting for all private recreational facilities, including swimming pools, and holiday decoration lighting would be prohibited.

Chapter 8 – Grading Ordinance
This chapter discusses controlling the amount of grading and landform alteration. However, when the amount is described as a finite amount, it must be appropriate and feasible.

8.3.B Setting the maximum grading (total cut and fill) amount to 1,000 cubic yards may be too small. It would be more feasible to minimize the ground disturbance in percentage relative to the size of the lot or development.

Chapter 9 – Hazards
Incorrect chapter references are confusing and should be corrected, as well as typographical errors throughout this chapter and draft Implementation Plan.

9.4.F Chapter 21 does not exist in the Local Implementation Plan document.

Chapter 13 – Coastal Development Permits
The provisions of this chapter generally follow the procedures contained in the California Code of Regulations. A number of typographic errors relating to section numbers make the chapter somewhat difficult to follow.

13.4.1.B.4 Fences should not be designated as significant non-attached structures.

13.4.2.C The September 5, 1978 letter should be included in an appendix.

13.4.8 The September 5, 1978 letter should be included in an appendix.

13.5.A(2) The meaning of this subsection is not clear.

13.6.4.B Lots created before the effective date of the Coastal Act should be exempt from this provision.

13.19 The Coastal Commission should not be involved in the review and approval of legal documents relating to public access and conservation/open space easements.

13.24.2 It is not clear what section or subsection is referred to by "2) above."

13.27 Development Agreements should not be required to be processed as amendments to the LCP.

Chapter 15 – Land Divisions

This chapter is deficient as it lacks a complete discussion of the subdivision process in Malibu. Either a full explanation of the subdivision process is needed, or references to the Subdivision Map Act requirements included. It is not entitled "...requirements for land division..." but instead "...required findings of consistency of any land division with the MLCP."

15.2.B The sixteen findings required by this subsection would make the subdivision of land almost impossible in Malibu. There would be virtually no properties that could meet all of the findings, including paraphrased "safe from erosion," "safe from extreme fire hazards," "not in slopes over 30%," "[creating] parcels no smaller than the average in the neighborhood," and the non-specific requirement to "purchase TDCs."

15.3 A coastal development permit should only be required when (1) the division of property occurred after December 31, 1976, and (2) the conditional certificate of compliance would be issued pursuant to Government Code Section 66499.35(b).

Chapter 17 – Water Quality Protection Ordinance

It appears that this chapter was taken from the County Standard Urban Stormwater Mitigation Plan (SUSMP) and the Municipal National Pollutant Discharge Elimination System (NPDES) program permit. It is, however, expanded to cover all development in Malibu (i.e., a storm water management plan is required for all development requiring a Coastal Development Permit (CDP)).

17.1 While the goals use "should" language, they provide a reasonable road map for application of specific standards.

17.4.3 This subsection requires a "water quality mitigation plan", a term that is not defined in the glossary and which is limited to the set of development scenarios listed in the SUSMP. There appears to be a conflict with the requirements for a "storm water management plan."

Chapter 19 – Local Coastal Program Amendments

Numerous typographic errors make this chapter somewhat confusing. References to sections of the Public Resources Code or the California Code of Regulations should be included in an appendix.

The Department of Regional Planning requests that this letter be made a part of the official record for this City of Malibu Local Coastal Program LIP and that the Commission give serious consideration to the points that are described above. The Department's concerns regarding the draft LIP are consistent with some of the issues described in our letters to Mr. Gary Timm dated October 25, 2001 and December 31, 2001 relating to the Commission's proposed draft Land Use Plan for the City of Malibu (the December letter is attached for your reference), as well our letter to you dated April 10, 2002 relating to Coastal Development Permit Application No. 4-00-119. If you have any questions

regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

David C. Cowardin
Section Head, Community Studies II Section

DCC:GMN:SMT

Attachment

cc: Laura Shell, Deputy, Third Supervisorial District

Buchalter
Nemer Fields
& Younger
A Professional Law Corporation

895 Dove Street, Suite 400, P.O. Box 8129, Newport Beach, California 92658-8129
Telephone (949) 760-1121 / Fax (949) 720-0182

File Number: M0810-0001
Direct Dial Number: (949) 224-6284
E-Mail Address: *shori@buchalter.com*

June 4, 2002

VIA FACSIMILE AND
OVERNIGHT EXPRESS

Charles Damm
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: Agenda Item No. 3, Thursday, June 13, 2002
Environmentally Sensitive Habitat Areas on Malibu Bay Company Property

Dear Chuck:

On June 13, 2002, the Coastal Commission will consider presentations from agency representatives and independent scientists on habitats of the Santa Monica Mountains to provide background on future Coastal Commission deliberations affecting environmentally sensitive habitat areas (ESHAs) in the City of Malibu and the Santa Monica Mountains. In preparation for the Commission's ESHA workshop, a field trip to Malibu and the Santa Monica Mountains has been scheduled on June 12, 2002. In anticipation of the Commission's consideration of ESHAs in Malibu, and on behalf of the Malibu Bay Company ("MBC"), I would like to submit the following summary of the work MBC has undertaken to date to map and evaluate sensitive habitat on its properties, and discussions with Commission staff with respect to these issues. As the Commission proceeds to its upcoming hearings on the Malibu Local Coastal Program (LCP), we would also request that the depiction of ESHAs on the Malibu Land Use Plan (LUP) maps for the MBC Point Dume property be revised consistent with the studies submitted to and reviewed by Coastal Commission staff.

MBC is the owner of approximately 110 acres of undeveloped land on twelve separate parcels in the City of Malibu. As an affected landowner, MBC has reviewed the Malibu LUP and submitted comments to staff. Because several issues involve biological conditions on its properties, MBC has also submitted studies and additional technical information to Commission staff to support its requested revisions to the LUP policies and maps. While we understand that the LUP Maps state that the boundaries depicted may not represent final boundary lines or constraints on the Commission's regulation of these areas, we believe that sufficient information has been presented to the Commission to support a refinement of the current mapping at this time.

Jurisdictional Delineations Submitted to Coastal Commission

Since 1997, MBC has retained Dr. Edith Read of PSOMAS Associates to evaluate its properties and to prepare delineations of waters of the United States and State of California, including wetlands delineations consistent with federal and state laws and regulations. Dr. Read's delineations included habitat evaluations on each of the properties listed below to determine if wetlands, including those as defined by the California Coastal Act, are present on MBC's properties. To date, Dr. Read has prepared jurisdictional delineations on the following MBC properties:

- Chili Cook-Off Site (Civic Center Area)
- Ioki Property (Civic Center Area)
- Smith Property (Civic Center Area)
- Point Dume Property
- The "Former Riders and Ropers" Property
- Trancas Residential Property

Maps depicting the location of each of these properties are enclosed for your information.

The jurisdictional delineations for the Chili Cook-off Site, Ioki Property, Point Dume, Trancas Residential, and the "Former Riders and Ropers" Property have been submitted to the Ventura office of the Coastal Commission. Several of these reports, including the Point Dume report, were submitted to Commission staff with our November, 2001, and January, 2002, correspondence on the proposed Malibu LUP. On April 4, 2002, Dr. Jon Allen visited the Point Dume site with Dr. Edith Read. She provided him with another copy of the report and they reviewed the delineation and habitat designations together. It is our understanding that on a separate occasion, Dr. Allen and Dr. John Dixon examined MBC's Chili Cook Off Site in the Civic Center area, and that their observations of this property were consistent with Dr. Read's report as well.

Dr. Read's jurisdictional delineations for the Chili Cook-Off Site and the Ioki Property have also been submitted to the U.S. Army Corps of Engineers ("Corps") and the California Department of Fish and Game ("DFG"). The Corps has provided written certification that it accepts the delineations prepared for both of those properties, and DFG confirmed verbally its acceptance of the jurisdictional habitat mapping in those reports.

Malibu LUP ESHA Mapping: Point Dume

Point Dume is an 18.87 acre parcel of property that is designated for commercial uses in the City's General Plan and the Coastal Commission's Malibu LUP. MBC has proposed a donation agreement to the City of Malibu under which the Point Dume property would be dedicated to the City for open space/active recreation uses and a community center. The current Malibu LUP ESHA maps depict areas on MBC's Point Dume property as ESHA, a depiction which MBC has taken issue with in its prior written and oral communications to the Coastal Commission.

Based upon the work that MBC's consultants have performed to date, and the site visit with Dr. Jon Allen, the current maps do not accurately depict the extent of habitat areas on the Point Dume property that should be mapped as ESHA, and we reiterate our request that the maps be refined to depict the habitat consistent with the reports submitted to and reviewed by Coastal Commission staff for these properties.

The LUP ESHA maps designate both forks of a drainage area on Point Dume as ESHA. The LUP's ESHA map reflects the general location of Sensitive Environmental Resources that were mapped over fifteen years ago as part of the County of Los Angeles' Land Use Plan for the Malibu area. According to the County planners who worked on the County's LUP, the designation of sensitive environmental resources was imprecise in that it was not uniformly ground-truthed and was mapped, in part, through a review of aerial photographs. Consequently, the more current and accurate information confirmed through recent biological studies and delineations that have been provided to and reviewed by the Coastal Commission staff should be reflected on the LUP ESHA map.

In conducting its work on this property, Dr. Read reviewed historical aerial photographs of the Point Dume site. In the 1930's, the majority of the Point Dume site was cleared of vegetation as a result of historic ranching and grazing activities, and has remained cleared as of today. The easterly drainage was not heavily vegetated with riparian or wetland species. In fact, it appears that much of the vegetation present in this drainage are a fairly recent phenomenon resulting from increased urban development, with the primary source of water for this drainage being runoff from the residential development on the landward site of Pacific Coast Highway. As a result of year-round runoff from sprinklers and other domestic water use, what used to be seasonal vegetation resulting from winter rains, is now able to be sustained year-round by urban runoff.

According to County of Los Angeles planning department personnel, at the time the County mapped Sensitive Environmental Resources on Point Dume, the designation was intended specifically to protect developed riparian corridors in coastal canyons and significant oak woodlands. Despite the intent of this designation, the eastern portion of the Point Dume drainage probably never contained oak woodlands, and is today vegetated primarily with non-native eucalyptus trees. We believe that it is critical that the Coastal Commission designation of ESHA on this site recognize the basis for the original mapping and that the portion of Point Dume currently mapped as ESHA may have never contained the oak woodland habitat the ESHA designation was seeking to protect, and that as a result of historical activities and urban development the nature of vegetation in the drainage has changed to that today it is vegetated primarily with non-native trees which would not support an ESHA designation.

The westerly fork on the Point Dume property is a drainage area that does not support wetlands, and does not meet the federal criteria for waters of the United States or State. It is described by Dr. Read in her Point Dume report as a "dry gully." The LUP ESHA map incorrectly maps this entire fork as an ESHA.

When Dr. Allen visited the site with Dr. Read, she reviewed her habitat designations with him and he expressed general concurrence with those designations for both the eastern and western forks of the drainage on Point Dume. We therefore request that the ESHA mapping be revised to reflect the current conditions on the site.

Conclusion

In conclusion, MBC has conducted a considerable amount of work to evaluate and map the vegetation, including sensitive habitat communities, on its properties. These reports have been submitted and made available to the Coastal Commission staff. In light of the current effort being undertaken by the Coastal Commission and its staff to better understand the extent and nature ESHAs in the City of Malibu and the Santa Monica Mountains, we believe that the work we have conducted to date and shared with your staff will be helpful to evaluating the environmental conditions on our properties and your efforts at finalizing the LCP for Malibu, and the ESHA maps therein.

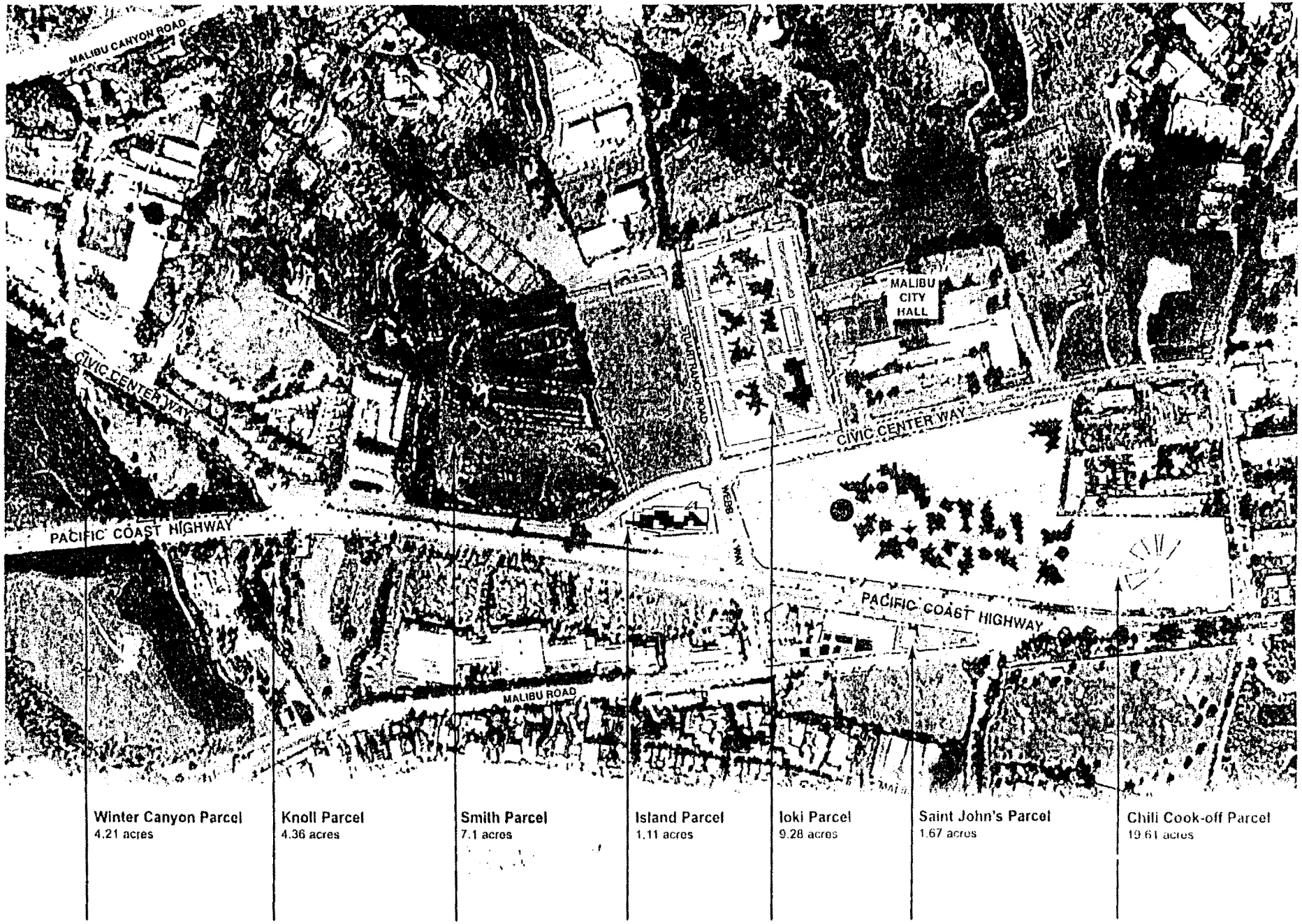
If the Coastal Commission or Commission staff would like to include the Point Dume property, or any of the other MBC properties on its June 12th field trip, we will make our property(ies) available, and can have our technical consultants available to answer any questions that you or the Coastal Commission may have regarding our properties and the information that has been submitted to date. Please do not hesitate to contact me if I can be of further assistance to you or your staff as you continue the effort to address these issues in Malibu.

Very truly yours,

BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation

By
SUSAN K. HORI

Enclosure
cc: Gary Timm
Dr. Jon Allen
Sara Wan, Chair and Members
of the Coastal Commission (Overnight Express only)
Dr. Edith Read
David Reznick



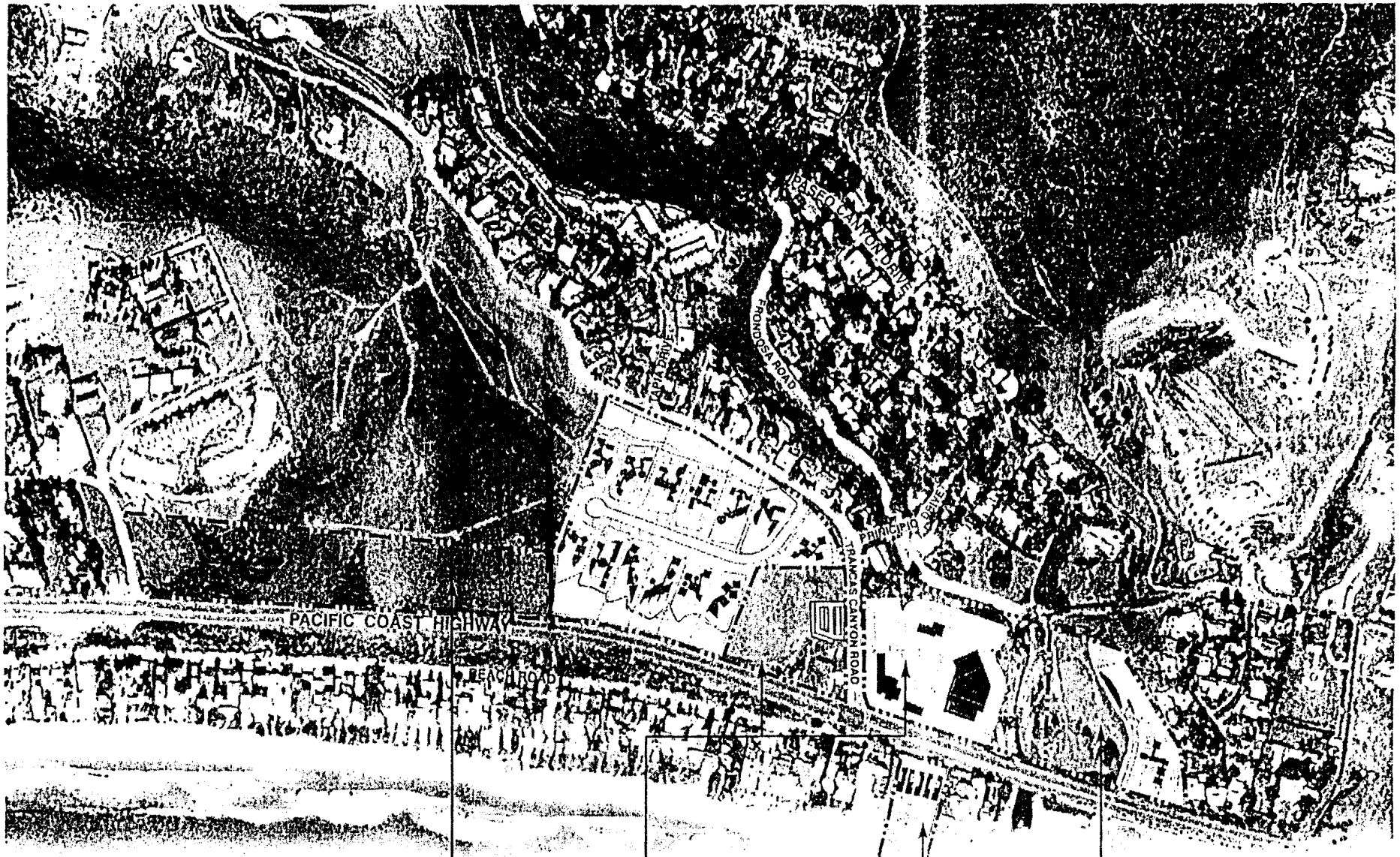
Malibu Bay Company

CIVIC CENTER AREA PARCEL LOCATIONS

Point Dume
18.87 acres

Malibu Bay Company

POINT DUME PROPERTY LOCATION MAP (Site Concept Plan)



Trancas Residential
24.87 acres

Trancas Commercial Center
12.39 acres

Trancas Beach Lot
Five single family beach front homes on 200' wide lot.

Former Riders & Ropers
5.24 acres

Malibu Bay Company

TRANCAS AREA PROPERTIES LOCATION MAP

State of California • The Resources Agency
DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-0001
(916) 653-8380

Gray Davis, *Governor*
Rusty Areias, *Director*

June 7, 2002

Katie E. Lichtig, City Manager
City of Malibu
12555 Civic Center Way
Malibu, California 90265

Dear Ms. Lichtig:

This letter is in support of the Crummer Family Trust Amended Draft Development Agreement, which provides for relocation of the ball fields at Malibu Bluffs Park as presented by the Trust at a multi-agency meeting on April 15, 2002.

The Amended Draft Development Agreement is a compromise solution that allows for retention of the ball fields in the general area but off State Park property and out of the prime view shed. The Crummer Family Trust would donate land to the City for the ball fields. State Parks would donate 2.678 acres of land not in the prime view shed to facilitate access to the new ball fields.

State Parks is ready to move ahead with plans for the property consistent with its vision and purchase of the property. The Amended Draft Development Agreement is a compromise, which in our view addresses both the recreation and view shed concerns. We urge support of the Draft Development Agreement.

Sincerely,

Ruth Coleman

Ruth G. Coleman
Acting Director

cc: Senator Kuehl
Assemblymember Pavley
Peter Douglas
Gary Timm
Crummer Family Trust
Russ Guiney
Hayden Sohm

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JUN 13 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RECEIVED
MAY 16 2002
CALIFORNIA
COASTAL COMMISSION

5/9/02

To the director:

The USA Today had a big article on the Malibu affluent fighting to keep their beach private which I believe is correct and affects your entire city.

I wanted to write you for several reasons given below and need your early reply.

1) I live in Rockaway Park ,NY for over 10 years a block from the ocean in a very nice beach. (I'm NOT a rich person and wish I was)

During the summer this nice beach area is polluted with many outsiders who bring serious noise pollution, crime and beer cans all over the area.

Some are criminals who rob and even sexually harass women.

This is the hidden dangers the Calif Coastal Commission fails to mention likely because you don't know.

RECEIVED
MAY 22 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Your reply is needed

Very Truly Yours

Eric N. Kemer

Eric N. Kemer
PO Box 7506(FDR sta)
NY ,NY 10150
whales1111111@yahoo.com

I want copies of my letter shown to your CCC members.

Relay this to your L.A office since the issue affects Malibu, CA. if the wrong address

7 May 2002

Law Offices
Hatch & Parent
P.O. Box Drawer 720
Santa Barbara, CA 93102-0720

South Coast Region
MAY
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Roden,

In response to your letter of May 1, 2002:
I have owned my property at 22041 P.C.H since the spring of 1973. Not once in the intervening years have I had access to the beach across the highway. I have watched the build-up (over) of any access that might have become possible. Indeed - even my view of the surf line from my top story became obscured by buildings and fences. Fortunately they've been unable to block out the sound of the surf. As for trash on the beaches - I have seen workers from beach side homes bring their trash - even furniture across the highway to my recepticlee for pick-up. On occassion I have been charged extra for furniture pick-up.

I am for beach access where-ever possible. I am confident an arrangement can be made with the C.C.C. for trash and sanitary concerns.

Sincerely,
Ruth H. Jones

Copy to C.C.C.

Faxed - May 9, 2002

Copy of letter sent to me.

STANLEY C. HATCH
GERALD B. PARENT
S. TIMOTHY BUYNAK
SUSAN F. PETROVICH
PETER N. BROWN
STANLEY M. RODEN
SCOTT S. SLATER
STEVEN A. AMERIKANER
GARY M. KVISTAD
CHRISTOPHER A. JACOBS
JEFFREY A. DINKIN
JEFFERY H. SPEICH
ROBERT J. SAPERSTEIN
KIRK R. WILSON
STEVEN L. HOCH
LORI LEWIS PERRY
JOSEF D. HOUSKA
SARAH J. KNECHT
STEPHANIE OSLER HASTINGS
BRADLEY E. LUNDGREN
DEBORAH L. MARTIN
MICHELLE LEE PICKETT
ROBIN L. LEWIS
TIMOTHY C. HALE
GRAHAM M. LYONS
MICHAEL T. FIFE
MINDY A. WOLFE
CAROLYN L. TROKEY
RUSSELL M. McGLOTHLIN
STEVEN A. JUNG
TRAVIS PANANIDES
KENNETH J. RICHARDSON
CHRISTINE E. RAY
KELLY McINTYRE KNIGHT
CHRISTINE M. ADAMS
THOMAS GARCIA
TAMLYN M. HUNT
HEATHER A. HALSEY

LAW OFFICES
HATCH & PARENT
A LAW CORPORATION

MAILING ADDRESS:
POST OFFICE DRAWER 720
SANTA BARBARA, CALIFORNIA 93102-0720

21 EAST CARRILLO STREET
SANTA BARBARA, CALIFORNIA 93101-2782
TELEPHONE: (805) 963-7000
FACSIMILE: (805) 564-6530
WWW.HATCHPARENT.COM

Of Counsel
CHRIS FRAHM
GEORGE SHORT
JAN A. GREBEN

KEVIN J. NEESE
1959 - 1995

LOS ANGELES
11911 SAN VICENTE BLVD
SUITE 350
LOS ANGELES, CA 90049
TELEPHONE: (310) 440-9996

SAN DIEGO
110 WEST C STREET, SUITE 2200
SAN DIEGO, CA 92101
TELEPHONE: (619) 702-6100

SOUTH LAKE TAHOE
THE SUMMIT
SOUTH LAKE TAHOE, CA 96150
TELEPHONE: (530) 542-7800

OUR FILE #
DIRECT DIAL # 333(805) 882-1406
INTERNET: Sroden @HatchParent.com

May 1, 2002

Ruth G. Jones
PO Box 1296
Sun Valley, ID 83353-1296

Re: Impending Opening of Public Beach Access at Carbon Beach.

Dear Mrs. Jones:

Hatch and Parent represents an owner of beach property on the south side of Pacific Coast Highway at Carbon Beach. The California Coastal Commission intends to open a public beach accessway over a portion of our clients's property in the near future. An offer to dedicate this public accesssway to the Coastal Commission was extracted from our client when he was granted a building permit in 1982. The Coastal Commission is just now acting on the many outstanding offers of dedication throughout the state as many are due to expire shortly.

Our concerns about this action revolve around potential impacts to the neighborhood and general public safety. There is a lack of public parking facilities, a lack of public services (trash clean-up, restrooms, emergency call boxes, lifeguards, etc.) as well as no high tide escape route once the accessway is closed at night. There are concerns that public beach goers may seek places to exit from the beach by trespassing over existing private properties.

We also have concerns regarding the entity that will supposedly operate and maintain the public beach accessway. The Coastal Commission has granted rights to this access to an unknown non-profit organization called "Access for All." Very little is known about this group. They do not appear to have the resources to patrol, clean and maintain the accessway and the adjacent beach area.

The opening of this accessway with its potential environmental and public safety issues seems ill conceived when there is an existing beach access at Zonker/Harris, just 0.5 miles west of the proposed site.

We understand that you own property along Pacific Coast Highway in the Carbon Beach area. We are writing to you to ascertain if you have any concerns or issues similar to our client's issues that should be raised in our dealings with the California Coastal Commission. We may take legal action to stop the use of the accessway until better planning, environmental review/mitigation and alternative accessways are considered.

Please contact me at 805-963-7000 if you would like more information on this issue or if you wish to share your concerns.

Sincerely,

Stanley M. Roden
For HATCH AND PARENT

SMR:sld

May 7, 2002

RECEIVED
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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
Sara Wan, Chairperson
89 S. California St.
Ventura, CA 93001

Subject: Preserving undeveloped and sensitive habitats within the Malibu/ Santa Monica Mountains area

Dear Ms. Wan and Members of the Commission:

I am writing to support the Ecological Findings for Malibu as reviewed by Staff Ecologist J. C. Allen, and request that the natural terrestrial habitats of Malibu be regarded as Environmentally Sensitive Habitat Areas (ESHA) by the California Coastal Commission. Malibu Lagoon, an area already protected by ESHA status and by the Calif. Dept. of Parks and Recreation (CDPR), is a site where I have developed and provided marine science environmental education programs for Resource Conservation District of the Santa Monica Mountains, conducted a baseline ecological survey for the State of California, and participated in the re-introduction of the tidewater goby into the Lagoon. As Education and Resource Projects Coordinator, I have worked with CDPR in habitat restoration and exotic plant removal in several state park sites within the Santa Monica Mountains, and have also served as a volunteer "weed warrior" for California Native Plant Society (CNPS) and National Park Service in Yosemite. Three years ago, I retired and moved to my present home in June Lake.

ESHA protection is necessary for the many species that rely on connectivity and habitat linkages for their survival. The large scale undeveloped areas within Malibu and the Santa Monica Mountains are largely intact, and contain one of the most sensitive habitats - the coastal sage scrub. It is this habitat within the Malibu that is most threatened by development. It is rare to find such a large and relatively intact ecosystem surrounded by urban development. Elsewhere in California, this habitat has been so fragmented that it is no longer functional, and only 10-15% of the historic coastal sage scrub (css) community remains. That the mountain lion resides within the undeveloped areas of Malibu and the Santa Monica Mountains is an indicator that this is a functional ecosystem that retains connectivity of large scale habitats.

Potential development of large scale habitats within Malibu seriously threaten a functioning ecosystem. With almost 54% of css in private ownership, development that is not sensitive will result in isolated islands of various component habitats, lacking broad corridor linkages and habitats of sufficient size that are necessary for species survival. In addition, the physical act of developing parcels bring soil disturbances that

I know that once exotic species have become established, they are almost impossible to remove. Especially difficult species to remove are the exotic Mediterranean grasses and milk thistle that dominate once-native grasslands, the giant Arundo grass that fills riparian areas and utilizes almost all of the available water, and cape ivy that covers shrubs and trees in canyon bottoms. As native plant species are lost, so are those that depend upon them. The report by staff ecologist Allen relates the threatened and endangered species that would be further reduced by loss of this important habitat, as well as species that depend upon a healthy ecosystem.

Malibu forms an important connecting link between the coast and large, undisturbed habitat areas within the Santa Monica Mountains. There are still narrow connections to the Sierra Madre, San Gabriel, and San Bernardino Mountains. It is necessary to protect the riparian corridors within the Santa Monica Mountains that connect these inland watersheds to the coast. The large scale undeveloped areas within Malibu contain a rich and ecologically important habitat, which is under multiple threats and is sensitive to human disturbance. It is worthy of recognition as an Environmentally Sensitive Habitat Area in the Malibu Local Coastal Plan.

Thank you for your consideration in this matter.

Sincerely,

Jean Dillingham

Jean Dillingham
P.O. Box 545
June Lake, CA 93529

FYI

Biography of Jean Hammond Dillingham

Jean Dillingham has been active in environmental education and restoration for over 20 years. As Education Coordinator for the Resource Conservation District of the Santa Monica Mountains, she has designed curricula and trained staff, teachers, and docents to guide marine science, wetlands, and mountain ecosystems field programs for thousands of school children throughout the greater Los Angeles area. An award-winning marine-science program designed to introduce students to the ecology of Malibu Lagoon serves as the model for expanded wetlands curriculum and field programs for students at Sepulveda Basin, Ballona Wetlands, San Joaquin Marsh, and at Batequitos Lagoon.

In addition to her educational work, Jean oversees several restoration and revegetation projects in the Santa Monica Mountains. She co-authored and co-edited *Malibu Lagoon: A baseline Ecological Survey* and contributed to *Mountains to the Sea: A Visitor's Guide to the Santa Monica Mountains.* Her first publication, *Windows into the Santa Monica Mountains*, remains in use today. Jean is the recipient of numerous awards for her work. She has received Honorable Mention as an EPA Wetlands Educator in 1996, and most recently was awarded *Woman of the Year* by State Senator Tom Hayden. For her work in environmental education, the San Fernando Valley awarded her their Conservation Award for 1997. Jean received her Bachelor of Arts in Zoology, with an emphasis in marine ecology, from University of California at Santa Barbara.

Yahoo! Mail for farleyhorse@yahoo.com

Send | Save Draft | Spell Check | Cancel

Insert addresses from Address Book or enter nicknames (separated by commas)

To: GARY TIMM, DISTRICT MANAGER

Subject: Environmentally Sensitive Habitat Area

Cc: Bcc:

Save copy to Sent folder

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Paragraph | Font | Size | View HTML Source

Regaurding the California Coastal Commission wanting to "steal" land from high tax paying home owners("The Malibu Land Use Plan") I believe is very wrong. It is scary to think that the Government will let this happen. I would think there is some able force to stop this before it goes any futher. Please do what ever is in your power to fight this with us. Shirley Stratton , Home Owner.

Use Signature

Attachments: (None) Add/Delete Attachments

Video: (None) Add NEW! What's this?

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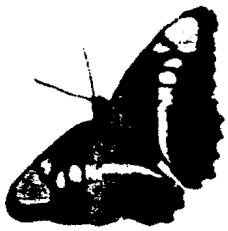

California Sister, Upperside
(Photo: Margaret Huffman)

Margaret Huffman
Chair, Habitats, S M Bay Audubon; Chair, Butterfly Gardening, L A Chapter N A Butterfly Assn
16856 Edgar Street
Pacific Palisades, CA 90272-3227

May 22, 2002

Mr J C Allen
Staff Ecologist, California Coastal Commission
89 S California St
Ventura CA 93001

Dear Mr Allen:

I want to thank Ms Pat Healey for giving me this chance to comment on your *Summary of Ecological Findings for Malibu,* dated December 24, 2001.

I applaud your landscape-scale approach, taking the *landscape* to be the entire Santa Monica Mountains, of which Malibu is an important part. To emphasize the sensitivity of the remaining undeveloped areas in Malibu, the analysis should clearly display them and focus on the roles they play in maintaining the health of other ecological systems in the mountains. Good examples of this approach are the discussion on pp.13-14 and the materials provided by Marti Witter, Jon Keeley, Rosi Dagit and Mary Meyer.

Delete materials not directly relevant to these issues, such as discussion of Valley Oak Savannah and listing sensitive species probably never found in the Malibu area. Including them sounded defensive, giving me the impression that the case was being overstated and they certainly would be seized upon by critics of the plan.

I also feel that a key element of the analysis has been omitted -- the quality of life in Malibu for the people who live there. Though ecological analysis normally focuses on non-human issues and inclusion of human issues invites political controversy, humans

have played essential roles in Santa Monica Mountains ecosystems, *especially* in the Malibu area, for thousands of years.

Continued urbanization and installation of enormous estates are destroying Malibu's rural character and discouraging original residents, many of who have special affinities for the Malibu ecosystem. Concentrating development in areas that are already degraded would lessen these effects.

The Pacific Coast Highway is of particular human concern. It frequently becomes a barrier to traffic for any of several reasons, isolating residents behind the blockage. The Highway also clearly limits the number of people that can be added to Malibu without increasing the occurrence of 5-mile traffic jams until they interfere with safety or health.. CALTRANS must have analyzed this issue and estimated reasonable population limits, which, at the least, should be cited in the plan. Ideally, the Coastal Commission should have an agency that works with developers to ensure that limits are not exceeded.

I would like to comment on Mountain Lions, the indicator species for the health of *all* Santa Monica Mountains ecosystems. Even though Mountain Lions may never venture into Coastal Sage Scrub, the dominant Malibu habitat, they are crucial to controlling populations of mid-level predators that do, and that kill such species of concern as the San Diego Horned Lizard and the Southern California Rufuous-crowned Sparrow. On the other hand, since none of the corridors needed to ensure a healthy gene pool for Mountain Lions passes through the Malibu area, the need for such corridors is irrelevant to the Malibu Plan and a diversion from pressing concerns mentioned above and in the other commentaries.

Thank you for this opportunity to comment on the Malibu Coastal Plan.

Sincerely,

Margaret Huffman
Author, *Wild Heart of Los Angeles – The Santa Monica Mountains*

Cc: Pat Healey

STATE OF CALIFORNIA–THE RESOURCES AGENCY

GRAY DAVIS, *Governor*

SANTA MONICA MOUNTAINS CONSERVANCY
RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207

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SOUTH CENTRAL COAST DISTRICT

May 20, 2002

Ms. Sara Wan
Chairperson
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Comment Letter on Initial Draft City of Malibu Local Coastal Program Land Use Plan

Dear Ms. Wan:

The Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the January 10, 2002 Initial Draft City of Malibu Local Coastal Program (LCP) Land Use Plan (LUP). The Conservancy is one of the principal natural resources state agencies in the Santa Monica Mountains and is responsible for implementing the Santa Monica Mountains Comprehensive Plan pursuant to Division 23 of the Public Resources Code. Since 1980, the Conservancy has protected over 50,000 acres in the Santa Monica Mountains zone. We understand that the Implementation Program is being developed and we look forward to providing input on that process.

In this letter, we address the areas of our core competence including parks, trails, public access, and protection of open space and wildlife habitat. With respect to these areas, in general, the Conservancy supports many of the policies in the Initial Draft LUP (discussed below), including many of those found in Chapter 2-Public Access and Recreation, the Land Resources Section in Chapter 3, and Chapter 6-Scenic and Visual Resources.

We also recommend the following modifications to the plan:

Chapter 2-Public Access and Recreation

In light of the tremendous and increasing use of the public areas in the Santa Monica Mountains and the Malibu coastal beaches, it is critically important to keep public access areas open so any one area is not overused. It is also crucial to provide adequate trails to maximize this access. The Conservancy supports many of the public access and recreation policies to increase public access to parks and other public lands. The Conservancy supports protecting, and where feasible, expanding or enhancing recreational opportunities as a resource of regional, state and national importance (Policy 2.1); and siting and

designing new development to minimize impacts to public access and recreation along the shoreline and trails, and requiring the dedication of access or trail easements for impacts to trails or prescriptive rights (Policy 2.5 and 2.50). We also support encouraging efforts to obtain public and private funding to purchase parcels and/or easements to complete gaps in the public trail system (Policy 2.54). Purchasing areas is the preferred way to implement open space preservation and trail connections, as opposed to land use regulation. We also support restricting landscaping, and any other barriers or obstructions placed by private landowners within existing road rights-of-way where such areas would otherwise be used for public parking (Policy 2.32). We have seen along Mulholland Highway (in Los Angeles County) that public rights-of-way have been encroached upon and public access has been compromised.

The Conservancy also supports Policy 2.33, giving priority to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation, and Policy 2.34, protecting to the maximum feasible extent, lower cost visitor-serving and recreation facilities, including overnight accommodations. The Santa Monica Mountains National Recreation Area (SMMNRA) is one of the most heavily used National Recreation Areas in the United States. Under current conditions, there is an insufficient amount of public accommodations for people using the SMMNRA. The City has an important role to play in providing these facilities.

Policy 2.41 should be amended by replacing the word "may" with "shall." This policy should read in part:

> For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement <u>shall</u> be recorded instead of an offer to dedicate and easement...

We agree that "Public accessways and trails to the shoreline and public parklands shall be permitted in all land use and zoning designations." (Policy 2.7). This policy also states, in short, that where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate, construction of necessary access improvements shall permitted to be constructed, opened and operated for its intended use. This policy should be clarified to allow this construction in not only unaccepted and/or unopened Offers-to-Dedicate, but also in accepted Offers-to-Dedicate, opened Offers-to-Dedicate, and to existing parkland.

Policy 2.28 prohibits gates, guardhouses, barriers, or other structures within private street easements if they would affect public access where prescriptive rights exist. The following

language should be added to Policy 2.28, "<u>However, this policy does not apply where public agencies own private street easements.</u>"

The intent of Policy 2.21 is unclear. It states that developments designed or sized to serve a larger market than park users shall be prohibited in public beaches and parks. Would this policy prohibit a proposed or existing destination restaurant on the Malibu Pier (on California Department of Parks and Recreation parkland)?

Please clarify where the "LCP-mapped access or trail alignments" (Policies 2.5, 2.50) and the "LCP Hiking and Equestrian Trails Map" (Policy 2.46) can be found.

In Policy 2.47, please replace "Santa Monica Mountains Coastal Conservancy" with, "<u>Santa Monica Mountains Conservancy, California Coastal Conservancy.</u>"

The Initial Draft LUP should be amended to emphasize that a public agency is the preferred entity to accept Offers to Dedicate easements. Public agencies do not answer to the desires of a private Board of Directors, have a responsibility to serve the public, and may be in existence in the future longer than private associations. The following text should be added to the end of Policy 2.47:

> <u>Unless a non-profit trust or association chooses to accept a trail dedication offer and can demonstrate the capacity to maintain it in perpetuity, the dedication should be made to a public agency.</u>

In addition, Policy 2.42 should be amended to read as follows (changes are underlined):

> For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, <u>the dedication should be made to a public agency.</u> The City <u>also</u> has the authority to approve a private association that seeks to accept the offer. The City <u>may</u> approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement. <u>Notwithstanding any provision of this policy, however,</u> any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement.

Policy 2.48 should be amended to include the following language [the suggested addition is underlined]:

> A strategic plan for the acceptance, construction, and operation of existing recorded trail easement offers which have not been accepted by a public agency or private association should be developed <u>in coordination with the Santa Monica Mountains Conservancy and the California Coastal Conservancy</u>...

Appropriate management agencies to take responsibility for trail maintenance of the California Coastal Trail (Policy 2.59) could include the Santa Monica Mountains Conservancy, the Conservancy's joint powers partner, the Mountains Recreation Conservation Authority (MRCA), and/or the National Park Service. The MRCA would also be an appropriate entity to accept offers to dedicate easements for shoreline access (Policy 2.72). (The area south of Pacific Coast Highway is outside the zone of the Conservancy.) (For clarification, this comment, or any comments in this letter, should not be interpreted to mean that the Conservancy is recommending the formation of a new joint powers agency, for example, to manage trails.)

Regarding Policies 2.79-2.81, the Conservancy supports the relocation of the ballfields from Malibu Bluffs State Park. The ballfield property was acquired with public funds for State Park purposes.

Specific Park Management Issues (Chapter 2)

The Conservancy fully supports Coastal Act Section 30210 to provide maximum public access and recreational opportunities, consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. We manage our open space lands to that end. The Conservancy believes that certain park management actions should be ultimately left to the appropriate resource or park agency to interpret. Our agency has considerable experience managing and operating parks. We may propose to impose certain restrictions on trail use after careful consideration of numerous factors such as public safety and protection of natural resources. For example, we might propose to close a trail if hazards deem the trail unsafe. We make numerous park management and operations decisions every day and obtaining permits for a large number of those decisions would likely create a unjustifiable burden on public resources. These basic park management and operations decisions should be determined by the park agency, without the need to obtain a coastal development permit.

Specifically, in reference to public beaches and parks, Policy 2.17 states that: "Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit." This sentence should be replaced with the following:

> Nothing shall prohibit normal opening/closing hours for parks. Standard park operations, such as establishing/modifying hours for parks and changing parking fees, shall be determined by the park agency based on park needs, and shall not require a coastal development permit.

In addition, Policy 2.53 refers to the need to obtain a coastal development permit for limitation on access to trails (e.g., for restoration purposes). The last sentence of this policy should be replaced with:

> Nothing in this policy shall restrict normal maintenance and operations of parks and trails. Limitations on trail access shall be determined by the park agency responsible for the trail, and shall not require a coastal development permit.

Also, Policy 2.19 states that a coastal development permit shall also be required for temporary events that have the potential to result in significant adverse impacts to public access and/or coastal resources. Public parklands frequently host events, which by the nature of the event, affect public access. Under this policy, would a coastal development permit be required for a wedding at Adamson House (on California Department of Parks and Recreation parkland), because it may affect parking for beach users? We recommend that the following language should be added to this policy:

> For park events hosted by park agencies (e.g., camps, trails maintenance days for volunteers, nature education activities, festivals, weddings, etc.), a conditional use permit shall not be required.

We are concerned that Policy 2.27 could be interpreted in the worst-case scenario to mean that public parking would be allowed in all areas of public parks. The following language should be added:

> However, within parks, the park management agency shall have the discretion to determine restrictions for public parking, taking into account

factors such as aesthetics, public safety, natural resource protection, and overall park resources.

In light of these above-mentioned comments, please note that the Conservancy is willing to work with local municipalities, including the City of Malibu, to formulate and implement practical park management guidelines and rules.

Malibu Lagoon, Malibu Creek, and Surrounding Area

Malibu Creek and Lagoon contain ecological resources of Statewide significance. Lower Malibu Creek was designated as a Significant Watershed in the 1986 LUP and it is State parkland. Protection and restoration of open space and habitats in the Malibu Creek watershed is crucial with respect to water quality, recreation, and habitat for numerous protected and sensitive species. The Conservancy supports restoration of Malibu Lagoon on State parkland as well as restoration of connections to historic and current wetlands in the immediate surrounding area. Specifically, if a Civic Center Specific Plan is developed, it should include measures to restore historic wetland habitat and to protect existing open space (Civic Center Policies 5.16-5.18).

In addition, land use designations within the lower Malibu Creek watershed should not be up-zoned to allow additional development in natural vegetation areas, areas that contain significant ecological resources, or in the historic floodplain. Additional development in these areas would permanently damage the ecological resources of the creek, and would likely fuel public pressure to further armor the creek. Specifically, there is no justification for upzoning to RR1 (Rural Residential, 1 du/acre) areas along and adjacent to Malibu Creek which were designated as M2 (Mountain Land, 1du/20 acres) in the 1986 LUP.

The proposed CG (Community General) designation west of and adjacent to the creek, within the floodplain, is also problematic. Malibu Creek State Park extends along Malibu Creek and must be correctly reflected as Public Open Space throughout the entire park boundary on Land Use Map 3, rather than as RR1, as is currently shown in part of the park boundary. Also, the proposed upzoning to RR1 (from 1du/2 acres and 1du/5 acres) on the hillsides north of the Civic Center, west of the creek is inappropriate. These proposed designations are incompatible with the existing topography, watershed, and viewshed.

Designation of Environmentally Sensitive Habitat Areas (ESHAs) (Chapter 3)

The City of Malibu supports immensely valuable ecological resources and functions. Careful scrutiny of development and other activities within the City is warranted. The Santa Monica Mountains support the best example of Mediterranean habitat in the world with a full range of predators. The City of Malibu has recognized the importance of its resources in its Draft General Plan Draft Environmental Impact Report:

> The City has a variety of unique natural resources due to this juxtaposition between the mountains and the ocean. These resources include canyon and coastal topography; a variety of terrestrial, freshwater aquatic and marine habitats; and rare, threatened and endangered species of plants and wildlife. The City of Malibu is an important part of, and occupies the majority of the coastal portion of, the Santa Monica Mountains National Recreation Area (SMMNRA). The SMMNRA was established partly to protect the unique plant and animal associations characteristic of the region's Mediterranean climate. (Malibu 1995)

Coastal sage scrub, in particular, merits increased protection. This plant community has been recognized as very threatened in southern California by the California Department of Fish and Game[1]. It has been reduced greatly in its range and continues to be under tremendous development pressure. Of the many habitat types found in the Santa Monica Mountains area, coastal sage scrub provides unique and valuable habitat value partially due to its location to the coast. Coastal sage scrub also supports a suite of sensitive species (Malibu 1995; Witter 2001). Its value as habitat is also particularly susceptible to degradation from a host of factors associated with development – such as increases in non-native invertebrates, domestic pets, non-native and invasive plants, and changes in fire frequency. As the urban/natural edge increases from additional development, these impacts become cumulatively more detrimental. The designation of ESHAs should ensure that they are large enough to minimize these cumulative adverse impacts.

The designation of ESHAs in Malibu should be tailored to meet the objectives of protecting core habitat and maintaining connectivity between core habitat areas. Coastal sage scrub and chaparral are functionally connected to riparian areas in Malibu. The current ESHAs (from the 1986 LUP) cannot function ecologically as stand-alone units. An ecologically

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[1] See sensitivity rankings, "Sensitivity of Top Priority Rare Natural Communities in Southern California," determined by the California Department of Fish and Game.

functional ESHA must maintain a critical mass in size, including ample buffer and connectivity to the natural area. These riparian buffers include coastal sage scrub and chaparral. Unless the new Initial Draft LUP provides a strong mechanism to protect riparian buffer areas, it will fail to protect the existing ESHAs. The ESHAs should be expanded from the 1986 designations so that they are large enough to maintain connectivity and to maintain predators and key indicator species.

The boundaries for ESHAs must be determined based on the best available science. Public agencies should invest significant resources to map legitimate areas to connect large enough units that are biologically functional. To this end, the Conservancy recommends that sufficient state funding be provided for an independent analysis of the ESHAs.

Environmental Review Board (Chapter 3)

The composition of the Environmental Review Board (ERB) (Policies 3.36-3.39) is critical to its effectiveness. We believe a minimum of half of the members should be professional ecologists from government agencies or universities. The ERB should include one dozen members, but only require six members to be present for meetings. This arrangement guarantees a functional minimum of members but allows other members to weigh in on key projects. A constraints analysis should be required for ERB review for any project within an ESHA.

Additional Comments on Chapter 3- Land Resources Section

Policy 3.5 and 3.7 identify a process for excluding an area from an ESHA if it determined that it does not meet the definition of ESHA. The LCP should clearly state whether a LCP amendment is needed, or the City would make that determination.

The following should be added as a policy to the ESHA Protection section (p. 50):

> <u>There may be situations where unacceptable impacts to critical ESHA resources would result from a proposed development that would normally be permitted in an ESHA pursuant to the LCP. The ERB and City Biologist shall have the authority to require project modifications or alternatives to avoid unacceptable impacts to critical ESHA resources, or to deny the project. If a project is denied, efforts to obtain public and/or private funding for the purchase of parcels and/or conservation easements within ESHAs should be actively pursued.</u>

The following should be added as a policy to the ESHA Protection section (p. 50): "Efforts to obtain public and/or private funding for the purchase of parcels and/or conservation easements within ESHAs should be encouraged." A mechanism to obtain funds for this purpose should be explicitly included in the Implementation Program.

The policies regarding ESHA protection should be clarified to ensure that necessary park facilities and activities are allowed in ESHAs. Policy 3.9 specifically notes that public accessways and trails are considered resource dependent uses (thus, they are allowed in ESHAs). Policy 3.10 allows non-resource dependent uses in ESHAs, provided that a finding can be made that otherwise a taking of private property would ensue. This does not apply to public agencies. Park facilities and activities such as nature centers, ranger stations, and camps should be allowed in ESHAs in order to maximum public access and education and to protect those resources. It is critical that these basic park needs are allowed in order for us to effectively manage our parks.

For example, the Conservancy's Corral Canyon Park provides important inland recreational resources, and recreational facilities and uses should specifically be identified in the LUP as allowed uses at Corral Canyon Park.

We support the intent of Policy 3.59:

> All new development shall include mitigation, for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance.

However, numerous issues must be clarified regarding acceptable mitigation including: the method (e.g., preservation, restoration, or enhancement), plant communities, assurances for permanent protection of mitigation sites, and impact to mitigation ratios. We recommend that mitigation guidelines be developed in consultation with various regulatory and park agencies, including the Santa Monica Mountains Conservancy.

A simple accounting system should be established and administered by the City of Malibu to document losses of plant communities resulting from development. This is an important tool to monitor the effectiveness of a jurisdiction's land protection policies and programs.

Policy 3.62 regarding requirements to replace native trees that are impacted from new developments should be clarified. The Conservancy recommends that onsite locations for replacement trees be required unless it can be demonstrated to the ERB, or the City

Biologist (if the impact site is not within an ESHA), that an offsite location would have more ecological value. Maps (at 100 scale) must be developed and updated by the City to document the locations of tree replacement. This is the only way to adequately track the success of restoration and preservation of planted trees. Any restoration plan should be consistent with the coverage and monitoring requirements outlined in Policy 3.47.

The Mountains Recreation and Conservation Authority (MRCA), the joint powers partner of the Conservancy, would be an appropriate entity to administer the proposed in-lieu fee mitigation fund for impacts to native trees from new development (Policy 3.63). The MRCA currently manages a riparian habitat in-lieu fee program in conjunction with the U.S. Army Corps of Engineers and the California Department of Fish and Game.

Chapter 4-Shoreline/Bluff Structures and Hazards

We concur with Policy 4.49 if the following language (underlined) is added:

> Development adjacent to parkland shall be sited and designed to allow required fire-preventative brush clearance to be located outside park boundaries unless no alternative feasible building site exists on the project site <u>and the project applicant agrees to pay for required fuel modification within the parkland</u>. A natural vegetation buffer of sufficient size should be maintained between the necessary fuel modification area and public parkland.

The cost of fuel modification for private development should not be borne by the taxpayers.

Chapter 5-New Development

The Conservancy supports the Lot Retirement Program and Transfer of Development Credit Program, including the requirement to record an offer to dedicate an open space easement (Policy 5.28). The Conservancy concurs with Policy 5.35 which states in part that "A land division shall not be approved if it creates a parcel that would not contain an identified building site." We also support the requirement to cluster development to minimize site disturbance, minimize fuel modification, and maximize open space (Policy 5.36).

Chapter 6-Scenic and Visual Resources

We support several policies in this chapter including Policy 6.21 which ensures that exterior lighting be concealed so that no light source is directly visible from public viewing areas.

In general, we support the intent of Policy 6.4: "New development shall not be visible from scenic roads or public viewing areas." We recommend the following text be added: "Park-related new development that would enhance the visitor experience shall be allowed."

The Conservancy also generally supports Policy 6.8 which requires that structures be set below the ridgeline. The following language should be added:

> However, it may be appropriate in some cases to allow some intrusion of the development into an ESHA, in order to protect critical viewshed from public viewing areas, such as Scenic Roads.

Chapter 7-Public Works

In the Introduction to this chapter (p. 120, 1st paragraph), the Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority should be identified along with the other agencies listed that finance public recreation facilities.

Policy 7.2 states that publicly financed recreational facilities and access improvement projects shall be permitted consistent with the policies contained in the Access and Recreation section of the LCP. Is this directly referring to Chapter 2-Public Access and Recreation of the LUP? If it refers to a separate set of policies, we request a copy of those policies.

Suggested Changes to Land Use and Parklands Maps

On the Park Lands Map 2, the shape of the Conservancy's Escondido Canyon Natural Park is incorrect. On Park Lands Map 3, Solstice Canyon Park, Corral Canyon Park, and Department of Water and Power property should be identified. California Department of Parks and Recreation property should be shown along Malibu Creek. On Park Lands Map 4, recent acquisitions in Tuna Canyon by MRCA and by Mountains Restoration Trust should be depicted. (Land Use Map 4 should also reflect these areas as Public Open Space.)

On Land Use Map 3, the Department of Water and Power property should not be designated as RR20 (at the west end of the figure). It should be designated Public Open Space. In addition, the Public Open Space designation reflecting California Department of Parks and Recreation property along Malibu Creek must be expanded to accurately reflect the park boundaries.

Thank you for the opportunity to comment on this document. Please direct any questions and all future correspondence to Paul Edelman, Deputy Director for Natural Resources and Planning, at the above address and by phone at (310) 589-3200, ext. 128.

Sincerely,

Jerome C. Daniel

JEROME C. DANIEL
Acting Chairperson

Literature cited

Malibu, City of. 1995. Draft Environmental Impact Report for the City of Malibu General Plan. August.

Witter, Marti. 2001. September 13 Letter from Marti Witter, Ph.D. of National Park Service to John Allen of California Coastal Commission.

From Marie Hansen
4/22/02

ACCESS FOR ALL
CALIFORNIA COASTAL PROTECTION NETWORK
CALIFORNIA NATIVE PLANT SOCIETY
CALIFORNIA OAK FOUNDATION • CALPIRG
CENTER FOR BIOLOGICAL DIVERSITY
CITIZENS FOR A VEHICLE FREE NIPOMO DUNES
DEFENDERS OF WILDLIFE
ENDANGERED HABITATS LEAGUE
ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO
ENVIRONMENTALISTS OF SANTA MARIA VALLEY
FRIENDS OF BLACK LAKE CANYON
FRIENDS OF LAS FLORES CREEK
FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL
LEAGUE FOR COASTAL PROTECTION
MENDOCINO COASTWATCH
MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION
NATURAL RESOURCES DEFENSE COUNCIL
PLANNING AND CONSERVATION LEAGUE
SAN DIEGO AUDUBON SOCIETY • SAN DIEGO BAYKEEPER
SAN LUIS OBISPO COUNTY CHUMASH COUNCIL
SAN MATEO LEAGUE FOR COASTSIDE PROTECTION
SANTA BARBARA CHANNELKEEPER
SIERRA CLUB
SOUTH COAST WILDLANDS PROJECT
SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP
VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

April 19, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

Dear Commissioners:

Together we represent millions of Californians and we write in support of the California Coastal Commission for your recent action adopting the draft land use plan (LUP) of the local coastal program (LCP) for the City of Malibu. We especially appreciate your support for continuous public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA). A review of the record indicates the ESHA designation is based, in part, on

the importance of habitat connectivity to the recovery and viability of species that rely on these dwindling habitat types for survival. Wildlife species are being directly and adversely impacted by the continued and increasing fragmentation of this important ecosystem. We feel that applying this type of conservation science-based decision making to long-range land use planning activities should become a statewide model.

Your certification of the LCP will be a much-needed update of the LUP prepared by Los Angeles County prior to Malibu's incorporation, and it underscores the importance of updating older LCPs throughout the coastal zone. The current draft Malibu plan provides a model for how updated LCPs should address the need to revise ESHA designations based on new biological information, incorporating the precautionary principle and reflecting what has been learned regarding conservation biology in the last 25 years. While many coastal landscapes do not contain coastal sage scrub and chaparral (that's in part why it is ESHA in the Santa Monica mountains) they do support other sensitive habitats whose future health and biological viability depends on the application of the type of science and analysis you utilized as the basis of your decision for Malibu.

We also support your draft policies relating to water quality and urge you to explore additional ways to protect wetlands and adjacent open space throughout Malibu, and in particular the area surrounding Malibu Creek in the Civic Center. Development proposed there is too intense to adequately protect water quality and the Malibu estuary. As is the case with habitat protection, we now have the benefit of increased understanding of the sources and impacts of polluted runoff and faulty septic systems. The best management practices to protect marine water quality in the Malibu LUP should be included in all LCPs, with some adaptation for local conditions. Indeed, when most of the state's LCPs were drafted, the term "nonpoint source pollution" was not even a part of the planning vocabulary.

Lastly, we applaud your efforts to increase public access to the coast in Malibu, and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance, and should not continue to be a private enclave for local residents. Setting a goal for at least one vertical accessway every 1000 feet will ensure that local residents not fortunate enough to own beachfront property will be able to enjoy the beach forever.

We strongly urge you to finalize these ESHA, water quality and public access policies when you act to adopt the entire Malibu LCP in September. We know you will be under tremendous pressure to do otherwise and ask that you stand firmly behind the exemplary action you took in January.

Respectfully Submitted,

ACCESS FOR ALL • CALIFORNIA COASTAL PROTECTION NETWORK CALIFORNIA NATIVE PLANT SOCIETY • CALIFORNIA OAK FOUNDATION • CALPIRG • CENTER FOR BIOLOGICAL DIVERSITY CITIZENS FOR A VEHICLE FREE NIPOMO DUNES • DEFENDERS OF WILDLIFE • ENDANGERED HABITATS LEAGUE • ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO • ENVIRONMENTALISTS OF SANTA MARIA VALLEY • FRIENDS OF BLACK LAKE CANYON FRIENDS OF LAS FLORES CREEK • FRIENDS OF THE RANCHLAND FRIENDS OF PT. SAL • LEAGUE FOR COASTAL PROTECTION MENDOCINO COASTWATCH • MONTEREY DUNES COALITION MOUNTAIN LION FOUNDATION • NATURAL RESOURCES DEFENSE COUNCIL • PLANNING AND CONSERVATION LEAGUE • SAN DIEGO AUDUBON SOCIETY • SAN DIEGO BAYKEEPER • SAN LUIS OBISPO COUNTY CHUMASH COUNCIL • SAN MATEO LEAGUE FOR COASTSIDE PROTECTION • SANTA BARBARA CHANNELKEEPER SIERRA CLUB • SOUTH COAST WILDLANDS PROJECT • SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

cc: Gov. Gray Davis
Sen. John Burton
Hon. Herb Wesson
Hon. Mary Nichols
Sen. Sheila Kuehl
Sen. Byron Sher
Assemblywoman Fran Pavley
Assemblyman Fred Keeley
Sup. Zev Yaroslavsky

Lloyd Ahern
19062 Pacific Coast Highway
Malibu, California 90265
310-456-3018

Received at Commission Meeting
APR 1 2 2002
From:_____

California Coastal Commission
Peter Douglas, Executive Director
Honorable Chair Sara Wan and Coastal Commissions
45 Fremont Street, Suite 1970
San Francisco, CA 94105-2219

Hand Delivered to CA Coastal Commission
Hearing Date April 12, 2002, Santa Barbara

Dear Coastal Commission,

Re: Malibu Draft Local Coastal Plan Hearing July 15, 2002

I was stunned to read that the proposed venue for the July hearing is in Huntington Beach. At the January hearing at LAX you announced the July hearing would cover the proposed implementation measures for the Malibu Local Coastal Plan.

You had six months to find a place that was in reasonable distance for the amount of people that would show up at this very critical hearing. This is not the best you could do. When people complain about your peculiar choice they are threatened with Eureka. I am an old hand at the Coastal Commission and have been observing and testifying since 1988. It's an old and worn out trick and should not be used on such a serious and far reaching matter.

The irony of Huntington Beach, Mr. Douglas, is the last time I was in Huntington Beach, I was there to defend your continued employment. I do not believe I need to remind you that hundreds of people up and down the state were after your hide. But I do need to remind you that I was with the 100s of people who actually showed up at Huntington Beach to defend you. I sat next to Pam Emerson, a person I respect immensely, talking about 'stupid Republicans' attempting to oust you just because they had the votes not because it was the right thing to do.

Somehow history is repeating itself. You plan to stick us in Huntington Beach, not because it is right, but because you have the power. It was wrong then and it is wrong now. I remind you it backfired for the Republicans and it will backfire for you. I have a motto, Mr. Douglas, I never emulate what I disapprove of. You ought to adopt this motto, too.

I also want to remind you, Mr. Douglas, we had a very elaborate poll taken this Tuesday in Malibu. It's called an election. The only candidate that supported your proposed LCP, came in DEAD last. I repeat: DEAD LAST. The two winners were extremely opposed to your LCP as it stands now and they have vowed to fight on.

We thought the election was going to be close, but the winners won in a landslide because of their vehement opposition to your LCP. Making us travel 60-75 miles just to drive down our attendance is not going to help the credibility of the CA Coastal Commission. Just because you're in control, does not make it right. The whole process should be about making it easier for the public to participate, not impossible for them to attend.

There are many organizations that have notified you of their concerns. The City of Malibu and the Malibu Chamber of Commerce made their requests in writing. Huntington Beach is a bad political and moral move on your part. Please find a way to bring this closer to our home, Malibu.

Kindest regards, your old defender,

Floyd Ackerman

Cc: Governor Gray Davis
Assemblymember Fran Pavley
Senator Sheila Kuehl

Temescal Canyon Association

Since 1972 Dedicated to Preservation of the Santa Monica Mountains

April 29, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001

RE: Malibu Local Land Use Plan

Dear Commissioners:

Temescal Canyon Association is a non-profit organization dedicated to the preservation of the Santa Monica Mountains. We have been in existence for 30 years and have over 600 members. We conduct regular hikes throughout the Santa Monica Mountains, and we are also involved in trail building and maintenance.

We would like to take this opportunity to ask you to support the findings of your staff ecologist John Allen. From first hand observation our Association can tell you that Coastal Sage Scrub and Chaparral communities meet the definition of ESHA, i.e., Environmentally Sensitive Habitat Areas. In order for these Sage Scrub and Chaparral communities to continue to survive as viable habitat it is essential that conservation based planning such as that set forth in the draft 2002 Malibu Land Use Plan be put in place now.

We would also like to suggest that the ESHA designations that were set forth in the 1986 Malibu LUP be reinstated. We noted that many of these designations were deleted from the current draft and that these areas are still clearly ESHA. Please find a way to implement the restoration to the greatest extent feasible of the historic wetlands at both Trancas and the Civic Center of Malibu.

Lastly, we ask that an Environmental Review Board be an essential part of this Land Use Plan. It should be made up of individuals who serve on a voluntary basis with expertise in the Santa Monica Mountains and Seashore and who will act as an advisory body to the City Council, Planning Commission and Planning Department for all projects in and adjacent to, ESHA.

Thank you for considering our recommendations.

Sincerely.,

Carol Leacock

Carol Leacock, President

Post Office Box 1101 Pacific Palisades CA 90272 Phone (310) 459-5931 Fax (208) 474-8516

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& Younger

A Professional Law Corporation

895 Dove Street, Newport Beach, California 92658
Telephone (949) 760-1121 / Fax (949) 720-0182

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

File Number: C1401-0001
Direct Dial Number : (949) 224-6284
E-Mail Address: *skhori@buchalter.com*

April 2, 2002

VIA FACSIMILE and FIRST CLASS MAIL

Gary Timm
California Coastal Commission
85 South California Street, Suite 200
Ventura, CA 93001

Re: Draft City of Malibu Local Coastal Program Land Use Plan (LUP)
Malibu Bay Company Properties

Dear Gary:

Thank you for meeting with Kari Kramer of the Malibu Bay Company and me on March 7, 2002, to discuss the concerns that we had with language that is proposed in the Malibu LUP. Although the Coastal Commission approved the LUP at its meeting in January, we understand that Coastal Commission staff is continuing to work on refinements to the LUP together with the Implementing Actions Program (IAP) component of the Local Coastal Program (LCP) in order to meet the statutory deadline of September, 2002, for certification of the Malibu LCP. We would like to briefly review the three main issues that we discussed at our meeting in this letter. As you suggested, we are also submitting for your review and consideration modifications to the LUP policies concerning maximum development area and development within or adjacent to ESHAs and ESHA buffer areas.

1. **Mapping Issues.**

We reviewed three mapping issues that are raised by the maps in the LUP. Our comments are as follows:

a. Scenic Resources Map 3: We discussed the fact that a "public viewing area" has been designated on the Malibu Bay Company's property on Pacific Coast Highway and Cross Creek Road, commonly known as the "Chili Cook Off Site." As we discussed, there are no views of the ocean from this location, and the view eastward is of existing developed areas. You indicated that the asterisk on the map may represent the need to provide a viewpoint in that general area and does not necessarily mean that it is tied to a specific location. You indicated that Commission staff would review the map

and see if clarification can be accommodated. We would suggest that the easiest means to clarify this would be to remove the asterisk from the privately-owned Chili Cook off site and place it on public property within the Civic Center area, and revise the last sentence in the Map Note as follows: "All locations are approximate and do not represent specific locations or designations on the properties mapped. All locations are subject to field checks. Where public open space areas are available within the general vicinity of a mapped locations, those areas should be used to provide public viewing areas."

b. Park Land Map 1: This map appears to designate a "Trancas Canyon Trail" on the Malibu Bay Company's residentially zoned property adjacent to Pacific Coast Highway. As we discussed, this property has been fenced for over twelve (12) years and no public access over the property exists, including prescriptive easements. You indicated that Barbara Carey of the Commission's staff utilized the County of Los Angeles' trail maps to designate many of the trails shown on the LUP maps, and that you would confer with her to confirm the existence of this trail. We would like to hear from either you or Ms. Carey if a trail link has been mapped on our property, and if so, under which jurisdictional map. As we do not believe one exists, we reiterate our request that this trail designation be removed from the private property and relocated to align with Trancas Canyon Road.

c. ESHA Maps: We discussed the mapping of ESHA on the Point Dume property. We have submitted jurisdictional delineations of the Malibu Bay Company's Point Dume and Trancas Residential properties to Coastal Commission staff. As we discussed, we have scheduled a site visit on April 4, 2002, with Coastal Commission biologist, Dr. John Allen, and our biologist, Dr. Edith Read, for these two properties to examine the extent and nature of vegetation present. If revisions to the mapping are warranted, we would request that the ESHA Maps be modified to reflect their findings.

2. **Policy 6.5:** We presented our current proposal that is pending before the City to develop thirteen (13) homes that will be clustered on fifteen (15) acres of an overall site that is approximately 25 acres in size. By clustering development, approximately 10 acres will be left in permanent open space. This property and the proposed homes are located between existing developed areas. Residential uses have been developed to the north and east of the property; Trancas Commercial Center and a gasoline station lie to the east; and new condominiums are being developed to the west. The proposed pad elevations for the structures have been designed to protect views from existing homes on Trancas Canyon Road.

The only reason Policy 6.5 and its limitation of 10,000 square feet of development area is applicable to the property is because the property is visible from Pacific Coast Highway , a scenic road under the LUP, which lies south of the site. While we understand the Commission's desire to minimize land form modifications to protect hillsides and views in sensitive areas, the policy, as drafted, provides no flexibility to permit consideration of physical conditions which may mitigate the impacts the policy seeks to avoid. Where, as you have acknowledged, (1) views of the ocean and beach from Pacific Coast Highway are not affected by the proposed development, (2) views from adjacent residential developments are not affected by the proposed development, and (3) views of the hillsides are not affected by the proposed development, we do not believe the 10,000 square foot limitation should apply. We would request that as part of the LCP package that is presented to the Coastal Commission, that Policy 6.5 be modified to identify criteria under which properties may be exempted from application of this policy. We suggest the following:

6.5 The maximum allowable development area (including the building pad and all graded slopes, if any, as well as any permitted structures) for residential development shall be limited to 10,000 sq. ft. or 25 percent of the parcel size, whichever is less on sites visible from scenic roads or public viewing areas, or on slopes over 3:1. ***The maximum development area limitation shall not be applicable to property visible from scenic roads or public viewing area where the property is located between existing development, and the proposed development will not adversely impair views of natural, undeveloped areas or views of the ocean and beach, and will not adversely impact sensitive resources.*** The maximum development area shall be further restricted if necessary to protect visual or other sensitive resources. All permitted structures shall be located within the approved development area.

We believe that the modification suggested would not create an undesirable expansion of this policy as applied to other properties in the City. First, there are few areas of potential "infill" development, i.e., properties surrounded by other developed areas, and second, where those properties exist, the objectives of the policy, view and resource protection, would still be achieved.

3. **Point Dume:** As we discussed during our meeting, one of the reasons we would like a determination made on the extent of ESHA on Point Dume is that the Malibu Bay Company and the City are considering use of Point Dume for public access and recreation uses, both of which are critically needed in the City. As discussed in Section 1.c., above, the extent of ESHA shown on Point Dume does not correlate to the jurisdictional delineation previously submitted to the Coastal Commission, and we would request that modifications to the mapping be made to reflect on-site conditions. Second, we also request a clarification to several ESHA protection policies as it pertains to development adjacent to ESHAs for public access and recreation purposes, as follows:

3.9 Public accessways, trails, and ***public parks***, are considered resource dependent uses. Accessways, trails, ***and public park facilities***, located within or adjacent to ESHA shall be sited to minimize impacts to sensitive resources to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect sensitive resources.

3.25 New development, including, but not limited to, vegetation removal, vegetation thinning, or planting or non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, except that habitat restoration and invasive plant eradication may be permitted if designed to protect and enhance habitat values. ***For the Point Dume canyon ESHA, new development shall not be permitted within the riparian ESHA buffer area, however, public park uses may be sited within the 25 feet top of slope Point Dume canyon buffer that is outside of the riparian ESHA buffer area.***

3.26 Required buffer areas shall extend from the following points:

- The outer edge of the canopy of riparian vegetation for riparian ESHA.
- The outer edge of the tree canopy for oak or other native woodland ESHA.
- ***Twenty-five feet (25') from the top of slope or 100 feet from the edge of the canopy of riparian vegetation for Point Dume canyon ESHA, whichever is greater.***
- The top of bluff for coastal bluff ESHA.

We believe that as modified, these policies will continue to provide protection for sensitive resources while permitting park and open space uses that promote and expand coastal access within the City.

Thank you again for the opportunity to meet and discuss these issues with you. We would appreciate your consideration of our suggested modifications.

Very truly yours,

BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation

By
SUSAN K. HORI

cc: David Reznick (via fax)
Kari Kramer (via fax)
Christi Hogin (via fax)

Kathy J. Daruty and Ron Remsburg
437 Lofty Hill Drive
Malibu, CA 90265-2730
818-706-3769
email: Kdaruty@aol.com

April 20, 2002

Gary Timm, District Manager
South Central Coast District
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

We are writing to voice our concern and opposition to the Land Use Plan being proposed by the California Coastal Commission for the City of Malibu. Although ***we do not live within the city, and are not immediately impacted by the proposed LUP***, we strongly oppose the precedent this landgrab creates.

We have been supporters of the CCC for decades. We are lifelong Democrats, and card-carrying members of the Sierra Club for 30 years. We support offering incentives to limit development in environmentally sensitive areas. However, the restrictions contained in the proposed Malibu LUP, making it impossible to use 75% of a property owner's land in or near an ESHA is simply a taking, without compensation.

We elect government officials (and the regulators they then appoint) to do many things. The most important thing we need from you is protection, and that means protecting our properties. If state appointed regulators instead undertake a political agenda that denies basic property rights to home owners anywhere in the state without offering compensation at fair market value, that is simple theft.

We urge the CCC to re-think the LUP for the City of Malibu. If they go forward with the current proposal, ***we will be voting Republican in November*** as the only option short of the courts to reign in the CCC. Please don't turn us into Republicans!

Sincerely yours,

Kathy Daruty

Ron Remsburg

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COASTAL COMMISSION
SOUTH COAST DISTRICT

PCH Beautification Committee (PCHBC)

An ad hoc group

Mission Statement

The purpose of the PCH BEAUTIFICATION PLAN is to transform the Pacific Coast Highway, which is the main artery to the heart of Malibu, in such a way as to reflect its natural beauty.

MEMBERS

Anoush Kotchounian

Michael Vignieri

Suzanne Maxx

Christine Rodgerson

Denis Rodgerson

Mary Lou Blackwood

Carolyn Van Horn

ADVISORS

Marti Witter

Rick Morgan

Barry Hogan

Chuck Bergson

CONSULTANT

Doug Campbell

April 4, 2002

Joan House, Mayor
City of Malibu
23555 Civic Center Way
Malibu, CA 90265

COPY

Dear Mayor House,

In regards to the Draft City of Malibu Local Coastal Program – Land Use Plan submitted by the California Coastal Commission – section 6 – Pacific Coast Highway, the PCHBC would like to bring our concerns to your attention. It is our opinion that the wording in section 6.32 eliminates any prospect of any landscape opportunities along a significant portion of the Pacific Coast Highway.

The goal of the Coastal Commission is very similar to the goal of the PCHBC, mainly protecting the environment along the Pacific Coast Highway. The intent of both organizations is to keep and maintain the rural beauty in our coastal community.

The PCH Beautification Committee (PCHBC) was formed approximately eight years ago as an ad-hoc committee of private, public and professional individuals dedicated to find ways to beautify the Pacific Coast Highway through landscaping endeavors within the City of Malibu. With the volunteer efforts of the committee members and our landscape architect, Doug Campbell, the first phase of work was identified and a conceptual plan was produced. The first phase of work identified was the length of Pacific Coast Highway (medians and right of way) from Cross Creek Road to John Tyler Drive.

The creation of the conceptual plan, its schedule and budget, included a variety of consultations with private and public entities including Coastal Commission staff, CALTRANS, State Parks, City of Malibu Planning, Public Works, Biologist, landscape contractor(s) and property owners. The fundraising efforts began in 1998 with moneys donated by the Malibu Board of Realtors, Homeowners Associations, as well as individual donations by PCHBC members. The initial donations of approximately $2,000 allowed the necessary soil investigation work to be completed to help determine the scope of the project.

The Local Coastal Program – Land Use Plan, Section 6. Pacific Coast Highway is of interest and concern to our project. The PCHBC strongly agrees with Section 6.31 which states: *"The Pacific Coast Highway corridor shall be protected as a scenic highway and significant view shed."*

Our concern is with the last sentence of 6.32 which reads as follows: No *such improvements shall be provided west of Malibu Canyon Road in order to maintain the rural character of that area."*

Throughout its existence, the PCHBC has made every effort to work with, and follow the guidelines of, each and every public agency to ensure their support. To this end, the PCHBC respectfully request the Malibu City Council ask the California Coastal Commission change 6.32 by eliminating the last sentence and have it read as follows: *"Landscape improvements, including median plantings, may be permitted along Pacific Coast Highway. Any proposed landscaping shall be comprised primarily of native and drought tolerant plant species. Landscaping shall be designed and maintained to be subordinate to the character of the area, not block ocean or mountain views at maturity and to maintain the rural character of that area."*

The PCH proposed landscape beautification plan from John Tyler Road to Cross Creek Road would definitely enhance and protect the Pacific Coast Highway corridor as a scenic highway and significant viewshed.

To this end, we thank you for helping the PCHBC attain this goal by asking the California Coastal Commission to make this extremely critical change to the draft Local Coastal Program – Local use Plan.

Cordially,

Anoush Kotchounian
Chairperson

Cc: City of Malibu
Council Members
Katie Lichtig, City Manager
Drew Purvis, Planning Director
Barry Hogan, Special Projects Manager
Chuck Bergson, Public Works Director

California Coastal Commission
Peter Douglas, Executive Director
Chuck Damm, Deputy Director
Gary Tim, District Manager, South Central
Barbara Carey, Coastal Program Analyst

ACCESS FOR ALL
CALIFORNIA COASTAL PROTECTION NETWORK
CALIFORNIA NATIVE PLANT SOCIETY
CALIFORNIA OAK FOUNDATION • CALPIRG
CENTER FOR BIOLOGICAL DIVERSITY
CITIZENS FOR A VEHICLE FREE NIPOMO DUNES
DEFENDERS OF WILDLIFE
ENDANGERED HABITATS LEAGUE
ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO
ENVIRONMENTALISTS OF SANTA MARIA VALLEY
FRIENDS OF BLACK LAKE CANYON
FRIENDS OF LAS FLORES CREEK
FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL
LEAGUE FOR COASTAL PROTECTION • MENDOCINO COASTWATCH
MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION
NATURAL RESOURCES DEFENSE COUNCIL
PLANNING AND CONSERVATION LEAGUE
SAN DIEGO AUDOBON SOCIETY • SAN DIEGO BAYKEEPER
SAN LUIS OBISPO COUNTY CHUMASH COUNCIL
SAN MATEO LEAGUE FOR COASTSIDE PROTECTION
SANTA BARBARA CHANNELKEEPER
SIERRA CLUB
SOUTH COAST WILDLANDS GROUP
SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP
VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

April 19, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

Dear Commissioners:

Together we represent millions of Californians and we write in support of the California Coastal Commission for your recent action adopting the draft land use plan (LUP) of the local coastal program (LCP) for the City of Malibu. We especially appreciate your support for continuous public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA). A review of the record indicates the ESHA designation is based, in part, on

the importance of habitat connectivity to the recovery and viability of species that rely on these dwindling habitat types for survival. Wildlife species are being directly and adversely impacted by the continued and increasing fragmentation of this important ecosystem. We feel that applying this type of conservation science-based decision making to long-range land use planning activities should become a statewide model.

Your certification of the LCP will be a much-needed update of the LUP prepared by Los Angeles County prior to Malibu's incorporation, and it underscores the importance of updating older LCPs throughout the coastal zone. The current draft Malibu plan provides a model for how updated LCPs should address the need to revise ESHA designations based on new biological information, incorporating the precautionary principle and reflecting what has been learned regarding conservation biology in the last 25 years. While many coastal landscapes do not contain coastal sage scrub and chaparral (that's in part why it is ESHA in the Santa Monica mountains) they do support other sensitive habitats whose future health and biological viability depends on the application of the type of science and analysis you utilized as the basis of your decision for Malibu.

We also support your draft policies relating to water quality and urge you to explore additional ways to protect wetlands and adjacent open space throughout Malibu, and in particular the area surrounding Malibu Creek in the Civic Center. Development proposed there is too intense to adequately protect water quality and the Malibu estuary. As is the case with habitat protection, we now have the benefit of increased understanding of the sources and impacts of polluted runoff and faulty septic systems. The best management practices to protect marine water quality in the Malibu LUP should be included in all LCPs, with some adaptation for local conditions. Indeed, when most of the state's LCPs were drafted, the term "nonpoint source pollution" was not even a part of the planning vocabulary.

Lastly, we applaud your efforts to increase public access to the coast in Malibu, and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance, and should not continue to be a private enclave for local residents. Setting a goal for at least one vertical accessway every 1000

feet will ensure that local residents not fortunate enough to own beachfront property will be able to enjoy the beach forever.

We strongly urge you to finalize these ESHA, water quality and public access policies when you act to adopt the entire Malibu LCP in September. We know you will be under tremendous pressure to do otherwise and ask that you stand firmly behind the exemplary action you took in January.

Respectfully Submitted,

ACCESS FOR ALL • CALIFORNIA COASTAL PROTECTION NETWORK CALIFORNIA NATIVE PLANT SOCIETY • CALIFORNIA OAK FOUNDATION CALPIRG • CENTER FOR BIOLOGICAL DIVERSITY • CITIZENS FOR A VEHICLE FREE NIPOMO DUNES • DEFENDERS OF WILDLIFE ENDANGERED HABITATS LEAGUE • ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO • ENVIRONMENTALISTS OF SANTA MARIA VALLEY • FRIENDS OF BLACK LAKE CANYON • FRIENDS OF LAS FLORES CREEK • FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL LEAGUE FOR COASTAL PROTECTION • MENDOCINO COASTWATCH MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION NATURAL RESOURCES DEFENSE COUNCIL • PLANNING AND CONSERVATION LEAGUE • SAN DIEGO AUDOBON SOCIETY • SAN DIEGO BAYKEEPER • SAN LUIS OBISPO COUNTY CHUMASH COUNCIL • SAN MATEO LEAGUE FOR COASTSIDE PROTECTION • SANTA BARBARA CHANNELKEEPER • SIERRA CLUB • SOUTH COAST WILDLANDS GROUP SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

cc: Gov. Gray Davis
Sen. John Burton
Hon. Herb Wesson
Hon. Mary Nichols
Sen. Sheila Kuehl
Sen. Byron Sher
Assembly member Fran Pavley
Assembly member Fred Keeley
Sup. Zev Yaroslavsky

MALIBU BAY COMPANY

April 22, 2002

Gary Timm
California Coastal Commission
85 south California Street, Suite 200
Ventura, California, Ca. 93001

RE: David B. Neish

Dear Gary:

This will serve to inform you that David Neish is authorized to discuss issues concerning the Malibu Local Coastal Plan with the Coastal Commission and its staff on behalf on the Malibu Bay Company.

Sincerely,

David Reznick

23705 WEST MALIBU ROAD SUITE D-2 MALIBU, CA 90265 (310) 456-6555 FAX (310) 456-9462

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CALIFORNIA
COASTAL COMMISSION

H.C. Rockey
13215 Leisure Village
Camarillo 93012, Ca.
805 484 8277
4/18/02

California Coastal Commission

Gentlemen:
Without reading your proposed land use plan for Malibu, I would judge by the character of the opposition to same that it is sincerely in the public interest. The opposition is from the most selfish and malignant of special interests.

On another score, I don't know the extent to which this is a matter of concern to your organization, but in many areas where development is raging rampant there is scant attention given to future availability of potable water. The populace lives with a faith found otherwise only in a God almighty, the existence of a vast underground, inexhaustible aquifer of fresh water. Of course, no one has ever seen this miracle, and I suspect it amounts to nothing more than speculation by parties at interest. They claim that it is either centuries of accumulated rain and run-off, or contemporary underground rivers of run-off from nearby mountain areas.
Which ever, and what ever, no one is willing to acknowledge that the water can come from only one source - rain. This is, of course, finite, and pretty easy to measure.
Some how, some way, and some time soon, people who rely on these aquifers must come to realize what the real score is.

Incidentally, I am pretty sure that my subscription to your publication ran out. After I moved a year ago, I ceased receiving it altho I notified you of a change of address. In any event, I would appreciate hearing as to the current status of this account.

Sincerely,

H. Rockey

P.S.: If you could convert the above comments on water to a letter of the the editor, you have my permission to print it.

From Jo Ruggles
4/22/02

THE MALIBU GENERAL PLAN

In March of 2000, the City of Malibu put forward a Request for Proposals(RFP) for Development of an Economic Strategy Plan for the City. The plan read as follows:

"The City of Malibu was incorporated in 1991. In 1995, it adopted a General Plan which includes Mission and Visions Statements which call for the 'sacrifice of urban and suburban conveniences in order to protect the environment...lifestyle,...and the rural characteristics' of the community. Numerous General Plan goals, objectives and policies support these objectives. Council members have remained committed to this Mission and Vision and this study should also reflect the City's Vision/Mission."

For reasons only known to them, members of this City Council don't seem to support these items any more.

1) **THE CITY SHALL** protect Environmentally Sensitive Habitat Areas (ESHA) as a priority over development and against any significant disruption of habitat values. Con Policy 1.1.4 *

2) **THE CITY SHALL** prohibit development in Environmentally Sensitive Habitat Areas (ESHA) unless no feasible alternative is available. LU policy 1.2.1 *

3) **THE CITY SHALL** maintain an Environmental Review Board (ERB) comprised of professionals with technical expertise in resource management as a technical advisory committee. The ERB shall review and make recommendations on proposed development in or adjacent to ESHA...LU Implementation Measure 31

4) **THE CITY SHALL** restore Disturbed Sensitive Resource Areas (DSRAs), to the extent feasible and ecologically desirable. Con Policy 1.1.6 *(Note: The Malibu Creek floodplain would be a DSRA if it is mostly a wetland disturbed with fill deposits- which it is.)

5) **THE CITY SHALL** establish setbacks from riparian corridors and oak woodlands of no less than 100 feet where feasible to protect wildlife habitats. Con Implementation Measure 26. (Not on Portshead Road)

6) THE CITY SHALL develop and adopt a watershed-wide cooperative program committed to the protection of natural resources, with Malibu Creek as the most immediate priority. The program shall seek the Cooperation of adjacent jurisdictions in order to create uniform practices And protection measures. Con Implementation Measure 4 (The Malibu Lagoon Task Force is the organization that closest fits that bill.)

7) THE CITY SHALL develop a plan for restoration of the Malibu Lagoon addressing the advantage of (a) constructing additional wetlands; (b) widening the existing estuary; (d) requiring a drainage system for the civic Center Area and other areas currently draining into the estuary and lower creek. Con Implementation Measure 60 (recommended by the Malibu Lagoon Task Force, but not supported by the City).

8) THE CITY SHALL (achieve) a three day emergency water supply in all residential areas. Con Objective 4.1 (less than 12 hrs. currently exists-until this is achieved, all new development reduces our emergency supply).

9) THE CITY SHALL discourage plant species which are invasive in the Santa Monica bio-geographic area where such invasive plant species would degrade native plant communities. Con Policy 1.2.5 (so much for not being able to plant Rose Bushes).

10) THE CITY SHALL avoid improvements which create a Suburban atmosphere such as sidewalks and streetlights. LU Policy 2.4.6 (so much for Cross Creek Improvement Plan & Mayor House's "Semi-rural" reference to Malibu).

It is our belief that the Coastal Commission Draft LUP for the City of Malibu comports with the above policies, and that they are fully supported by the residents of the City of Malibu.

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* 1986 Malibu LUP/LCP – P63 requires conformance to Table I (much more restrictive than the current LCP).

Here are the review letters requested and their status thus far on our Malibu Ecological Findings.

Deb Hillyard (CDFG - Morro Bay) (Letter pending)

Bill Tippets (CDGF - San Diego) (Only email received (attached) – will request letter again?)

Mary Meyer (CDFG - Ojai) (letter received)

Dr. Todd Keeler-Wolf (CDFG - NDDB Sacramento) (Author of: "A Manual of CA Veg." - CNPS/DFG) (Letter pending)

Suzanne Goode (Calif Dept of Parks & Rec. - Malibu Creek State Park) (Letter pending)

Dr. Tom Scott (UC Riverside - CSS/Chaparral Ecologist) (Has declined to write letter – second hand report from Pat Healey, Malibu) (Tom was very supportive in a phone conversation – said chaparral was "different" in SMM).

Dr. Marti Witter (NPS SMMNRA) (Previous Malibu City Biologist now with NPS in Santa Monica Mtns.) (Letter received)

Dr. Jon Keeley (Dept of Interior - UGS CSS/Chaparral Fire Ecologist) (Letter received).

Rosi Dagit (Malibu ERB and Res. Conserv. Dist. SMM Conservancy) (Letter received)

Dr. Walt Sakai (Malibu ERB and Santa Monica College) (Letter pending)

Diane Noda (USFWS - Ventura) (Letter pending).

David Magney (CNPS/consultant, Ojai, CA) (Letter pending)

Dr. Travis Longcore (UCLA Urban Wildlands Group) (letter pending).

The Nature Conservancy (Letter pending) (Peter Douglas was requesting).

NORTHERN ARIZONA UNIVERSITY

SCHOOL OF FORESTRY

Paul Beier
Professor, NAU School of Forestry
Flagstaff AZ 86011-5018
Phone: 1-928-523-9341. Email: paul.beier@nau.edu Web Page: http://www.for.nau.edu/~pb1

25 March 2002

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

RE: Draft Ecological Findings regarding ESHA determination for land in City of Malibu's Land Use Plan

Dear Sir or Madam:

I have reviewed the above-referenced report by John Allen, and I am writing to strong agree with the scientific statements and the interpretation of scientific data in this report. Because of my expertise on mountain lions and conservation corridors, I read pages 8-12 in detail. I would add that a recent book summarizing a landmark 10-year study of mountain lions (KA Logan & LL Sweanor. 2001. Desert Puma. Island Press, 463pp) gives strong support to Dr Allen's assertions about the importance of habitat connectivity for mountain lions, and the role of mountain lions in top-down regulation of deer populations.

In particular, I agree with Dr Allen that the continued existence of mountain lions in this area is evidence that the area is still functionally part of a larger interconnected ecosystem, that the area will not continue to support mountain lions unless it is managed as part of a larger ecosystem, and that the loss of ecological values in the proposed ESHA would have impacts on the larger ecosystem of which it is a part. The report's emphasis on *function* (in contrast to a static snapshot of existing conditions) and on the broad regional context is sound conservation science, and the correct way to evaluate the ecological significance of the area.

Clearly this area qualifies as an Environmentally Sensitive Habitat Area, and is under great threat. I strongly support an ESHA designation and the findings in Dr Allen's report.

Sincerely,

Paul Beier

Paul Beier

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

122 NORTH TOPANGA CANYON BOULEVARD TOPANGA, CALIFORNIA 90290
Office (310) 455-1030 Fax (310) 455-1172
Education Reservations (310) 455-1449
E-mail: info@rcdsmm.org • www.rcdsmm.org

MARGO MURMAN
Executive Officer

BOARD OF DIRECTORS
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WOODLAND HASTINGS

1 March 2002

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dr. Jon C. Allen
California Coastal Commission
89 South California Street. Suite 200
Ventura, CA 93001

Re: Comments on the Summary of Ecological Findings for Malibu

Dear Jon Allen,

Thank you for the opportunity to review and comment upon the Summary of Ecological Findings for Malibu that will be incorporated into the revision of the Malibu Local Coastal Plan.

Overall, the information was well presented and represents a clear synthesis of the current scientific views on integrating planned development with preservation of natural resources. Malibu represents a unique situation, where the remaining fragments of wildlands still afford sufficient resources to support numerous species which are declining or gone from other coastal areas in Los Angeles County. It has not yet been possible to determine the threshold for sustainability until long after it is exceeded. Therefore, it would seem prudent to err on the side of caution as development proceeds. It is clear that a strong effort in Malibu to protect connectivity on a variety of spatial scales could be the difference between long term functionality or continued degradation. Designation of the "Environmentally Sensitive Areas" as delineated in the document makes good biological sense from a long term planning perspective.

A major point that is very well supported is that habitat function is as important as habitat type. Due to the disturbance regime in Malibu, (fire, development, brush clearance, etc.) the function of the remaining wildlands is critical to long term sustainability. A development plan process that encourages clustering, reduces fragmentation and protects the integrity of the landscape will have significant ancillary benefits in reduced fire hazard and reduced geological hazard while protecting the underlying ecological support system.

There are a few minor points that might also be considered. First, the document lists connectivity with wildlife corridors to the north, including the Sierra Madre, San Gabriel and San Bernardino. Missing from that list is the Santa Susanna Mountains and Simi Hills, which are the closer crucial linkages on a metapopulation scale.

In the descriptions of Malibu Habitats, we concur with the inclusion of chaparral as a critical habitat. While chaparral further inland may not play as crucial a role, this assemblage in Malibu is a necessary transition area and due to its limited extent, clearly meets the criteria of the Coastal Act for designation as an ESHA. Many of the species listed as characteristic of the Coastal Sage Scrub habitat rely upon adjacent mosaics of chaparral for foraging and movement corridors.

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Clearance of this community for fire safety around new structures, as well as disturbance for other development is clearly an impact that deserves greater attention.

The description of riparian woodland would benefit from adding that this woodland community is listed as threatened statewide and in need of preservation. In the coastal zone of Malibu, the riparian zones are the clear lifelines for numerous species. Another species found only within that community are the CA Newts (*Taricha torosa torosa*) which are a state listed species of special concern. They are also indicator species that respond negatively to water pollution and other development related disturbances. A recent survey undertaken by a coalition of agencies and universities coordinated by NPS has found that CA Newts are only found in the more undisturbed areas. Their presence then is a valuable tool to use when evaluating potential development impacts.

The Coastal Saltmarsh section should be expanded to note the potential for restoring wetlands at Las Flores and Trancas Canyons. Both of these locations had substantial historical systems and presently retain sufficient habitat to warrant further restoration in the future, as has been possible at Solstice and Zuma Canyons.

No mention is made of the role of invasive exotic species, both plant and animal, on the integrity of the native ecosystem. It might be helpful to include a brief discussion of the impacts these species have not only in out competing the natives, but in increasing fire frequencies, especially in chaparral and coastal scrub areas that are thinned for brush clearance. These impacts are substantial and need to be evaluated for each new proposed development, especially within the context of evaluating ESHA status on a parcel level.

One additional suggestion is inclusion of some form of on-going evaluation (GIS?) of the ESHA process as it is implemented. Without a formal review process that documents the cumulative impacts of development over time, individual project assessments will inevitably fail to achieve the goals of preservation. If the LCP is going to take a more wholistic approach to defining ESHA's, then it is crucial to incorporate annual review on a large scale landscape basis to track effectiveness, identify gaps, and highlight successes.

The coast of Malibu sits at a critical juncture. Decisions made in the Local Coastal Plan will mean the difference between preserving and protecting the natural systems, or loosing them to urban sprawl. It is easy to forget in our technologically advanced society, that the air we breathe, the sea that we swim in, and the land that we live on is really our support base. If we choose to destroy it, we will, in the end, destroy ourselves. The choice to proceed with care within the context of careful planning seems clear. If well implemented, the proposed ESHA designations will help achieve that goal.

Sincerely,

Rosi Dagit

Rosi Dagit
Senior Conservation Biologist

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BC

Mariposa Land Company Ltd.
PO Box 2485
Malibu, Ca 90265
310-456-3230
Fax 310-456-3182

March 4, 2002

Mr. Chuck Damm
Mr. Gary Timm
Coastal Commission
89 S. California Street, Suite 200
Ventura, Ca 93001

Re: Draft Local Coastal Plan prepared by Coastal Staff

Dear Mr. Damm and Mr. Timm:

Policy 3.11 (Development in ESHA Buffers) of the referenced draft plan would render our property unbuildable. Our Self Storage project is already approved by the City of Malibu by CUP 96-006. This City approved project (as well as any redevelopment of the site) necessitates grading within the ESHA Buffer in excess of the 10,000 square foot limitation required under Policy 3.11 in order to comply with the City's Flood Plain Management Ordinance. We request that Coastal Staff change Policy 3.11 so that the 10,000 square foot limitation does not apply to any development that ultimately restores ESHA and ESHA Buffers substantially to native habitat as we are planning to do.

The zoning map of the referenced plan shows a Visitor Commercial zone on the south half of our Self Storage site. This would also render our City approved project impossible to build. Coastal Staff has designated the north half of the site as Commercial General (CG). This north half of the site is where we have proposed restoration of habitat and a CG zone here all by itself is impractical. We request that the rest of our property* be designated as CG as shown on the City's General Plan. Thank you for your consideration.

Sincerely,
Mariposa Land Company Ltd.

Grant Adamson

Grant H. Adamson

RECEIVED
MAR 07 2002
CALIFORNIA COASTAL COMMISSION

Copy: Christi Hogin, Esq.
Barry Hogan
Fred Gaines, Esq.
Susan McCabe

*APNs: 4452-011-029, 4452-011-036, 4452-011-037, 4452-012-024

ROBIN SCHNEIDER

23680 Summit Drive, Calabasas, CA 91302
phone: 818-591-9204 fax: 818-591-9838

March 17, 2002

RECEIVED
MAR 20 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
South Central Coast District
89 S. California Street, Suite 200
Ventura, CA 93001
Att: Gary Timm, District Manager

Re: Malibu Land Use Plan

Dear Mr. Timm;

I moved to Calabasas six years ago because I love the open space in the Santa Monica Mountains. I love to hike, walk my dogs, see and enjoy nature and I love to ride horses. Now, all of this is being taken away from me and thousands of others that enjoy the same activities. I cannot take my dogs for a walk on a leach in Malibu Creek State Park. I cannot take my dogs with me when I ride my horse in Cheseboro National Park. I cannot take my horse to Coral Canyon, off PCH in Malibu because they no longer allow horses.

I must ride my horse in Cheseboro Park along with hikers, bikers and other equestrians on the weekends because this is all that is left. We all manage to get along, respectful of each other but it is crowded, very crowded, and getting more crowded all the time. We must add new trails not take away existing trails.

I used to think of myself as an Environmentalist. I supported the Sierra Club and other environmental groups. Not any more!! Since when did being an environmentalist mean not being able to enjoy the land. We all need open space; places to walk, ride bikes, ride horses and play. We cannot afford to keep the land in a pristine, untouched manner that eliminates usage. We must use the land, enjoy the land and at the same time preserve it for current and future generations.

Please help by NOT taking away our trails or the means to get to them!!!!

Sincerely,

Robin Schneider, Art Sch

Robin and Arthur Schneider

March 11, 2002

RECEIVED
MAR 18 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. Gary Timm
District Manager
California Coastal Commission
85 South California St., Ste. 200
Ventura, CA 93001

Dear Mr. Timm:

In response to the Coastal Commission's Draft of the Malibu LCP, I am writing on behalf of the Malibu Chamber of Commerce, which represents over 400 businesses and 2000 employees who proudly serve residents and visitors of Malibu.

It is our understanding that prior to adopting a final Land Use Plan, the Commission will review another Draft of the LCP when they meet in July 2002. For that reason, we would like to submit comments as they pertain to our primary interest in how the document will ultimately affect our local economy and ability to maintain a healthy business community. In addition we would like to also request a change of venue for the July meeting. We would respectfully request you consider meeting at the Renaissance Hotel in Agoura Hills. This location is much more conducive in proximity for representatives of Malibu businesses to attend.

In reviewing the draft, we are encouraged that your plan supports our efforts to cultivate additional revenue opportunities from our visitors. At the Chamber of Commerce, we are supportive of any efforts that help us in that regard. However, we are concerned that the current draft designates a disparate amount of visitor-serving land compared to what is needed and, more importantly, what would be economically viable in Malibu. For as much as we recognize the need and benefits for visitor-serving facilities in our city, we do believe that the LCP allows us the flexibility to address our need for more land for general office space in Malibu. Therefore, we urge the Commission to consider a more balanced allocation of land use – to adequately serve the needs of our visitors and our community.

Additionally, the current draft requires the City to develop a specific plan or comprehensive plan for the Civic Center area. Having advocated the development of a specific plan for the Civic Center properties for the last ten years (resulting in very little progress), we hope that the Coastal Commission will simply include this in the LUP. We believe this to be for the sake of efficiency. Having recently completed our Economic Plan for the City, we understand that a development plan for the many properties in the Civic Center area is an urgent need for Malibu.

As a general comment, it is our hope that the Coastal Commission continues to work with the City and the members of the community to finalize the LCP. The result of such efforts can only accomplish the most informed, feasible and economically viable LCP for Malibu.

Thank you for your consideration.

Sincerely,

Jeannette Scovill,
President
Malibu Chamber of Commerce

23805 Stuart Ranch Road, Suite 100 • Malibu, California 90265-4897 • (310) 456-9025 • FAX: (310) 456-0195

Paul Beier
Professor, NAU School of Forestry
Flagstaff AZ 86011-5018
Phone: 1-928-523-9341. Email: paul.beier@nau.edu Web Page: http://www.for.nau.edu/~pb1

25 March 2002

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

RE: Draft Ecological Findings regarding ESHA determination for land in City of Malibu's Land Use Plan

Dear Sir or Madam:

I have reviewed the above-referenced report by John Allen, and I am writing to strong agree with the scientific statements and the interpretation of scientific data in this report. Because of my expertise on mountain lions and conservation corridors, I read pages 8-12 in detail. I would add that a recent book summarizing a landmark 10-year study of mountain lions (KA Logan & LL Sweanor. 2001. Desert Puma. Island Press, 463pp) gives strong support to Dr Allen's assertions about the importance of habitat connectivity for mountain lions, and the role of mountain lions in top-down regulation of deer populations.

In particular, I agree with Dr Allen that the continued existence of mountain lions in this area is evidence that the area is still functionally part of a larger interconnected ecosystem, that the area will not continue to support mountain lions unless it is managed as part of a larger ecosystem, and that the loss of ecological values in the proposed ESHA would have impacts on the larger ecosystem of which it is a part. The report's emphasis on *function* (in contrast to a static snapshot of existing conditions) and on the broad regional context is sound conservation science, and the correct way to evaluate the ecological significance of the area.

Clearly this area qualifies as an Environmentally Sensitive Habitat Area, and is under great threat. I strongly support an ESHA designation and the findings in Dr Allen's report.

Sincerely,

Digitally signed by Paul Beier
Date: 2002.03.25 17:56:32 -07'00'

Paul Beier

RECEIVED
MAR 2002
COMMISSION
DISTRICT

Coastwalk
7207 Bodega Ave. Sebastopol, CA 95472

March 13, 2002

To: Sara Wan, California Coastal Commission
cc: Gary Timm, Tami Grove, Linda Locklin, Steve Horn, Ken McKowen

Subject: CCT Goals and Objectives

The CCT Working Group adopted a set of Goals and Objectives for the California Coastal Trail Project on August 28, 2001, with the intention that these would be used to guide our efforts towards completion of the CCT.

At about the same time, Coastal Commission staff prepared a slightly different set of Goals/Objectives/Standards. These objectives and standards, at least in part, have been included in both the San Luis Obispo County LCP (July 2001), and the Malibu LUP (January 2002).

The objectives listed in the Commission document are different from those adopted by the Working Group on 8/28/01. We should be consistently using the approved objectives in all appropriate documents. Please note that both the San Luis Obispo County LCP and the Malibu LUP should be revised to include the approved Working Group objectives.

Among the trail standards, there is one particularly objectionable item that could easily result in an undesirable inland location for the CCT. This item allows an inland location if landforms or legally authorized development block safe passage at all times of the year.

Coastwalk suggests the following language be used:
The Coastal Trail shall be located immediately adjacent to the shoreline. Where this is not feasible ~~due to natural landforms or legally authorized~~ development, inland bypass trail segments shall be employed, as close to the coastline as possible. Coastal trail segments that may not be passable at all times (*e.g.*, high tide, river crossings, nesting birds) must have inland alternative routes.

Please note that this language change should be made in the San Luis Obispo County LCP and the Malibu LUP, as well as in the Coastal Commission standards.

Thank you for your consideration.

Stan Bluhm
Coastwalk, CCT Steering Committee

ATE OF CALIFORNIA-THE RESOURCES AGENCY GRAY DAVIS, *Governor*

EPARTMENT OF FISH AND GAME

South Coast Region
Mary Meyer, Plant Ecologist
Habitat Conservation Planning Branch North
1429 Foothill Road
Ojai CA 93023
(805)640-8019
mmeyer@dfg.ca.gov

March 12, 2002

Mr. John C Allen
Staff Ecologist
California Coastal Commission
South Central Coast Area
89 S. Ventura Blvd.
Ventura CA 93001

Ecological Findings for the Malibu Area

Dear Mr. Allen,

I appreciated receiving a copy of the above-referenced report and associated materials. The report provides a careful analysis and justification for designating Environmentally Sensitive Habitat Areas (ESHAs) within the coastal zone of the Malibu area. Based upon my familiarity with land use patterns and natural habitats of Los Angeles, Ventura and Santa Barbara Counties, I would strongly agree with the fundamental assertion put forth in this report- that all natural terrestrial habitats in the Malibu area be regarded as ESHA, and that any determination to the contrary must be established via site-specific analysis with emphasis on habitat connectivity issues.

There is a growing body of evidence, documented in this report and elsewhere, which indicates that habitat fragmentation and isolation are causing continued declines in the long term viability of natural habitats and the species they support in coastal southern California counties. The report accurately describes the numerous species of plants and animals which are declining, rare or otherwise sensitive and rely upon these habitats for their continued existence. The analysis emphasizes the need for maintaining connectivity at various landscape scales with particular emphasis on large animal movement and keystone species. I would add that habitat fragments and isolated areas also experience troubling declines in native invertebrates- loss of key invertebrate species can affect pollination, seed dispersal and genetic exchange within plant populations- their loss also has a cascading effect on a broad array of species, destabilizing and reducing species diversity and essential ecosystem processes. Fragmentation and isolation also may reduce the ability of plant species to shift across the landscape in response to environmental change over both the short term and long term.

By recognizing the complexity of natural ecosystems and their inter-connectedness, I would strongly agree with the reports conclusion, and urge that the California Coastal Commission recognize these habitats and work to seek their conservation.

Sincerely,

Mary Meyer

Mary Meyer, Plant Ecologist

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MAR 13 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

United States Department of the Interior

NATIONAL PARK SERVICE
Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, California 91360-4207

In reply refer to:
L76 (SAMO)

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SEP 17 2001
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

September 13, 2001

Mr. John Allen
California Coastal Commission
89 S. Ventura Blvd.
Ventura, CA 93001

Dear Mr. Allen:

In response to your request, I have analyzed whether coastal sage scrub in the Malibu Coastal Zone meets the biological criteria for an Environmentally Sensitive Habitat type, as defined by the California Coastal Act. The Coastal Act defines Environmentally Sensitive Habitat as *"any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed by human activities and developments"*. Coastal sage scrub is both an ecologically significant habitat type and one that is particularly sensitive to disturbance from human impacts.

The Malibu Coastal Zone is located within the Santa Monica Mountains National Recreation Area, a park with a wide range of ecological diversity that provides habitat for numerous species of mammals including mountain lion, bobcat, coyote, mule deer, and badger, 400 species of birds, 35 species of reptiles and amphibians, 23 federally listed threatened plant and animal species, three state listed threatened and endangered species, and 46 animal and 12 plant "species of concern". The richness and variety of the park is characteristic of its Mediterranean climate zone and the region is recognized as a global "hotspot" of biological diversity (Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. Kent. 2000. "Biodiversity Hotspots for Conservation Priorities." Nature 403: 853-858).

Coastal sage scrub is one of the major plant communities of the Santa Monica Mountains where it occurs on the drier slopes and lower elevations of the mountains. It forms a broad band along the coast and occurs in scattered locations to the north of the immediate coast and is common on eroded slopes in inland areas of the Simi Hills. Within California, the habitat has been heavily impacted and it is estimated that statewide, only 10-25% of the former habitat remains (O'Leary, John. 1990. California coastal sage scrub: General characteristics and considerations for biological conservation. In: Endangered Plant Communities of Southern California. Proceedings of the 15th Annual Symposium of the Southern California

Botanists, Claremont, CA 91711). The Santa Monica Mountains National Recreation Area, Vandenberg Air Force Base and Camp Pendelton are the largest contiguous remainders of coastal sage scrub in southern California (O'Leary. ibid.). The plant community is considered sensitive by the State of California's Department of Fish and Game because of its scarcity, susceptibility to development impacts, and its habitat for sensitive bird and reptile species (California Natural Diversity Database, 2000). A list of sensitive animals associated with coastal sage scrub in the Santa Monica Mountians is attached. A number of species of the coastal scrub plant communities (both coastal sage scrub and southern coastal bluff scrub) occur only on the immediate coast and further destruction of the coastal habitat may eliminate these species from the Santa Monica Mountains region. These include *Coreopsis gigantea, Ericameria ericoides, Isocoma menziesii* var *sedioides, Perityle emoryi, Erysimum suffrutescens, Stanleya pinnata, Opuntia oricola, Isomeris arborea, Cardionema ramosissimum, Atriplex californica, Atriplex coulteri, Atriplex lentiformis, Dudleya caespitosa, Croton californicus, Astragalus trichopodus* var *lonchus, Camissonia lewisii, Camissonia micrantha, Eriogonum parvifolium, Lastarriaea coriacea,* and *Mucronea californica.*

Coastal sage scrub is particularly sensitive to human impacts. In the coastal zone of the Santa Monica Mountains coastal sage scrub has been, and will continue to be, impacted by direct and indirect development effects, increased fire frequency, increased nitrogen deposition and invasive plant and animal species.

Among the most significant impacts to coastal sage scrub from development is vegetation modification for fire safety. This includes a range of activities that can include planting of highly irrigated gardens; slope plantings of moderately irrigated, drought tolerant and "fire-resistant" plants; thinning of native vegetation; or complete removal of all native shrubs. The area affected by fuel modification often exceeds that directly lost to development itself. Even thinning zones, where the fuel management treatment ostensibly has the least impact on coastal sage scrub vegetation, will degrade and simplify community structure and composition over time. Non-native grasses invade the openings created by thinning between shrubs and, as fewer shrubs resprout each year, the complex shrub community is converted to annual grasslands with a greatly reduced number of scattered re-sprouting shrubs (Witter, pers. obs.). Irrigation of fuel management zones in combination with reduced structural complexity has been shown to substantially affect arthropod communities up to 200 meters (656 feet) which has resonating impacts on vertebrates that use arthropods as prey species (Suarez, A.V., J.Q. Richmond, and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10:711–725 and Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in Coastal sage scrub. Ph.D. Thesis, University of California, Los Angeles, CA).

The fire frequency in the Santa Monica Mountains has increased in concert with increased human activity and anthropogenic fires are a regular and potentially increasing occurrence

(Radke, K.W-H. 1981. The effect of fire frequencies on species diversity, vegetation cover, and floristic changes in chaparral. PhD Dissertation. University of California, Berkeley and Keeley, J.E., C.J. Fotheringham, and M. Morais. 1999. Reexamining fire suppression impacts on brushland fire regimes. Science 284:1829-1832.). The result is that in some areas the fire return time is as little as 10 years and sequences of fires with intervals as short as two years have occurred (Tiszler, J. 2000. Fire regime, fire management and the preservation of biological diversity in the Santa Monica Mountians National Recreation Area. Draft manuscript). It has been demonstrated that type conversion from chaparral to a degraded grassland/sumac vegetation occurs with a reduced fire interval (Davis, S. 1997. Increased fire frequency in 20th century Southern California causes vegetation conversion in coastal chaparral. In: Abstracts of the Southern California Environment and History Conference, Sept. 18-20, 1997 California State University, Northridge, Page 6.). Similar conversion to a degraded vegetation type can be observed within the coastal sage scrub zone in high fire frequency corridors such as Malibu Canyon. Type conversion of coastal sage scrub in the Santa Monica Mountains coastal zone is likely, based on studies from other areas that show conversion of coastal sage scrub to grassland with short interval fires (White, Scott. 1995. Disturbance and dynamics in coastal sage scrub. Fremontia.23: 9-16) and with the increased fire frequency within the Santa Monica Mountains.

Anthropogenic nitrogen deposition is a global problem that can cause vegetation type conversion and it has been hypothesized as a contributing factor to the replacement of coastal sage scrub by Mediterranean annual grasses (Yoshida, L.C. and E.B. Allen. 2001. Response to ammonium and nitrate by a mycorrhizal annual invasive grass and native shrub in southern California. American J. Bot. 88:1430-1436). Increased deposition of nitrate from automobile exhaust in the Santa Monica Mountains may enhance or maintain annual grass dominance and may influence changes in coastal sage scrub community structure.

As coastal sage scrub is disturbed by development, fuel modification, or fire, opportunities for establishment of non-native weedy species exist. Conditions for invasion and replacement by annual grasses have been described above. In the coastal zone, the most serious pending threat to coastal sage scrub is from *Euphorbia terracina*, an annual spurge. On the coastal bluffs in eastern Malibu and sporadically throughout the lower reaches of the coastal canyons as far west as Zuma Canyon, monospecific stands of *E. terracina* are replacing coastal sage scrub. Wherever slopes have been cleared in the vicinity of *E. terracina*, in the following year the vegetation is replaced by pure stands of this plant, reducing the complex coastal sage community of native plant and animal species to a virtual wasteland dominated by one species.

In summary, the coastal sage scrub community in the coastal zone of the Santa Monica Mountains is a rich and ecologically important habitat type within the globally significant southern California Mediterranean ecosystem. It is a community that is under multiple threats and is sensitive to human disturbance. It is appropriate that it be recognized as an Environmentally Sensitive Habitat Area in the Malibu Local Coastal Plan.

Thank you for considering the National Park Service's input. If I can be of further assistance, please call me at (805) 370-2333.

Sincerely,

Marti Witter, Ph.D.
Fire Ecologist

cc: Ray Sauvajot, Chief of Planning, Science and Resource Management
Arthur Eck, Superintendent, Santa Monica Mountains National Recreation Area

SAMO:MWitter:mw:09/10/2001:g:\PSRM\mwitter\correspondence chron\file_name

Reptiles
o San Diego horned lizard (Phrynosoma coronatum blainvillei) (Status:[footnote 2] CSC, Protected)
o Coastal western whiptail (Cnemidophorus tigris multiscutatus) (Special Animal)
o Silvery legless lizard (Anniella pulchra pulcha) (CSC)
o San Bernardino ringneck snake (Diadophis punctatus modestus) (Special Animal)
o Coast patchnose snake (Salvadora hexalepis virgultea) (CSC)

Birds
o Cooper's hawk (Accipiter cooperi) (CSC)
o Sharp-shinned hawk (Accipiter striatus) (CSC)
o Golden eagle (Aquila chrysaetos) (CSC, Fully Protected)
o Ferruginous hawk (Buteo regalis) (CSC; MNBMC)
o Northern harrier (Circus cyaneus) (CSC)
o Prairie falcon (Falco mexicanus) (CSC)
o Merlin (Falco columbarius) (CSC)
o Vaux's swift (Chaetura vauxi) (CSC; MNBMC)
o Loggerhead shrike (Lanius ludovicianus) (CSC; MNBMC)
o Southern California rufous-crowned sparrow (Aimophila ruficeps canescens) (CSC)
o Bell's sage sparrow (Amphispiza belli belli) (CSC; MNBMC)

Mammals
o Mexican long-tongued bat (Choeronycteris mexicana) (CSC)
o Yuma myotis (Myotis yumanensis) (CSC)
o Cave myotis (Myotis velifer) (CSC)
o Long-eared myotis (Myotis evotis) (Special Animal)
o Fringed myotis (Myotis thysanodes) (Special Animal)
o Long-legged myotis (Myotis volans) (Special Animal)
o Small-footed myotis (Myotis ciliolabrum) (Special Animal)
o Spotted bat (Euderma maculatum) (CSC)
o Pale big-eared bat (Corynorhinus townsendii pallescens) (CSC)
o Pallid bat (Antrozous pallidus) (CSC)
o Big free-tailed bat (Nyctinomops macrotis) (CSC)
o Western mastiff bat (Eumops perotis) (CSC)
o San Diego black-tailed hare (Lepus californicus bennettii) (CSC)
o San Diego desert woodrat (Neotoma lepida intermedia) (CSC)
o American badger (Taxidea taxus) (Special Animal)
o Ringtail (Bassariscus astutus) (Fully Protected)

USGS
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U. S. Department of the Interior
U.S. Geological Survey
Western Ecological Research Center
Sequoia-Kings Canyon Field Station
47050 Generals Highway
Three Rivers, California 93271-9651
(559) 565-3170; Fax -3177

Dr. Jon C. Allen
California Coastal Commission
South Central Coast Area
89 South California St. Suite 200
Ventura, CA 93001

21 December 2001

Dear Dr. Allen,

I am writing to comment on the Draft Ecological Findings for the ESHA determination for the City of Malibu Land Use Plan. Because of the recent closing down of the Department of Interior's internet, I have received these materials rather late and have not been able to manage time for detailed comments on the draft. I have, however, studied the document and do have comments pertaining to my expertise, which is fire ecology and management. The primary concern I have with the coastal ecology is the problems inherent in the design of developments that interface with wildland areas. Since the middle of the last century, wildfires along the coastal front range of the Santa Monica Mountains have been responsible for significant loss of property and lives. Every decade sees these losses increase, despite concomitant increases in fire management activities. My research in this region has recently shown that the primary factor for this pattern is directly tied to patterns of development. Not only has the perimeter of developments expanded but the increasing fragmentation of native shrublands, both chaparral and coastal sage scrub, have greatly increased the fire hazard in this region. Limited expansion of the urban/wildland interface will certainly contribute to reducing this hazard, however, design of developments to reduce shrubland fragmentation will also contribute to fire hazard reduction. As fragmentation increases, it increases the area of development exposed to extreme fire hazard. Fragmentation of shrublands also contributes substantially to loss of natural resource value because as fragmentation increases, so also does the area/perimeter ratio of the habitat increase. This has negative ecological impacts because it exposes the shrubland fragment to increased chance of alien plant invasion. In this region the primary invasive species are weedy grasses and this in turn has ramifications for altering fire regimes by making the ecosystems more flammable for a longer portion of the year.

In summary, let me say one of the important considerations to planning in this region is to reduce to the maximum extent of shrubland fragmentation. This of course is a value added scheme because there are other notable advantages such as increasing the connectedness of habitats, which is of substantial value to wildlife. I hope these thoughts are of some value.

Sincerely,

Jon E. Keeley

Jon E. Keeley, Station Leader

on Allen

rom: Jon Allen
ent: Thursday, February 28, 2002 3:36 PM
o: 'Bill Tippets'
c: 'craysbrook@dfg.ca.gov'; John Dixon; Peter Douglas
ubject: RE: Malibu Esha Findings

Malibu Comments

i Bill,

hanks for your prompt response to this large request. I will carefully consider your comments, use them in my revision.

hanks again for your valuable input. I appreciate it.

egards,
on
craysbrook@dfg.ca.gov
-----Original Message-----
From: Bill Tippets [mailto:BTippets@dfg.ca.gov]
Sent: Thursday, February 28, 2002 2:23 PM
To: jallen@coastal.ca.gov
Cc: Chuck Raysbrook
Subject: Re: Malibu Esha Findings

Jon,

I regret that I can't find more time for reviewing your work, so my comments will be brief.

My first and probably biggest question is whether ESHA should/can be defined at a landscape level per the Coastal Act. Certainly any area in the Coastal Zone, if large enough, will have attributes that qualify as ESHA (species or habitats that are especially rare or valuable, habitats or species have a special role or nature in the ecosystem, or habitats or species are easily disturbed/degraded by human activities or developments).

By allowing the analysis to encompass entire drainages/canyon systems, the conclusion should be inescapable that ESHA applies. "Even" chaparral-dominated or non-native grassland-dominated canyon systems have great value as connections to other habitats, serve as forage areas, act to ameliorate sediment/runoff problems, etc. I think that you may be over-relying on the mountain lion as a key illustration of connectivity. Is it expected to persist in all coastal areas? I don't think so, and other species don't have the same requirements.

This appraoch is like starting to develop a habitat model for an NCCP, but never applying any criteria for identifying low or non-contributing areas. I think that you are courting serious backlash if you don't include some thresholds for screening out some areas within the coastline of Malibu. This does not have to be a capitulation to political pressure/realities, but a recognition that within the existing landscape some future losses of habitat acres (and the associated species) and contiguity, will not result in the triggering of one of the three ESHA criteria. This comment does presume that th eremaining lands meet those needs. How you set those thresholds is the toughest part, but eevn in your findings you imply that on an individual (project) basis, some losses may be tolerated within the ESHA context
>>> Jon Allen <jallen@coastal.ca.gov> 02/18/02 10:43AM >>>
Hi Bill,

I would like to request a scientific opinion from you on the

Received at Commission
Meeting

JUL 1 0 2002

From:_____

Stanley W. Lamport
310.284.2275
slamport@coxcastle.com

File No. 40687

July 10, 2002

The Honorable Sara Wan
Chair, California Coastal Commission
South Central Coast District
89 S. California Street, Suite 200
Ventura, CA.

Re: **Comments on Draft Malibu Local Coastal Program**

Dear Ms. Wan and Members of the Commission:

We represent the Land Use Preservation Defense Fund ("Defense Fund"), a non-profit entity dedicated to advancing the public interest in the fair regulation of land. The Fund represents the interests of concerned citizens living in the City of Malibu ("City") and elsewhere, who believe that the Local Coastal Program ("LCP") you are proposing for the City violates the Coastal Act and represents an unsound policy. This letter will address many of the concerns the Defense Fund has with the LCP. We are addressing our comments to both the Land Use Plan ("LUP") and the Local Implementation Plan ("LIP"). The Fund reserves the right to submit additional comments.

At the outset, the draft LCP violates Public Resources Code section 30523, which states in relevant part:

> It is the intent of the Legislature that local coastal programs certified by the commission should be sufficiently specific to meet the requirements of Section 30108.5, but not so detailed as to require amendment and commission review for minor changes, or to discourage the assumption by local governments of post certification authority which ensures and implements effective protection of coastal resources.

Public Resources Code section 30108.5 in turn provides that a land use plan must be "sufficiently detailed to indicate the kinds, location and intensity of land uses, the applicable resource and development policies and, where necessary, a listing of implementing actions."

It is apparent from these provisions that a LCP is supposed to provide a general guideline to the City and measures to implement those guidelines. However, section 30523 makes it clear that the level of detail should not deny the City of the flexibility to decide the most appropriate way to apply those guidelines in any given case.

The draft LCP repeatedly violates Legislature's mandate in section 30523. The draft LCP micromanages the City's regulation of land use. It denies the City the discretion to employ measures that achieve the resource protection policies in the draft program that may differ from specific, restrictive measures the Commission is proposing.

The violation of Public Resources Codes section 30523 permeates the LCP. It is embedded in all of portions of the LCP that we are addressing in this letter.

The Visual Resource Regulations Violate the Coastal Act

The draft LCP contains a broad scenic resource regulatory scheme that is beyond the scope of the regulatory standards in the Coastal Act. As the Commission's staff acknowledged in a recent public forum, Chapter 3 of the Coastal Act defines the scope of the Commission's authority to regulate development through a LCP and coastal development permit. Public Resources Code section 30200 states that the policies of Chapter 3 "constitute the standards by which the adequacy of local coastal programs and the permissibility of proposed development subject to the provisions [of the Coastal Act] are determined."

As a result, the Coastal Commission does not have the power to impose policies and standards that are beyond the scope of policies described in Chapter 3. With respect to "scenic resources," the statute is fairly specific. Public Resources Code section 30251 states in pertinent part:

> 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. (Emphasis added.)

This statute, which is cited in the LUP, is the only one that addresses visual qualities. It is clear from the first sentence that it is limited to "coastal areas." The term "coastal areas" does not mean the same thing as the coastal zone, which is a defined term in the Coastal Act. While the Act does not define the word "coastal area," its is clear from other definitions that "coastal" refers to an area on or adjacent to the sea. Public Resources Code section 30101, for example, defines a "coastal-dependent development or use" as any development or use which requires a site *on, or adjacent to, the sea* to be able to function at all."

Thus section 30251 applies only to scenic qualities along the coast. In that regard, the Commission may adopt policies that protect views to and along the ocean and other scenic areas adjacent to the sea, to minimize the alteration of natural land forms in areas on or adjacent to the sea, to assure visual compatibility in areas on or adjacent to the sea and to restore or enhance visually degraded areas in such locations.

Even if the Commission attempted to improperly misread the statute by disconnecting the first sentence in section 30251 from the second sentence, the statute would still only permit the Commission to protect views to and along the ocean and scenic areas on or adjacent to the sea. Such an improper reading would at most improperly justify regulating minimized alteration of natural land forms, visual compatibility with surrounding areas and restoration of visually degraded areas. It would justify the broad "scenic" regulations proposed in the LCP.

The LCP goes way beyond the permitted scope of regulation under Public Resources Code section 30251. It not only relates to views of the beach and ocean (true coastal areas), it seeks to protect views of "mountains and canyons and views of natural habitat areas" all of which are non-coastal areas. (LUP, p. 110.) The LUP states that its "policies require that new development not be visible from scenic roads or public viewing areas" without regard to whether such development is located in a coastal area. (LUP, p. 110.) It states, "Protection is provided for prominent ridgelines by requiring structures to be set below the ridgeline and to avoid intrusions into the skyline." (LUP, p. 110.) The ridgelines in Malibu are not coastal areas under the statute.

Policies 6.1, 6.2 and 6.3 violate the statute by including non-coastal areas within the scope of scenic regulation and seeking to include the view of non-coastal areas within the scope of visual protection. Similarly, policies 6.4 through 6.34 also violate section 30251 by purporting to regulate the view of non-coastal areas and by imposing restrictions that are not related to the visibility of coastal areas or the preservation of land forms in the coastal area.

The regulations in the LIP are equally flawed. Sections 6.4 through 6.7 violate Public Resources Code section 30251 to the extent they are not related to the visibility of coastal areas or the preservation of land forms in the coastal area.

Furthermore, the LCP imposes an arbitrary maximum development area of 25 percent or 10,000 square feet for residential development that cannot be made invisible from scenic highways and public viewing areas. (LUP §6.5; LIP §6.5.A.2.) There is no rational relationship between this extreme restriction and the stated goal of preserving views. If, for example, the front of a residence is visible from a viewing area, but the remainder of the structure and other structures on the property are not visible, limiting the development area will not change the visibility of the residence. The extreme restriction limits the ability of the City to fashion its own approaches to achieve the same objectives in violation of Public Resources Code section 30523.

The ESHA Regulations Violate the Coastal Act

The Recreation and Land Use Preservation Foundation has prepared an analysis of the ESHA regulations in the LCP to help the public understand how those regulations work. We enclose that analysis with this letter and ask that you consider it in connection with the Defense Fund's comments.

The Ecological Findings for the LCP declares that "all relatively undisturbed habitats in the Malibu area constitute ESHA under the Coastal Act." The LCP not only imposes the limited development restrictions on land designated as ESHA, but on a 100-foot buffer area adjacent to the mapped ESHA. The Defense Fund believes that these restrictions violate the Coastal Act and other laws for the following reasons.

First, the LCP indiscriminately identifies land as ESHA that may not be ESHA. The Ecological Findings for Malibu states:

> "[A]ll relatively undisturbed natural habitats in the Malibu area constitute ESHA under the Coastal Act. Therefore, it is staff's opinion that, because of their significance within the Santa Monica Mountains ecosystem, all natural habitats in Malibu are ESHA *until a site-specific analysis with consideration given to habitat connectivity issues demonstrates otherwise.*" (Ecologial Findings, p. 15, emphasis added.)

It is clear from the findings, that the areas mapped as ESHA are not necessarily ESHAs, but are potential ESHAs. The Ecological Findings themselves refer to the areas identified on the maps as "potential ESHA areas." (Ecological Findings, p. 15.) Furthermore, LUP policy 3.7 states that areas that are now mapped as ESHAs may be removed from the designation if a site-specific biological study establishes that a property does not actually meet the ESHA criteria established in the LCP. LIP section 4.1 imposes an ESHA overlay zone over all land mapped as ESHA and imposes all of the severe ESHA use restrictions on all land mapped as ESHA in the LCP. At the same time, section 4.3.C provides that the City may find that the land does not actually meet the ESHA criteria.

The Coastal Act does not permit the Commission to impose the severe ESHA use restrictions on land that is not actually ESHA. Public Resources Code section 30107.5 defines an "environmentally sensitive area" as an area in which plant or animal life or their habitats <u>are</u> rare or especially valuable, not where such qualities could or might exist. Land either is an ESHA or is not an ESHA under the Coastal Act.

Declaring all undeveloped land as an ESHA until a site-specific biological investigation proves otherwise is not permitted under the Coastal Act. It also imposes an extreme and unfair burden on the property owner to refute a presumption that is not based on any specific biological assessment that was related to the property.

Second, the LCP's ESHA criteria is overbroad and inconsistent with the Coastal Act.. The definition of an "environmentally sensitive area" in the Coastal Act describes the exceptional condition, not the norm. The LCP has turned what was intended to be the exceptional circumstance into the general rule that applies to all undeveloped land. This overbroad definition is not consistent with either the language or the purpose of the Coastal Act. Furthermore, it is inconsistent with the policies that require the Commission to assure that "the maximum amount of prime agricultural land [is] maintained in agricultural production to assure

the protection of the area's agricultural economy." (Pub. Res. Code § 32241.) The Coastal Act clearly provides that land suitable for agricultural use "shall not be converted to nonagricultural use" unless such use is not feasible or would preserve other prime agricultural land. (Pub. Res. Code § 30242.) The overbroad definition of an ESHA in the LCP will make these policies unattainable.

Third, there is no rational basis for imposing all of the severe ESHA development restrictions on the arbitrary 100 buffer specified in the LCP. (See LIP §§ 4.5.4 & 4.6.1.) Public Resources Code section 30240 merely states, "Development in area adjacent to environmentally sensitive habitat areas...shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat...areas." There is no reason why someone could not make responsible use of land within 100 feet of an ESHA that would not significantly degrade the ESHA. There is no scientific evidence that any activity within 100 feet of an ESHA will significantly degrade an ESHA.

Once again, the Commission does not have the power to impose ESHA restrictions on land that is not ESHA. The ESHA buffer restrictions unnecessarily impose that result. Furthermore, they unnecessarily prevent the City from exercising local control consistent with protecting true ESHAs in violation of Public Resources Code section 30523.

Finally, the takings exception that would allow for limited use of land designated as ESHA employs the wrong standard. Both the LUP and the LIP allow for minimum economically viable use of the land. However, the proper constitutional standard is "reasonable investment-backed expectations."

The LCP Imposes Development Restrictions that Violate the Coastal Act

The LCP imposes broad and extremely detailed development regulations throughout the City that far exceed the Commission's regulatory mandate under the Coastal Act. Chapter 3 in the Coastal Act contains policies related to public access, recreation, marine environment, land resources, development and industrial development.

The land resources and development articles in Chapter 3 are fairly specific. The land resources sections deal with the protection of "environmentally sensitive areas" (Pub. Res. Code § 30240), preservation of agricultural land (Pub. Res. Code §§ 30241 – 30242), protection of timberland (Pub. Res. Code § 30243) and mitigation of impacts to archaeological and paleontological resources (Pub. Res. Code § 30244).

The development policies are equally limited. Public Resources Code section 30250 provides that new residential, commercial and industrial development, with certain exceptions, shall be located within or contiguous with or in close proximity to existing, developed areas or in cases where such areas are not available, in other areas with adequate public services and where it will not have significant environmental effects. Public Resources Code section 30253 states:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
>
> (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
>
> (4) Minimize energy consumption and vehicle miles traveled.
>
> (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Furthermore, Public Resources Code section 30231 allows the Commission to maintain the biological integrity of streams and lakes "to maintain optimum populations of marine organisms and for the protection of human health" through a variety of means listed in the statute.

These are specific regulatory functions. They deal with the general location of new development, specific measures related to specific types of natural hazards, land stability, consistency with air quality requirements, special recreational communities and discharges into streams. As noted above, the Commission is permitted to address views of coastal areas and to provide for access to the beach. These policies do not allow the Commission to micromanage every aspect of the City's land use regulation.

The development regulations in LIP sections 3.5, 3.6, 3.8, 3.9, 3.10, 3.11 (with respect to areas that are not ESHAs), 3.12, 3.13 and 3.14 have nothing to do with the Chapter 3 policies. If it is not blocking access to the beach or the view of a coastal area and it is not located in an ESHA, the Commission has no business regulating the size of a side yard, the height of a wall or fence, the projections of structures into yards, or whether a house has a second unit. Nor should the Commission be regulating the minimum width of a house, the minimum floor area, the maximum size of a home or the height of a residence that is not blocking the view of a coastal area. The Commission does not have the power to regulate signage that is not interfering with coastal access or blocking the view of coastal areas.

Nor is there any basis for the Commission to broadly regulate the activities that occur in the vicinity of native trees that do not affect streams or marine water quality. The broad native

tree ordinance in Chapter 5 of the LIP is not justified by any Chapter 3 policy. Not every native tree provides stream nutrients or provides shading for streams. Nor is there any justification for preventing the broad range of restrictions in the vicinity of native trees and depriving the City of the means to determine whether such activities would actually threaten the survival of the tree.

Not only does the Commission lack the authority to establish the broad, detailed regulations that are in Sections 3 and 5 in the LIP, but once again these restrictions violate Public Resources Code section 30523. Imposing these specific requirements on the City in the LCP will strip the City of its local regulatory control. It will require the City to seek Commission approval to make any changes to these regulations to address its local needs. It is the very result the Legislature directed the Commission to avoid in enacting section 30523.

For all of these reasons, the Defense Fund respectfully requests that the Commission drastically scale back the LCP and produce a more focused program specifically directed to the issues the Commission is permitted to consider in the Coastal Act.

Very truly yours,

Stanley W. Lamport

SWL/rl
Enclosure

40687\963767v1

Temescal Canyon Association

Since 1972 Dedicated to Preservation of the Santa Monica Mountains

April 29, 2002

Received at Commission Meeting

JUL 1 0 2002

From:

California Coastal Commission
89 South California Street
Ventura, CA 93001

RE: Malibu Local Land Use Plan

Dear Commissioners:

Temescal Canyon Association is a non-profit organization dedicated to the preservation of the Santa Monica Mountains. We have been in existence for 30 years and have over 600 members. We conduct regular hikes throughout the Santa Monica Mountains, and we are also involved in trail building and maintenance.

We would like to take this opportunity to ask you to support the findings of your staff ecologist John Allen. From first hand observation our Association can tell you that Coastal Sage Scrub and Chaparral communities meet the definition of ESHA, i.e., Environmentally Sensitive Habitat Areas. In order for these Sage Scrub and Chaparral communities to continue to survive as viable habitat it is essential that conservation based planning such as that set forth in the draft 2002 Malibu Land Use Plan be put in place now.

We would also like to suggest that the ESHA designations that were set forth in the 1986 Malibu LUP be reinstated. We noted that many of these designations were deleted from the current draft and that these areas are still clearly ESHA. Please find a way to implement the restoration to the greatest extent feasible of the historic wetlands at both Trancas and the Civic Center of Malibu.

Lastly, we ask that an Environmental Review Board be an essential part of this Land Use Plan. It should be made up of individuals who serve on a voluntary basis with expertise in the Santa Monica Mountains and Seashore and who will act as an advisory body to the City Council, Planning Commission and Planning Department for all projects in and adjacent to, ESHA.

Thank you for considering our recommendations.

Sincerely.,

Carol Leacock, President

Post Office Box 1101 Pacific Palisades CA 90272 Phone (310) 459-5931 Fax (208) 474-8516

W10 A

CALIFORNIA COASTAL COMMISSION
JULY 10, 2002 HUNTINGTON BEACH HEARING

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

COMMENTS FOR THE ADMINISTRATIVE RECORD

Submitted by Georgianna McBurney
3601 Vista Pacifica #13
Malibu CA

I was just recently told that whatever plan the California Coastal Commission passes in September relative to the Malibu LCP/LUP/LIP will not be subject to an approval vote by the Malibu City Council which represents the citizens of Malibu. There are no citizen's meetings in Malibu scheduled to be held by the Commission. I don't appreciate my voice not being heard.

For some time the Commission has been complaining about all the work that Malibu, without a Coastal Plan, was causing the Commission. So imagine my surprise when I read the following:

Ord. 2 Definitions - Appealable Projects: Everything you do with your home can be appealed to the Director of the Coastal Commission for a Hearing including; routine maintenance like brush clearance, minor remodels, pools, horses, and other ancillary uses and even your failure to eradicate all non native plants outside your fuel modification zone A. (which may be as narrow as 20 feet)

I don't appreciate my rights being stripped away from me.

I don't appreciate seeing my council and its staff emasculated and legislated into being the administrative SS troops. I elected them to represent me, not hunt me down, making my life here a dangerous and living nightmare.

I don't appreciate my neighbors being encouraged to rat on me.

I don't appreciate being made to place my life and property in danger as the Commission punishes me if I cut more brush than their plan allows and decide instead to follow the recommendations set down by the fire department and required by the insurance companies in the fuel modification plan. Either way I lose.

And any of you who think I exaggerate, read their words. Don't listen to their voices, read their words.

The words they pass in September will be the words that govern our destruction.

Georgianna McBurney

W/9a

Edward E. (Ted) Vaill
Attorney at Law
20249 Inland Lane
Malibu, CA 90265
310/456-3754 Ph
310/456-7025 Fx

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PUBLIC COMMENT FOR CALIFORNIA COASTAL COMMISSION HEARING OF JULY 10, 2002 REGARDING THE PROPOSED LOCAL COASTAL PLAN FOR THE CITY OF MALIBU

Commissioners:

I am a 28 year resident of Malibu and a former Planning Commissioner for the City, as well as a former Vice Chair of its Parks and Recreation Commission. I have practiced law for 37 years, much of it dedicated to containing government excess, and I recently retired from my law firm to dedicate myself to opposing this draft Local Coastal Plan proposed by the Coastal Commission's staff.

This Commission is governed by the California Coastal Act of 1976 (Public Resources Code Section 30000 et seq.), which carefully establishes that:

> **"existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division [of the statute], are essential to the economic and social well-being of the people of this state and especially to working people employed within the coastal zone."**

This includes the property owners and working people of Malibu.

The Coastal Act also establishes as a goal the following:

> **"Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and <u>constitutionally protected rights of property owners."</u> (Emphasis added)**

THE BEACH ACCESS ISSUE

One of the key sections of the staff's draft LCP Land Use Plan and its draft Implementation Plan relates to Public Access, both laterally along Malibu's coastline and vertically from the public roads of Malibu to the shoreline. In order to determine if this concern by the CCC staff is real or illusory, I have undertaken on three occasions over the past few weeks to walk the City of Malibu's entire coastline below the mean high tide line, from Leo Carrillo Beach to near Topanga Canyon Boulevard, a distance of almost 22 miles. This took about 14 hours to accomplish, and I filmed my trek along Malibu's coastline, which I hope to present to you as soon as it is edited.

Here are my conclusions from this three day trek across Malibu:

1. At no point was my progress prevented by natural or human forces; no fences blocked my way; no signs prevented me from walking the beaches of Malibu seaward of the mean high tide line.
2. Malibu has many beautiful beaches already extremely publicly accessible, supported by the necessary lifeguard, toilet, trash collection, and parking facilities, including Leo Carrillo, Nicholas Canyon, La Piedra, El Matador, Broad, Zuma, Westward, Paradise Cove, Escondido, Corral, Dan Blocker, Puerco, Amarillo (Malibu Road), Malibu Lagoon (Surfrider), Las Tunas and Topanga.
3. The "vertical access" so touted by the CCC staff is illusory - in many of the places where such vertical access is sought, the beaches are very small or even nonexistent at high tide, and would seem to be of interest only to residents, and at low tide at that. For a visitor to come to Malibu, and try to find a parking place at the Big Rock Accessway, for instance, and descent the many concrete steps to the small, boulder-strewn beach below, would seem to be ridiculous compared to the wide expanse of Zuma Beach or the natural beauty of El Matador Beach (except for the graffiti which some visitors have recently thoughtlessly spray painted on this beautiful beach's rocks to announce that they have been there). At the Big Rock Beach accessway, for instance, a sign announces that rest room facilities are available a half mile east at Las Tunas Beach. Will visitors walk that half mile along PCH to relieve themselves? Human nature being what it

is, they will trespass on the beach property below to do this, creating a health hazard.

The key point here is that if the Coastal Commission staff feels that there is a burning need for more beach access in Malibu, then the State should pay for the purchase of beach properties to provide such beach access, complete with the necessary public amenities and safety that California's citizens have come to expect at its beaches.

Attached is a March 6, 2002 recommendation of Malibu's Public Safety Commission to the Malibu City Council setting forth the criteria necessary to be in place prior to the opening of new beach accessways in Malibu.

THE ESHA ISSUE

Finally, I would like to make on additional comment about the desire of the CCC staff to use "junk science" to create additional ESHAs throughout Malibu due to the existence (al least before Malibu's frequent fires) of coastal sage scrub and chaparral. The real purpose of this effort is to foreclose all but minimal future development within the City of Malibu. I reject the statements some have made to me that the people now living in Malibu should be glad that the CCC is trying to do this, because that will mean that noone else will be able to build in Malibu, i.e., that the CCC will make Malibu the ultimate NIMBYs. This view fails to realize that to deny development such as remodels and simple home improvements strangles the lifeblood from a city such as Malibu.

In a season which may very well see the return of the fires that ravaged Malibu nine years ago, destroying 400 or so homes and killing three people (see yesterday's Los Angeles Times for example), it is senseless to give protected ESHA status to the prime fuel for those fires: chaparral and coastal sage scrub.

Malibu Public Safety Commission
Beach Access/Public Safety Criteria
March 6, 2002

In pursuit of the public's right to responsible access to Malibu beaches, the following is a recommendation from the City of Malibu Public Safety Commission to the Malibu City Council for their consideration:

Recommendation: The Malibu City Council shall adopt public safety criteria regarding the opening of new public access ways to beaches within the City of Malibu and the management and operation of said public access ways.

Prior to the opening of new beach access ways, the operating agency shall be qualified to meet the following criteria:

- Emergencies: All public beach access ways shall be built to comply with the needs of the medical emergency professionals who will respond to any such needs of the beach goers, i.e., width of opening and pitch of stairway, if one is needed, helicopter landing capability, etc. An emergency telephone that is regularly maintained and in good working order shall be provided at all beaches having public access ways. The Los Angeles County Fire Department shall provide all necessary emergency guidelines.

- Beach & Ocean Safety: All beaches having public access ways shall have a County or state lifeguard on duty during daylight hours. Standard State or County Public Beach Safety rules and beach regulations shall apply for all beaches having public beach access ways and be posted in English and Spanish. When appropriate, hazardous swimming warning signs shall be posted in English and Spanish at all beaches having public access ways. The Los Angeles County Fire Department shall provide the above guidelines.

- Parking: Appropriate safe parking guidelines, including handicapped parking, are to be determined by the Sheriff's Department, California Highway Patrol and/or the California Transportation Department. All nearby parking to each public beach access way shall be determined to be safe by these guidelines and, if only available on the land side of Pacific Coast Highway, shall have a crossing signal.

- Gate Maintenance: All public beach access gates to beaches may be open only during daylight hours. These public gates will be managed and maintained only by recognized County or State agencies. The Los Angeles County Department of Beaches and Harbors shall provide these guidelines. The Sheriff's Department must assume responsibility for maintaining the peace at all beach locations that have public access ways.

- Maintenance: Beach cleanup, including waste disposal, at all beaches having public access ways shall be provided by the County or State and shall be of the same quality of service currently provided by the County Department of Beaches and Harbors.

- Sanitation: Public bathrooms shall be provided and properly cleaned and maintained at all beaches having public access ways. Said public bathrooms, when possible, shall be incorporated into the access ways so as not to block the view of the ocean nor intrude onto neighboring private property. The Los Angeles County Department of Beaches and Harbors shall provide these guidelines

- Amenities: All beaches having public access ways shall be provided with a drinking fountain.

- Liability: The State and/or County shall accept full responsibility for the approaches to the public beach access ways, the access ways themselves and the effected beaches. In addition, when public beach access ways are opened, all effected beach homeowners shall be held harmless from all liability and responsibility with regard to beach parking at or near the public beach access ways; the access ways themselves; the beaches, both below and above the mean high tideline, and the ocean. Furthermore, beach homeowners in the effected areas, shall have the right of recourse against the State and/or County if the above criteria is not properly implemented. The recourse shall be the closure of the public beach access ways until implementation of the above criteria is met.

- Requirements: In addition to all of the above criteria, before approval can be granted to the operating agency of any new public beach access way, said operating agency shall meet the following requirements: The operating agency shall meet all licensing requirements, including, but not limited to, providing full disclosure of its capability to manage public beach access ways and beaches (see above criteria). This disclosure shall be made to a County or State selected, highly rated, liability insurance carrier, who must then approve the qualifications of the selected operating agency. Furthermore, selected operating agency must provide daily service, pari pasu the California Department of Beaches and Harbors.

- Beach Homeowners: In the locations where new public beach access ways are opened, beachfront homeowners in the effected areas shall not be required to become stewards of public safety nor providers of the beach goers right to a clean environment that includes public amenities typically provided at other public beaches.

Rod Bergen
23939 Ventura Blvd.
Calabasas, CA 91302
818-591 7896

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

10 July 2002

California Coastal Commission
Chairperson Sara Wan & Commissioners & Staff
So. Central District Office
FAX 805-641 1732

Dear Chairperson Wan, Commissioners and Staff

Below is my letter regarding the Draft Malibu LCP/LUP/LIP. I respectfully request that copies be made for all the Commissioners, Alternate Commissioners and Coastal Commission Staff.

RE: Draft Malibu LCP/LUP/LIP

Dear Commissioners:

The impact of the current Commission's interpretation of the California Coastal Act has a devastating impact on California Agriculture, and in particular a severe impact on many local businesses involved in the care and feeding of equines and other livestock. California has a very large equine population, which employs thousands of individuals. There are approximately 5,000 to 10,000 horses living along the California coastline in Malibu and in the Santa Monica Mountains.

Article 30241 of the Coastal Act requires the Maintenance of prime agricultural land, and much of the land in the Santa Monica Mountains is zone for agricultural use.

Following are the Horse Industry statistics compiled by the American Horse Council. Please take to heart the impact of these statistics on local equine industry.

Sincerely,

Rod Bergen

Horse Industry Statistics

The horse industry is a highly diverse industry that supports a wide variety of activities in all regions of the country. It combines the primarily rural activities of breeding, training, maintaining and riding horses with the more urban activities of operating racetracks, horse shows and public sales.

For years, horsemen and women have known that the American horse industry is a serious, economically diverse and productive business that deserves the attention and appreciation of government, media and the public. But they had no written documentation to support their claims.

Now, after a year-long study conducted by the Barents Group of Washington, D.C. and commissioned by the American Horse Council Foundation, the horse industry has its proof that it is a major contributor to the American economy. Following are some industry statistics from ***The Economic Impact of the Horse Industry in the United States.***

How Many Horses are There?

There are 6.9 million horses in the U.S., including both commercial and recreational horses. 725,000 of those horses are involved in racing and race horse breeding, while 1,974,000 and 2,970,000 are used in showing and recreation, respectively. 1,262,800 are used in other activities, such as farm and ranch work, rodeo, polo, police work, etc.

How Many People are Involved in the Industry?

7.1 million Americans are involved in the industry as horse owners, service providers, employees and volunteers. 3.6 million and 4.3 million of those participated in showing and recreation, respectively, with some overlap in cases of people who participate in both activities. 941,000 people participated in racing in either a professional or volunteer capacity. 1.9 million people own horses. In addition to the people actually involved in the industry, tens of millions more Americans participate as spectators.

The horse industry is a diverse, broad-based activity with stakeholders including large numbers of recreational and show horse riders, and moderate-income track, show and stable employees and volunteers. The median income for all U.S. households is $36,000, while the median income for horse owning households is $60,000. 14% of horse-owning households have incomes under $25,000, 38% under $50,000 and 64% under $75,000.

Number of Horses & Participants by Activity

Activity	No. of Horses	No. of Participants
Racing	725,000	941,400
Showing	1,974,000	3,607,900
Recreation	2,970,000	4,346,100
Other*	1,262,000	1,607,900
Total	6,931,000	7,062,500**

*Includes farm and ranch work, police work, rodeo and polo.
**The sum of participants by activity does not equal the total number of participants because individuals could be counted in more than one activity.

Impact on the American Economy

The horse industry directly produces goods and services of $25.3 billion and has a total impact of $112.1 billion on U.S. gross domestic product. Racing, showing and recreation each contribute more than 25% to the total value of goods and services produced by the industry.

The industry's contribution to the U.S. GDP is greater than the motion picture services, railroad transportation, furniture and fixtures manufacturing and tobacco product manufacturing industries. It is only slightly smaller than the apparel and other textile products manufacturing industry.

The industry pays a total of $1.9 billion in taxes to federal, state and local governments.

Of the 619,400 people directly employed by the industry, some are part-time and seasonal employees, which equates to 338,500 full-time equivalent jobs. This is the standard way that the Bureau of Labor Statistics measures employment in the U.S. The industry generates over 1.4 million FTE jobs across the U.S.

In terms of employment, the industry directly employs more people than railroads, radio and television broadcasting, petroleum and coal products manufacturing and tobacco product manufacturing.

Economic Impact	# of Americans Involved	# of Full-Time Jobs	#of Horses	Total Taxes Paid
$112.1 billion	7.1 million	1.4 million	6.9 million	$1.9 billion

Broken down, the horse industry has a direct economic effect in the urban areas of $2.8 billion and employs 45,800 FTE employees. In rural areas, the direct economic effect is $22.5 billion and employs 292,700 FTE employees.

How to Order the Study

This study is available in four volumes. Volume I is the national summary; Volume II gives state figures for CA, CO, FL, ID, IL, MD, NY, OH, OK and TX; Volume III is the technical information and Volume IV contains breakouts on figures for Thoroughbreds and American Quarter Horses. The costs are:

Volume I	$35.00
Volume II	$15.00
Volume III	$50.00
Volume IV	$50.00
Entire Study	$150.00

Payment in advance is required via check or money order, VISA or MasterCard. Checks should be made payable to American Horse Council Foundation and mailed to 1700 K St. NW, Suite 300, Washington, D.C. 20006.

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W10a

VAN ROYCE VIBBER
9990 Houston Road
Malibu, CA 90265
310/589-0803 phone
310/589-0214 fax
310/717-1122 cell

July 5, 2002

RE: Malibu Local Coastal Plan

Page 1 of 1

(805) 641-1732

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

Dear Coastal Commission:

Please adopt the LOCAL COASTAL PLAN for Malibu as prepared by the Coastal Commission. The purpose of the Coastal Act is to protect the coast. Unfortunately the city was not able in the many years of opportunity to come up with a satisfactory plan, and it fell on the Commission to draft one.

The plan as presented has full environmental safeguards, which are supported by many people. The ESHAs are based on sound planning and science, and should be kept intact as much as possible. Preservation of open space, protection of flora and fauna, and maximum environmental safeguards should be the goal.

Sincerely,

Van Royce Vibber

VAN ROYCE VIBBER

GEO SAFETY, INC.

1462 Lachman Lane Pacific Palisades, California 90272 U.S.A. (310) 459-9453 Fax (310) 459-6187

June 29, 2002

RECEIVED

JUL 0 5 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 South California Street
Ventura, CA 93001

Re: City of Malibu Local Coastal Program-Land Use Plan

The plan has received extensive negative criticism for its designation of native vegetation such as Coastal Sage Scrub and Chaparral and their habitats as ESHAs (Environmentally Sensitive Habitat Areas). Such native vegetation occurs on generally steep to very steep slopes characterized by thin and highly erosive soils, thereby naturally limiting development in many designated areas. I strongly believe that the proposed ESHA designation is the proper step and the only neaningful option in effectively protecting coastal-dependent environmental resources on a watershed-wide basis.

The City of Malibu comprises a narrow strip of generally steep, coastal slopes that directly drain into the ocean and have a direct and immediate impact on coastal resources. By law the California Coastal Commission is directed to uphold the Coastal Act and protect plant communities and habitats with minimal development impacts, or appropriate mitigation measures, as part of the development process.

Consider that the footprint for just a single family home requires fuel modification on generally steep to very steep slopes that alters and removes the native vegetation for a distance of approximately 200 feet around the home, in effect removing the native vegetation on about five acres. It has been well documented that fuel modification on steep slopes characterized by generally highly erosive soils readily triggers erosional processes that approach or even exceed the erosion predicted in immediate post-fire years. The thin, generally nutrient-rich surface soil layer also contains the irreplaceable native plant seed pool that can consist of over a hundred species that range from annual flowering fire followers to woody, deep-rooted plants best adapted to the continuous fire-flood-erosion cycle. This thin soil layer as well as the native seeds in the soil must be considered irreplaceable environmentally sensitive resources. With the loss of the thin soil layer from the steep watersheds a vicious cycle of site and habitat degradation is initiated that is not only reflected in rill and gully erosion, soil slips and slides, but also in thin, depauperate native flora that provides inadequate cover for the steep, generally unstable natural slopes. Since natural habitats are a reflection of the interaction of plant and animal life and the resources provided by a watershed and its location, wildlife habitat is also degraded or destroyed.

The above are just some of the reasons why it is so important to recognize Coastal Sage Scurb and Chaparral vegetation within the coastal zone as ESHAs and limit development to the natural carrying capacity of the land.

Klaus Radtke

Klaus Radtke, Ph.D.
Wildland Resource Sciences

July 9, 2002

Via Facsimile

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Dear Chairperson Wan and Commissioners:

On behalf of Defenders of Wildlife and our more than 100,000 members and supporters in California, I am writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. The draft Malibu LCP is the product of a sound science-based process that should be used as a model for future LCPs. Defenders of Wildlife has already signed onto a letter to the Commission in support of the draft Malibu LCP, dated April 19, 2002. The April 19 letter details a number of issues, including public access and water quality. We continue to support the statements in that letter, but would like to take this opportunity to single out the issue that is most directly linked to Defenders' mission – the proposed designation of coastal sage scrub and chaparral as Environmentally Sensitive Habitat Area (ESHA).

In the draft Malibu LCP, Commission staff has recommended the designation of ESHA for 49.2% of the land area in Malibu. This designation is both consistent with the letter and intent of the Coastal Act and, after taking into account land that is already protected from development and land that is undevelopable due to slopes of more than 40%, will impact only 14.9% of the developable land in Malibu.

Under the Coastal Act, ESHA is "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Public Resource Code § 30107.5. The areas in Malibu proposed as ESHA meet this definition.

The City of Malibu serves as a link between the coast and the large, undeveloped areas in the Santa Monica Mountains. The predominant vegetation is the highly imperiled coastal sage scrub, which is an ecosystem of high biodiversity. There are also grasslands, woodlands, chaparral, and riparian areas. Indeed, this area contains a large number of watersheds – more than 30 streams discharge into the ocean within city limits. In essence, Malibu is a relatively intact-island ecosystem surrounded by encroaching urbanization.

As an intact island ecosystem, Malibu supports a wide diversity of species, ranging up and down the food chain. At the top, there is the mountain lion, which is very sensitive to large-scale habitat fragmentation. Research by leading conservation biologists has found that none of the existing local populations would persist without connecting corridors to the other populations. See California Resources

California Office
926 J Street
Suite 522
Sacramento, CA 95814
Telephone: 916-313-5800
Fax: 916-313-5812

National Headquarters
1101 Fourteenth Street, N.W.
Suite 1400
Washington, D.C. 20005
Telephone: 202-682-9400
Fax: 202-682-1331
www.defenders.org
www.kidsplanet.org

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Agency, "Missing Linkages: Restoring Connectivity to the California Landscape," (2001), and Sauvajot, R.M., et al., "Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys," (2000). This area also sustains gray fox, bobcat, badger, mule deer, steelhead trout, southwestern pond turtle, tidewater goby, least Bell's vireo, and tens of other fish, wildlife and plant species. Many of these species are either listed as stated or federally protected endangered or threatened species or species of special concern.

Looking at the factors that result in designating an ESHA, it is safe to say that the areas designated in Malibu fit the ESHA definition. All of the area designated as ESHA contains habitat that is both rare (especially coastal sage scrub) or important to rare species because it serves as a connector to large habitat areas or the area is so rare that any of this habitat is important to the long-term conservation of the species. In addition, this area is relatively intact. Thus, it functions as an integrated ecological system – with all parts necessary to continue to perform as an intact system. For these reasons, the ESHA in Malibu is valuable and the loss of this habitat will impact will impact the ecosystem as a whole as well as individual imperiled species. Finally, these areas could easily be disturbed or degraded by human activity and development. With increasing pressure from a growing population and the attractiveness of living in Malibu, development is a key threat to habitat in Malibu. Not only does development directly destroy habitat by clearing land, building structures and creating artificial night lighting, but increasing human presence also increases fire frequency.

The Malibu LCP's ESHA designation is based on sound science and must be upheld. There is one area, however, within the draft LCP that does need strengthening. The draft LCP currently allows a 10,000 square foot development envelope in all types of ESHA. Defenders does not believe that this is appropriate for riparian areas, which are particularly sensitive. We urge the Commission to modify the LCP to follow current policy which only allows development within riparian ESHA that is resource dependent.

Defenders understands that the proposed ESHA designation in Malibu will result in less development and thus will upset those interested in development. However, California, and Malibu in particular, is identified, in part, by the beauty of its coast. This beauty is more than just maintaining stunning views; it is also about maintaining the vitality and health of disappearing, fragile ecosystems, which includes sustaining top-level carnivores down to insects and plants.

The draft Malibu LCP is based on sound conservation science, incorporating what has been learned by conservation biologists during the last 25 years. Moreover, this LCP reflects the core values in the Coastal Act. For these reasons, we urge you to continue to support the staff's recommendations regarding the designation of ESHA in the draft Malibu LCP. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Kim Delfino

Kim Delfino
California Program Director

REC
RECREATION & EQUESTRIAN COALITION

P.O. Box 245
Agoura Hills, CA 91376
Phone: 818.991.1236
Fax: 818 889.4540
www.gotorec.org

July 10, 2002

Received at Commission Meeting
JUL 1 0 2002
From:_____

California Coastal Commission
So. Central District Office
FAX 805-641 1732

Dear Chairperson Wan, Commissioners and Staff:

RE: Draft Malibu LCP/LUP/LIP.
Please ensure that copies are made and distributed to all the Commissioners, Alternate Commissioners and Coastal Commission Staff.

I represent the interests of some 10,000 horses in Malibu and the Santa Monica Mountains. Some of their owners are here today to convey to you their opposition to this draft. There are also many empathetic people who do not own horses but enjoy the ambience of having them in their community to retain a rural atmosphere.

Why does your staff think that wild animals do no damage and do not impact an ecosystem, but that domestic animals always do?

Your requirement that horses be inside the 50' fuel modification area is your way of excluding horses from Malibu, because that policy conflicts with the County Health Department requirement of livestock being at lest 50' away from a residence.

Your requirement that horse facilities be limited to only one 750 sq. ft. structure effectively excludes horses from Malibu. Do people build a tiny corral or a barn and only have 1 horse if it all fits inside the irrigated fuel modification area? Where do they keep the hay, supplements, tack and gear, which cannot be kept together or the mice will eat the tack? Horses are herd animals, very social, and do best when there are several of them, at least two.

Forcing people to choose between having to move in order to keep their family horses and way of life or else giving up their horses to stay in their house is a morally wrong policy.

There is no reference of how to determine "appropriate sized parcels" for equestrian riding and training facilities and activities. 3.11.2C

It is unclear why some uses that are compatible and appropriate with similar uses are prohibited in certain zone districts – such as prohibiting equestrian riding and training facilities and activities including boarding of horses, domestic animals, etc; and the raising of horses and other agriculture-related animals; and boarding of animals as a commercial use – all of this is excluded in the Private Recreational Facilities Zone District. Chapter 3, Table B

The draft lacks a balance regarding the ESHA issue. Have you considered using scientific data to determine the exceptional places for locating ESHAs, instead of a one-size-fits-all attitude?

REC
RECREATION & EQUESTRIAN COALITION

Horses and other livestock were instrumental in developing these lands as ranches and farms; and their historic participation should be honored and valued by ensuring that people can easily have permitted livestock facilities without costly permits.

Additionally, the trails and trailheads into the Santa Monica Mountains National Recreation Area that speak the history and bear testimony to our pioneering forbears should be easily accessed by the public, including by equestrians. Trails give people connectivity and a glimpse of history.

By excluding and diminishing the role of horses and recreation in the ecosystem, and by treating all lands as ESHA, the Draft Plan contributes to ecological malpractice

Thank you for the opportunity to comment.

Sincerely,

Ruth L. Gerson

Ruth L. Gerson
President

REC
RECREATION & EQUESTRIAN COALITION

July 10, 2002

California Coastal Commission
So. Central District Office
FAX 805-641 1732

RE: Draft Malibu LCP/LUP/LIP.
Please ensure that copies are made and distributed to all the Commissioners, Alternate Commissioners and Coastal Commission Staff.

CHANGES NEEDED TO THE MALIBU LUP/LCP/LIP TO ALLOW HORSE KEEPING

1. A clear and precise definition of ESHA needs to be included in the plan. Currently, all undeveloped land is designated an ESHA and imposes a burden on the property owner to prove it is not an ESHA. Criteria needs to be developed with scientific and biological studies and supporting data so that there is no subjectivity in the ESHA designations.

2. Fences, corrals, barns, storage and tack buildings need to be excluded from the definition of structures. None of these facilities are habitable and most have limited or no utilities. These facilities are not an impediment to wildlife movement.

3. Equestrian facilities such as arenas, corrals and pastures need to be excluded from the 10,000 sq. ft. disturbed area calculation. Horses need to be exercised daily either in an arena or large fenced corral/pasture. A small arena measures 80 x 200 ft. That would immediately exceed the allowed disturbed area and not even allow a home and driveway.

4. Allow horses and equestrian facilities outside the "irrigated fuel modification zone". Health and safety codes require horses be kept 50 to 75 ft. from residential structures. This conflicts with the LUP requiring horses to be within the 50 ft. "irrigated fuel modification zone."

5. It should not be illegal for horses to stand under oak trees. Horses have been standing under trees for a millennium. There is no scientific evidence to indicate that horses under oak trees create any threat to trees. The natural shade and weather protection eliminates the need to build a structure.

6. Remove the prohibiting of animal facilities for personal use "within or adjacent to ESHA." Horses and wildlife habitat are compatible. San Mateo has a trail in a nature preserve with endangered & threatened species. There is no scientific data implicating horses with the spreading of weeds and non-native plants. The broad ESHA designation along with the setback requirements effectively bans horses.

7. The number of animals allowed on a parcel should be allowed without permit at the present County formula of 8 per acre.

8. The slope formula for animals needs to be eliminated. Animals will not go where they cannot easily walk. Topography is self-limiting. Horses will move and stay where the surest footing exists.

9. The LUP needs to examine trails and access into the Santa Monica Mountains National Recreation Area. The plan ignores the millions of dollars of taxpayer monies invested in creating the largest urban National Recreation Area in the United States. Access for equestrians into this area is as important as beach access. The plan overlooks Malibu's critical role as a gateway to the SMMNRA.

Received at Commission
Meeting

JUL 1 0 2002

From:
Sarah Dixon, 31875 Sea Level Drive, Malibu, California 90265, 310-457-7854

July 10, 2002, Testimony Before the California Coastal Commission Regarding the Draft Land Use Plan, and Environmental Review Board (ERB) Policies and Implementation Policies in the Current Draft Malibu Land Use Plan

1. I want to remind everyone that the Coastal Commission has been protecting the coastal portion of the Santa Monica Mountains from urban sprawl over the past thirty years. I cannot imagine what Malibu would look like today without that ongoing protection. Many have forgotten that it was the Coastal Commission who saved Malibu from the dread growth inducing sewer system monster. And yet today I'm disappointed to see that the draft Land Use Plan supports urban sprawl in the Malibu Creek flood plain instead of mandating creative and equitable restoration of Malibu Lagoon to its historic configuration—with appropriate compensation to landowners.

2. I note that for every person in this room there are hundreds who hike, bike, surf, and swim in Malibu who can't be here today because they work all week to support themselves and their families. These people who cannot speak to you here make the Santa Monica Mountains and Seashore their natural day use park. They do not stay in expensive resort hotels and shop for recreation.

3. The riparian areas of the Santa Monica Mountains National Recreation Area are the best, cleanest, most natural remaining place where inner city kids can hike with a ranger and meet a frog for the first time. And that frog is part of a larger ecosystem that depends on our decisions for its very survival.

4. The coastal sage scrub of the Santa Monica Mountains is the air scrubber for the Los Angeles Basin (Santa Monica Mountains National Recreation Area Enabling Legislation).

5. You have plenty of science to support the policies in the draft. Vital background materials for the 1986 LUP were printed in a separate volume; and staff apparently didn't know they existed for use as a starting point database for the new draft. What a waste! I urge you to make sure the supporting science and background information are printed within the new LUP, so people will understand the why the policies are important.

Now I will turn to my subject for today: Environmental **Review Board (ERB) Policies and Local Implementation Policies in the Current Draft Malibu Land Use Plan**

The Malibu City Council has in the past wisely avoided individually appointing ERB members; but we cannot know what future Councils might choose to do.

Recommendation: Define a *neutral* appointment process to avoid politicization and maintain independence of the ERB, as well as to assure a broad spectrum of members with *management* experience in appropriate disciplines.

Comment 4: LIP 13.7C (*See page 5 below*) appears to hand ERB assignments over to City Staff, who, as employees considering job security, might be less independent than ERB members.

Recommendation: Delete LIP 13.7C, because the best qualified biologist or environmental specialist cannot replace the wide variety of disciplines required in environmental considerations in the biologically, geologically, and historically complex Santa Monica Mountains and Seashore.

Comment 5: Conflicts have recently arisen regarding the City's perception of the ERB and its functions, and scheduling practices that don't recognize the calendar obligations of busy professionals who give of their time to visit sites, analyze plans, and consider recommendations for bringing applications into conformance with regulations. The City and ERB members have different views as to why it has become difficult to assemble a quorum for meetings. A valued member, one who consistently worked creatively to help applicants through the process, recently resigned in frustration.

Recommendation: Before finalizing Environmental Review policies, Coastal Commission Staff should meet with ERB members and City Staff to clarify objectives and consider modifying environmental review policies for a better working relationship.

<u>California Coastal Commission Malibu Land Use Plan 1986</u>

P64: An Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management (modeled on the Significant Ecological Areas Technical Advisory Committee) shall be established by the Board of Supervisors as an advisory body to the Regional Planning Commission and the Board to review development proposals in the ESHAs, areas adjacent to the ESHAs, Significant Watersheds, Wildlife corridors, Significant Oak Woodlands, and DSRs. The ERB shall provide recommendations to the Regional Planning Commission (or decision-making body for coastal permits) on the conformance or lack

decision-making body shall make written findings relative to the approved project's conformance with the ERB's recommendations.

3.38 All applications for development within or adjacent to ESHA shall be reviewed for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision-making body.

LIP 13.7C. Except as provided in section 13.4 (Emergency Permits), the Environmental Review Board (ERB) or a qualified biologist or environmental specialist shall serve as advisors to the Planning Director, Planning Commission and City Council for coastal development permits within or adjacent to properties within the ESHA Overlay Zone or identified as being ESHA pursuant to provisions of the ESHA Overlay Ordinance Chapter 4. *(Chapter 4 is Shoreline Bluff Structures & Hazards.)* The ERB or qualified biologist or environmental specialist shall provide recommendations on the conformance or lack of conformance of the proposed project with policies of the certified LUP and may suggest mitigation measures designed to avoid or minimize impacts on environmentally sensitive habitat area resources.

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 3, 2002

To: California Coastal Commissioners
and Other Interested Persons

From: David C. Cowardin, Section Head
Community Studies II Section

SUBJECT: COMMENTS ON PROPOSED MODIFICATIONS TO THE PROPOSED CITY OF MALIBU LOCAL COASTAL PROGRAM
AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Thank you for the opportunity to review and comment on the revised City of Malibu draft Local Coastal Program Land Use Plan, dated June, 2002, and the recommended modifications to the draft Local Implementation Plan dated June 11, 2002, prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The following comments, as well as those in the attached letters that were previously forwarded to the Commission and to Commission staff, are intended to convey the Department's position on policy content of the City's LCP.

LAND USE PLAN

Chapter 3 – Marine and Land Resources

Language added to various policies relating to Environmentally Sensitive Habitat Areas (ESHAs) creates inconsistencies in the intent of these development standards.

3.7 The additional language is not consistent with the original wording of the body of the policy. It would appear that the new language "If an area is not ESHA ..." is really equivalent to the existing language "... if the area in question should no longer be considered ESHA ...." Therefore, we believe that any change to the ESHA boundary requires an LCP amendment.

3.10, 3.11, 3.12, etc.

Simplifying these policies only represents minor tinkering with a flawed concept; that is, permitting non-resource dependent development in ESHA. The County sees this as a violation of the Coastal Act and cannot support these and other policies on the same subject in the LUP.

3.26b Taken alone, the plain language of this provision and its treatment of fuel modification zones is a reasonable protection for ESHA. However, in the context of other provisions that permit non-resource dependent uses in ESHA, implementation of 3.26b would create a contradiction whereby "buffers" could become more restrictive than ESHA.

3.42 Land divisions should still be "consistent with all the policies of the LUP," language that has been omitted.

LOCAL IMPLEMENTATION PLAN

Chapter 4 – ESHA Overlay

Two areas have been added without explanation to the list of habitats considered ESHA. Concurrently, more intense development is allowed in coastal sage scrub (recognized by the state as endangered) and in chaparral (treated by the Coastal Commission as significant) ESHA. This diminishes the importance of coastal sage scrub and brings into question the extraordinary treatment given to chaparral.

4.3.B ESHA DETERMINATION - Added:

1. **Designated Area of Special Biological Significance, or Marine Protected Area** – These areas are not defined, and no criteria are provided to make a determination as to their location or extent.

The Department of Regional Planning requests that this letter be made a part of the official record for the City of Malibu Local Coastal Program and that the Commission consider the points that are described above. The Department's concerns regarding the draft LIP are consistent with some of the issues described in our previous letter to Mr. Gary Timm dated December 31, 2001, relating to the Commission's proposed draft Land Use Plan for the City of Malibu, as well our letter to you dated June 26, 2002, relating to the proposed LIP. These letters are attached for your reference. If you have any questions regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

DCC:GMN:SMT

Attachments

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

COPIES FOR COMMISSIONERS

December 31, 2001

Mr. Gary Timm
California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

SUBJECT: DRAFT City of Malibu Land Use Plan

We would like to provide additional comments on the Draft City of Malibu Local Coastal Program Land Use Plan (LUP). This letter incorporates the concerns of Dr. Daryl Koutnik, Senior Biologist, and supplements our previous letter to you dated October 25, 2001. There are aspects of the draft plan related to environmentally sensitive habitat areas (ESHAs) that we believe should be revised; detailed comments related to this issue are attached. We will address three aspects of the ESHA policies: 1) Many of the proposed ESHAs do not meet the Coastal Act definition, 2) An alternative approach to protecting coastal resources exists that would address your staff ecologist's concerns, and 3) The Coastal Act allows only resource dependent uses in ESHAs. We are especially concerned with these policies because sections of the LUP staff report include the Santa Monica Mountains portion of the coastal zone in its analysis. The inclusion of some of these ESHA concepts in the unincorporated area would be inappropriate.

ESHA Designation

Your staff's proposal regarding ESHAs is a dramatic change from the way ESHAs are depicted on the 1986 certified LUP for Malibu and the Santa Monica Mountains. In the 1986 LUP, limited areas of wetlands, streams, riparian corridors and selected oak woodlands were designated as ESHAs on the "Sensitive Environmental Resources" map. (See attached Figures 1-4) These are the types of areas that are identified in your staff report as "clearly ESHA." (Allen, J.C. 2001. Ecological Findings for Malibu. Staff Report, Draft City of Malibu Land Use Plan. Page 1.) Other important areas that did not meet the Coastal Act definition of ESHA were identified and given additional protection in the 1986 LUP. These areas include Significant Watersheds, Wildlife Corridors, Significant Oak Woodlands and Savannas, and the Malibu/Cold Creek Resource management Area.

We agree with the inclusion of wetlands, riparian areas and dunes as ESHA in the draft LUP. However, the ESHA maps accompanying the draft LUP indicate that most of Malibu's undeveloped land, which includes a variety of plant community types such as chaparral, coastal sage scrub, and coast live oak, has been placed in the ESHA category. Preservation of habitat connectivity and wildlife corridors is cited in the staff report as a main reason for designating such large areas as ESHA. (Ibid, 8-12) Although we agree that these are important factors to consider, we do not think that the ESHA designation is warranted or required to preserve habitat connectivity.

320 West Temple Street • Los Angeles, CA 90012 • 213 974-6411 Fax: 213 626-0434 • TDD: 213 617-2292

Development in ESHAs

Redefining ESHAs in a manner which so greatly expands their area is significant because, as stated in the staff report, "Development is never allowed within these habitats except for a small number of specified activities." (Ibid, 1) Section 30240 of the Coastal Act allows only resource dependent uses in ESHAs. The draft LUP also would prohibit new agricultural and confined animal uses in ESHAs. To expand ESHAs as proposed in the draft LUP would then prevent many individuals from engaging in these important, traditional aspects of the rural and recreation lifestyle of the mountains.

Associated with the extensive expansion of ESHAs proposed in the draft LUP is the issue of "takings," addressed in policies 3.9 and 3.10. These policies would allow some limited amount of development in an ESHA, which seems contrary to Coastal Act Sections 30240 and 30007.5. It also seems contrary to case law as cited in *Sierra Club v. California Coastal Commission (Mendocino County)* (12 Cal.App.4th 602), where the California Court of Appeal said: "The LUP in this case, for example, may provide significant habitat protection, but it allows non-resource-dependent (residential) development in violation of the Act." Further, the proposal to allow development in ESHAs is not addressed in the Summary of Ecological Findings prepared by your staff ecologist. It appears that in attempting to avoid future "takings" lawsuits prompted by the excessive designation of chaparral and other habitats as ESHAs, the LUP will be inconsistent with State law.

In conclusion, we believe the goal of protecting coastal resources can be achieved in a very effective fashion without designating all undeveloped land as ESHA, but instead using an approach similar to that taken when the Commission certified the County's LUP in 1986. Although you were not able to meet with us prior to the January 10, 2002 hearing, we would like the opportunity to work with your staff to resolve these and other issues in a mutually beneficial fashion so that the Local Coastal Programs for the City of Malibu and the unincorporated Santa Monica Mountains will be compatible and reflect the most effective way of achieving the goals of the Coastal Act.

Thank you for your consideration of our comments and suggestions. Please contact Gina M. Natoli or me at 213/974-6422 if you have any questions. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Ronald D. Hoffman
Supervising Regional Planner

RDH:GMN

Attachments

LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING
Additional Comments on the DRAFT City of Malibu Land Use Plan

Environmentally Sensitive Habitat Areas (ESHAs)

ESHA Map – The map is not "scientifically" based, but based chiefly on existing ground disturbance. ESHA criteria should be developed, and there should be more specific ESHA identification.

- The statement that the map will "change over time" makes the ESHA map a moving target. How would anyone know with certainty the status of a property?
- There are essentially no coastal resources identified as ESHA.

Policy 3.3 – This is too vague, too broad: what are the ESHA criteria? California Department of Fish and Game, not the California Native Plant Society (CNPS) listings of sensitive communities should be used.

Policy 3.4 – We agree with a five-year review of the ESHA map.

- Habitat restoration should not qualify as ESHA until it is successfully completed.

Policy 3.9-3.10 – These policies defeat the ESHA protections and are inconsistent with Section 30240 of the Coastal Act.

Policy 3.15 – Defining a "dune" ESHA seems to be redundant. All EHSAs are supposed to be protected along with other sensitive resources.

- Is the least tern known to nest in any locations within the City of Malibu?

Policy 3.16 – Unless sensitive habitat areas are identified, how can new vehicular uses be avoided within them? Are you using "sensitive habitat areas" interchangeably with "ESHAs?"

Policy 3.37 – What are the study criteria? Also, see comment on CNPS above. (Policy 3.3)

HABITAT

Page 37 - Does the Santa Monica Mountains dudleya occur within the Malibu boundary? What are the locations of the Santa Susana tarplant (Charmlee Park)?

Page 39 - Why have significant oak woodlands and significant watersheds been eliminated?

- Although important, chaparral is not designated as a sensitive habitat by California Fish & Game; this is also true for Venturan sage scrub and coast live oak woodland. (Neither are sensitive.) Last paragraph, "...use that is not consistent... will be permitted," defeats the purpose of the policy protections. Perhaps the ESHA boundaries should be drawn more practically.

Policy 3.2 – Several listed canyons are not "exceptional undisturbed habitats," i.e. Escondido and lower Trancas.

Policy 3.11 – Good as a method to provide development guidelines in ESHA and parkland buffers.

- The development standards are similar to those of the Significant Watershed category in Table 1 of the 1986 certified LUP: why, then, remove the resource category?

RECOMMENDED CHANGES

Policy 3.3 - Remove reference to the California Native Plant Society list, since it is not subject to public review. State and Federal lists should be used because they are subject to public review.

Policy 3.64 – An inventory of trees should be by species, not "type."

Policy 3.65 – Change "type" to species.

- The in-lieu fee should be based on International Society of Arborists value of removed tree.

Policy 3.67 – "Vacant land" implies that nothing is present, but natural vegetation and wildlife are present; "undeveloped land" is more accurate.

Policy 3.91 – A lagoon management plan should be left to State Parks and Recreation.

Policy 3.100 – The last sentence is not clear. Is a word missing?

Policy 3.104 - Washout areas should be more than fifty feet from riparian areas.

BIOLOGICAL RESOURCES

Policy 3.35 – There is no distinction between new development applications within or outside an ESHA for the biological inventory requirement. This requirement might be eliminated if more clearly defined ESHAs are provided.

Policy 3.37 – Need a more specific requirement than "a map depicting the location of biological resources" (e.g., vegetation map and constraints map or sensitive elements.)

- "Analysis of any unauthorized development" should include a time frame (i.e., post Coastal Act). New owners typically do not know a property's development history. Would this analysis include the presence of scrub habitats in non-native grassland if human-induced fire frequency were lessened to pre-European settlement of North America? Given the expansive coverage of the proposed ESHAs and their buffers, the policy will effectively be a full employment act for biologists and add a minimum of $10,000-$20,000 to the cost of a single-family residence. Are there any exemptions for additions to existing residences?

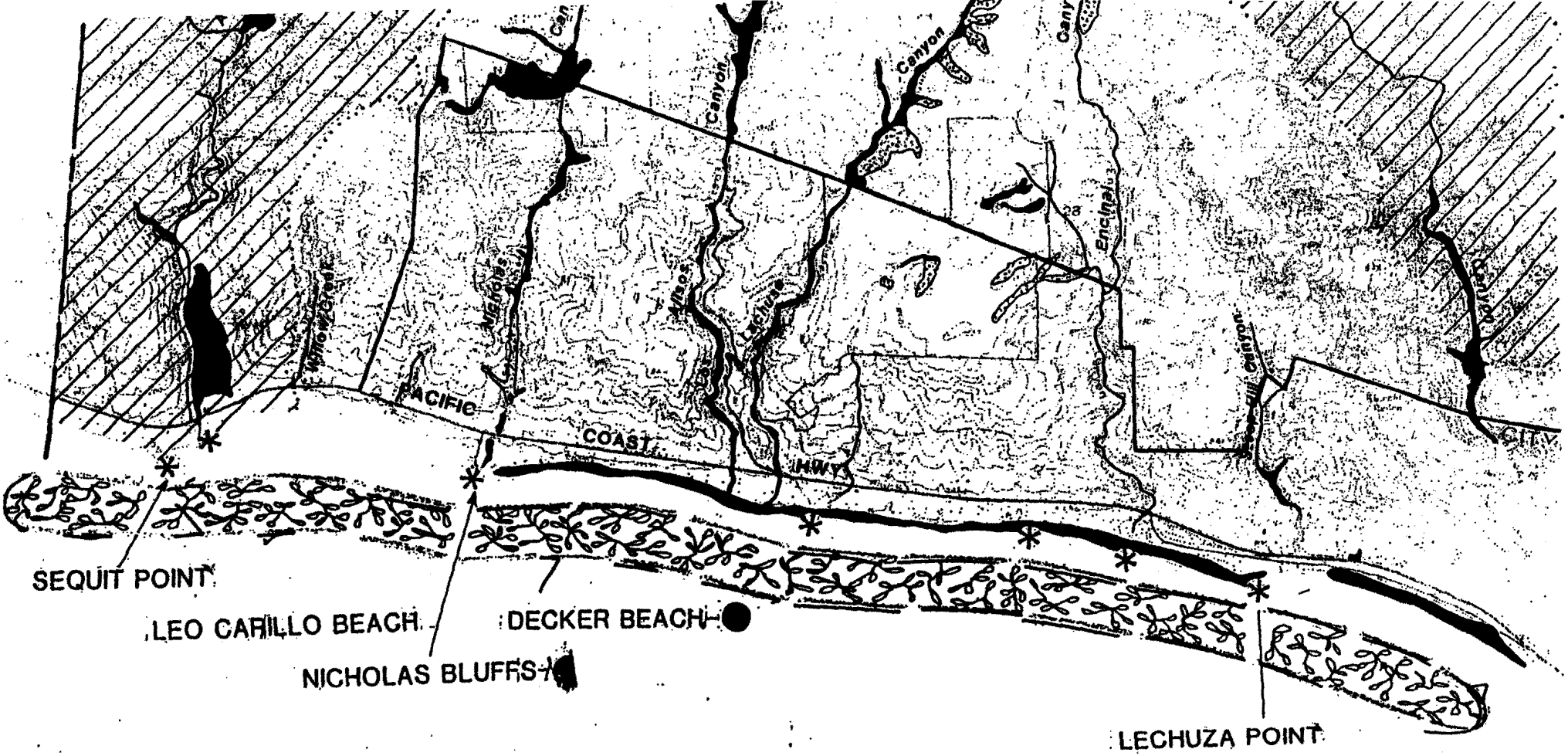
Policy 3.38 – Circular requirement: "ERB...to review...development...within or adjacent to ESHA," or if sensitive resources are identified by a biological study "pursuant to Policy 3.37," which applies within or adjacent to ESHA.

- First use of the term "Sensitive Environmental Resource Areas," but the term is not defined. Only ESHAs have been identified. "Sensitive Environmental Resource Areas: are identified and mapped in the 1986 certified LUP as Significant Watersheds, Significant Oak Woodlands, Wildlife Corridors, etc.

GENERAL DEFINITIONS

Policy 3.13 – The use of the term "significant impacts" has CEQA implications, but projects in the coastal zone that may have impacts to sensitive resources are not necessarily significant impacts under CEQA.

- "Fully mitigated" needs to be defined; is this mitigation in real terms or mitigation as determined by conditions of a development permit?



ENVIRONMENTALLY SENSITIVE HABITAT AREA — RESOURCE DEPENDENT USES

- INLAND
- OFFSHORE — KELP BEDS
- SHORELINE — ROCKY AREAS
- SHORELINE — SEA LION HAUL OUT

SIGNIFICANT WATERSHEDS RESIDENTIAL — RESOURCE DEPENDENT USES

WILDLIFE MIGRATION CORRIDOR

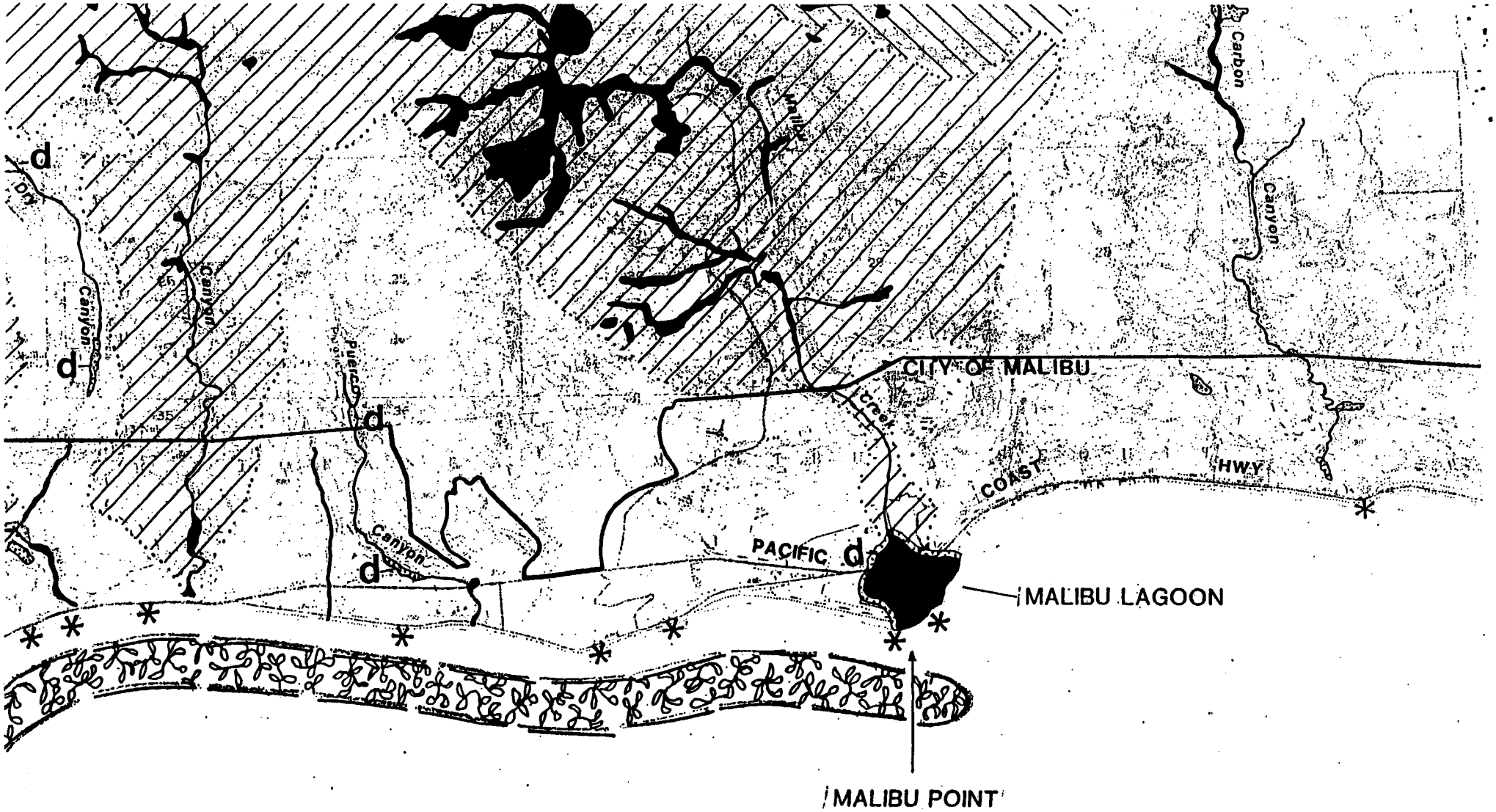
MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

SIGNIFICANT OAK WOODLAND AND SAVANNAHS

d — LOCALLY DISTURBED SENSITIVE RESOURCES AREAS

1986 Malibu LUP Sensitive Resource Areas

Figure 1



ENVIRONMENTALLY SENSITIVE HABITAT AREA — RESOURCE DEPENDENT USES

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MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

SIGNIFICANT OAK WOODLAND AND SAVANNAHS

d — LOCALLY DISTURBED SENSITIVE RESOURCES AREAS

1986 Malibu LUP Sensitive Resource Areas

Figure 3

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

June 26, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: COMMENTS ON THE PROPOSED LOCAL IMPLEMENTATION PLAN FOR CITY OF MALIBU LOCAL COASTAL PROGRAM AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Dear Chair Wan:

Thank you for the opportunity to review and comment on the City of Malibu draft Local Implementation Plan (LIP), prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The Department recognizes the great burden that the legislative mandate has placed on your staff to prepare a comprehensive program. It is also recognized that your staff was required to prepare and present a document to Malibu that included all issue areas considered by the Coastal Act, as well as other items of concern to the Commission.

These comments are intended to convey the Department's position on specific issues discussed in the LIP chapters, and are summarized for the Commission's consideration in the following paragraphs.

Chapter 3 – Zoning Designations and Development Standards
This chapter, together with Table B, addresses permitted uses and specific development standards for each zone district. Some uses that could be found compatible and appropriate with similar permitted uses are prohibited in certain zone districts (e.g., restaurants, health clubs and hotels are not allowed in the Commercial Recreation zone district). Certain standards are unclear or questionable, while other standards are very specific and could overlap with existing municipal code standards.

Table B — The following identifies some specific uses prohibited from compatible, appropriate zone districts:

PRIVATE RECREATIONAL FACILITIES ZONE DISTRICT: Equestrian riding and training facilities and activities including boarding of horses, domestic animals, etc.; Raising of horses and other agriculture-related animals; Boarding of animals as a commercial use; Restaurants; and Camping.

COMMERCIAL RECREATION ZONE DISTRICT: Plant nurseries; Restaurants; Visitor-oriented goods, such as recreational equipment and clothing; Health clubs; and Hotels.

4.8.A The only new development allowed in an ESHA should be resource dependent.

4.8.1.C.2 The in-lieu fee should be broadened to allow the funds to go to other State and Federal agencies that are property owners in the Santa Monica Mountains.

Chapter 6 – Scenic, Visual, and Hillside Resource Protection Ordinance
The provisions regulating types of night lighting seem overly restrictive in their prohibiting most types of lighting in residential areas.

6.5.G Parameters should be set for the specific types of night lighting prohibited in residential areas, as it could be interpreted that all lighting for all private recreational facilities, including swimming pools, and holiday decoration lighting would be prohibited.

Chapter 8 – Grading Ordinance
This chapter discusses controlling the amount of grading and landform alteration. However, when the amount is described as a finite amount, it must be appropriate and feasible.

8.3.B Setting the maximum grading (total cut and fill) amount to 1,000 cubic yards may be too small. It would be more feasible to minimize the ground disturbance in percentage relative to the size of the lot or development.

Chapter 9 – Hazards
Incorrect chapter references are confusing and should be corrected, as well as typographical errors throughout this chapter and draft Implementation Plan.

9.4.F Chapter 21 does not exist in the Local Implementation Plan document.

Chapter 13 – Coastal Development Permits
The provisions of this chapter generally follow the procedures contained in the California Code of Regulations. A number of typographic errors relating to section numbers make the chapter somewhat difficult to follow.

13.4.1.B.4 Fences should not be designated as significant non-attached structures.

13.4.2.C The September 5, 1978 letter should be included in an appendix.

13.4.8 The September 5, 1978 letter should be included in an appendix.

13.5.A(2) The meaning of this subsection is not clear.

13.6.4.B Lots created before the effective date of the Coastal Act should be exempt from this provision.

13.19 The Coastal Commission should not be involved in the review and approval of legal documents relating to public access and conservation/open space easements.

regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

David C. Cowardin
Section Head, Community Studies II Section

DCC:GMN:SMT

Attachment

cc: Laura Shell, Deputy, Third Supervisorial District

CAPITOL OFFICE
STATE CAPITOL, ROOM 4032
SACRAMENTO, CA 95814
TEL (916) 445-1353
FAX (916) 324-4823

DISTRICT OFFICE
10951 WEST PICO BLVD., SUITE 202
LOS ANGELES, CA 90064
TEL (310) 441-9084
FAX (310) 441-0724

California State Senate

SENATOR
SHEILA JAMES KUEHL
TWENTY-THIRD SENATORIAL DISTRICT

CHAIR
NATURAL RESOURCES AND WILDLIFE COMMITTEE

COMMITTEES:
AGRICULTURE AND WATER RESOURCES
BUDGET AND FISCAL REVIEW
ENVIRONMENTAL QUALITY
HEALTH AND HUMAN SERVICES
JUDICIARY
LABOR AND INDUSTRIAL RELATIONS
SELECT COMMITTEES:
CHAIR, INTERNATIONAL TRADE POLICY AND STATE LEGISLATION
CHAIR, SCHOOL SAFETY
DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH
HEALTH
FORESTRY
GENETICS, GENETIC TECHNOLOGY AND PUBLIC POLICY
INVESTIGATE PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET
JOINT COMMITTEE ON THE ARTS

July 10, 2002

W 10a

Sara Wan, Chair
Members of the Commission
California Coastal Commission
45 Fremont Street
San Francisco, CA 94105

RECEIVED
JUL 10 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: City of Malibu Local Coastal Program Land Use Plan and Implementing Ordinances

Dear Chair Wan and Commissioners:

As the State Senator and State Assemblymember representing the City of Malibu, we wish to make the following comments on the Local Coastal Program (LCP) currently under consideration.

First of all, as you know, we both thought it was important that the LCP, to the maximum extent possible, reflect the joint efforts of the California Coastal Commission, which takes its charge from the California Coastal Act, and the City of Malibu, which must implement and live with the final adopted document. To that end, both of our offices hosted meetings with the Commission and the City beginning last year to encourage a continuing dialogue. In November of 2001, 70% of the issues were in contention. In January, the contested issues were down to 25%. In early May, experts from the City, the Coastal Commission, and the California Department of Fish and Game were brought together at Senator Kuehl's office to present the differing ways in which the science of ESHAs has been approached. We commend both the City and the Commission for their continued willingness to hear differing views and work toward reaching possible consensus. In our efforts to resolve the differences on ESHA, we also made a formal request to the Secretary of Resources for an independent scientific evaluation of the ESHA determination in Malibu.

The ESHA determination remains a major area of contention. ESHAs are defined as any area (1) in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and (2) which could easily be disturbed or degraded by human activities. As you are aware, there are differences between the Commission and the City as to which particular properties fit this definition. Although in the proposed maps a great

deal of the land to be designated as ESHA is either steep slopes or public land, we believe, as to the rest, that the goals should include protection of core habitat and riparian buffer areas, wildlife corridor linkages, and connectivity of larger habitat areas with corridors sufficient to insure that they are biologically functional. These must be carefully balanced against the rights and ability of people to use their property.

Furthermore, site specific flexibility must be considered. We have heard anecdotal information which leads us to believe that more site-specific information is necessary to exclude parcels that may be incorrectly mapped as ESHA. Accurate mapping at this time is essential for reinforcing confidence in the designations as opposed to requiring revisions after the fact.

In the matter of coastal access, we are very supportive of increasing the number of public access points to the coast in the City of Malibu. Section 30001.5 of the Coastal Act states that one of the goals for coastal zones is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles, and consistent with constitutionally-protected rights of private property owners." In addition, in 1985, both the Coastal Commission and the Coastal Conservancy adopted statewide Standards and Recommendations for Accessway Location and Development which include a standard for vertical accessways in urban areas of once every six parcels, or up to once every 500 feet. In the current draft of the LCP, there are site specific recommendations mostly requiring that accessways be opened every 1,000 feet of shoreline. This is a reasonable, good compromise that we can support. The draft LCP reflects an excellent effort to establish reasonable policies that serve to create opportunities for access for all. Although the LCP is not the place to deal with it, one result of the opening of additional public access points will be the need for additional maintenance of the public beaches; ex., trash cleanup, etc. We assume that this issue will be addressed at the appropriate time.

Finally, just a few brief comments on process. This would appear to be the appropriate time to review the process for making improvements to private property. We are aware of applications for relatively minor projects that have taken in excess of two years to process. In addition, we have been informed that it is the general policy to review an entire existing property for conformity when even a minor new improvement is sought. If this is, indeed, the case, the process should contain a high degree of flexibility to assure reasonableness and to aid in timely decision-making. We also wish to go on record as supporting the equestrian use that has become such an integral part of living in our mountains and canyons. Reasonable accommodation should be possible to protect runoff, minimize grading, etc., and still support the continuation of these activities.

Thank you for your consideration.

Sincerely,

Sheila Kuehl

SHEILA KUEHL
Senator, 23rd District

Fran Pavley

FRAN PAVLEY
Assemblymember, 41st District

COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS

RECEIVED
JUN 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

Good morning, Madame Chair and members of the Commission. My name is Joseph Chesler, and I am Chief of Planning for Los Angeles County Department of Beaches & Harbors, with offices in Marina del Rey. This morning, I would like to express the County's concerns over two aspects of the proposed Malibu LCP Local Implementation Plan. In doing so, I call your attention to issues pertaining to allowable signage at our beaches (*Sec. 3.13.3*) and temporary events (*Sec. 13.4.9*).

First, the Draft LIP would prohibit any outdoor advertising displays, structures and signs. The proposed ordinance would directly impact my Department's ability to fund the W.A.T.E.R. Program, which is the County's inner-city youth aquatic education program. This program has relied almost entirely upon ad-generated revenue on existing beach facilities since 1985. The County has affixed public safety signboards to the lifeguard towers that provide the public with valuable safety information about current beach conditions. The portion of the safety sign that includes advertising funds this public education effort. The continued use of these and similar signs on existing beach structures was reaffirmed last May by your Commission in its conditional approval of two recent coastal development permits that allow assembly of new lifeguard towers at all of our beaches. In keeping with previous Commission findings, we ask that the LIP specifically allow existing outdoor advertising on the beach that is incorporated within the County's public safety board program, as long as the boards do not increase in size or change in design. Your concurrence with our request will ensure the continued success of the W.A.T.E.R. program, by providing a consistent revenue source that supports a valuable community program.

Fax: (310) 821-6345
(310) 305-9503 13837 FIJI WAY, MARINA DEL REY, CALIFORNIA 90292
INTERNET: http://beaches.co.la.ca.us/

Also of concern to us is the tightening of restrictions on temporary and special events on County beaches in Malibu. As you are well aware, our beaches play host to a wide variety of special events each year that routinely use the beach, our parking lots, or other public facilities. For these temporary events to be exempt from permitting obligations under the proposed LIP, the event must meet <u>all</u> of the following criteria:

A. It cannot be held between Memorial Day and Labor Day (unless shorter than one day, including set-up and strike);
B. It cannot occupy any portion of the sandy beach or public parking area; and
C. It cannot charge for public admission (consistent with County policy).

This "guilty until proven innocent" approach to regulation appears insensitive to the volatile nature of temporary event planning, in general, by requiring the issuance of a coastal development permit for virtually every type of short-term activity that is conducted on a sandy beach or in a beach parking lot. While event organizers **may** apply for an exemption through the City, this increased level of scrutiny would be an added burden for County and City staff, and would severely impact event organizers by increasing processing time and associated fees. Our special event permitting staff ensures that each of the events that receive a free County permit does not impact the public's use or enjoyment of the beach area that they occupy.

The proposed LIP ordinance would adversely impact thousands of event days on Malibu beaches each year. These events include weddings, day camps, surf contests, religious activities, and other community-related events, as well as a variety of film and television venues. We believe that the added administrative and financial burden placed on the organizers of these events would actually discourage public use of Malibu beaches for these events.

As recently as April 2001, when asked to clarify the Commission's position related to temporary events on County-run beaches, I was provided with Commission guidance memoranda from 1993 and 1998, which mirrors the proposed LIP policies, except for one subtle, yet critically important factor –current practice, as we have understood and practiced daily, exempts all temporary events except those that meet ALL of the stated criteria. This practice is reasonable in that it allows our permitting staff to easily screen all prospects before issuing a use permit. However; under the proposed Malibu LIP, an event would require a CDP if only ONE of the criteria apply. Additionally, the proposed LIP would restrict the use of public beach parking lots in a similar fashion, casting the net even wider and restricting use for temporary events. These changes are unacceptable, and we seek your acknowledgement that the existing governance of these types of events on our beaches be retained (why fix it, if it isn't broken?). This action will preserve appropriate beach areas for continued public use and enjoyment, and maintain an acceptable level of control against possible abuse.

Thank you for this opportunity to address you today about these important issues affecting the public's use of our beaches.

REC'D APR 0 2 2001

T. Henry / C. Bedell

RECEIVED
APR 7 1998
CALIFORNIA
COASTAL COMMISSION

M E M O R A N D U M

4/8 copy to all analysts
Mig to TH

DATE: March 25, 1998

RECEIVED
APR 0 6 1998
CALIFORNIA
COASTAL COMMISSION

TO: Deputy Directors, Coastal Program Managers

FROM: Sherilyn Sarb, Temporary Events Coordinator

CC: Peter Douglas

SUBJECT: TEMPORARY EVENTS IN THE COASTAL ZONE

Attached is a memo which has been endorsed by the Commission and distributed via the planning directors mailing list statewide. The memo is seeking local government cooperation in regulating temporary events in the coastal zone. **Please distribute the letter to Commission staff and to any other local, state or federal government representatives that you know are involved in planning or regulating such temporary events that could impact public use of the beach or parks.** A new copy of the temporary event guidelines are referenced in the letter and are also attached. Call if you want a disk or copy procommed to your office.

The memo asks that local governments review their current LCP ordinances to assure that coastal development permits are required for those temporary events having the potential for significant adverse effects on public access and coastal resources. Currently most certified LCPs do not contain provisions which acknowledge whether or not a temporary event held on a public beach, parklands or beach parking lot is exempt from the coastal development permit (cdp) process. In review of comprehensive LCP amendments, new LCPs or in periodic reviews, staff should encourage change in this situation in the future. In some cases, it may not be appropriate to simply incorporate the Commission adopted guidelines into an LCP. The recent Commission decision on the Manhattan Beach LCP (February 1998) is an example. Please don't hesitate to call me if you'd like to discuss this effort in greater detail addressing a particular local coastal area.

Regarding Commission jurisdiction over temporary events, the guidelines have not been modified since they were adopted in May 1993. However, in its action on the Manhattan Beach LCP amendment and the AVP volleyball tournament permits last year, the Commission did not allow charging of a fee for 100% of public admission to the events. As a result of these decisions, staff has indicated to the Commission that **we will not exclude any AVP volleyball tournaments which involve a fee for paid admission, regardless of the time of year the event is proposed or whether only a portion of the seating involves an admission fee.**

As a result of the Commission's actions on the AVP events, for events held on the beach and in the summer, which involve a fee for admission, staff should specifically question whether an exclusion by the Executive Director, as allowed for in Section II (d-g) of the guidelines, is appropriate. Additionally, staff should use discretion as to whether or not a cdp is required for a temporary event that impacts public use of the beach or parks and involves a fee for admission, at any time of year. In exercising discretion, staff should consider how closely the event parallels the AVP tournaments. The Commission was concerned about the commercial aspect of such sporting events which are not open to the general public on public beach, and the possible trend toward more of these kinds of events in the future. The Commission is aware there are music festivals that occur off season in many locations that involve a fee for admission, and they did not suggest the guidelines should be modified to require a cdp, in all cases, for such events.

The guidelines are set up to allow staff the flexibility of requiring a cdp when there are unique or changing circumstances which have the potential to adversely affect public access and recreation. They are designed to consider the location where the event is proposed, public recreational use of that area, timing of the event and adequacy of support facilities, when deciding whether or not to require a permit. Therefore, very similar events may be excluded from permit requirements in one location, but require a permit in another. In some cases, staff may need the specific details related to the event in order to determine whether a permit is necessary. Staff can also work with promoters and local governments to address potential concerns and the agreed upon event, designed to avoid adverse impacts, can ultimately be exempt from permit requirements. Again, don't hesitate to call me if you want to discuss a particular event or get an idea of other areas where similar situations have occurred.

For those temporary events which clearly require a cdp pursuant to the guidelines, i.e. they are on the beach, in the summer, and involve a fee for admission, you should inform local governments and promoters of the temporary event that the Commission is very concerned about a trend toward new events which charge a fee for admission, when the event is held on public beach and parkland, and, the cdp process provides a public hearing and discretionary review of the event. It is possible the Commission may not approve all or a portion of the event, such as the fee for admission.

The Commission is also concerned about the cumulative impact of local governments allowing a number of events on one weekend, or consecutive weekends such that the beach is rarely free of a temporary event. This concept is a little harder to grasp, but the Commission has asked for a report in the future to determine if there is any way to address cumulative effects. At this point, to address the issue, I would appreciate a call or note identifying the significance of this issue for your particular area. Thanks for you help.

E OF CALIFORNIA – THE RESOURCES AGENCY

PETE WILSON, Governor

LIFORNIA COASTAL COMMISSION
EMONT, SUITE 2000
FRANCISCO, CA 94105-2219
E AND TDD (415) 904-5200

January 23, 1998

To: Planning Directors of Coastal Cities and Counties

From: Peter Douglas, Executive Director

Re: **REGULATION OF TEMPORARY EVENTS IN THE COASTAL ZONE**

Over the past several years, temporary events on California's beaches and adjacent areas have become a subject of substantial concern. The concerns relate to the nature and frequency of such events, their impact on coastal resources and nearby residential neighborhoods, and the general public's ability to get to and utilize coastal recreational lands during such events. Temporary events, such as volleyball tournaments, visual arts and music festivals, surfing contests, boat and auto races, farmers markets, etc. have a long-standing tradition and history in California's coastal communities. As the State's population grows and competition for limited coastal space intensifies and fiscally strapped local governments search for supplemental sources of revenue, conflicts among different coastal users and uses become more significant. Exacerbating the problem is the fact that many event sponsors, whether for profit or charitable purposes, seek to charge entrance fees that, by their nature, result in the exclusion from the event site non-paying members of the public. The Commission recently denied approval of a volleyball tournament that proposed 100% paid seating on the beach in the summer.

While some temporary events raise substantial concerns about adverse impacts on coastal resources, most events of this type are de minimis and raise no such concerns. In order to minimize permitting burdens for the vast majority of temporary events that do not raise Coastal Act concerns, the Commission sought and received legislative approval to utilize procedures to exclude such events from coastal permit requirements. The attached guidelines were adopted by the Commission in 1993 to identify those types of temporary events which have the potential for significant adverse effect on public access and/or coastal resources and which, as a result, require a coastal development permit.

The Commission recently held a workshop and received public testimony on whether the guidelines should be changed. Subsequent to the hearing, Commission staff, based on Commission direction, determined not to amend the guidelines at this time. However, testimony at the hearing did suggest that the guidelines fail to address the cumulative impacts these kinds of events are having on public access to and recreational use of the shoreline. Concerns were raised about the number and size of events, impacts on public parking, noise, advertising, etc. The Commission heard from citizens that these concerns are not being adequately addressed at the local level and that there may be inadequate opportunities for the public to raise these concerns through a public hearing process.

The Coastal Act gives both the Coastal Commission and local governments the responsibility to implement coastal protection policies through the planning and regulatory processes established by the Act. The Commission believes that most of the concerns raised in connection with the impacts of temporary events can best be addressed at the local government level. Obviously in doing so, Coastal Act policies designed to protect coastal resources need to be addressed. The Commission-adopted guidelines relative to temporary events only apply to areas where the Coastal Commission retains permit authority, including public trust lands and areas for which there is no certified Local Coastal Program (LCP).

The Commission has asked that staff contact its local government partners in coastal stewardship to request that you review your local regulations affecting temporary events. The intent is to ensure that every LCP contains implementable land use policies that specifically address the protection of coastal resources consistent with Coastal Act policies. These policies should, for example, deal with potential impacts on parking and traffic affecting public beach access, visual amenities, the recreational and free use of public beaches, impacts on environmentally sensitive habitat, and the cumulative affects of multiple events, especially during the high-use summer season. Coastal development permits should be required for those temporary events having the potential of significant adverse effects on coastal resources. In addition to the range of issues your jurisdiction deals with as a matter of primarily local concern , Coastal Act policies and the Commission's guidelines should be used to help shape your approach.

We realize that many local governments have dealt with temporary events long before the Coastal Act was enacted. It is our intent to work in cooperation and coordination with you so as to avoid duplication of effort, to reduce regulatory burdens for event sponsors, and to minimize conflicts in policy direction. As you consider our request, we would also appreciate it if you would assist the Commission in meeting its responsibilities by notifying promoters of temporary events that a coastal development permit may be required from the Commission for certain types of events, and that they should contact the appropriate Commission office for guidance on whether a coastal permit or permit exemption is required. To the extent possible, Commission staff is available to provide any assistance you may deem helpful and appropriate. If you have any further questions, please don't hesitate to contact either myself at the above number or Sherilyn Sarb in our San Diego office at (619) 521-8036.

TempEven.doc

V. Definitions.

For purposes of these guidelines, the following definitions shall apply:

a) "Temporary event(s)" means an activity or use that constitutes development as defined in Section 30106 of the Coastal Act; and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use;

b) "Limited duration" means a period of time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis;

c) "Non-permanent structures" include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, movie/film sets, etc., which do not involve grading or landform alteration for installation.

d) "Exclusive use" means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself.

e) "Coastal resources" include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

f) "Sandy beach area" includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest.

(tegl.doc)

TE OF CALIFORNIA – THE RESOURCES AGENCY PETE WILSON, Governor

ALIFORNIA COASTAL COMMISSION
REMONT, SUITE 2000
FRANCISCO, CA 94105-2219
CE AND TDD (415) 904-5200

TO: Local Governments and Interested Persons

FROM: Coastal Commission Staff

SUBJECT: Guidelines For the Exclusion of Temporary Events from Coastal Commission Permit Requirements - Adopted 5/12/93

I. Purpose and Authority.

The purpose of these guidelines is to identify the standards the Coastal Commission staff, under the direction of the Executive Director, will use in determining whether a temporary event is excluded from coastal development permit requirements pursuant to Public Resources Code Section 30610 (i) (as amended by SB 1578, Ch. 1088, Stats. 1992). The guidelines are for use in areas where the Coastal Commission retains coastal development permit authority. These guidelines may be utilized by local governments for reference in developing Local Coastal Programs or in processing LCP amendments, if required, to address coastal development permit jurisdiction over temporary events.

II. Criteria for Exclusion from Permit Requirements.

Except as provided in Section III. below, the Executive Director shall exclude from coastal development permit requirements all temporary events except those which meet all of the following criteria:

a) Are held between Memorial Day weekend and Labor Day; and,

b) Occupy all or a portion of a sandy beach area; and,

c) Involve a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

Only temporary events meeting all of the above criteria shall require coastal development permit review, however,

The Executive Director may also exclude from permit requirements temporary events meeting all of the above criteria when:

d) The fee is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; or,

e) The event is held on sandy beach area in a remote location with minimal demand for public use, and there is no potential for adverse effect on sensitive coastal resources; or,

f) The event is less than one day in duration; or,

g) The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.

III. Executive Director or Commission Discretion to Require a Permit.

The Executive Director, or the Commission through direction to the Executive Director, may determine that a temporary event shall be subject to Commission coastal development permit review, even if the criteria in Section II. are not met, if the Executive Director or the Commission determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;

b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in Section V. of these guidelines;

c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or parking areas or otherwise significantly impact public use or access to coastal waters;

d) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.

IV. Modifications to Guidelines by the Commission.

The Commission may amend these guidelines at any time if it is determined such modification is necessary to more effectively implement Section 30610(i) of the Coastal Act, and provide Coastal Commission coastal development permit review of any category of temporary events having the potential for significant impacts to coastal resources; or, eliminate such review of any category of temporary events having no such potential.

(1) The state has retained or will retain, as a condition of the transfer or sale, permanent property interests on the land providing public access to or along the sea.

(2) Equivalent or greater public access to the same beach or shoreline area is provided for than would be feasible if the land were to remain in state ownership.

(3) The land to be transferred or sold is an environmentally sensitive area with natural resources that would be adversely impacted by public use, and the state will retain permanent property interests in the land that may be necessary to protect, or otherwise provide for the permanent protection of, those resources prior to or as a condition of the transfer or sale.

(4) The land to be transferred or sold has neither existing nor potential public accessway to the sea.

(d) Nothing in this section shall be construed to interfere with the management responsibilities of state resource agencies, including, but not limited to, the responsibilities to ensure public safety and implement the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest.

(f) Nothing in this section is intended to restrict a private property owner's right to sell or transfer private property.

(Added by Ch. 822, Stats. 1999.)

Section 30610

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.

(b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial

..., .. shall, by regulation, require that a permit be obtained pursuant to this chapter.

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i) (1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and

protection policies of Chapter 3 (commencing with Section 30200).

(Amended by Ch. 1075, Stats. 1978.)
(Amended by Ch. 919, Stats. 1979.)
(Amended by Ch. 43, Stats. 1982.)
(Amended by Ch. 1470, Stats. 1982.)
(Amended by Ch. 1088, Stats. 1992.)

Section 30610.1

(a) Prior to certification of the applicable local coastal program, no coastal development permit shall be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

(b) Within 60 days from the effective date of this section, the commission shall designate specific areas in the coastal zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit. Areas shall be designated for the exclusion provided for in this section if construction of single-family residences within the area to be designated has no potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural land or on agricultural lands currently in production, or on public access to or along the coast.

In addition, if septic tanks will be required or used, an area identified as having septic tank problems by the appropriate regional water quality control board or the State Water Resources Control Board in an approved basin plan or by other formal action of such board may not be designated for exclusion pursuant to this section.

(c) Within areas designated pursuant to subdivision (b), no coastal development permit shall be required for the construction of a single-family residence on any vacant lot which meets all of the following criteria:

(1) It is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.

(2) Is a legal lot as of the effective date of this section and conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinances.

(3) Is not located within an area known to the affected local government, or designated by any other public agency, as a geologic hazard area or as a flood hazard area, or, if located within such an area, it has been determined by the affected local government to be a safe site for the construction of a single-family residence.

(4) Is no more than 250 feet from an existing improved road adequate for use throughout the year.

(5) Can be served by an adequate water supply that is legally available for use either by means of a well or by means of a connection to a water system with sufficient capacity to serve such lot or lots; provided, that no such connection shall require the extension of an existing water main which would have the capacity of serving four or more additional single-family residential structures.

Californians for Local Coastal Planning

23852 Pacific Coast Hwy., Ste. 152
Malibu, CA 90265

www.californiacoastp.anning.org
(310) 317-8487

August 6, 2002

California Coastal Commission
South Central District
89 South California Street, Suite 200
Ventura, California 93001

Hand Delivered– San Luis Obispo, California
16 Notebooks for Commissioners
4 Packages for Commission staff

Re: Draft Malibu Local Coastal Program Land Use Plan (Draft LUP) and Draft Local Implementation Plan (Draft LIP) – June 2002

Dear Commissioners:

Californians for Local Coastal Planning (CLCP) is an independent grassroots organization comprised of residents of the State of California concerned about land use regulations in the coastal zone. All of us support the Coastal Commission and the Coastal Act principles. We are environmentalists, scientists, lawyers, retirees and activists who strongly support protection of our sensitive coastal environment and vigorously oppose unnecessary development of the California coastline.

However, we also feel strongly that the Draft Malibu Plan exceeds the authority of the Commission and includes policies that are not reflective of City of Malibu's unique resources or the concerns addressed by its local citizens. The findings associated with the Draft Malibu LCP do not adequately address adverse impacts to health and welfare or legal and economic outcomes, and they fall short of formal scientific or rigorous environmental analysis.

The Coastal Act anticipated these potential conflicts and stressed the importance of local in the Local Coastal planning process. In an effort to assist the Commissioners, we respectfully offer commentary on various aspects of the Draft Malibu Plan that pose the greatest problems and for which our residents have the most expertise. We strongly oppose the same provisions of the Draft Malibu LUP that the City of Malibu has found objectionable as well. The most significant of our concerns would be addressed by the Commission's full adoption of the recommendations of the City.

The following list of overriding concerns are more fully elaborated on in papers dedicated to subject matter for special consideration: Natural Resource Protection & Environmentally Sensitive Habitat Areas (ESHA), Fire Hazard & Fuel Modification, and Agriculture & Horticulture. We will offer additional supplements for the administrative record later.

1) As the Bolsa Chica case mandates, ESHA designation carries serious consequences, and so should not be applied indiscriminately or without solid justification. The designation of ESHA prevents all but resource-dependent use within ESHA property and surrounding buffer areas and unfairly places an onerous burden of proof on a property owner even when a parcel does not in good faith qualify as ESHA.

2) The unprecedented procedure reversing and accelerating the normal Local Coastal Planning process does not allow enough time to sort out the conflicts or scientific peer review expertise to fully address the impacts of the June 2002 Draft Plan. With good reason, the public is uncertain of what "Plan" is currently being considered since they have not seen the staff interpretation of Commission comments from the July hearing. CCC mailed LUP or LIP drafts & maps do not match CCC Internet drafts and maps.

3) We support the City of Malibu's recommendation to adopt the Los Angeles County 1986 certified Land Use Plan ESHA maps.

4) We support a graded (tiered) system of regulations for protection of resources depending upon their importance to the ecosystem, their state of degradation, susceptibility to significant adverse impacts, their size and sustainability. Buffer areas must not be mandated with rigidity, but maintain flexibility to allow for unique circumstances in habitat and terrain.

5) You can protect the ecosystem biologically and functionally in the Santa Monica Mountains and coastal areas without expanding the cases, in whole or part, on private property as 'Environmentally Sensitive Habitat Areas' (ESHA) unless it contains State or Federally declared rare or endangered species.

6) The Commission must not adopt the proposition that any property not mapped ESHA could be regulated as ESHA under unknown and arbitrary rules of interpretation.

7) The current plan increases fire hazards in the Santa Monica Mountains and coastal zone. We ask the Commission to direct staff to remove fire safety conflicts.

8) The Commission must allow for flexibility in almost all cases where there are prohibitions unless the use or activity is otherwise illegal. The variance system embedded in California land use statutes helps to preserve reasonable use of property. There are sound methods to minimize or eliminate adverse environmental impacts from use or development on private property with site specific scientifically based evaluation and execution.

9) The Commission must not certify an LCP that is so detailed that minor changes will require an LCP amendment and Commission approval. The LUP is a policy document and should only define environmental endpoints. The City of Malibu must define the methods to reach the endpoints based on local physical, natural and social conditions. We assert that is not the case in the Draft Malibu Plan.

10) The Commission must not certify an LCP that prohibits reasonable use of property seen from public spaces. Until the extent of 'public spaces' is narrowed, 95% of Malibu parcels will be unreasonably affected by scenic regulations. At this point, there is no way to evaluate the staff's response to Commission direction, however, the Commission must limit the parcels affected and the minor details on development standards imposed in the certified Plan.

11) The Commission must require a clear and certain Appeal Jurisdiction map before certification of the LUP. The ambiguity and uncertainty for retained jurisdiction in the draft plan is unacceptable. CCC staff recommends that an appeal system be based on their 'rules of interpretation' for which there is no set of rules produced. The Commission has recommended a City of Malibu Environmental Review Board composed of 'hard core' professionals so that local decisions are not based on political appointees. Because the Commission system is subject to the same potential conflicts, landowners and the public should not be

left with an obscure system for appeals. In too many cases up and down the state, CCC staff has accepted appeals based on perceived ESHA and scenic conditions contrary to the Executive Director's claims this will not happen in Malibu.

12) The LUP and LIP recommendations will prevent or severely restrict agriculture, horticulture and equestrian activities and facilities if certified as written.

13) We object to the Coastal Commission staff drafting any Land Implementation Plan (LIP). The drafting of a LIP is subsequent not concurrent to certification of the Land Use Plan. The CCC staff draft findings for the LUP and the LIP of December 2001 have no resemblance to the current draft documents. The Coastal Act, even with the advent of AB988, clearly states that local jurisdiction creates the LIP with no exceptions. The current system in place is particularly problematic since the City's Interim Zoning Ordinances (IZO) were used and misused at the sole discretion of the CCC staff for the creation of the Draft LIP. The lack of individual notice to property owners, the procedural shortcomings, the omission of fire safety regulations and the application of development standards on parcels that were designated as something else in the City land use maps causes havoc in practical and legal terms.

14) We object to any changes in the land use designations from the City of Malibu General Plan including the Crummer Trust property.

15) The athletic fields at Malibu Bluffs Park should remain. The Settlement Agreement (August 6, 1982) between the State Department of Parks and Recreation and the Malibu Little League stipulated the permanent nature of the fields. This is an issue to be settled between the parties and not through the intervention of the Coastal Commission. AB2922 was passed in 1982 allowing lease renewals for the ballfields in perpetuity.

16) The City stormwater, wastewater and solid waste management programs are award winning. The City Ordinances associated with these Clean Water Programs meet or exceed State Water Resources Control Board and Federal Clean Water Act provisions. Malibu is one of only a few in California that reduced solid waste by 57% in spite of the fact that 12,000,000 visitors contribute to the small municipality's tasks. The number of beach closure days in Malibu has been significantly reduced and more improvements is expected when the City filtration and disinfection systems are operating for urban runoff before it reaches Malibu Creek, Lagoon and Surfrider Beach within the next twelve months.

17) The City Grandfathering Ordinance is strong and does not legalize structures that were never allowed or permissible.

18) We oppose any attempt to rush the certification of the Local Coastal Plan at the September 2002 hearing. Returning to the Commission for an LCP amendment will not cure the legal problems associated with certification of the Land Implementation Plan before being vetted (how do you spell?) by and in the City of Malibu.

These are some of the issues of critical concern to homeowners, renters, ranchers, gardeners, commercial growers, children and families. If the Draft Local Coastal Plan is not amended, this June 2002 Malibu Plan will reduce Malibu residents to only the extremely wealthy who may not have interest in sharing the current values that are held by residents today.

Malibu's population remains surprisingly diverse. The diversity and character are worth preserving. If adopted without amending the fire hazard and fuel modification regulations, the Malibu LCP will increase fire hazards and will be in conflict with the State's fire protection policies. We do not believe that is the intention of the Legislature or the Commission. We are available to assist Commissioners and/or staff in any way possible.

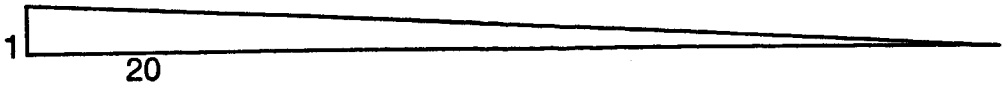
BARRY HALDEMAN

JOHN SIBERT

JEFF HARRIS, MD

KATHY BURR-BALLESTEROS

Cc: City of Malibu – City Manager, Katie Lichtig
Governor Gray Davis
Senator Sheila Kuehl
Assemblymember Fran Pavley
Supervisor Zev Yarovslavsky
Senator John Burton
Assemblymember Herb Wesson



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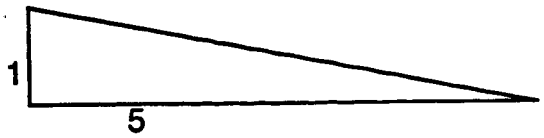

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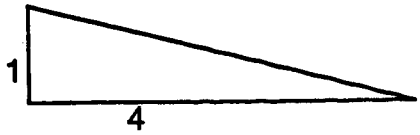

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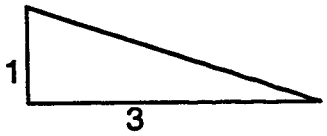

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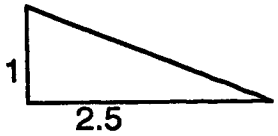

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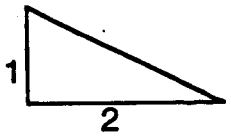

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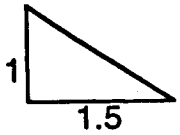

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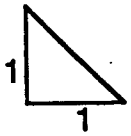

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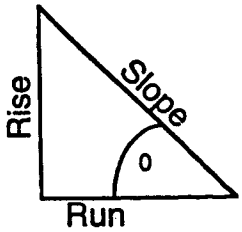

Ratio = Run/Rise

Percent = Rise/Run

Degree = Angel between Run & Rise

Californians For Local Coastal Planning

August 6, 2002 Comments

California Coastal Commission
Draft Malibu Local Coastal Program
June 2002 Land Use and Local Implementation Plans

Natural Resource Protection
Environmentally Sensitive Habitat Areas

The Draft Malibu Local Coastal Plan, made up of the Land Use Plan and the Local Implementation Plan, created by the California Coastal Commission is significantly deficient in scientific merit. In particular, the extension of the definition of Environmentally Sensitive Habitat Areas (ESHA) to include coastal sage and chaparral and the mapping of these newly defined ESHA is unsupported by evidence. Good science-based outcomes can only be realized by controlled investigation and the development of factual data – the designations of ESHA in this draft are based on assertions that are unsupported by evidence. At best this is only hypothesis, the first step in a scientifically valid investigation. In particular, the extension of the ESHA designation requires supporting evidence of the actual environmental significance of the habitat and that requires ground observations to support the hypothesis.

The CCC staffs' arguments in support of this designation as presented in the CCC hearing of July 10, 2002 are based on non-specific literature review and aerial photographs. The only scientifically supportable way to gather supporting evidence is by ground-truthing – actual site visits and evaluation. This has been done in a very limited number of cases, by staffs' own admission, and there is no biologically support evidence for the extension of the definition to all coastal sage and chaparral in the draft Local Coastal Plan, or in the staff comments or findings submitted for the record. They also ignored the assessment of environmentally sensitive areas conducted by the County of Los Angeles in 1986 and the input from the State Department of Fish & Game.

Scientifically based conclusions must stand up to peer review – the conclusions in the Draft Malibu Local Coastal Plan fail that test. The argument that a defensible ESHA mapping of Malibu would be too time consuming is specious. Since the designation of an area as an ESHA has such severe consequences for the property owner and since areas adjacent to an ESHA suffer similar consequences, such a designation should never occur without sound, scientifically supported evidence. The Draft Malibu LUP fails to present such evidence.

As the Bolsa Chica case mandates, ESHA designation carries serious consequences, and so should not be applied indiscriminately or without solid justification. The designation of ESHA prevents all but resource-dependent use within ESHA property and surrounding buffer areas and unfairly places an onerous burden of proof on a property owner even when a parcel does not in good faith qualify as ESHA.

We support the City of Malibu's recommendation to adopt the Los Angeles County 1986 certified Land Use Plan ESHA maps.

We support a graded (tiered) system of regulations for protection of resources depending upon their importance to the ecosystem, their state of degradation, susceptibility to significant adverse impacts, their size and sustainability. Buffer areas must not be mandated with rigidity, but maintain flexibility to allow for unique circumstances in habitat and terrain.

Until there is the widespread scientific support required to expand the definition of what is rare or especially valuable in Malibu, the Commission must make significant changes to the proposed designation policy – Draft LUP 3.1.

1. Land Resources Draft Malibu Land Use Plan – June 2002

a. ESHA Designation

LUP 3.1 Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are ~~shall be designated as~~

Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The natural habitats in the City of Malibu th~~at are rare or especially~~ valuable because of their special nature or role in the Santa Monica Mountains ecosystem ~~ESHA types~~ include riparian areas, streams, woodlands, grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, and are designated as ESHA ~~as defined by the Coastal Act.~~ An exception to this ESHA designation is where native trees, coastal sage scrub, or chaparral exist in such small isolated patches that they will not maintain long term viability as habitat due to existing development, including fuel modification.

Since the California Coastal Act places "strict limits on the uses which may occur in an ESHA" (see *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493), ESHA should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community. Until the number of site visits and additional peer review can occur, the following criteria for Environmentally Sensitive Habitat Areas are offered for consideration of the City of Malibu and the Coastal Commission:

ESHA Baseline Should Be Derived From 1986 Plan: The "baseline" for ESHA in Malibu should be the 1986 County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan. ESHA designated in that plan, which by virtue of its thorough research and longstanding practice has been accepted by the City, Los Angeles County, and the Commission itself, should remain ESHA.

Large Scale Connected Habitat, Producing Core Habitat Areas, Can Be ESHA: "Large scale connected habitat areas are to be preferred over similar-sized but fragmented areas." J.C. Allen (Coastal Commission staff), "Ecological Findings for Malibu," March 8, 2002, page 10.

But only if such large scale connected habitat areas do in fact provide habitat for rare or especially valuable plant or animal life.

Likewise, ESHA Should Not Be Designated Where Habitat Has Been Badly Fragmented: The theory of habitat connectivity has no application where habitat connections have been lost. ESHA designations are not appropriate in such areas. These are areas "where development is concentrated on the coast, much of which is already badly fragmented (e.g. Point Dume and the eastern end of Malibu)." J.C. Allen (Coastal Commission staff), "Ecological Findings for Malibu," March 8, 2002, page 9.

Similarly, ESHA Should Not Be Designated in Existing Concentrated Developments: The California Coastal Act has expressed a preference to cluster "new residential, commercial, or industrial development ... within, contiguous to, or in close proximity to, existing developed areas able to accommodate it." Public Resources Code Section 30250. The Legislature has determined that policies which "serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies." *Bolsa Chica, supra*, 71 Cal.App.4th at 509. ESHA designation would defeat the sound legislative policy of clustering development in such high-density areas as Point Dume, Malibu Park, and Big Rock.

ESHA Should Not Be Designated in Formally Defined "Calvo Exclusion" Areas: The California Coastal Commission has already determined that construction of single family residences in certain areas have no potential "for significant adverse impacts on scenic resources ... on environmentally sensitive areas ... or on public access to or along the coast." Public Resources Code Section 30610.1. These areas, known as "Calvo Exclusion" areas, have been definitively identified by the Coastal Commission itself and

should be exempt from any ESHA designation. The Point Dume, Malibu Park, and Big Rock areas comprise a large proportion of Calvo exclusion property.

This does not mean, however, that non-fragmented, non-clustered, non-Calvo exclusion properties automatically qualify as ESHA. These properties must also meet the test of ESHA under specific biological criteria.

For Areas Not Designated ESHA, the City of Malibu may use designations more custom-tailored to balance protection with development, such as "Disturbed Sensitive Resource Area," "Sensitive Ecological Area," "Hillside Development Area," and other designations, with rules in place designed to allow reasonable development while still offering protection to areas of special concern. These non-ESHA designations should not be confused with ESHA by virtue of being designated a natural resource that requires special protection.

Following is a July 10, 2002 transcript section dealing with the Commission staffs' discussion on the legal 'dilemma' posed by the United States Constitution, the 5th Amendment, and the complications associated with ESHA designation. Also included is a relevant rebuttal to an appeal before the Coastal Commission that better lays out the legal strategy that has been and will be successfully applied to oppose projects that have ESHA or disturbed ESHA designation.

or the size of a parcel should affect what you can put on it.

And, to say the same rule applies to 10,000-square feet, or an acre, or 20 acres is unrealistic, and is not good planning. Or, if you have separate parcels, and you want to consolidate those parcels, and like the example of the gentleman here yesterday here gave. He was so right.

What will happen is, it will take away the flexibility and the planning that you should do, and I want to keep and be for the ESHA designation, and make sure that what is ESHA is ESHA, but I don't want to come up and concoct some rule to make me feel better because I am trying to stop mansions, or something like that, and in effect I create bad planning.

And, I can tell you, unequivocally, that this is not the way to do it, to put in this type of size thing, because in many cases I would never even agree, as one person, to suggest that you could even do something of that size or nature.

CHAIR WAN: Staff.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, Commissioner Kruer is right, and this is a concern that we've had. We spent a lot of time addressing it, and how we came to where we are is that we are looking at a situation where an entire property, an entire parcel, is environmentally sensitive habitat. That is the starting point.

1 Under the *Coastal Act* you can't allow development
2 on that parcel. Under the Constitution, and the provision in
3 the *Coastal Act*, that you have to allow some economically
4 viable use, or else there would be a taking of private
5 property, you have to permit an override of the provision
6 that says you can't build a house in an ESHA.
7 So, and we were responding also to the concerns by
8 the city, because the approach would be, if you do it on a
9 case-by-case basis, you would have to do an analysis, a
10 takings analysis, in each case, and that involves an
11 extensive series of factors and elements that you would have
12 to look at, in terms of investment-backed expectations, and
13 you know what is normal in the area, or what is reasonable.
14 And, so we came up with a conclusion of 10,000-
15 square feet as a way of saying we think that that is an
16 economically viable use, to meet the takings provision. And,
17 that is how we came up with that number, in part.
18 CHAIR WAN: Yes, Mr. Faust.
19 SENIOR DEPUTY DIRECTOR DAMM: Just --
20 CHIEF COUNSEL FAUST: Madam Chair --
21 CHAIR WAN: Oh, okay, Mr. Damm --
22 CHIEF COUNSEL FAUST: Do you want to go first? go
23 ahead.
24 CHAIR WAN: -- and then Mr. Faust.
25 SENIOR DEPUTY DIRECTOR DAMM: Just to augment what

1 the Executive Director mentioned, also with regards to the
2 10,000-square foot development area, that is, as I mentioned
3 yesterday, something that the Commission has applied on
4 permits numerous times because it is included in the 1986
5 Land Use Plan that the county prepared, and was certified by
6 this Commission for a large area of the Santa Monica
7 Mountains, in the unincorporated area, primarily, but also
8 partially within the city prior to incorporation. And, it
9 limits the development area to 10,000-square feet, the same
10 as what staff is recommending.
11 CHAIR WAN: Commissioner Potter.
12 COMMISSIONER POTTER: I have a question on that,
13 and it is the --
14 CHAIR WAN: I'm sorry.
15 COMMISSIONER POTTER: I'm sorry.
16 CHAIR WAN: Mr. Faust has been trying to speak,
17 and then --
18 COMMISSIONER POTTER: My apologies, counsel.
19 CHIEF COUNSEL FAUST: Madam Chair, I just wanted
20 to add one thing, with respect to this.
21 I agree with what has been said so far. There is,
22 basically, a conflict here between the *Coastal Act* ESHA
23 requirements and the *Fifth Amendment*. And, the Commission
24 has faced this conflict on numerous occasions before, and
25 they have dealt with it, in your permitting jurisdiction, on

1 a case-by-case basis.

2 What you do, as you are familiar with in the pygmy
3 forest, in the Monterey and Asilomar Dunes, various other
4 places up and down the state, is look at the particular
5 parcel, and make a case-by-case decision about what is the
6 minimum development that must be allowed on that parcel under
7 Constitutional principles in order to avoid a taking? And,
8 that is how you've dealt with it in your permitting juris-
9 diction.

10 In your planning jurisdiction, the Commission has
11 certified a number of LCPs where it has placed detailed
12 policies into the LCP, in order to provide for the local
13 government to make that kind of a determination, as well.
14 So, those policies exist.

15 What staff was attempting to do here, as Mr.
16 Douglas and Mr. Damm indicated, was take a different
17 approach, which is also a valid approach. Instead of a
18 quasi-adjudicatory approach, it is also possible for
19 government to take a quasi-legislative approach, to define a
20 standard in the plan, and say, this is the standard. Staff
21 was attempting to do that.

22 My understanding is that this is something that
23 the city preferred, because it vastly decreases the amount of
24 work that is required in the permitting actions, themselves.
25 It defines the answer, if you please.

But, from a legal perspective, either one is possible. The policies exist. We can take direction on one or another, and we can write policies that will achieve either one.

It is a question of what this Commission and the city best think will solve this dilemma about the conflict between the ESHA policies and the *Fifth Amendment*.

CHAIR WAN: Commissioner Kruer, you want to finish up, and then I will go to Commissioner Potter.

COMMISSIONER KRUER: Right.

I just think that we have been doing this, and I think we have tried to do as good a job as possible, all of us to do this, and so has staff. And, I think we deal with these takings issues, and deal with these things, and economic viability, and everything on a case-by-case basis, and look at a project, anyway.

I just think that to develop a standard like this, and put this in, creates bad planning, and to have another legal backstop that I don't think you need here, it takes the creativity out of planning. It creates the pressure of where you are going to site the project, what you are going to do, what you are going to allow the massing, horizontal, all of the different issues that when you have this flexibility.

And, it is just, as a person, who has been through this many, many times, you are always better to not have a

defined amount, so that you can reserve your rights. Because I can tell you, a lot of times, you don't even want to allow 10,000-square feet.

CHAIR WAN: Commissioner Potter.

COMMISSIONER POTTER: Yeah, I just have a couple of questions.

First of all, is this development definition. I thought I heard yesterday that the 10,000-square foot had some flexibility in and around the road aspect. Chuck, I think you talked about that. Does road translate to driveway, because, I mean, in certain parcels, based on the configuration of the parcel, I could do 10,000 feet of development in the driveway and never get to the house.

And, the other issue I have is what is this do to existing residences, that may fall within that 10,000-square foot site development area, and then go ahead and want and make some sort of minimal expansion to it? Are they falling into some new definitions, and they are precluded from being able to expand?

My guess is that an overwhelming majority of Malibu certainly falls within this 10,000-square foot definition, if it includes all site development impact, instead of just structure. I mean, I agree with Commissioner Kruer, in a way, in that big is not necessarily bad, but if it is based on, you know, the form of architecture and the

THE URBAN WILDLANDS GROUP, INC.
P.O. BOX 24020, LOS ANGELES, CALIFORNIA 90024-0020, TEL (310) 276-2306

REBUTTAL TO BOARD REPORT

Consideration of an Appeal from City Engineer's Approval of Coastal Development Permit 00-05 for Waterview Street Landscaping Project

May 18, 2001

The following document serves as a rebuttal to the "Board Report" prepared by Staff of the City Engineer's office assessing the merits of the appeal of Coastal Development Permit 00-05 by The Urban Wildlands Group, Endangered Habitats League, Lepidoptera Research Foundation, Santa Monica Bay Audubon Society, Ballona Ecosystem Education Project, Sierra Club, Wetlands Action Network, Mandy Saner, and Bonnie Foster. This rebuttal was prepared by Dr. Travis Longcore of The Urban Wildlands Group whose credentials are attached.

In general, the Board Report does not substantively engage the issues raised by the appeal, and is incorrect in both fact and policy interpretations. These errors and omissions are sufficiently significant to suggest that Staff had reached a conclusion about the validity of the appeal before addressing its constituent parts, and wrote the Board Report as a *post hoc* rationalization of Staff's preconceived decision. Such defensiveness is understandable on the part of Staff; they did indeed prepare the report justifying the initial decision appealed here. However, any fair and impartial consideration of the evidence and argument in the appeal would result in reconsideration of at least some part of the initial decision. Staff's refusal to cede even the most well-established points of scientific fact indicates a less than fair treatment of the appeal, its contents, and the rights of the appellants to have a fair assessment of their basis for appeal presented to the Board.

In the pages that follow, relevant text from the Board Report is presented in italics, with responses following.

Recommendation
Deny the appeal.

As discussed below, this conclusion is not supported by the best available science, the facts at hand, or the policies of the California Coastal Act.

Land Resources
Relevance of Site Conditions
Appellants suggest throughout their appeal that current site conditions are irrelevant to LAWA's development of the site. Staff disagrees. PRC § 30240(a) states that environmentally sensitive habitat areas (ESHAs) "shall be protected against any significant disruption of habitat values..." For this analysis, staff assumes that the project site is an ESHA. The current plan to re-vegetate the site with native plants (and some of the existing palms) requires that LAWA alter the site. In other

words, for LAWA to improve the site's habitat value, LAWA must alter the site. Moreover, this improvement is dependent upon the resources at the site. Staff finds that any disruption that might occur is not a "significant disruption" of habitat values since the project will improve habitat values.

The appeal does *not* maintain that the site conditions prior to project implementation are not relevant. In fact, the appeal reestablishes the acknowledged fact that the project site is, and was before partial project completion, an ESHA.

The appeal does make the legal point that once the site is recognized as an ESHA, even if it is degraded, it receives the same protection under PRC § 30240(a) as a pristine ESHA. Staff does not dispute this interpretation.

The proposed project is not a resource dependent use. Prior to the condition that native plants be used, the plan would have installed exclusively exotic landscape species, many of which are invasive in dune habitats. The condition for the use of native plants underneath palm trees does not turn it into a restoration project.

Landscaping using native plants is not the same as restoring a habitat. The conditions on the project contain no guidelines that will turn a landscaping project into a restoration. Such conditions would include a plant list to ensure that the proper species are included (including *Eriogonum parvifolium*, foodplant for the endangered El Segundo blue butterfly), ensure that local sources for plants are used, and prohibit destruction of native plants spontaneously regenerating on the project site. None of these conditions are proposed, so the claim that the project is now a resource dependent use that will improve habitat values is unsubstantiated.

As documented in the appeal, the site is currently occupied by native dune plant species that would be displaced by the proposed landscaping project. This would constitute a further significant disruption of habitat values. The Board Report ignores this fact completely.

Applicability of Bolsa Chica Land Trust v. Superior Court
Appellants declare that the legal decision in Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493, "provides the basis for [Appellants'] appeal . . . ." In the Bolsa Chica case, a developer sought to destroy a deteriorating ESHA, build houses on the site, and mitigate the environmental damage by recreating a similar area at another site. The court held that the Coastal Act "does not permit destruction of an [EHSA] simply because the destruction is mitigated offsite." Under current plans for the project, LAWA will not destroy the ESHA, rather, LAWA will improve the habitat value by removing exotic plants and replacing them with native vegetation. Consequently, staff finds that Appellants' citations of the Bolsa Chica decision are out of context and the Bolsa Chica decision does not apply directly to this CDP decision.

The Board Report does not address the portion of the *Bolsa Chica* decision cited in the Appeal. The fact pattern for current development project need not completely match that in the *Bolsa Chica* decision for the declarations made therein to be relevant. Staff completely avoided discussion of the actual point made by the appeal, which relates to the following paragraph of the *Bolsa Chica* decision:

> Thirdly, contrary to Commission's reasoning, section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA. We do not doubt that in deciding whether a particular area is an ESHA within the meaning of section 30107.5, Commission may consider, among other matters, its viability. However, where, as is the case here, Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. ***Rather, under the statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection.***
>
> *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493, 507–508 (1999) (emphasis added) (citations omitted).

The Board Report is silent on this major point in the appeal. The decision is indeed relevant, for it contradicts Staff's original justification for allowing the project, namely that the ESHA is degraded. By concentrating on another portion of the decision, Staff attempts to draw a distinction between the *Bolsa Chica* case and the current project. In doing so, Staff now claims that the project will not disrupt the ESHA, but will improve it. To the contrary, the project will destroy (and has destroyed) native vegetation in an ESHA, and therefore substantially disrupts habitat values. It is factually incorrect to now claim that the project, which included the installation of 90 palm trees in an ESHA, is now or will be a net benefit to the habitat. Furthermore, the conditions imposed by Staff on the project would only result in the use of native plants as landscaping, not in a restoration of the habitat values of the site.

LAWA's use of Washingtonia Robusta
Appellants argue passionately against the palm trees, yet provide no momentous reason for their removal.

The burden is not on the Appellants to provide a momentous reason for removal. The question is whether, when evaluating the proposed project *de novo*, it would be acceptable to plant palm trees in a coastal dune ESHA. Staff does not address this point in the Board Report. Staff instead apparently gives consideration to the fact that the palms had already been installed. This unfairly shifts the burden away from the applicant to design a project that complies with the California Coastal Act, thereby rewarding the applicant for installing the trees illegally.

Appellants argue that the trees will occupy habitat area. Obviously, the trees will occupy some land area, but the total of this area is dramatically less than the land area that LAWA added by removing obsolete streets and other impermeable surfaces.

Ironically, this rationalization by Staff is prohibited by the section of the *Bolsa Chica* decision that Staff cited earlier in the report. As interpreted by the court, the Coastal Act does not permit the destruction of part of an EHSA in exchange for mitigation elsewhere. In addition, Staff fails to rebut the underlying fact established by the Appellants that the installation of the palm trees

removed native vegetation in an ESHA, an impact that extended beyond the area of the palm trees themselves to include substantial construction area.

Appellants claim that the trees will provide perch sites for raptors, but fail to show how these trees will be significantly more attractive to raptors than those immediately across a narrow residential street or, indeed, the trees that remain on the dunes from the former residential development.

Staff fails to demonstrate how more trees will not worsen the situation. Furthermore, the palm trees will also attract non-native starlings, which congregate in flocks and utilize palm trees in high numbers. The argument that palm trees already exist does not provide justification to install more.

Consequently, staff finds that the risk of "significant disruption of habitat values" does not exist.

In reviewing hundreds of projects for compliance with Coastal Act habitat protection standards, I have never encountered the argument that planting invasive exotic trees in the middle of an ESHA did not constitute a significant disruption of habitat values. No more significant disruption of habitat values exists than removal of the plants that constitute a habitat. Staff's claim to the contrary is unsupportable by both science and policy.

Appellants claim that the trees will invade the dunes habitat, but provide no evidence that this is a genuine threat. Appellants offer a photograph of a small cluster of young palms sprouting near Vista del Mar and suggest that this isolated phenomenon will invade the dunes, yet on 300 acres of dunes maintained by LAWA this is the only location staff observed and the only location noted by the Appellants. In light of the thousands of Washingtonia robusta *that surround the site-indeed, currently occupying the dunes from the former residential development-this isolated occurrence is inconsequential. Again, staff finds that the risk of "significant disruption of habitat values" does not exist.*

First, the Appellants would have been trespassing had they surveyed the entire dunes for sprouting palm trees, therefore it is understandable that an example on the perimeter of the dunes is noted. Staff claims to have surveyed the entire 300 acres, yet fails to provide any documentation of this survey . Furthermore, Staff indicates no knowledge of the many other wildlands up and down the southern California coast where *Washingtonia* palms have invaded natural habitats. The Vista del Mar site proves that these palms can and do invade dune habitats. Given the indefinite life of the project, the inclusion of palm trees unnecessarily subjects the El Segundo dunes ESHA to an even greater invasive exotic plant species burden. Staff offers lay opinions in place of those of qualified, scientific experts and repeats the discredited argument that because the dunes are partially degraded it is acceptable to degrade them further.

Irrigation
Appellants suggest that permanent irrigation could harm the site's habitat value. Staff agrees. For that reason staff stated in its Final Staff Report:

> *Staff received several comments concerning permanent irrigation systems. These comments generally indicated that permanent irrigation would increase populations of nonnative and/or undesirable species. Since this staff report presupposes that LAWA will plant*

predominantly native species in conformance with the conditions imposed herein, plants will require irrigation only until they become established. Once established, both the native plants and palms should no longer require irrigation. Staff anticipates that LAWA will remove all aboveground irrigation components once LAWA deems that the plants are fully established. Consequently, staff concludes that no Coastal Act concern regarding irrigation remains.

Appellants provide no argument why the City Engineer should change this position.

If Staff agrees with the threat, then the project should be conditioned to reflect that concern. Without the condition, the project, despite assurances and assumptions about the future behavior of the applicant, the project remains noncompliant.

Pedestrian Path

In their appeal, Appellants object to construction of the decomposed granite path, stating that it "will encourage use of a sensitive habitat area by pedestrians and pets." However, staff notes that during the public hearing appellant Sierra Club encouraged construction of the path and proposed creating a walking tour for school children and others. Staff finds that the pedestrian path will serve to confine pedestrian traffic to a limited area, the path, rather than indiscriminate encroachment upon the area, as permitted previously.

Since the public hearing, the Appellants have observed the destructive use of the project area by pedestrians and their dogs, strengthening their conviction that the project degrades the ESHA. Staff presents no evidence of the use of the site prior to project implementation, and therefore has no factual support for the claim that the project reduces impacts by pedestrians and dogs. The only evidence presented on this topic (by the Appellants in the appeal) is ignored by Staff in the Board Report. While the Sierra Club supported the path conditioned on education programming for the project site, this suggestion was rejected by Staff, making the Staff's invocation of this comment as support for the pedestrian path somewhat disingenuous.

Selection of Native Plant Sources

Appellants seek to not only specify how LAWA will restore and/or develop the site, but also the sources from which LAWA will obtain its native plants. Specifically, Appellants seek to substantiate the "dangers of nonlocal sources" by referencing an article co-authored by three (3) UWG leaders. Yet, even this article concedes that "[d]ebate centers around the relative importance of matching local ecotypes when reestablishing plants on a restoration site." Appellants do not clarify what they consider to constitute "local" ecotypes and fail to present a compelling argument why LAWA should be restrained in exercising its best judgement in this case.

Staff cites a sentence completely out of context from a peer-reviewed, published, scientific article. (Staff seems to imply that this article is suspect because "leaders" of The Urban Wildlands Group were authors. To the contrary, that the Appellants have published peer-reviewed scientific articles on the habitat under consideration should, if anything, lend credibility to the appeal.) The full paragraph from which Staff partially cites is as follows:

> A second aspect of the definition of restoration is what has been called "the ecotype question" (Cairns 1987: 316, Kline and Howell 1987: 84). Debate centers around the relative importance of matching local ecotypes when reestablishing plants on a restoration site. Although academic consensus seems to support using local ecotypes (see Millar and Libby 1989, Read et al. 1996, Allen 1997), we illustrate the importance of local ecotypes on higher trophic levels and the maintenance of biodiversity.

The next section of the paper, and the references cited therein, thoroughly describe the necessity of the use of local ecotypes in restoration. Pulling the single sentence out of context is a mischaracterization designed to bolster support for Staff's position. Perhaps the Board was not made aware of the actual content of the paper in the Board Report because it did not support Staff's position.

Staff also fails to discuss the other two scientific papers submitted in full on the question of local ecotypes. Science makes progress, and from the time that the paper cited by staff was written (1997), additional research has conclusively shown the genetic importance of local ecotypes in restoration plantings. These two additional papers, published in two prestigious journals (*American Journal of Botany* and *Conservation Biology*) are absent from Staff's reconsideration of the appeal, and indeed, are not even mentioned. These articles (which were not written by members of The Urban Wildlands Group) did not support Staff's position, and Staff completely ignores their inclusion in the appeal. Science-based natural resource management does not allow one to pick and choose sentences and articles to one's liking. Rather it should consider the state of the science, which in this instance supports conditions to limit propagule sources to local ecotypes. "Local" in this context means from the El Segundo dunes, or as close as feasibly possible from environmentally similar habitats.

This request for a condition on propagule source is consistent with Coastal Commission policy; the Commission recommended local sources as early 1994. In that year, the Commission developed a set of guidelines for restoration that included, among other recommendations, a statement on propagule sources, summarized by Coastal Commission Staff as follows:

> It is generally recommended that materials used to restore a site are of local origin, such as seeds, cuttings, salvaged plants, micro-organisms, and topsoil originating from the subject site.[1]

This article is posted in its entirety on the California Coastal Commission website.

Views to and Along the Ocean and Scenic Coastal Areas
Appellants contend that LAWA's application should be denied under PRC § 30251, which requires that new "development shall be sited and designed to protect views to and along the ocean and scenic coastal areas" and shall "be visually compatible with the character of surrounding areas . . . . " Specifically, Appellants claim that the palm trees degrade the "natural visual quality" of the area (emphasis added). Staff rejects this argument. First, PRC § 30251 does not address only

[1] California Coastal Commission (prepared by Troy Alan Doss and Susan P. Friend). 1995. Restoration of Unpermitted Development within the California Coastal Zone. Presented at the Society for Ecological Restoration Conference.

"natural visual quality." To interpret PRC § 30251 this way would preclude any development that did not restore "natural" conditions. This is clearly not the intent of PRC § 30251 or any other part of the Coastal Act. Second, Appellants' argument ignores the fact that the project site is in an area occupied by extensive remnants of the former residential development, including streets, building slabs and foundations, and landscaping that includes palm trees. Third, Appellants' argument ignores the project's compatibility with the existing adjacent residential development.

Visual compatibility and aesthetic values are some of the most difficult decisions to be made in implementing environmental impact analysis. The Appellants stand behind their contention that palm trees are visually incompatible with southern California coastal dunes.

Appellants also claim that "views to the ocean . . . are blocked" by the palm trees. Staff recognizes that viewers can sometimes see the palm trees when viewing the ocean from the adjacent residential area, but staff finds that the palm trees' slender character and their scattered placement allow "views to and along the ocean and scenic coastal areas." Moreover, staff notes that LAWA promised at the public hearing and in letters to neighbors that it will remove the trees that are reportedly most visible to those neighbors who oppose the trees. Consequently, staff finds that the project complies with PRC § 30251.

Staff is off point on this issue. The Coastal Act and the Commission are concerned with views from public areas, not from private residences. Staff is silent on views from public areas, and does not deny that the view to the ocean is degraded by the presence of the palm trees. Slender or not, 90 palm trees "scattered" in the line of sight further degrades the scenic character of the El Segundo dunes.

Conclusion
In consideration of the foregoing, staff recommends that the Board find that the City Engineer did not err in his decision that the Board deny the appeal.

The Appellants ask that the Board carefully consider information presented in the appeal independent of Staff's recommendation in the Board Report to ensure compliance with the resource protection policies of the California Coastal Act.

Californians For Local Coastal Planning

August 6, 2002 Comments

California Coastal Commission Hearing

Malibu Local Coastal Program
June 2002 Draft Land Use and Land Implementation Plans

Fire Hazards and Fuel Modification

Summary

Coastal Commission staff drafted a Local Coastal Plan (Malibu Plan) that will increase fire hazards in the Santa Monica Mountains and coastal zone.

At the very least, the Malibu Plan must include an unambiguous statement that Los Angeles County Fire Department policies regarding fire prevention, fuel management and fire protection, supercede any CCC policies concerning resource management.

The addition of coastal sage scrub and chaparral as Environmentally Sensitive Habitat Areas (ESHA) creates significant adverse impacts on the entire fire protection system currently used in Malibu and the Coastal Zone.

The Draft Malibu Plan policies exceed the statutory authority granted to the Commission by the Coastal Act and the Legislature.

The Draft Malibu LCP fails to consider many significant existing codes, laws and model ordinances dealing with fire protection and fuel modification, including the California Fire Plan.

A valuable resource for fire protection planning has been published - *I-ZONE DOCUMENTS: URBAN-WILDLAND INTERFACE FIRE: THE I-ZONE SERIES* - A Strategic Resource Planning Guide Project sponsored by the Federal Emergency Management Agency (FEMA), the California Department of Forestry and Fire Protection (CDF), the Governor's Office of Emergency Services (OES), and the University of California Forest Products Laboratory (UCFPL). Commission staff failed to reference this important document.

A committee of experienced fire officers has studied the Coastal Commission draft Malibu Local Coastal Plan (LUP & LIP) and concluded that the addition of coastal sage scrub and chaparral as ESHA creates significant adverse impacts on the entire fire protection system currently used in Malibu and the Coastal Zone. The resource protection policies staff believes are necessary to protect ESHA, including restrictions on brush clearance/fuel modification and requirements for planting native plants closer to homes, will result in increased danger to firefighters, residents, visitors and property. ESHA should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community.

Many of the individual plants staff recommends for planting and prohibits residents from removing, are required to be removed as "target species" by Los Angeles County Fire Department fuel modification policies-

A narrative on each of these points follows this summary. We are available to assist Commissioners and/or staff in any way possible.

Tony Giordano, Deputy Chief
L. A. F. D., 28 years, Retired
(310) 589-2457

Tony Shafer, Captain I
L. A. F. D., 41 years, Active
(310) 456-3184

Don Wallace, Captain II
L.A.F.D., 27 years, Retired
(818) 222-2560

Coastal Commission staff drafted a Local Coastal Plan (Malibu Plan) that will increase fire hazards in the Santa Monica Mountains and coastal zone. There is an absence of proven and reasonable fire protection policies in the draft Malibu Land Use Plan (LUP) and Land Implementation Plan (LIP). We are alarmed that CCC staff findings did not address the fact that fire is the most serious issue facing residents in the City of Malibu and the Santa Monica Mountains Coastal Zone – a jurisdiction with the highest fire hazard rating in the State. Certification of the LCP must not occur until requirements and recommendations from Federal and/or State fire and life safety experts are incorporated. This overview will be followed up with

detailed recommendations. We are submitting this information now so that Commission staff has the opportunity to examine the fire suppression issues mo[redacted]t, the **Malibu LCP must include an unambiguous statement that Los Angeles County Fire Department policies regarding fire prevention, fuel management and fire protection, supercede any CCC policies concerning resource management.**

The addition of coastal sage scrub and chaparral as Environmentally Sensitive Habitat Areas (ESHA) will have significant adverse impacts on the entire fire protection system currently used in Malibu and the Coastal Zone. The resource protection policies proposed to protect ESHA, including restrictions on brush clearance/fuel modification and requirements for planting flammable native plants closer to homes, will result in increased danger to firefighters, residents, visitors and property. ESHA regulations should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community. There is clear evidence that the very existence of these plant communities is the result of human use and management for the past 15,000 years. (See "Native American impacts on fire regimes of the California coastal ranges" Journal of Biogeography, 29, 303 – 320, attached, and, "I-Zone Documents: Urban-Wildlands Interface Fire: The I-Zone Series", available from FEMA)

The Draft Malibu Plan policies exceed the statutory authority granted to the Commission by the Coastal Act or the Legislature. Other statutes and regulations supercede your authority. In the rush to produce a draft, CCC staff's proposed policies fail to meet the mandatory requirements of at least the following:

SRA fire-safe regulations (CCR 1273 et seq.)
California Fire Code (CFC)
Uniform Fire Code (UFC)
International Fire Code Institute (IFCI) Urban-Wildland Interface Code
NFPA Standard 299, and the
Model Ordinance for Defensibility of Space and Structures

developed pursuant to Government Code Section 51189. Each of these codes and regulations are designed to protect the lives and property of citizens. These statutes have been completely ignored in CCC staff's proposals. Conclusions on biological resources ignore the biological value of brush clearance and prescribed burns [redacted] improve the health of the plant communities themselves as well [redacted] food and cover.

Both history and science support the value of maintaining a mosaic of different ages and developmental stages of chaparral to improve biological diversity and its value to plants, wildlife and humans. Staff's presentation of scientific papers that supported the position to create chaparral and coastal sage scrub ESHA did not consider the multiple scientific studies that show the biological value of prescribed burns and other fuel management techniques as a means to improve the biological values of those plant communities and the symbiotic resultant increased protection of life and property. Because the Santa Monica Mountains are an urban wildland interface both issues must be completely evaluated.

Readily available scientific researchers and their documents were not presented at the Commission's June 13, 2002 *"Workshop on the Significance of Native Habitats in the Santa Monica Mountains"* at the Queen Mary. It is unfortunate that Commissioners were denied the opportunity to hear any expert opinion on fire protection requirements in this environmental setting. CCC staff's proposed fuel management policies will result in increased fire loads closer to inhabited structures thereby compromising fire protection and increasing life and property loss. Without amendment, the draft policies will compromise escape routes and

decrease safety zones, defensible space and the ability of residents to shelter in place – all adverse impacts to families, pets, animals and property.

Additionally, CCC staff's proposed fuel management policies will lower biological diversity, increase loss of riparian habitat, increase loss of wetlands and increase the severity of extreme air pollution events thereby endangering the lives of additional millions of Southern California residents. Commissioners should be aware that staff's choice to ignore the positive biological impacts of fuel management and the failure to analyze the increased harm to life and property could be negligent. The deficiencies must be fully investigated and remedied before certification of the LUP or LIP.

Resources Available for Fire Planning

The following quotes and references are the result of an invaluable multi-agency project to address fire safety in a comprehensive manner: ***I-ZONE DOCUMENTS: URBAN-WILDLAND INTERFACE FIRE: THE I-ZONE SERIES*** - A Strategic Resource Planning Guide Project sponsored by the Federal Emergency Management Agency (FEMA), the California Department of Forestry and Fire Protection (CDF), the Governor's Office of Emergency Services (OES), and the University of California Forest Products Laboratory (UCFPL).

Planning Documents

The *California Fire Plan* was never referenced by CCC staff in their findings; however, it does provide critical information.

"Pre-fire Management Program to Reduce Wildfire Costs and Losses - (a) Findings:

1. Suppression of fire in California's Mediterranean climate has significantly altered the ecosystem and increased losses from major fires and fire protection costs. Historical fire suppression has increased:
   - periods between fires
   - volumes of fuel per acre
   - fire intensities
   - fire damage and losses
   - fire suppression difficulties, and
   - total taxpayer costs and losses.
2. With continued fire suppression in wildland areas, fuel volumes per acre will continue to increase, unless a substantial long-term program of fuel reduction is implemented.
3. Fuel loading problems are occurring on federal and state responsibility areas, as well as in wildlands within city limits, which are local responsibility areas.
4. Similarly, California's eight straight years of drought increased the dead and dying vegetation, the volumes of drier fuel per acre, and the acres with vegetation fuel ladders, all of which contribute to increased size and severity of fires resulting in greater costs and losses."

Since the Commission staff is developing a planning document generally reserved for creation by a local agency, it may not know it **must follow the rules and regulations of the State. The Governor provides a useful reference document: *Office of Planning and Research (OPR) Guidelines* that require "attention be devoted to issues of concern to the community,"** and that "cities and counties need to address each issue to the extent it applies to the community." Here again, there is wide discretion allowed in the ways this can be done, but the intent is clear: if wildland fire is a concern, then it must be covered in the Plan."

From: "Introduction to the I-Zone

Chapter IV. The California Fire Plan – The State Board of Forestry and the California Department of Forestry and Fire Protection (CDF) have drafted a comprehensive update of the fire plan for wildland fire protection in California which is reproduced, in part, below.

"C. PURPOSE AND NEED FOR THE VEGETATION MANAGEMENT PROGRAM

In 1980 the State of California recognized the unacceptable loss of resources from wildfire, the high costs to control fires, and the need for alternative means of preventing wildfires. In response, Senate Bill (SB) 1704 was enacted to allow [California Division of Forestry] CDF greater flexibility to decrease fuel hazards on private lands by assuming up to 90% of the costs of a project, providing liability insurance, and suppressing escaped fires. In 1981, CDF developed the Chaparral Management Program (CMP) to implement SB 1704 to reduce fire hazards on non-federal rangelands throughout the state. The CMP provides for fuel treatments in north and central coast grasslands and montane hardwood-conifer forests, south central coastal scrub, and chaparral and oak woodlands throughout their ranges (emphasis added). Although implementation of the CMP has reduced fire hazards, suppression costs, and property losses in CMP areas, the California State Board of Forestry (BOF) has determined that additional vegetation types and acreages must be treated because the loss of private property and high-value resources remains unacceptable (*California State Board of Forestry 1996*). In some areas of the state, wildfires are becoming more intense and severe, and, as more people are moving to rural areas, the potential for loss of life and property increases.

Also, suppressing wildfires is expensive- state, federal, and local agencies spent approximately $920 million in 1993 to suppress wildfires in California. Although the need to suppress wildfires has increased, budget reductions have reduced the capability of agencies to suppress them. A working group comprising representatives of BOF, CDF, and the California Department of Fish and Game (DFG) reviewed the CMP and developed recommendations to improve vegetation management by providing additional fire protection while meeting the concerns and needs of other agencies and the general public. These recommendations include expanding vegetation management to include additional vegetation types and fuel management techniques, and expanding fuel treatments into additional jurisdictions with high fire hazards."

A Brief History of Fire in Southern California

From: "Introduction to the I-Zone

Chapter XVI. Environmental Impact and Fuel Modification

"The problem of wildland fire affecting populated areas in California is also a long-standing dilemma, dating back to the earliest settlements of Native Americans, explorers, missionaries, and miners. The unlimited burning of forested areas, both accidental and deliberate, abounded in 19th Century California. The first attempts to mandate fire suppression tactics were made by the state legislature in 1849, to little avail."

A brief review of the historical literature shows evidence that Native American fuel management practices created a symbiosis between ideal biological conditions and ideal fire suppression conditions. Fire professionals have rediscovered this relationship and we should strive to replicate it through planning policies.

Chapter III. The History of Wildfires

"Fire was an important part of the daily life of native Californians, and they used it for many specific purposes. It is difficult to say how extensive native burning was in California wildlands, but we do know the Spanish tried to prohibit native burning in1793."

Chapter II. I-Zone Ethnohistory

These groups [California's Native Americans] "...burned grasslands annually after August to improve seed-bearing crops and increase forage for deer, elk, and antelope. Many

grasses would resprout with the first rains, and the young shoots or "little hairs" would also be collected and eaten. Annual fires in the grass and other flashy fuels occurred in late fall and early winter, usually after the seed harvest. Prescribed fires around oak trees insured a productive crop of acorns. The fires would kill insect larvae that would infest the acorns.

The use of prescribed fires also reduced plants that competed with plants with more value. This is especially true for promoting plant material suited to basket making and other manufactured materials. Baskets were used to collect, store, process, and cook the acorns- an early Californian staple.

Prescribed fires also increased the number of game animals. Partridge and quail, for example, once ran in coveys of 300 to 400 birds! The burned-over grasslands quickly resprouted and increased forage for deer, elk, and antelope. Father Serra reported in June of 1796 "entering a valley more than a league in width and parts of which so green that, if I did not know in what country I was, I would have taken it, without hesitation, for land under cultivation" (Balckbourn and Anderson: 1993). Insects provided variety in many diets. Grasshoppers were collected by burning the grass in a circular pattern, and the roasted hoppers were collected and eaten. Another technique was to place hot coals in the center of a circle, while the people beat the brush and drove the grasshoppers into the hot coals.

The California Indians also used prescribed fires in the chaparral. The Coastanoan and Chumash, of California's coast, used controlled burns on the chaparral to retard growth, reduce dead plant material, increase grazing, and increase seed bearing crops. Chaparral burning of five to ten acres provided evenly scattered patterns of growth. The chaparral was burned every two to three years. A mosaic pattern of new and old chaparral growth developed from this practice, breaking-up the fuel load and allowing the Indians to hunt deer attracted to the open grassy areas. An experiment by foresters found that prior to prescribed fires, in dense unburned chaparral, the deer count was 30 per square mile. After the first prescribed burn, deer count rose to 98 deer per square mile and up to 131 deer by the second year. The deer count dropped to 84 the fifth and sixth years after the prescribed fire." "...Settlement patterns and archival photography suggests that wildland vegetation was kept at a respectable distance from their combustible buildings."

Conclusions

A committee of experienced fire officers has studied the Coastal Commission draft Malibu Local Coastal Plan (LUP & LIP) and concluded that **the addition of coastal sage scrub and chaparral as ESHA creates significant adverse impacts on the entire fire protection system currently used in Malibu and the Coastal Zone. The resource protection policies necessary to protect ESHA, including restrictions on brush clearance/fuel modification and requirements for planting native plants closer to homes, will result in increased danger to firefighters, residents, visitors and property.** The authors of this document are gravely concerned about our friends and relatives who are still active firefighters.

A complete review of available data and expertise regarding fire and environmental management of natural areas must occur. There is ample historical and scientific evidence that these biotic communities are the result of 15,000 years of human management and 200 years of misguided fire suppression policies. A tremendous amount of research and fire science has occurred in the past decade. This research accelerated after the devastating losses in the Oakland, Malibu and Laguna fires in the early 90s. There is scientific evidence that both coastal sage scrub and chaparral benefit from and are more productive for humans and wildlife when actively managed through fuel modification techniques banned by CCC staff's proposed policies.

The Draft Malibu LCP fails to consider many significant existing codes, laws and model ordinances dealing with fire protection and fuel modification, including the California Fire Plan. It ignores the State's definition of "weed" in § 14875 of the California

Health and Safety Code as follows: "(b) Sagebrush, chaparral, and any other brush (emphasis added) or weeds which attain such large growth as to become, when dry, a fire menace to adjacent improved property." Demanding protection of and additional planting of these "weeds" places Malibu/Coastal Zone residents in danger of unprecedented loss of life and property.

Many of the individual plants staff recommends for planting and prohibits residents from removing are required to be removed as "target species" by Los Angeles County Fire Department fuel modification policies; putting residents in an untenable conflict between enforcement bureaucracies. The Draft Malibu LCP places ESHA protection policies over fire and life safety policies. The Commission must make a clear statement in the Local Coastal Plan that reverses these dangerous priorities.

There has been no direct discussion in the CCC staff findings or in public hearings about the conflicts between staff proposals and the fire insurance requirements under the California Fair Plan. We respectfully ask the Commission to instruct their staff to become fully informed about these conflicts and to recognize any adverse impacts created. Additionally, the findings must include any related adverse impacts concerning the affordability of residential and commercial fire insurance as well as a complete review of any policies that may not allow a homeowner to build or rebuild with materials that are more non-combustible. The findings must include staff's rationale for policy choices that increase fire hazards over dangerous biologic considerations that are demonstrably more dangerous to residents.

The proposed policies concerning the untouchable setback from ESHA of 100-foot for buffers would prevent meeting minimum clearance requirements on many properties. **You cannot apply brush clearance regulations with ESHA standards in existing residential neighborhoods because it is contrary to public health and safety and prudent planning principles.** Attached: Assemblymember Fran Pavley's fire prevention mailer; California Fire Timeline & Statistics; Oakland-Berkeley Hills Firestorm Statistics; Fire Hazard Zoning & Mitigation Legislation since 1885; and Native American impacts on fire regimes.

B. California Fire Timeline and Statistics

Berkeley Hills, Alameda County	584 structures		1923
Mill Valley, Marin County	125 structures		1929
Mt. Tamalpais, Marin County	117 structures		1929
Griffith Park, Los Angeles County		28 died	1933
Southern California	200 structures		1943
Glenn County		15 died	1953
Humboldt & Siskiyou Counties	13 structures		1955
Refugio, Santa Barbara County	20 structures		1955
San Diego, San Diego County		1 died	1956
Malibu, Los Angeles County	50 structures		1956
Harlow, Mariposa County	106 structures	2 died	1961
Bel Air, Los Angeles County	484 structures		1961
Santa Rosa, Sonoma County	224 structures		1964
Coyote, Santa Barbara County	94 structures	1 died	1964
Hanly, Napa County	102 structures		1964
PG&E, Glenn County		7 died	1964
Angeles Nat'l Forest, Los Angeles County		12 died	1966
Paseo Grande, Santa Barbara County	61 structures		1967
Clampitt, Los Angeles County	86 structures		1970
Wright, Los Angeles County	103 structures		1970
Laguna, San Diego	382 structures	5 died	1970
San Bernardino County	54 structures		1970
Oakland Hills, Alameda County	36 structures		1970
Sycamore, Santa Barbara County	234 structures		1977
Los Angeles County	30 structures		1978
Kannan, Los Angeles County	224 structures	1 died	1978
Sonoma County	63 structures		1978
Malibu, Los Angeles County	230 structures		1978
Panorama, San Bernardino County	325 structures	4 died	1980
San Bernardino County	65 structures		1980
Napa County	69 structures		1981
Los Angeles County	65 structures		1982
Las Pilitas, San Luis Obispo County	41 structures		1985
San Diego County	64 structures		1985
Baldwin Hills, Los Angeles County	53 structures	3 died	1985

Wheeler, Los Angeles County	26 structures		1987
Alpine County	26 structures		1987
Pebble Beach, Monterey County	31 structures		1987
Stanislaus Complex, Tuolumne Co.	28 structures	1 died	1987
Forty-Niner Fire, Nevada County	312 structures		1988
Shasta County	58 structures		1988
Los Angeles County	15 structures		1988
Paint, Santa Barbara County	641 structures	1 died	1990
Campbell Complex, Tehama County	641 structures	2 died	1990
Los Angeles County	50 structures		1990
Mariposa County	66 structures		1990
Tunnel, Alameda County	3,229 structures	25 died	1991
Fountain, Shasta County	636 structures		1992
Old Gulch, Calaveras County	170 structures		1992
Altadena, Los Angeles	118 structures		1993
Laguna, Orange County	441 structures		1993
Malibu, Los Angeles County	350 structures	3 died	1993
California, Riverside County	107 structures		1993
Topanga, Los Angeles County	323 structures	3 died	1993
San Luis Obispo County	80 structures		1994
Vision, Marin County	45 structures		1995
Fork, Lake County	40 structures		1996
Harmony, San Diego County	110 structures	1 died	1996
Highway 58, San Luis Obispo Co.	13 structures		1996
Williams, Yuba County	85 structures		1997
Juniper, Riverside County	89 structures		1998
Lowden, Trinity County	23 structures		1999
Willow, San Bernardino County	50 structures		1999
Canyan, Shasta County	176 structures		1999
Jones, Shasta County	428 structures	1 died	1999

C. Oakland-Berkeley Hills Firestorm Statistical Detail

Where: Oakland, California

When: October 20, 1991

Primary Causes: High Winds
Steep Slopes
Heavy Fuels

Result: 25 Fatalities
150 Injuries
1,600 Acres Burned
Over Two Billion Dollars in Damage
790 Homes Consumed in One Hour

	TOTAL LOSS	PARTIAL LOSS	TOTAL	DOLLAR DAMAGE
Homeowners	1941	2069	4010	$1,679,267,880
Renters	214	172	386	25,149,960
Condominiums	54	63	117	11,403,012
Dwellings	227	101	328	103,960,254
Apartment Buildings	2	17	19	29,489,208
Condo Buildings	3	0	3	19,046,427
Other	789	500	1288	23,183,097
TOTAL	3230	2922	6152	$1,891,499,838

F. Fire Hazard Zoning and Mitigation Legislation List

Legislation	Date	Reason	Effect	Code Sections Affected
	1885	Uncontrolled fire damage	Board of Forestry formation	PRC 4120
Organic Act	1897		Set aside national forest reserves	
Subdivision Map Act	1907		Rules for subdividing parcels	
Zoning Law	1917		First zoning law in state	
Clarke-McNary Act	1924	Severe fire seasons	Cooperation of state and feds in protection of Nat. Forests	PRC 4185-4187 (Acceptance of fed provisions)
	1927	Severe aggregate wildfire decade	California Division of Forestry formed	
	1927		Enables county general plans	
	1961	Bel Air Fire	Natural resource protection	PRC 4291
California Land Conservation Act	1965		AKA Williams Act, to set aside lands for preservation	
Housing Act	1968		Fire hazard severity classification system	
	1971		Requires consistency with zoning, subdivisions and general plan	
Z'berg-Nejedly Forest Practice Act	1973		Exemption of forest management activities for vegetation management and fuelbreaks	PRC 4584
Forest Improvement Act	1978		Provides for cost share for reforestation, urban forestry, and wood energy programs	PRC 4790-4790.16
SB 1972 - Campbell	1979		Fire prevention hazard reduction standards on railroad right-of-way	PRC 4254, 4255, 4258, 4259, 4260, 4296.5
SB 78 - Ayala	1981		SRA fire hazard classification and zoning, roof and attic openings, and C.H.C.D. roofing regulations	PRC 4291.5, H&SC 13108.5
SB 81				
SB 799 - Mello	1981		Firework regulations in SRA fire hazard zones	PRC 4254-5, 4258-60

Legislation	Date	Reason	Effect	Code Sections Affected
SB 1916				
	1985	1985 Firestorm	Defensible space around structures	PRC 4291
AB 1812 - Cortese	1989	873 structures destroyed this year	Natural Hazard Disclosure for wildfire in SRA	PRC 4291
SB 1075 - Rogers	1991	Extensive rural and wildland development	Minimum fire safety regulations in SRA	PRC 4290
AB 337 - Bates	1992	Oakland-Berkeley Hills Fire, 1991	Fire Hazard Zoning in LRA and Class B Roof	GC 51178-51188, H&SC 13108.5
AB 3819 - Brown	1995	Southern Calif. Firestorm, 1993	Class A roof and Model Ordinance for Defensibility of Space and Structures	GC 51178.5, 51189, H&SC 13108.5, 13132.7, PRC 4205
AB 747 - Brown	1995		Class A, B, C Roof and wood shingle testing timeline	H &SC 13132.7
AB 1195 - Torlakson	1997		Natural Hazard Disclosure for wildfire in LRA VHFHSZ's	CC 2079.11, 1102.6c, GC 8589.3-5, 51179, 51183.5, PRC 2621.9, 2694, 2696, 4125, 4136

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Native American impacts on fire regimes of the California coastal ranges

Jon E. Keeley* *US Geological Survey, Western Ecological Research Center, Sequoia-Kings Canyon National Parks, Three Rivers, CA, USA and Department of Organismic Biology, Ecology and Evolution, University of California, Los Angeles, CA, USA*

Abstract

Aim Native American burning impacts on California shrubland dominated landscapes are evaluated relative to the natural lightning fire potential for affecting landscape patterns.

Location Focus was on the coastal ranges of central and southern California.

Methods Potential patterns of Indian burning were evaluated based upon historical documents, ethnographic accounts, archaeological records and consideration of contemporary land management tactics. Patterns of vegetation distribution in this region were evaluated relative to environmental factors and the resilience of the dominant shrub vegetation to different fire frequencies.

Results Lightning fire frequency in this region is one of the lowest in North America and the density of pre-Columbian populations was one of the highest. Shrublands dominate the landscape throughout most of the region. These woody communities have weak resilience to high fire frequency and are readily displaced by annual grasses and forbs under high fire frequency. Intact shrublands provided limited resources for native Americans and thus there was ample motivation for using fire to degrade this vegetation to an open mosaic of shrubland/grassland, not unlike the agropastoral modification of ecologically related shrublands by Holocene peoples in the Mediterranean Basin. Alien-dominated grasslands currently cover approximately one-quarter of the landscape and less than 1% of these grasslands have a significant native grass presence. Ecological studies in the Californian coastal ranges have failed to uncover any clear soil or climate factors explaining grassland and shrubland distribution patterns.

Main conclusions Coastal ranges of California were regions of high Indian density and low frequency of lightning fires. The natural vegetation dominants on this landscape are shrubland vegetation that often form dense impenetrable stands with limited resources for Native Americans. Natural fire frequencies [redacted] these landscapes in habitable mixtures of shrublands [redacted] landscape mosaics are readily produced with additional human subsidy of ignitions. It is hypothesized that a substantial fraction of the landscape was type converted from shrubland to grassland and much of the landscape that underwent such type conversion has either been maintained by Euro-American land management practices or resisted recolonization of native shrublands. It appears that these patterns are disturbance dependent and result from anthropogenic alteration of landscapes initiated by Native Americans and sustained and expanded upon by Euro-American settlers.

Keywords
Burning, fire, Indians, chaparral, coastal sage scrub, lightning, landscape history, Native Americans, type conversion.

*Correspondence: US Geological Survey, Western Ecological Research Center, Sequoia-Kings Canyon National Parks, Three Rivers, CA 93271, USA.
E-mail: jon_keeley@usgs.gov

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INTRODUCTION

Understanding the historical pattern of human impacts on landscapes is critical to correctly interpreting the ecological basis for vegetation distribution (Christensen, 1989). In some cases such as the Mediterranean Basin there has been a long intense utilization of resources that has greatly altered the distribution of forests and woodlands (Bottema *et al.*, 1990; Redman, 1999; Grove & Rackham, 2001). Throughout that region reliance upon an agropastoral existence since at least mid-Holocene has intensified the use of fire for the opening of closed canopy woodlands and increasing herbaceous associations (Pignatti, 1983; Naveh & Kutiel, 1986; Vernet, 1990; Lepart & Debussche, 1992). In North America, the history of such landscape impacts has been briefer, and there is considerable debate on the degree to which Native Americans altered vegetation distribution.

Prior to European colonization, North American Indians were heavily dependent upon a hunter-gather subsistence and one of the few tools for managing resources was fire. While there is some agreement on the use of fire, there has been a long debate on what impact Indian use of fire has had on the landscapes encountered by the first European settlers. Some contend that Indian use of fire had dramatic and widespread impacts on our landscape, and many of these anthropogenic patterns are still evident in the distribution of vegetation types (Denevan, 1992; McCann, 1999; Bonnicksen, 2000). In contrast, Vale (1998, 2000) has argued that the much of North America was little affected by indigenous populations prior to Euro-American colonization. He accepts a role for Native American burning in shaping eastern US landscapes, but has stated (Vale, 2000) that 'in the dry American West, the frequency of lightning ignitions is so high – an annual average of 5125 lightning fires in the national forests of the eleven western states alone in recent decades – that whatever additional burning was done by Native Peoples may have altered vegetation in only limited areas'. In his view (Vale, 1998), Indians might have altered landscapes in the immediate vicinity of villages (e.g. Yosemite Valley) but did not affect larger regions (e.g. the Sierra Nevada mountain range).

NATIVE AMERICAN BURNING AND BACKGROUND LIGHTNING-IGNITED FIRES

The suggestion that Native Americans have not markedly changed western US landscapes is based on two considerations dealing with the density of both lightning fires and pre-Columbian populations.

The number of lightning-ignited wildfires cited by Vale (2000) is a seemingly large quantity, although less impressive when expressed as a density of roughly 1 fire per 12,000 ha per year. It is debatable whether or not this density is sufficient to burn all available fuels at a frequency that saturates the environment to the extent that human ignitions were insignificant. More importantly, lightning-ignited fires are clumped in both time and space (Komarek, 1967; Main & Haines, 1976). On a regional scale they are very high in large parts of the southwest and very low in the coastal ranges of the Pacific slope (Fig. 1), opposite the regional pattern for native peoples prior to Euro-American contact (Krech, 1999). On a local scale lightning-ignited fires increase with elevation (Komarek, 1967; Vankat, 1985; van Wagtendonk, 1994), typically opposite the distribution of native peoples. The potential for Indian burning impacts being overshadowed by background lightning-ignited fires is seemingly greatest in the mountains of the southwest, and far less in the coastal ranges of central and southern California.

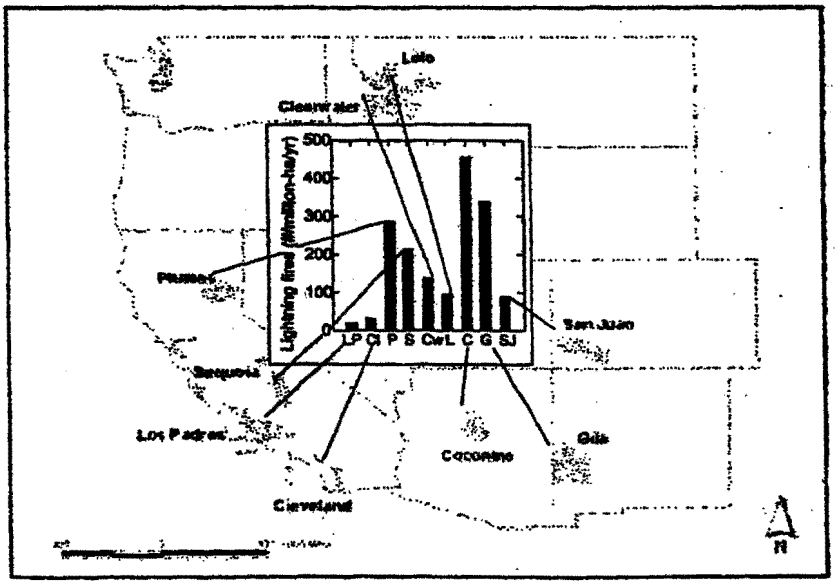

Figure 1 Lightning fire incidence on selected national forests in the western US national forests; abbreviated as follows: SJ = San Juan in Colorado, G = Gila in New Mexico, C = Coconino in Arizona, Cw = Clearwater in Idaho, L = Lolo in Montana, P = Plumas in California, S = Sequoia in California, LP = Los Padres in California and Cl = Cleveland in California. Data on lightning fire incidence are from the National Forest Fire Reports, 1970–79, USDA Forest Service, Washington, DC. Data on forest area from http://www.fs.fed.us/research/.

The second part of Vale's (2000) argument concerns the pre-Columbian 'North American population of 3.8 million', which he contends could not have occupied much living space and, because of their highly clumped distribution, were absent from the bulk of the landscape. He calculates that 'only about 0.02% of the combined areas of the United States and Canada' were directly exploited, e.g. for agriculture. However, the land area affected by burning was potentially orders of magnitude greater as a single human ignition is capable of spreading fire far beyond the point of origin. This is particularly true in the coastal ranges of central and southern California, where the worst synoptic fire weather conditions in the country occur annually (Schroeder *et al.*, 1964).

IMPACT OF NATIVE AMERICAN BURNING ON SHRUBLAND VEGETATION OF THE CALIFORNIA COASTAL RANGES

I hypothesize that Native American burning in the coastal ranges of central and southern California subsidized natural lightning ignitions to the extent that landscape patterns of grassland and open shrubland were significantly increased. Bendix (2002) has recently addressed a related but different question; whether fire prone chaparral is a 'human artefact' best explained by Indian burning. I concur with his conclusion that one need not invoke Native American burning to explain the existence of this vegetation type and that in the absence of humans 'fire would burn a given stand on time scales of decades to centuries'. However, I will argue that Native Americans greatly accelerated this natural fire frequency on shrubland dominated landscapes. As a consequence, shrublands were thinned-out or displaced and over a sizeable portion of the landscape, the physiognomy changed from shrubland to grassland. My arguments are based upon the following considerations: (1) natural lightning-ignited fire density is low relative to much of the western US. (2) Native American populations were large and widely dispersed. (3) Shrublands dominate the landscape throughout most of the region and have weak resilience to high fire frequency, and are often displaced when fires occur more than once or twice a decade. (4) Relative to herbaceous communities that establish under higher fire frequencies, undisturbed shrublands provided fewer resources and greatly limited access to those resources that were utilized by Native Americans. (5) In the absence of agriculture, fire was the only significant land management tool available to the pre-Columbian Californians. (6) Ecological studies during the last century have provided evidence of anthropogenic alteration of landscape patterns, in particular replacement of shrublands with herbaceous associations.

Natural lightning-ignited fire density

The distribution of lightning-ignited fires (Fig. 1) illustrates that the coastal ranges of California have at least an order of magnitude fewer such fires than interior ranges of California and much of the western US. This pattern derives from the

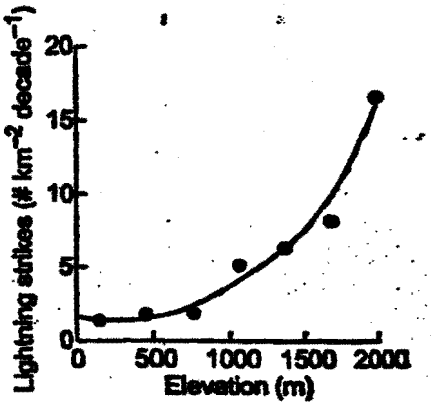

Figure 2 Elevational distribution of lightning strikes in San Diego County, California, based on the Automated Lightning Detection System of the Bureau of Land Management (corrected data from Wells & McKinney, 1995; according to M. Wells, personal communication, 1999, the values in the original paper are one order of magnitude too high). In this region only about 2–6% of lightning strikes result in fire (Minnich *et al.*, 1993).

fact that coastal foothills are cooled sufficiently in the summer to inhibit convective lightning storms and those resulting from winter frontal systems fail to ignite fires because of high fuel moisture (Conroy, 1928; Greenlee, 1983). Within the coastal ranges, summer lightning-ignited fires tend to clump in the higher mountains and decrease with elevation (Keeley, 1982; Greenlee, 1983), as does the elevational distribution of lightning strikes (Fig. 2). Lightning fires largely ignite fuels in forests and fewer than 20% ignite in shrublands (Keeley, 1982; Bendix 2002). In the coastal Santa Monica mountains of southern California no lightning-ignited fires are recorded in a 60-year fire record and similar patterns of few or no lightning fires are seen in other fire records from the coastal ranges (Keeley & Fotheringham, 2001a).

The natural fire regime in the absence of contemporary human subsidy is thought to have varied both spatially and temporally, with some parts of the coastal ranges perhaps experiencing century-long fire-free periods, in contrast to interior montane landscapes where fire return intervals were shorter and more predictable. Modelling studies conclude that in the central coastal region fire return intervals from just natural lightning ignitions were substantially longer than when Native Americans were present on the landscape (Greenlee & Langenheim, 1990). Fossil pollen from the central coastal ranges has also been interpreted as providing evidence for burning by Indians (Byrne *et al.*, 1991; Mensing, 1998). Other circumstantial evidence of Native American influence is from charcoal deposition studies that show, prior to European colonization, the frequency of large fires in the front range of the Santa Ynez Mountains of Santa Barbara County was similar to the contemporary period (Mensing *et al.*, 1999). Today humans are responsible for the vast majority of ignitions in this region (Keeley, 1982),

suggesting that Native Americans likewise were a dominant source of ignition.

Native populations in California

Since the early Holocene, native peoples were distributed throughout the southern and central coastal ranges of California (Erlandson, 1994). By the time of contact with Europeans, they had expanded to occupy most readily inhabitable sites (e.g. Beals & Hester, 1974a; Jones, 1992) and produced population densities among the highest in North America. The density of pre-Columbian people in California was, as is the case with contemporary populations, many times greater than most other parts of the West (Krech, 1999), e.g. the estimated peaks between 310,000 and 350,000 in California (Baumhoff, 1963; Cook, 1978) vs. 25,000 in Montana (Baker, 2002). Unlike the sparse clumped pattern described for the Sierra Nevada (Vale, 1998), Indians had substantially higher population densities and were more widely dispersed along the coast (Fig. 3) and throughout the coastal foothills and valleys (Fig. 4), averaging one to three (sometimes eight) persons per km^2 (Cook, 1951, 1978; Beals & Hester, 1974b).

California was noted for its extraordinary diversity of tribes, with sixty to eighty mutually unintelligible languages spoken in the state (Shipley, 1978), and each tribe maintaining strict boundaries separating their resources from other tribes. Kroeber (1925; p. 601 and 636) described it this way for two tribes in southern California, 'the Kawaiisu were pressed close against a variety of neighbours [Yanelmani, Yokuts, Tübatulabal, Serrano, Chumash].... The Juaneño Indians ... were wedged in between the Gabrielino and the Luiseño'. In fact, some have argued that the sedentary lifestyle of these hunter-gatherers was forced upon these peoples because of overcrowding (Cohen, 1981). It appears that most-all valleys and adjacent drainages with at least seasonal water flow were inhabited partly or all the year round. Settlements of 10–250 individuals comprised politically autonomous lineages with families in widely scattered houses on cleared sites. Each family had fields in its home valley, usually in the form of wedges extending from the valley bottom up to the crest on each side of the drainage (Bean & Shipek, 1978; Shipek, 1993). Because of vagaries in the weather, food resources varied from year to year and the zone of exploitation needed to be large enough to accommodate poor resource years; thus families also maintained fields at scattered locations within a half-day walk. Within this 'home range' individuals claimed exclusive exploitation privileges that were jealously guarded (Beals & Hester,

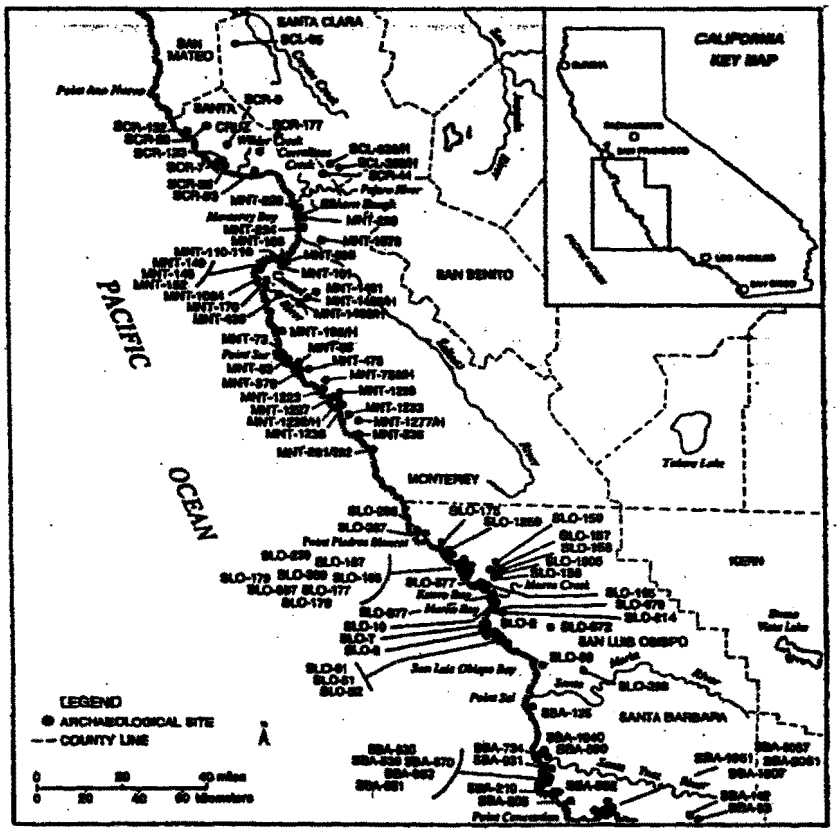

Figure 3 Central California coast archaeological sites (from Erlandson & Glassow, 1997). While the archaeological sites illustrated here may not all have been occupied at the same time, they do illustrate the potential for widespread Indian influence (reproduced with permission of the Institute of Archaeology, University of California, Los Angeles, CA).

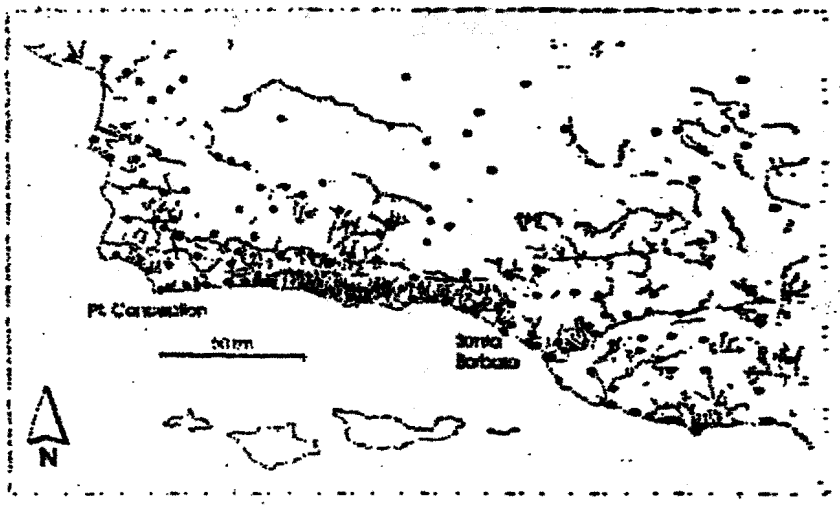

Figure 4 Approximate distribution of mainland Chumash villages (closed circles) in central coastal California at the time of European colonization in 1769 (redrawn from King, 1975; Gamble, 1991). Coastline, streams and contemporary place names also indicated.

1974a). Resource limitations occurred often enough to induce intertribal conflicts on a frequent basis (Sparkman, 1908; White, 1963; Levy, 1978; McCorkle, 1978). Many violent deaths during the late Holocene have been interpreted as resulting from population pressures (Fiedel, 1992; L. Keeley, 1996) and most accounts of warfare list resources as one or the only reason for conflict (James & Graziani, 1991). This and other patterns suggest people were 'living at or near the carrying-capacity of their local environments' (Baumhoff, 1981; Erlandson, 1997).

How much land area was directly exploited by Native Americans? Kroeber (1962) considered no land was truly 'uninhabited', rather lands only varied in the intensity of their utilization, either for subsistence or other 'customary purpose.' For inland southern California Luiseño it was suggested that only about 5% of the total territory area was unused (Beals & Hester, 1974c). Intensively utilized portions of the permanent geographical territories averaged approximately 85 km^2 (White, 1963). Considering a typical settlement pattern (e.g. Fig. 5), it is apparent that a significant portion of the landscape was potentially influenced by the indigenous populations. This zone of impact would have likely varied dependent upon annual resource availability, expanding greatly during periods of drought (Shipek, 1981).

This zone of impact has been described by Anderson *et al.* (1998) as follows: 'Every part of the region had long been discovered, walked, or settled by native people by the time Spaniards first landed on the shores of San Diego Bay'. On the surface this may seem to be a bit over-stated, but perhaps not. For example the archaeological record in San Diego County has over 11,000 Indian sites documented, and the widespread dispersion of human activity is illustrated by the fact that these sites occurred within all thirty-two US Geological Survey (USGS) 7.5 min quadrangles studied by Christenson (1990) and on all fifty-nine soil types present within the Kumeyaay (Diegueño) territory. Christenson's studies of settlement patterns showed that two-thirds were distributed in the coastal valleys and foothills and the remainder in the mountains. Average elevation was 750 m and 64% of the sites were located in what currently is chaparral or coastal sage scrub vegetation. On average, sites were within 135 m of a water source, although 74% of these are currently seasonal streams.

Despite the evidence of a dominant presence on the landscape, the rugged terrain throughout the coastal ranges makes it seem likely that there were remote areas left untouched by Native Americans.

Coastal range landscapes

Evergreen chaparral and the smaller stature coastal sage scrub are the natural dominants on upland sites over much of central and southern California (Cooper, 1922; Wells, 1962; Kuchler, 1977; Holland & Keil, 1989). Coastal sage scrub typically dominates near the coast but is replaced by chaparral further inland and at higher elevations. Oak woodlands occupy more mesic slopes and valleys, often forming a mosaic with grasslands and shrublands, and decrease in extent from south to north. Mixed coniferous forests only occur at the highest elevations.

The original extent of native grasslands dominated by bunchgrasses such as *Nassella pulchra* and *Poa scabrella* (plant nomenclature according to Hickman, 1993) is a matter of debate (Hamilton, 1997). Today remnants persist on deep fine textured soils and there is little doubt that their former distribution was greater, although apparently of limited extent in southern California (Kuchler, 1977), possibly restricted to isolated patches, not unlike its present distribution (Huenneke, 1989; Keeley, 1990, 1993). Natural herbaceous associations dominated by annual forbs and grasses are widespread on the very arid interior margins of the central and southern coast ranges (Hoover, 1970; Wester, 1981; Schiffman, 2000). On less arid sites on coastal slopes, such annual associations are disturbance-dependent and derive from either over-grazed native grasslands or fire-induced type conversion of shrublands and

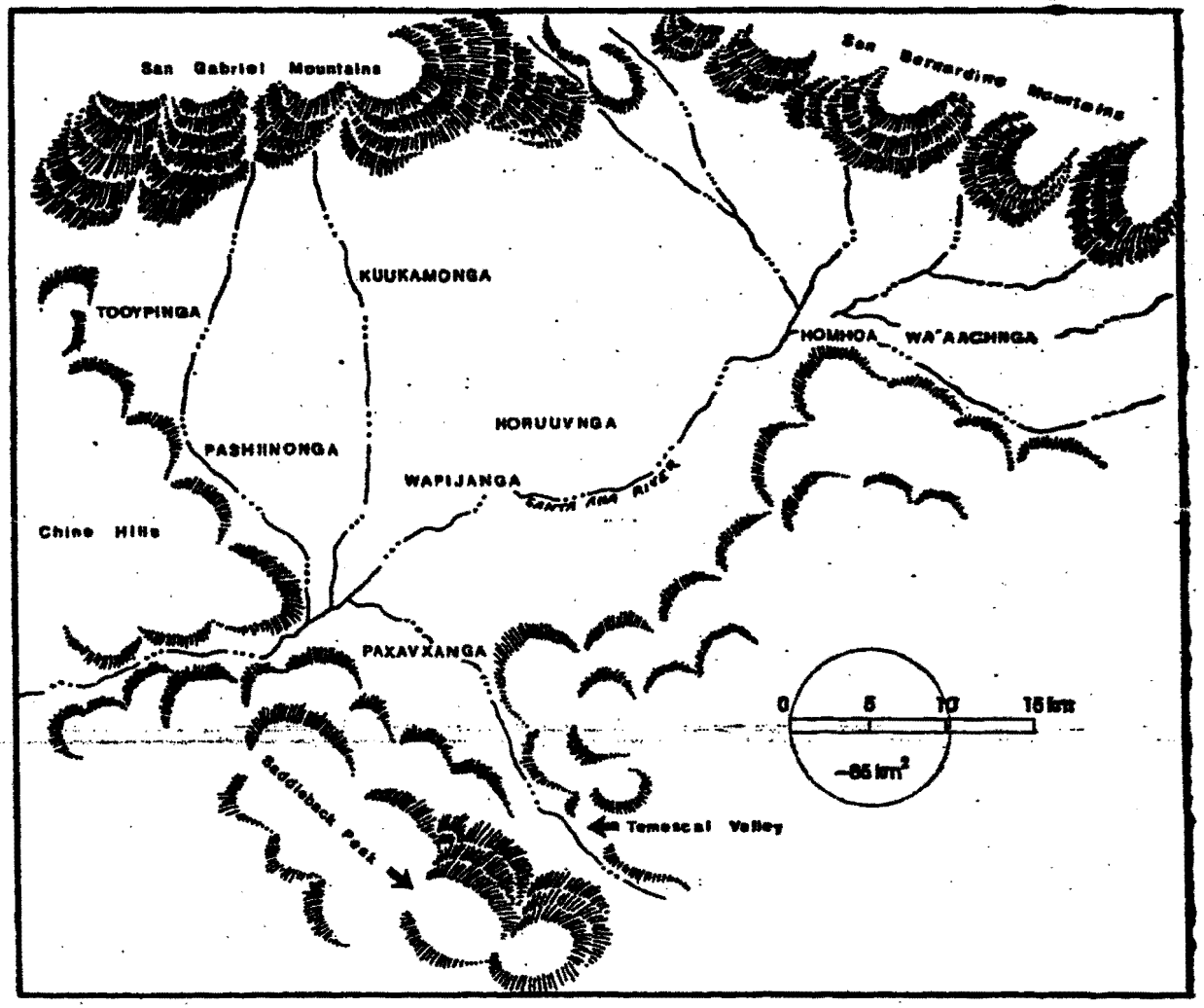

Figure 5 Gabrielino communities in the eastern end of the Los Angeles Basin in southern California (from McCawley, 1996). Included with the scale is the estimated direct impact area of 85 km² per settlement estimated by White (1963) for another southern California tribe. Considering the total Gabrielino territory of approximately 4200 km² and roughly fifty settlements it appears much of the territory was exploited. Today the portion of this landscape not developed is covered with exotic annual grassland but the natural vegetation of these plains would have been chaparral and coastal sage scrub (Leiberg, 1900; Cooper, 1922), fragments of which still persist in protected areas (J. Keeley, personal observation).

woodlands (Wells, 1962; Heady, 1977; Huenneke, 1989; Hamilton, 1997).

Chaparral is resilient to fires at intervals of two or more decades and is noted for its abundant and diverse post-fire herbaceous flora (Keeley, 2000). Shorter fire return intervals thin the vegetation by eliminating non-sprouting shrubs (e.g. the majority of *Ceanothus* and *Arctostaphylos* spp.) and promote the persistence of herbs, particularly annuals (Zedler *et al.*, 1983; Haidinger & Keeley, 1993; Stohlgren, 1993; Keeley, 2000). Continued high fire frequency can convert this herb/shrub mixture entirely to 'annual grasslands', dominated by native and non-native grass/forb associations (Sampson, 1944; Hedrick, 1951; Biswell, 1957; Bentley, 1967; Malanson & O'Leary, 1995; Fabritius & Davis, 2000). Such type-conversions are unlikely without human subsidy because lightning-ignited fires are not usually associated with weather conditions capable of spreading fire in young stands of chaparral (Minnich, 1987; Keeley *et al.*, 1999; Keeley & Fotheringham, 2001b).

Coastal sage scrub also has an abundant ephemeral post-fire herbaceous sere dominated by annuals, but often with a greater representation of perennial grasses, including the bunchgrass *N. lepida* and rhizomatous *Leymus condensatus* and *Agrostis* spp. (Keeley, 2000). Coastal sage scrub is

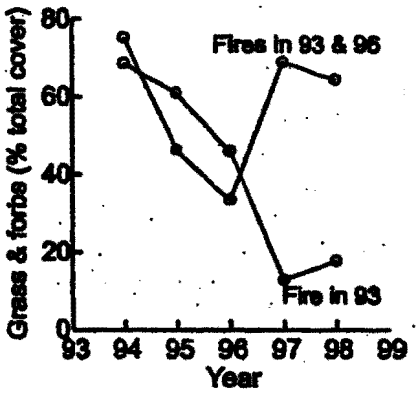

Figure 6 Post-fire coastal sage scrub abundance of forbs and grasses illustrating the typical ephemeral nature of this herbaceous component and the stimulatory effect of repeat fires 3 years apart. Both sites below 300 m adjacent to the coast in the western Santa Monica mountains (data from J. Keeley, C.J. Fotheringham, and M.B. Keeley, unpublished data).

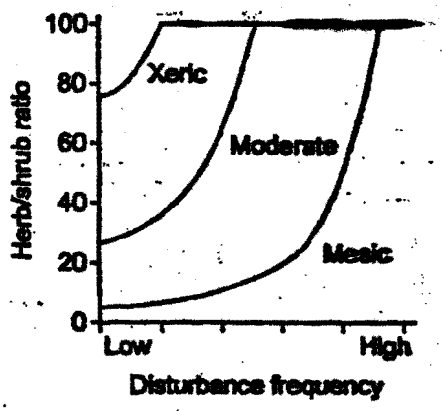

Figure 7 Interaction between soil aridity and disturbance frequency on the balance of herbs and shrubs on upland landscapes in coastal California (see for example, Cooper, 1922; Wells, 1962; Keeley, 2000).

resilient to higher fire frequency than chaparral, but fires at 3 (–5)-year intervals will promote persistence of the herbaceous component to the detriment of shrub recovery (Fig. 6). Repetition of fires at this frequency will type convert coastal sage scrub to a grass/shrub mixture (Giessow & Zedler, 1997; Minnich & Dezzani, 1998).

With respect to disturbance induced type conversion of chaparral and coastal sage scrub, there are marked interactions between disturbance frequency and other site factors. For example, on highly infertile sites, post-fire annual growth may fail to develop sufficiently to carry repeat fires, thus reducing the likelihood of type conversion. There is also a marked interaction with soil aridity, because of either climate or substrate (Cooper, 1922; Wells, 1962). At the xeric end of the soil moisture gradient, herb dominance may be unrelated to disturbance frequency, whereas at the mesic end herbs are more dependent upon repeated disturbance (Fig. 7).

Native American resources

Populations immediately along the California coast heavily exploited marine resources and those along riverine courses utilized fish for parts of the year (Erlandson, 1994). However, these as well as inland peoples, depended heavily upon terrestrial plants (Baumhoff, 1963; Beals & Hester, 1974a). At least by the middle Holocene, seeds of native grasses, forbs and acorns were a staple throughout the coastal ranges of California, as evidenced by the appearance of mortars, pestles and other milling artefacts (Erlandson & Glassow, 1997). There is documented usage of 100–200 plant species (Timbrook, 1984; McCawley, 1996), and, as in most agricultural societies today, annuals were the dominant plant resource, e.g. *Salvia columbariae* (chia), *Madia* spp., *Calandrinia* spp., *Clarkia* spp. Of these, chia seeds were a significant food source in all Indian groups in the region (Timbrook, 1986), and no wonder on a mass basis it contains three times more fat than acorns and five times more than grass seeds (Christenson, 1990).

Even for the many tribes that exploited acorns, grass and forb seeds were an absolute necessity (Baumhoff, 1963). Oaks in the coastal ranges only produce significant acorn crops in mast years at 2–5-year intervals and crop failures were synchronized over large areas (Koenig *et al.*, 1994). The marked masting behaviour of oaks raises serious questions about the extent to which native Californians depended upon acorns as a predictable source of protein and calories. Although acorns were apparently stored, there was likely a limit to the quantity and duration of successful storage. Stores must have been precarious, as they were likely vulnerable to predation by bears, particularly grizzley bears (*Ursus horribilis*, mammal nomenclature according to Burt, 1964). Native Americans shared much of the same habitat with these bears and were often in direct competition with them (Roper & Graber, 2000?), illustrated by the fact that even today the less aggressive black bear may break into modern homes to obtain food resources (J. Keeley, personal observation). Thus, during years of low acorn production there would have been increased dependence on other seed sources, and this would have been for most years.

Herbaceous perennials, including bulbs and corms of geophytes and large seeded bunchgrasses, were depended upon heavily and were most readily available in grasslands or shrublands following fires. Other perennial grasses were important as food and construction material, e.g. *Leymus* (= *Elymus*) *condensatus* and *Muhlenbergia rigens* (Timbrook, 1984; Anderson, 1996). All herbaceous perennials would have been readily available after burning because post-fire regeneration is by resprouting (Keeley, 2000).

Shrubs did provide some important resources, for example seeds from woody species of sage (*Salvia* spp.) or fruits from

some of the broad-leaved evergreens, primarily chaparral cherry (*Prunus ilicifolia*), toyon (*Heteromeles arbutifolia*), manzanita (*Arctostaphylos* spp.), and scrub oak (*Quercus berberidifolia*). Because of the dense spacing and divaricate branching pattern of chaparral, these resources would have been extremely hard to access in undisturbed stands.

Mule or black-tailed deer (*Odocoileus hemionus*) were potential year-round food and hide resources (Baumhoff, 1963; Beals & Hester, 1974b), but are sparse in undisturbed mature shrublands and favour open mixtures of chaparral and grassland. In the southern part of the state small game comprised a significant portion of the diet (Baumhoff, 1963). Hares (*Lepus californicus*), quail (*Callipepla* spp.; avian nomenclature according to Sibley, 2000) and mourning doves (*Zenaida macroura*) were of major importance, but avoid dense shrublands because of the lack of food resources and vulnerability to predators (Biswell *et al.*, 1952). Brush rabbits (*Sylvilagus bachmani*) are common in shrublands but increase in mixtures of shrub and grassland.

According to Beals & Hester (1974c) 'The area of chaparral probably provided the most to the native economy, not because it was especially productive but because there was so much of it'. Shrubland/grassland mosaics would have been prime habitats that maximized resource biomass, accessibility of plants and animals, and firewood. Such landscape heterogeneity increased biodiversity and thus variation in food supplies. This diversity was valuable in surviving periodic droughts, some of which were severe enough to result in abandonment of settlement sites by native Californians (Jones & Kennett, 1999), or reduce populations through starvation and diminished fertility (Shipek, 1981).

Fire as a pre-Columbian land management tool

In contrast to much of the Americas, California Indians had not developed agriculture by the time of the Spanish invasion, which is surprising because such high population density and other cultural advancements are generally associated with agriculture in other parts of the globe (Diamond, 1997). Theories to explain this lack of agricultural development include limited diffusion of ideas/materials and environmental constraints of the mediterranean climate (Bean & Lawton, 1973). However, it is likely that California Indians were not motivated to develop crops because they were extraordinarily successful at managing the natural resources available (but cf. Cohen, 1981).

Shipek (1977, 1981) claims that in southern California one of the important cultural resources was a religion that rewarded knowledge on how to increase plant and animal food supplies. She pointed out that type conversion of chaparral to more open grassland/chaparral mixtures through repeated burning was the most obvious means for doing this. Likewise, Timbrook *et al.* (1982) argued that a critical adaptation of the coastal Chumash was the use of fire to convert coastal sage scrub to grassland, although they questioned whether such burning extended to inland chaparral. Others, through a combination of ethnographic accounts, historical records and inference have concluded that widespread use of repeated burning to effect type conversion of chaparral/coastal sage scrub to grassland, or maintain grass/shrub mosaics, was widespread (Longhurst *et al.*, 1952; Knowles, 1953; Lewis, 1973; Baumhoff, 1978; Christenson, 1990; Anderson, 1993, 1994, 1996; Anderson & Moratto, 1996). Kroeber (1925, p. 447) described the burning of brush to promote the growth of annuals as 'The usual California practice...' The clearest documentation of this is the 1792 report by Spanish explorer José Longinos Martnez who wrote 'In all of New California from Fronteras northward the gentiles have the custom of burning the brush...' (Simpson, 1938). Additionally, there are countless other accounts of Indian burning recorded by early Spanish and American explorers in the coastal ranges (Bolton, 1927; Moraga, 1930; Fages, 1937); particularly detailed is the widely cited proclamation by the Spanish Governor Arrillaga delivered at Santa Barbara in 1793 (Clar, 1959).

Such fire-driven type conversion of shrublands was just one of the many 'intensification' processes, whereby production strategies were altered to increase exploitation of tribal territories (Bouey, 1987). In an evolutionary context this would be one additional form of cultural niche construction (e.g. Laland *et al.*, 2001). I hypothesize that the primary reasons for burning in the coastal ranges were because (1) shrublands dominated much of the landscape, (2) undisturbed chaparral and coastal sage scrub provided few resources, and (3) resources that were present in shrublands were not readily accessible without burning. In addition, undisturbed shrublands had negative qualities related to, (4) their consumption of precious water resources, (5) presence as a fire hazard during autumn Santa Ana wind conditions, (6) harbouring of potentially lethal predators and enemies, and (7) as an obstacle to local travel.

The motivation for this type of land management would be the following.

Increase seed, bulb and fruit production

Post-fire shrublands and sites type converted to herbaceous associations, would have been dominated by important seed resources, e.g. *Salvia*, *Madia*, *Clarkia*, *Calandrinia*, and vegetable resources such as foliage, e.g. *Trifolium*, *Lupinus*, and bulbs/corms, e.g. *Dichlostemma capitata*, *Brodiaea* spp., *Calochortus* spp., *Allium* spp., *Sanicula* spp., *Lomatium* spp. (Luomala, 1978; Timbrook *et al.*, 1982). Following fire, diversity increases from two dozen (mostly woody species) per tenth hectare pre-fire, to as many as eighty species, largely annuals arising from dormant soil-stored seed banks (Keeley, 2000). Many have highly specific fire-related cues (Keeley, 1991). One of the most widely utilized seed resources was chia (*S. columbariae*), which often has deeply dormant seeds that are smoke stimulated (Keeley & Fotheringham, 1998). Native American's insight into these relationships is illustrated by their sowing tobacco seeds into post-fire seedbeds (Harrington, 1932). We now know that tobacco (*Nicotiana attenuata*, *N. quadrifolia*) germination is dependent upon exposure to smoke or charred wood, as is

the case with the majority of chaparral annuals (Keeley & Fotheringham, 2000).

Repeat fires (e.g. more than one per decade) will extirpate chaparral shrubs that recruit entirely by seed (e.g. many species of *Ceanothus* and *Arctostaphylos*), and thin out facultatively seeding shrubs such as *Adenostoma fasciculatum* (Keeley, 2000). Under such high fire frequency, resprouting shrubs persist as islands in a matrix of herbaceous vegetation and these resprouters include some of the more important Native American fruit resources, chaparral cherry, toyon, manzanitas and scrub oak. Manzanitas are of interest here because there are both resprouting and obligate seeding species, represented throughout the coastal ranges by *A. glandulosa* and *A. glauca*, respectively. Just two fires in a decade will extirpate the latter, however, in terms of edible fruit tissues (Keeley & Hays, 1976) it pales in comparison with the resprouting species. Considering all of these shrubs, repeated burning reduces many of the species that are of limited value as resources and leaves those that are particularly important. There is also value added to this scenario in that these resources are far more accessible when present in isolated island remnants, plus fruit production increases following such stand thinning (Keeley & Keeley, 1988).

It is unlikely that Native Americans relied solely upon natural fires to generate post-fire herbaceous resources. The resources available in the post-fire herb flora typically lasts but a few years (Fig. 6) and natural fires in the coastal ranges occur at long intervals, perhaps only once or twice a century (Keeley & Fotheringham, 2001a). Repeated burning by Indians would maintain these herbaceous elements on the site (Fig. 6) and diminish the capacity of the woody cover to close in, thus placing the vegetation on a trajectory that favoured persistence of a strong herbaceous component. Continued burning would produce a new quasi-equilibrium, where shrub recolonization was slowed by weak seed dispersal or poor seedling establishment in grasslands (Hobbs & Mooney, 1986; Keeley, 1998). As a consequence, once the stand was opened up, less frequent burning would have been needed to preclude shrub [redacted] In other words, Horne's (1981) contention [redacted] graphic evidence for 'annual burning of shrublands' is probably correct, i.e. once type conversion to herbaceous associations was effected, this vegetation was likely stable for a decade or longer without repeated burning (besides, 'annual burning' of shrublands is an oxymoron as this frequency of disturbance eliminates shrubs and results in type conversion to grassland).

Increase habitat for mammal resources

The hypothesis that Native Americans utilized fire to open up dense shrublands to increase deer and other animal resources is best supported by contemporary game management practices. We know from studies of deer management, that undisturbed stands of chaparral are nearly impenetrable and the new growth in older stands is commonly produced out of reach of deer (indeed, it was this observation by wildlife managers that led to the widely popular myth that [redacted] from shrubs increases 40-fold or more (Gibbens & Schultz, 1963; Hendricks, 1968) and the majority of species comprising the temporary post-fire flora are also important food resources for deer (Cronemiller & Bartholomew, 1950). Herds increase several fold in post-fire environments (Biswell *et al.*, 1952), although the effect is short-lived as the vegetation closes in after 5 years (Biswell, 1961). Repeated burning produces a mosaic of grassland and shrub patches, which is ideal habitat (Salwasser, 1976), and results in a permanent three- to fivefold increase in deer herds (Taber, 1956). Other important resources such as valley quail, brush rabbits, and mourning doves increase several fold in open brush/grassland over undisturbed chaparral (Biswell *et al.*, 1952), and jackrabbits, which completely avoid dense shrublands, will expand into these grassland mosaics. Opening up these shrublands would have been crucial to Native Americans exploitation of these animal resources because approaching prey undetected would have been unlikely in undisturbed shrublands, and lack of manoeuvrability would have prevented use of bows and arrows or the quasi-boomerang like throwing stick (McCawley, 1996).

Increase water resources

Christenson (1990) did an in-depth study of archaeological site location relative to water sources and showed that in San Diego County, 74% of the processing and habitation sites were located near seasonal watercourses. In all likelihood as the seasonal streams dried up, populations moved on, not only because of the necessity for direct access to water but because prey populations likewise would be forced to move as well. Thus, mechanisms for increasing duration of water flow would increase the annual duration that the resources in that locality could be exploited. Repeated burning and type conversion of chaparral to herbaceous associations has been shown to greatly increase annual flow from watersheds, often converting ephemeral streams to perennial flow (Veihmeyer, 1953; Biswell & [redacted] Rowe, [redacted]). [redacted] for watershed evapotranspiration and can be substantial. In one southern California study, repeated burning and type conversion of chaparral to grassland resulted in a 475% increase in summer flow (Hoyt & Troxell, 1934). There is every likelihood that many contemporary seasonal streams were capable of perennial flow under different fire management by Native Americans.

Reduce hazardous conditions

Native Americans shared the top of the food chain with the highly feared grizzly bear (*Ursus horribilis*), which was widespread throughout the valleys and foothills of the central and southern coastal ranges (Storer & Tevis, 1955; Roper & Graber, 2001). Chaparral was a favoured habitat for grizzlies and there are a sufficient number of reports of Indians being killed by these bears to explain both the general avoidance of closed chaparral stands, as well as the

tendency for not travelling far from the home village (Storer & Tevis, 1955). Repeated burning to keep the brush open throughout a tribe's home range would have been prudent.

Ethnographic reports show fire was used to reduce shrublands immediately around settlements to reduce the occurrence of rattlesnakes and ambush from neighbouring Indian groups (Pilling, 1978; Davis, 1988). In addition, type conversion from shrublands to lower fuel volume grassland would have reduced fire hazard during the autumn Santa Ana wind conditions, which contributed to massive wildfires at a frequency comparable with what is observed today (Mensing *et al.*, 1999).

Facilitate travel

Travel through chaparral is nearly impossible without extreme epidermal abrasion and this would have been even more pronounced for California Indians who wore little or no clothing. Additionally, the rate of movement through chaparral, as opposed to grassland, would be comparable to the difference in molecular diffusion rates through water vs. air, thus travel was generally through open land (Heizer, 1978).

Native Californians in the coastal ranges actively quarried many rock types and minerals that were used in food processing, hunting and decorations, particularly steatite, porphyry, cinnabar, tourmaline, asphaltum, clay and pigments (Heizer & Treganza, 1957; Beals & Hester, 1974b). These items were not reliably obtained through trade as conflicts with neighbouring groups would commonly disrupt trade. Exploiting local mineral resources was hindered by the fact that these rock resources were just as likely to occur in rugged areas surrounded by impenetrable brush as in more accessible areas. Thus, burning would aid in the discovery of these resources, analogous to the burning of brush commonly performed by miners in southern California during the nineteenth century (Leiberg, 1899).

Unintentional burning

Today in the coastal ranges people unintentionally cause the burning of about 220,000 ha per year (CDF, 1970–79; Keeley, 1982). While some argue that Native Americans were careful and meticulous in their use of fire, it seems unlikely in what is the worst fire climate in the USA that escaped fires did not occur fairly frequently. Not only might this occur during normal vegetation burning but the numerous ethnographic accounts of burning to capture woodrats, rabbits, ground squirrels, grasshoppers, wasp larvae, etc. all seem like risky behaviour in this regard. Such escaped fires are suggested by eighteenth century Spanish accounts of Indian burning which was described as 'universal, although on some occasions it happens that it may be greater or less, according to the winds or calm" (Burrus, 1967, cited in Timbrook *et al.*, 1982). See also Horne (1981, p. 116) for an ethnohistoric account of one such escaped fire.

Anthropogenic alteration of vegetation patterns

The contemporary pattern throughout the central and southern coastal ranges of California is a mosaic of chaparral, sage scrub, grassland and oak woodland (e.g. Fig. 8). While the boundaries of these vegetations may seem timeless, there are ecological analyses that conclude disturbance has played a prominent role in their formation, patterns that may have been initiated by Native Americans and perpetuated by Spanish/Mexican and American settlers. In general, they are consistent with the hypothesis that Native Americans utilized high fire-frequency to drive type conversion from woody shrublands/woodlands to herbaceous associations.

Wells (1962) examined the substrate and slope aspect characteristics associated with grassland, shrubland and woodland vegetation in the San Luis Obispo Quadrangle of

Figure 8 Vegetation mosaic in the coastal ranges of California (photo by J. Keeley).

the central coast. Grasslands, all of which were dominated by exotic annuals, were well represented on at least half a dozen different substrates and these same substrata also supported abundant woody vegetation. Indeed, he commonly found grassland and shrubland or woodland juxtaposed side by side on the same soil type, a pattern evident in other studies (Burcham & Storie, 1957; Hill & Arkley, 1966). Wells (1962) concluded that 'since grassland, shrubland and forest occur on almost all geological substrata in the San Luis Obispo area, it is obvious that the nature of the substratum has little direct influence on the physiognomy of vegetation under this range of climate, except when considered in connection with fire', although he did acknowledge that the future trajectory induced by disturbance was affected by soil characteristics (e.g. Fig. 7). He hypothesized that the accelerated fire frequencies, beginning with the late Pleistocene human entry into California, initiated a long process of type conversion of ligneous associations to herbaceous communities. Even following cessation of disturbance, recolonization was greatly retarded because of the limited dispersal ability of many shrubs (Cooper, 1922; Wells, 1962; Keeley, 1998), and the competitive advantage of annual grasses (Da Silva & Bartolome, 1984; Davis & Mooney, 1985).

More recently Callaway & Davis (1993) have quantified the dynamic patterns inferred by Wells (1962). Using historical aerial photographs taken over a 42-year period, they were able to verify that burning increased the rate of transition from shrublands to grasslands, and in the absence of disturbance, grasslands reverted to shrublands or woodlands. They too found that soil type, while not strongly controlling vegetation boundaries, did affect the post-disturbance trajectory. Other studies of historical changes have also reported grasslands invading disturbed shrublands (Minnich & Dezzani, 1998) and shrublands re-invading grasslands following a cessation of disturbance (Hobbs, 1983; Freudenberger *et al.*, 1987).

These conclusions mirror those drawn much earlier by Sterling (1904) and Cooper (1922). The latter observed that in the central coastal range

> Mountains are controlled by chaparral and the plains by grasses. The character of the transition zone between the types is as follows: The first hills are as a rule entirely grass-covered, though even on these, and occasionally out upon the valley-floor, are patches of chaparral. These show absolutely no correlation with altitude, slope-exposure, or soil type. Their edges are sharp and the shrubs are uniformly developed throughout. They are obviously remnants...Penetrating farther into the mountain mass, the chaparral patches become more and more numerous... In short, everywhere near the valleys and plains the hills are grass, while in the depths of the ranges they are covered with scrub. The larger the extent of the mountain mass the greater is the central area of chaparral. Conversely, a small isolated area of hills, though of considerable altitude, may have none. This arrangement is so nearly universal where chaparral and grassland meet that specific examples are hardly necessary...

Cooper (1922) concluded that the mechanism driving these patterns was fire, if it occurred with great frequency, it favoured grassland at the expense of the chaparral and yearly burning would inevitably destroy the brush completely and prevent invasion by it. He hypothesized that

> The patchy transition between grassland and chaparral is also explained, for fires started in the valleys, where most of the Indian population lived, would spread into the surrounding ranges in various directions and to varying distances. Certain areas would escape, and these would be larger and more mountain systems, where paucity of population would reduce the starting of fires to a minimum.

In support of this hypothesis he noted that

> the most convincing proofs of former control of present-day grassland by chaparral are the frequent remnants... The sharply limited patches in the midst of other vegetation, in which *Adenostoma* is usually most prominent...Using this method, which has in some cases been corroborated by historical testimony, it has been possible to demonstrate that dense chaparral once covered extensive areas which are now grassland...

Other early observers noted similar patterns from other more northern coastal ranges (Sterling, 1904), and further south in the Tehachapi Mountains, Bauer (1930) noted that

> In the grassland the islands of shrub growth, with sharp boundaries and uniform vegetative composition, indicate a more or less remote fire or fires... It is reported that in aboriginal days the natives intentionally burned the rank herbaceous vegetation yearly (Jepson '10).

Such apparently remnant islands of shrubland embedded within grassland are also reported from the northern end of the coastal ranges (Sharsmith, 1945).

Dodge (1975) studied translations of Spanish diaries written by early explorers in present day San Diego County and contended that enough site-specific detail was given to conclude that many grasslands described by these accounts are today covered by shrublands. Following Aschmann (1959), Dodge (1975) theorized that the Native Americans maintained the southern California landscape in a mixture of grassland and shrubland through repeated burning. Examples of early Spanish accounts include: 'The soil is very good; it is black, well grassed, and mellow; and the fields are thickly dotted with shrubs' (Fages, 1937), or Frey Juan Crespi's diary notes on 17 July 1769 north of San Diego 'We climbed a very grassy hill ... then traveled over mesas that are in part covered with grass and in part by a grove of young oaks, rosemary, and other shrubs not known to us' (Bolton, 1927). A few days later and further north the diary describes 'we ascended a little hill and entered upon some mesas covered with dry grass, in parts burned by the heathen for the purpose of hunting hares and rabbits, which live there in abundance. In some places there are clumps of wild

prickly pear and some rosemary'. Based on contemporary landscape patterns, such chaparral fragments within a grassland matrix, are most likely to result from human fire subsidy (J. Keeley, personal observations).

With the demize of the native population in the early part of the nineteenth century, fire incidence decreased and sites likely have been re-invaded by shrubs. On the mesas of coastal San Diego County Cox (1986) examined size structure of chaparral along an ecotone with grasslands and concluded that during the twentieth century chaparral has been colonizing grassland after a long hiatus of fires dating back possibly to Native American times, consistent with Dodge's thesis.

At the northern end of the central coastal region in the San Francisco Bay area there are numerous reports of shrub re-establishment into grasslands following the formation of parks and reserves, which eliminated grazing and burning (McBride & Heady, 1968; McBride, 1974; Hobbs & Mooney, 1986; Russell & McBride, in press). More vigorous suppression of natural fires is presumed to play an important role in this shrub 'invasion', but since natural lightning fires are rare in the region (for every 1000 ha in Santa Clara County there is a lightning-ignited fire only once every 200 years; Keeley, 1982), it seems more probable that shrub 'invasion' is the result of enhanced prevention of anthropogenic fires. It is likely that much of the grassland in this area originated with Native American burning as this region was densely populated with over 2000 inhabitants spread across as many as 100 village sites (Cook, 1957).

While these observations are consistent with widespread Native American impact on landscapes of the coastal ranges, assigning patterns entirely to native people is difficult because the Euro-American settlers had similar fire management practices (Barrett, 1935; Brown & Show, 1944). In some cases, this question can be addressed with historical records; e.g. the present distribution of grasslands in the San Francisco Bay area is similar to what was present at the time of the Spanish colonization (Clarke, 1959; Mayfield, 1978). Palynological records from the central coastal region are consistent with the hypothesis of anthropogenically determined type conversion during mid- to late-Holocene, although the data are also consistent with climate change explanations as well (Heusser, 1978; Russell, 1983; Byrne *et al.*, 1991; Anderson & Byrd, 1998; Mensing, 1998).

An important question is how much of the landscape physiognomy was altered by Native American burning? Answering this is challenging if not impossible. We have little way of knowing what vegetation changes occurred in some of the most heavily utilized areas because many of these are areas of contemporary development. We do not know with some certainty how much of the current exotic grassland is derived from native grassland, and how much is caused by degradation of shrublands. We do not know the extent of post-settlement changes in vegetation structure induced by Euro-American burning and grazing. Additionally, we have no estimate of the extent of reversal in Indian [redacted] over the past 200 years.

A starting point would be to look at the current distribution of grasslands in the ten coastal counties from Monterey southward. Today they cover almost 2 million hectares or 25% of the landscape, dominated almost entirely by non-native annuals, and less than 1% of this grassland landscape has significant patches of native perennial bunchgrass (Huenneke, 1989). If we accept the conclusions of Cooper (1922), Wells (1962), Oberbauer (1978), Huenneke (1989), Keeley (1990, 1993) and Hamilton (1997) that the origin of much of these exotic grasslands lies in type conversion from shrubland/woodland, and assume minimal expansion of grassland since Euro-American settlement, then perhaps one-quarter of the indigenous landscape was altered by fire-driven type conversion of shrublands. If we accept the view of Clements (1934), Barry (1972), Heady (1977) and others that exotic annual grasslands occupy sites that have always been grassland, then this percentage would be substantially lower. If we accept Dodge's (1975) thesis that shrublands have re-invaded many former grasslands following Euro-American settlement, then this number could be higher.

CONCLUSIONS

Indian burning in the California coastal ranges was not unique as Indians throughout North America used burning for a multitude of land management activities (e.g. Hough, 1926; Barrett, 1981; Pyne, 1982; Wickstrom, 1987; Boyd, 1999; Bonnicksen, 2000; cf. Forman & Russell, 1983). What is not so certain is the extent to which this anthropogenic subsidy to natural ignitions was sufficient to alter landscape patterns. If the case cannot be made in the coastal ranges of California, then it is doubtful whether it could be made anywhere. It is very likely that through the use of fire, Native Californians markedly altered vegetation patterns over much of the region. Further north, well into the Pacific northwest, the balance of lightning-ignited fires and pre-Columbian peoples was such that these impacts were likely experienced there as well. In light of the rather clumped distribution of both lightning and pre-Columbian people in the interior west, the question remains as to how widespread native American impacts were in the interior western US.

Despite the case for a heavy human imprint on the California landscape made here (and by others, e.g. Anderson & Moratto, 1996; Anderson *et al.*, 1998), this does not argue for a ubiquitous human presence (e.g. Denevan, 1992), or the absence of wilderness. Indeed, considering the rugged terrain and pattern of Indian impacts hypothesized by Cooper (1922), it is very likely there were significant portions of the central and southern California landscape that were remote and inaccessible, particularly as tribes did not generally occupy lands near the border of their territory (Kroeber, 1962). Indeed, such wilderness areas would have been important barriers inhibiting attacks from other tribes as most settlements were small and often lived under threat of attack (James & Graziani, 1991). There is some

suggestion of remote, undisturbed areas in ethnohistoric reports of dense stands of brush on long-distance travel routes (e.g. Taber & Dasmann, 1958; Burcham, 1960). Indirect evidence of wilderness areas is suggested by the extraordinary diversity of languages in the state, which may have their origins in the isolation and long-term stability of tribelets induced by wilderness areas between groups. This is supported by the observation that the Great Central Valley, which likely had few or no remote wilderness areas, had the least language diversity in the state (Kroeber, 1925, p. 477). Pre-contact California is surpassed in the density of languages only by the island of New Guinea, where rugged topography and village isolation are believed to have played prominent roles in the evolution of language diversity (Diamond, 1992). Thus, while native Californians may have greatly altered the landscapes over broad regions, the rugged terrain of a significant portion of the coastal ranges likely remained outside their sphere of influence.

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BIOSKETCH

Jon E. Keeley is leader of the US Geological Survey research station at Sequoia National Park, in California, and adjunct professor of Organismic Biology, Ecology and Evolution at the University of California, Los Angeles. He has published on the fire ecology of California chaparral and coastal sage scrub vegetation over a period of 30 years and is author of the chaparral chapter in the *Terrestrial Vegetation of North America* and the upcoming edition of *California Terrestrial Vegetation*. Other research interests include ecophysiology of smoke-stimulated seed germination and photosynthetic pathways of aquatic plants. Dr Keeley is a former professor of biology for 20 years, Fellow of the Southern California Academy of Sciences, Guggenheim Fellow, and Honorary Lifetime member of the California Botanical Society.

Californians For Local Coastal Planning

August 6, 2002 Comments

California Coastal Commission Hearing

Malibu Local Coastal Program
June 2002 Draft Land Use and Local Implementation Plans

Agriculture and Horticulture

Summary

The Coastal Act requires protection of farmland and enhancement of crops, gardens and nurseries because of the moderate marine climate, long growing season, and soil conditions found in the coastal zone and because it is in the best interests of the state.

Relevant Coastal Act policies relating to agriculture have not been considered in the Draft Malibu Local Coastal Plan prepared by Coastal Commission staff:.....

On the Federal level the ***Agricultural Improvement and Reform Act of 1966*** **provides that the nation's farmland is a unique natural resource** and that each year a large amount of the nation's farmland is being irrevocably converted from actual or potential agricultural use to nonagricultural use in many cases as the result of action taken or assisted by the federal government.

Farm Bureaus and Resource Conservation Services have aggressive education campaigns to teach best management practices (BMPs) for soil management, pesticide and fertilizer use, stream and river protection from runoff, groundwater protection and water conservation and reuse.

The Commission's role is to define the environmental endpoints and the City of Malibu's role is to define the methods to be applied based on physical and natural local conditions.

The physical and mental health benefits of growing your own food and working in your garden are not debatable. Eliminating this option for 3,000 families is unacceptable.

Land used for agriculture purposes in the Santa Monica Mountains as well as other fire prone areas, increases the safety provided by the buffer that slows down or stops the spread of wildfire.

People and animals are an important part of the Malibu coastal ecosystem. Planning must look at both the natural and human-based systems and strive for the balance expected in the Coastal Act.

Human behavior can be changed and sustained for a longer period by incentive-based regulations.

Siting of planted areas, erosion, and run-off associated with agricultural uses and landscaping can all be successfully regulated to minimize or eliminate environmental impacts without the need for absolute inflexible prohibitions.

ESHA (Environmentally Sensitive Habitat Areas) designation carries serious consequences for property development and conservation: the California Coastal Act places "strict limits on the uses which may occur in an ESHA" (see *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App.4th 493). Therefore, ESHA should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community. Until that agreement has been reached, the ESHA boundaries should not be expanded in the Malibu Local Coastal Plan.

The Draft LUP needlessly extends ESHA buffer areas and planting on slopes less than 3:1 without any corresponding greater level of environmental protection.

The Water Quality section of the Draft LUP provides a good mechanism for environmental protection without a need for absolute prohibition.

The Draft Malibu LCP will gradually eliminate agriculture and horticulture in Malibu. The activities are at the heart of our rural community. We are equally concerned about the precedent that will be set and how the State's agriculture economy will be adversely impacted.

We are especially concerned about 'Enforcement', 'Grandfathering' and 'Disaster' regulations that may not allow the keeping of or rebuilding existing uses or structures that never did require a local building or coastal development permits.

Regulations need to be particularly sensitive to the cultural activity and values in the Santa Monica Mountains and coastal zone. One size does not fit all: an effective sustainable LCP must be flexible enough to be adaptable to local conditions and will reduce unwillingness to cooperate. Agriculture and the preservation of agriculture must be treated as a natural resource.

A narrative on each of these points is included with this submission as well as specific policy recommendations.

Policy Recommendations – Draft Malibu LCP – June 2002

Californians for Local Coastal Planning has significant objections to some of the policies affecting agriculture and horticulture in the Coastal Commission's Land Use Plan of June 2002 drafted for the City of Malibu.

LUP 3.10 If the application of the policies and standards contained in this LCP regarding use of property designated as Environmentally Sensitive Habitat Area, including the restriction of ESHA to only resource-dependent use, would likely constitute a taking of private property, then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.

The proposal is in conflict with the Coastal Act Section 30240. The Commission is prohibited from allowing nonresource dependent uses in ESHA even to avoid a taking. The burden of proof will be on the landowner. The burden is unreasonable and excessive based on the limited scientific analysis presented to date.

We support the City of Malibu request to adopt the Los Angeles County 1986 ESHA maps and continue with site specific peer-review analysis with a date certain for completion. How can agriculture use ever meet the definition of allowable uses in an ESHA? On existing properties with agriculture uses, how can that parcel be 100% ESHA? ESHA adjacent policies are as problematic and inflexible. How is a landowner ever going to gain access to a neighbor's property to prove it is not ESHA so 'ESHA adjacent' regulations do not prohibit reasonable use of their land?

LUP 3.12 ....For other ESHA types, the allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) on parcels where all feasible building sites are in ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size whichever is less.

The agriculture and horticulture community oppose the '10,000 square foot or 25% which ever is less' development envelop restriction proposed in the ESHA and ESHA buffer sections unless there is an environmental impact demonstrated that cannot be minimized or eliminated. The 10,000 square foot building pad in the 1986 LUP only applied to Significant Watersheds and Wildlife Corridors. These were specifically mapped and limited in scope. The maximum standard applied only to the graded building pad not to appurtenant uses. The application of the policy since 1986 (until recently) allowed for all other uses and structures normally associated with a residential development to be outside of the restricted building pad area. Adding those appurtenant uses and structures in the development envelope calculation will either prevent their use or cause the residence to be extremely small even on a large parcel. Allowing these appurtenant structures and uses in the fuel zones may not adequately address the prohibition's impacts especially when compounded by proposed mandates for ESHA buffer setbacks which on many parcels will overlap. The restriction has not been applied since 1986 in the same manner currently being proposed in the Draft Malibu LCP. How can cultivated land be defined as ESHA? The development envelop restrictions can be workable under other natural resource definitions but only if the criteria and conditions attendant to it are more in keeping with the Los Angeles County 1986 LUP that allowed more than one development envelop on a parcel.

LUP 3.23 –3.30 - Areas adjacent to ESHA and Parks - These policies that prohibit variances and setbacks are not supported by State or case law. As written the proposals are

inflexible and do not allow for best management practices accepted by other state regulatory agencies with far more experience and qualifications. The [redacted] **ESHA buffer areas without any corresponding greater level of environmental protection.** Both the Dept. of Fish and Game and the Army Corps of Engineers have applicable boundary line guidelines. Buffer area for riparian paths currently is measured from one of three standard boundary lines, all of which are roughly the same: either from top of the existing bank (Fish & Game), the outer edge of riparian vegetation (Fish & Game), or the average high water mark (Army Corps of Engineers) if applicable. The setbacks from top of slope proposals have no rational. Imposing these unreasonable minimum setbacks will severely restrict the irrigated and development area yet there is no evidence that separating development so far from ESHA would serve to protect it. We ask that the City and Commission consider of Fish & Game or Army Corps of Engineer standards where applicable.

Specifically LUP 3.27 should be replaced with: *Variances or modifications to setback, buffer, or other sensitive resource protection standards shall be granted to allow use of property in a manner basically consistent with established regulations with such variations as will place the property in parity with other properties in the same zone and with the same general features. Variances shall be more favored in areas of denser development and less favored in areas of low-density of development. The City of Malibu shall have authority for determining criteria for granting such variances.*

The City of Malibu staff's LUP Matrix alternative is acceptable but does not go as far as necessary to deal with problems that would arise if LUP 3.27 is adopted as written.

Land Resources – j. Agriculture and Confined Animal Facilities

LUP 3.65 New agricultural uses shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater than 3:1 and does not result in any expansion to the required fuel modification area.

The prohibition of agricultural use on slopes [redacted] reexamined. Throughout the state coastal communities, there are farmers growing, irrigating, and managing their crops, vineyards and orchards on slopes less than 3:1 without harm to adjacent natural areas. The key is requiring farmers or gardeners to employ environmental impact principals that eliminate harmful effects and that offer feasible alternatives today. Cultivation on slopes can be managed properly to minimize or eliminate harmful runoff and sedimentation. A slope chart has been provided with this report so that you are able to visualize the various slope degrees. You can imagine the extent of the limitation if applied in the Santa Monica Mountains. Site specific examination of soil and other topographic conditions may allow for flexibility to the slope prohibition. A set of standards and criteria should be adopted for slopes less than 3:1 so that environmental endpoints can be achieved. **The Draft LUP needlessly restricts planting on slope areas without any corresponding greater level of environmental protection.**

Limiting agriculture uses to Zones A & B will drastically impact the economics of both the commercial and home garden grower. Businesses will fail if they are needlessly over regulated. **The Water Quality section of the Draft LUP provides a good mechanism for environmental protection without a need for absolute prohibition.** The applicable policies are listed later for your reference.

LUP 3.66 Crop, orchard, or vineyard uses in conjunction with an existing or new single family residence may be permitted only within the irrigated fuel modification area (Zones A & B, if required) required by an approved fuel modification plan for the approved structure(s). Such uses shall not result in any expansion to the fuel modification area required for the approved residential structure(s).

This policy as written causes significant adverse impacts and will drastically reduce agriculture and gardens in the City of Malibu. This must only be applied if 100% of the parcel is ESHA and the ESHA maps of 1986 must be adopted.

LUP 3.69 The use of reclaimed water for any approved agricultural use is required where feasible.

LUP 3.70 Any approved agricultural or confined animal use shall include measures to minimize impacts to water quality, consistent with Policies 3.136 through 3.144.

Water Quality – e. Agriculture and Confined Animal Facilities

LUP 3.136 Agricultural and confined animal uses may be permitted only in conformance with Policies 3.64 through 3.70.

We support policies that protect natural resources and, where appropriate and feasible, allow for reasonable agriculture and horticultural uses.

LUP 3.137 When undertaking agricultural activities, BMPs to minimize erosion and prevent excessive sediment and pollutant impacts shall be implemented.
LUP 3.138 Animal waste, wastewater, and any other byproducts of agricultural activities shall be properly disposed of on land or through suitable sewage disposal systems, if available. The disposal of such wastes in or near streams or sensitive habitats is prohibited.
LUP 3.139 Compost, fertilizer, and amended soil products shall be used in a way that minimizes impacts to water quality. The placement of such products in or near streams is prohibited.
LUP 3.141 Vegetated filter strips and other treatment measures shall be incorporated into animal facilities to intercept, infiltrate, and filter runoff.
LUP 3.144 BMPs to protect sensitive areas (such as streams, wetlands, estuaries, ponds, lakes, shores, and riparian zones) shall be implemented to reduce physical disturbance and to reduce direct loading of animal waste and sediment caused by animals.

We respectfully request that the Commission consider policies that were submitted to the Commission for certification by the *City of Malibu, Local Coastal Plan, May 2001*. **The policies reflect how the Malibu Local Coastal Plan meets the requirements of the Coastal Act and reflects the values of the Malibu community:** (references in parenthesis are to Malibu General Plan – 1995)

LCP-133 Protect agriculture which requires or is enhanced by Malibu's unique climate. (LU GOAL 5)

LCP-134 Rural character preserved through agricultural and horticulture land uses. (LU OBJECTIVE 5.1)

LCP-135 The City shall permit compatible agricultural and horticultural uses within the rural residential zones in order to maintain the rural traditions in the area. (LU Policy 5.1.1)

LCP-136 The City shall prohibit development and proposed uses adjacent to agricultural and horticultural uses that degrade or substantially interfere with existing agricultural and horticultural uses. (LU Policy 5.1.2)

LCP-137 The City shall encourage agricultural and horticultural uses that require limited land area such as greenhouses and nurseries. (LU Policy 5.1.3)

LCP-138 The City shall develop an integrated pest management program to limit adverse impacts from herbicides, pesticides, and fertilizers. (LU Policy 5.1.4)

LCP-139 Develop incentive and protection measures, such as regulating adjacent uses to assure that new uses do not interfere with productivity and permitting necessary accessory structures by right in Rural Residential zones, to encourage land use for production of tropical fruits, nuts and flowers where sensitive natural biota communities will not be adversely impacted. (LU Implementation Measure 82)

LCP-140 Permit non-retail greenhouses and nurseries in all rural areas to encourage land use for production of tropical fruits, nuts and flowers where sensitive natural biota communities will not be adversely impacted. (LU Implementation Measure 83)

Background Information

The Coastal Act requires protection of farmland and enhancement of crops, gardens and nurseries because of the moderate marine climate, long growing season, and soil conditions found in the coastal zone and because it is in the best interests of the state.

Relevant Coastal Act policies relating to agriculture have not been considered in the Draft Malibu Local Coastal Plan prepared by Coastal Commission staff: A) Section 30241 – The maximum amount of prime agriculture land shall be maintained in agriculture production to assure the protection of the areas agricultural economy... B) Section 30241.5 requires an economic feasibility analysis before land can be converted from agriculture use, and C) Section 30242 - All other lands suitable for agriculture use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

The U. S. Soils Conservation Service considers much of California coastal land 'prime'. The state Williamson Act and the Thurman Agricultural Policy Act provide special protections for farmlands that apply in the Coastal Zone. Many crops can be economically grown in non-prime land because of the mild marine climate. Flat and alluvial lands are not required for successful orchards, vineyards and flower growers. The Coastal Act provides special protections to reduce urban impacts on crops, fruit or nut-bearing trees, vines, or bushes; protecting farmlands has reduced urban sprawl and recommends economic assistance to keep agriculture lands.

Agriculture activities have been exempt from Commission permitting and enforcement actions. Attorney General Opinion No. SO 77/39 I. L. clarified this protection in 1978; stating that removal of major vegetation did require a CCC permit 'unless done in the furtherance of an agricultural purpose." Gross revenue from food production is a major factor in the state and local economy. The addition of coastal sage scrub and chaparral to the environmentally sensitive habitat area (ESHA) criteria will have significant adverse impacts on agriculture and horticulture in the City of Malibu and may set statewide precedence without widespread scientific agreement. It will also increase the fire hazards by increasing the flammable fuel load and reducing the irrigated areas of homeowners. The findings in the Draft LUP and LIP do not adequately address these adverse impacts.

On the Federal level the *Agricultural Improvement and Reform Act of 1966* provides that the nation's farmland is a unique natural resource and that each year a large amount of the nation's farmland is being irrevocably converted from actual or potential agricultural use to nonagricultural use in many cases as the result of action taken or assisted by the federal government. The *Federal Farmland Protection Program* directs federal agencies to identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state governments, local government and private programs and policies to protect farmland.

Agriculture practices can have adverse environmental impacts that require control. **Farm Bureaus and Resource Conservation Services have aggressive education campaigns to teach best management practices (BMPs) for soil management, pesticide and fertilizer use, stream and river protection from runoff, groundwater protection and water conservation and reuse.** The size of crops, vineyards, nurseries, and orchards in the Malibu coastal zone can be managed by application of today's best management practices. **The Commission's role is to**

define the environmental endpoints and the City of Malibu's role is to define the methods to be applied based on physical and natural local conditions.

It does not take an economist's analysis to determine the importance of raising your own fruits, flowers and vegetables to explain the value of protecting the agricultural uses of the lands in the coastal zone. Economic value must be understood in two contexts: that which is gained by a commercial operation as well as that which is saved by not having to purchase food for your family. **The physical and mental health benefits of growing your own food and working in your garden are not debatable. Eliminating this option for 3,000 families is unacceptable.**

Land used for agriculture purposes in the Santa Monica Mountains as well as other fire prone areas, increases the safety provided by the buffer that slows down or stops the spread of wildfire. Many homes and lives have been saved because highly flammable coastal sage and chaparral was replaced with orchards, vineyards, gardens, crops and landscaping.

Water use planning and the allocation of uses for agriculture have been studied in the Malibu Coastal Zone. The State Water Resources Control Board adopted a revised *Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (Basin Plan) on June 13, 1994 that was amended by the Regional Board on January 27, 1997 representing the Board's master quality control planning document and regulations. The Basin Plan designates 'Agriculture Supply' as an existing beneficial use for surface water and groundwater. This Basin Plan sets objectives to protect existing and potential beneficial uses. Other state and federal agencies have studied and support the continuation of agriculture in this coastal zone. The Board is also the leader in the regulatory program for reduction of adverse impacts from nonpoint source pollution associated with agriculture activities.

The City of Malibu partners with the Regional Water Quality Control Board and the Santa Monica Bay Restoration Project in a joint effort to stem the flow of pollutants and sediment reaching coastal waters, streams and lagoons, and has already received over $4 million in state grants to study and implement the City's Clean Water Program.

Together, the regulator and the caretakers of the land are obligated by law to avoid significant impacts to natural resources. **People and animals are an important part of the Malibu coastal ecosystem. Planning must look at both the natural and human-based systems and strive for the balance expected in the Coastal Act.** This CCC **Draft LUP** will have unintended consequences, and the lack of flexibility will unreasonably **cause the loss of** what's special for people who choose to live and work here.

Human behavior can be changed and sustained for a longer period by incentive-based regulations. The U. S. Department of Agriculture has been very successful with their Wildlife Habitat Incentives Program (WHIP). It is unrealistic to assume there could ever be enough enforcement personnel to monitor all the prohibitions incorporated in this Draft Malibu Plan especially since individuals, not government, will be forced to pay for nearly all of the implementation costs. Human activity - without benefit of permit and agency oversight for health and safety - will increase rather than decrease if this plan is adopted as written.

The proposed regulations coupled with the new definition of ESHA and the CCC staff proposed ESHA maps clearly pose conflicts for agriculture and the Coastal Act. The Act envisions a balance of regulatory schemes to minimize impacts to the greatest extent possible while still holding to other principles imbedded in the Act. The Legislature declared the basic goals of the state for the coastal zone including "assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state."

Santa Monica Mountains and Seashore – The Malibu Coastal Zone

It is to the credit of the California Coastal Commission and other agencies that half of the Santa Monica Mountains and Seashore is owned by public agencies and land trusts – 76,000 acres – an incredibly large core habitat area. This is particularly amazing because of its close proximity to the urban demands of Los Angeles and Ventura counties. The State has absolute power to regulate those public lands as core habitat for plants, birds and animals without the intrusion of development and to permit only resource dependent uses. Designating the remaining lands 'environmentally sensitive habitat area' because of coastal sage and chaparral, the most abundant plant community in Southern California, coupled with the attendant prohibitions embedded in the regulations, will severely change the aesthetic values of the communities within the coastal zone without consideration of the balance required in the Coastal Act.

Siting of planted areas, erosion, and run-off associated with agricultural uses and landscaping can all be regulated to minimize or eliminate environmental impacts without the need for absolute inflexible prohibitions. The farm and nursery community agree with the biologists of the City of Malibu, Los Angeles County and State Fish and Game as well as others who are troubled by the CCC staff findings for the scientific basis for the Draft 2002 LUP ESHA maps and policies. Landowners do not believe that the CCC staff has proven the environmental need or the right to restrict the use of property to such an extent based on what has been presented to date. The Draft LUP and LIP fails to establish objective standards to determine ESHA. Without specific biological criteria, the Draft LCP makes it impossible to determine whether a parcel will be considered ESHA or ESHA adjacent. Malibu's medium and small-scale farming and the home gardening dynamic includes three variations: natural (soil and topography), random (weather), and managed (seed & chemical application). Scientists with lots of experience have figured out ways to deal with and manage all three variations.

ESHA (Environmentally Sensitive Habitat Areas) designation carries serious consequences for property development and conservation: the California Coastal Act places "strict limits on the uses which may occur in an ESHA" (see *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App.4th 493). **Therefore, ESHA should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community. Until that agreement has been reached, the ESHA boundaries should not be expanded in the Malibu Local Coastal Plan.**

Conclusion

The Draft Malibu LCP will gradually eliminate agriculture and horticulture in Malibu. These activities are at the heart of our rural community. We are equally concerned about the precedent that will be set and how the state's agriculture economy will be adversely impacted.

We are very concerned that new regulations will require coastal development permits for 'new development' simply to change a crop or to change the way the same crop is planted or to change the use of water. What if one year a crop was started from seed and the next year from seedlings? **Agriculture uses need to have a separate definition for 'new' development. If not amended, a change of crop or home garden procedures will require a detailed biological impact analysis and crop productivity analysis. Is hoeing, disking and tilling considered 'grading'? Will grading policies and measures apply to normal agriculture activities?** There is no clear definitions or points of clarification that relieve us of that concern.

We are especially concerned about 'Enforcement', 'Grandfathering' and 'Disaster' regulations that may not allow the keeping of or rebu[illegible]ctures that never did require local building or coastal development permits. We request that polices be adopted that do not make current agriculture uses 'legally non-conforming'. In the event the use or structure is/was legally permitable, it should be recognized as such. The financial burden imposed on farmers and growers to comply with all 2002 LCP regulations if they cannot produce documentation of a permit for their activity or facility is extreme. There will be too many cases of retroactive enforcement since there are too many quirks of why permits for a use or 'development' were never required but were legally allowed. Many appurtenant uses such as greenhouses, gardens, storage & potting sheds and shade houses never needed a permit. The CCC staff proposed disaster rebuild provisions allow for the replacement of a residence plus 10% in the same footprint as well as landscaping and erosion control features. So much is left to the imagination in this disaster rebuild subject that homeowners need affirmative assurance in policies and/or implementation measures that activities and structures normally associated with life in Malibu can be rebuilt without being subject to a coastal development permit. Human-beings in Malibu live in their homes and on their land. They farm, garden and raise pets, horses, birds, poultry, and a menagerie of other animals and frolic in pools and play yards. Provide for legalization of those activities without calling them 'legal non-conforming' if there are any potential onerous implications.

There should be a provision for agricultural use on a residential lot adjacent to a residence without requiring a residential structure. The Malibu Plan is not well thought out and needs flexibility to apply the regulations that actually achieve the highest environmental benefit.

Regulations need to be particularly sensitive to the cultural forces and values in the Santa Monica Mountains and coastal zone. One size does not fit all: an effective sustainable LCP must be flexible enough to be adaptable to local conditions and will reduce unwillingness to cooperate.

There has not been enough time to analyze the on-the-ground problems created by the Draft Malibu Land Use policies. The State does not have a clear understanding of the physical and social systems that make up the Malibu coastal zone.

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294
(323) 881-2401

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SOUTH CENTRAL COAST DISTRICT

P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

August 1, 2002

Sara Wan, Chair
California Coastal Commission
22350 Carbon Mesa Road
Malibu, CA 90265

Dear Chairperson Wan:

CITY OF MALIBU LAND USE AND LOCAL IMPLEMENTATION PLANS

The County of Los Angeles Fire Department has thoroughly reviewed the "Draft" *City of Malibu Land Use Plan (LUP)* and the *City of Malibu Local Coastal Program (LCP) Local Implementation Plan*. While the Department understands that the California Coastal Commission is mandated to protect valuable coastal resources from further impacts, the Department has a responsibility to ensure that the residents and the existing approved uses are defensible during wildland fires. In reviewing the plan, the Department has several concerns that need to be enumerated at this time.

1) In Section 3.18, the LUP states that "The use of insecticides, herbicides, or any other toxic chemical substances which has the potential to significantly degrade Environmentally Sensitive Habitat Areas (ESHAs), shall be prohibited within or adjacent to ESHAs, where application of such substances would impact the ESHA, except where to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration." The Department would counter by agreeing that while these types of substances should rightfully be excluded from ESHAs, their use in areas adjacent to ESHAs should remain permitted as they can enhance defensible space and provide far greater structure protection.

2) In Section 3.21, the LUP requires that "Wildfire burn areas shall be allowed to revegetate naturally, except where reseeding is necessary to minimize risks to public health or safety. Where necessary, reseeding shall utilize a native plant seed mix appropriate for the site." In many areas adjacent to homes, vegetation has been modified or replaced with less flammable exotic species. While the Department is aware of the need to preserve the native plant community, it also understands that most native plants are fire dependent and burn readily during wildland fires. The Department would request that native plant communities where they were previously modified to enhance defensible space, be allowed to revegetate in this modified state after a wildland fire.

3) In both Sections 3.47 and 6.27, the LUP requires that "Cut and fill slopes and other areas disturbed by construction activities (including brush clearance and fuel modification), shall be landscaped or revegetated at the completion of grading and/or construction." Parameters that are to be met include that "Plantings shall be

of primarily native, drought-tolerant species, and blend with the existing natural vegetation and natural habitats on the site." In addition, "Landscaping or revegetation shall provide 90 percent coverage within five years." While the Department understands the need to protect native plant communities, this requirement will ensure that continuous, fire dependent, and native vegetation will once again proliferate within the fuel modification and brush clearance zones adjacent to structures, thereby making structure protection more difficult during a wildland fire.

4) In Section 3.56, the LUP states that "All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety...development shall include fire resistant materials and incorporate alternative fuel modification measures, such as firewalls, and landscaping techniques, where feasible, to minimize the total area modified." While the Department realizes that there is a need to minimize the amount of fuel modification within ESHAs, we would request to be able to use the full range of tools to enhance defensible space that have previously been at our disposal in all other areas. Limiting the area that is developed will decrease the amount of defensible space and will hamper firefighting personnel's efforts to protect structures from flammable native vegetation. A recommendation instead of a requirement that minimal fuel modification be completed in ESHAs, would be a more workable solution for the Department.

5) In Section 3.62, the LUP states that "Where the removal of native trees cannot be avoided through the implementation of project alternatives,...mitigation measures shall include, at a minimum, the planting of replacement trees on-site...Where on-site mitigation is not feasible, compensatory mitigation, in the form of an in-lieu fee, shall also be provided for the unavoidable temporal impacts of the loss of native tree habitat." The Department believes that this policy should be restricted to only mature, native trees. A definition of a mature tree taken from the Los Angeles County Oak Tree Ordinance would include trees that are greater than 8-inches in diameter at breast height (4½ feet above mean grade).

6) In Section 4.49, the LUP requires that "Development adjacent to parkland shall be sited and designed to allow all required fire-preventative brush clearance to be located outside park boundaries, unless no alternative feasible building site exists on the project site. A natural vegetation buffer of sufficient size should be maintained between the necessary fuel modification area and the public parkland." While the Department agrees that all fuel modification should be accomplished on-site and not encroach onto public parkland, occasionally, once fuel modification is completed, a sufficient area will not remain to provide a natural vegetation buffer. As fuel modification plans are designed to lessen the visual impact of brush clearance, a well designed fuel modification plan will be able to serve as both a fire prevention measure and a suitable buffer to public parkland. In areas where the parcel is large enough to contain both the necessary fuel modification zones and a natural vegetation buffer, the Department would support the LUP's requirement for this type of resource protection.

7) In Section 4.50, the LUP states "When brush clearance is required for fire safety, brushing techniques that minimize impacts to native vegetation, sensitive environmental resources and that minimize erosion, runoff and sedimentation shall be utilized." Adherence to this requirement would further reduce the Department's ability to abate hazardous fuels by means that have previously been considered acceptable. This would include the use of herbicides, the Department's brush crusher, the use of biological controls (goats), and the use of a tractor pulled disc. The only remaining method for clearing brush in a coastal zone would be expensive manual clearance.

The County of Los Angeles Fire Department looks forward in working with the California Coastal Commission to protect coastal resources and at the same time, continuing to provide the necessary protection for the people, the environment, and the property of Malibu residents. John Todd, Assistant Chief, Forestry Division, will be contacting the California Coastal Commission staff to follow-up on these critical life-safety issues. If you have questions or need clarification, Chief Todd may be reached at (323) 890-4330.

Very truly yours,

P. MICHAEL FREEMAN

PMF:JRT:sc

c: Cynthia McClain-Hill, Commissioner
Dr. William A. Burke, Commissioner
Christina L. Desser, Commissioner
Pedro Nava, Commissioner
Patrick Kruer, Commissioner
John Woolley, Commissioner
Mike Reilly, Commissioner
Dave Potter, Commissioner
Gregg Hart, Commissioner
Shirley S. Dettloff, Commissioner
Scott Peters, Commissioner
Joan Dean, Assistant Deputy Secretary, Trade and Commerce Agency
Mary Nichols, Secretary, Resources Agency
Paul Thayer, Executive Officer, State Lands Commission
Maria Contreras-Sweet, Secretary, Business, Transportation and Housing Agency
Soo Lee, Alternate Commissioner
Edward Laurence Albert, Alternate Commissioner
Amanda Susskind, Alternate Commissioner
Tom Soto, Alternate Commissioner
Trent Orr, Alternate Commissioner
Maria Elena Durazo, Alternate Commissioner
Annette Rose, Alternate Commissioner
Deborah Ruddock, Alternate Commissioner
George Luna, Alternate Commissioner
David Allgood, Alternate Commissioner
Peter M. Douglas, Executive Director
Gary Timm, District Manager, South Central Coast District
Katie Lichtig, City Manager, City of Malibu
Susan Nissman, Third District

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 29th, 2002

Dear Governor Davis,

I am sure you are very busy in this year of fiscal crisis and elections. However, I would like to draw your attention to the Coastal Commission's plan for Malibu. I urge you to prevent them from strangling the people who live there. Through their combination of draconian regulations, which in their bizarre zeal staggers drunkenly into the realm of the absurd, and their insistence on "Coney-Islanding" Malibu, the Coastal Commission achieves the contradictory goals of both depopulating and overpopulating our precious coast.

The Coastal Commission dubbed almost all of Malibu an ESHA for political and not scientific, environmental reasons. They prohibit everything from pets to rose bushes, demanding ridiculous reports before, during and after a project, quite often extending in perpetuity. If I am to comply, I need to hire arborists full time to sit on my property during any construction, big or small. If I am to comply, I must prove that everything Coastal wants to do to me is NOT a taking, which will be impossible, because it is, but nonetheless, it is out of my bank account that I must hire economists, financial analysts, engineers, all working to prove that Coastal is not persecuting me, all before I want to do any project...

I am a member of the Theodore Payne Native Plant Preservation Society. I planted natives on my property, just because I think it is the right thing to do. I was going to remove all of my eucalyptus and other non-native trees, until I saw the Coastal Commission regulations governing anyone who has live oak and sycamore trees on their property. I always vote slow growth and yet I have campaigned for parks bonds and other responsible growth measures. I am not an extremist on either side. I am just a citizen appalled at your employees' shameful behavior.

Please tell your Coastal [redacted] democracy – and to your [redacted] Malibu is a pretty liberal town and has supported you in the past. However, for the first time, I hear the shocking opinion from many that maybe a conservative republican governor may not be so bad, because he will most definitely change the composition and behavior of the Coastal Commission, starting with the ever vengeful Sara Wan and Peter Douglas.

I will not be signing my name to this letter when I copy it to the Coastal Commission, as I fear retribution, based on experiences suffered by some of my fellow citizens at the hands of the Coastal Commission.

Respectfully,

Anonymous Malibu Citizen

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Cal. Coast Commission
S. Central Coastal Distric
89 S California St Suite 200
Ventura Ca 93001

Policies abuse freedoms

(The following comments were addressed to the California Coastal Commission)

I have been a resident of Malibu for 25 years. During this time I have enjoyed a lifestyle, which is common to many here in our coastal environment. At 70 years old I find myself unnecessarily impacted by organizations, which have no understanding of the personal freedoms that are the core of American life. Common sense, logic and fairness seem to have totally escaped your thinking. Programs that set up centralized autocratic policies exercising regimentation and suppressing local authority is Fascism, plain and simple. The possession of our rights and privileges is the reason for our greatness as a society and a country. Your actions are an abuse of the authority, which was meant to regulate, not dictate.

I do not have children of my own, but one of my great pleasures is to visit and watch the children, young people and families in Bluffs Park. The proposal to return this site to its natural state is beyond all rational thought. What we need is more areas like Bluffs Park, to keep our children in healthy activities. If you take away the parks, trails and other areas that you deem as sensitive, you invite them to be in areas that promote everything that we are fighting to change.

I think you are out of order and any policies that restrict our basic freedoms must be re-examined.

Dr. Christian Title

I agree with Dr Title, and extremists or immature people should be removed from c.c.c policy making.

Respectfully F. Davies

Mariposa Land Company Ltd.
P.O. Box 2485
Malibu, Ca 90265
310-456-3230

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 31, 2002

Ms. Sara Wan, Chair
Members of the Coastal Commission
22350 Carbon Mesa Road
Malibu, Ca 90265

Re: Malibu Local Coastal Plan, Malibu Civic Center

Dear Chair Wan and Members of the Coastal Commission:

The current proposed Local Coastal Plan has a dearth of Commercial General zoning. Without any appreciable Commercial General zoning, there will be tens of thousands of additional vehicle trips per year on the Pacific Coast Highway and the canyon roads by residents seeking these services from nearby cities.

Coastal Staff summarily dismisses this issue as something that should be handled by a Civic Center Specific Plan. Staff ignores the reality of Malibu. The Legislature required the Coastal Commission to do the LCP for Malibu because the Legislature believes Malibu is unable to produce an LCP in a timely manner. To suggest that Malibu could do a specific plan, something that does not have a deadline to complete is unrealistic. In fact, the City of Malibu attempted to do a specific plan for the Civic Center in the late 1990s and was unable to complete it.

There is no appreciable CG zoning in the City of Malibu in the proposed LCP. Of the four parcels with CG zoning, only one could realistically be used for CG purposes. Please review the attached map. The parcel south of PCH is already developed with retail and medical offices. The parcel on the west side of Cross Creek road is behind the gates of the Serra Canyon residential community. The portion of the parcel on the east side of Cross Creek Road that is zoned CG is also behind the gates of the Serra Canyon residential community. The CG parcel that fronts the PCH is the only possibility but it is smaller than indicated because of road easements that are not depicted on the map.

We encourage you to direct staff to use the zoning designations of the City's General Plan. If you do not address this issue, you will relegate Malibu residents to tens of thousands of additional vehicle trips per year. To assume a future Specific Plan will handle this issue is to ignore the reason why you are doing the LCP in the first place. Please utilize the Malibu General Plan zoning designations. Over 50 public meetings where held to prepare the General Plan and it should be the basis for the LCP land use.

Sincerely,

Grant Adamson

Grant Adamson
Mariposa Land Company Ltd.

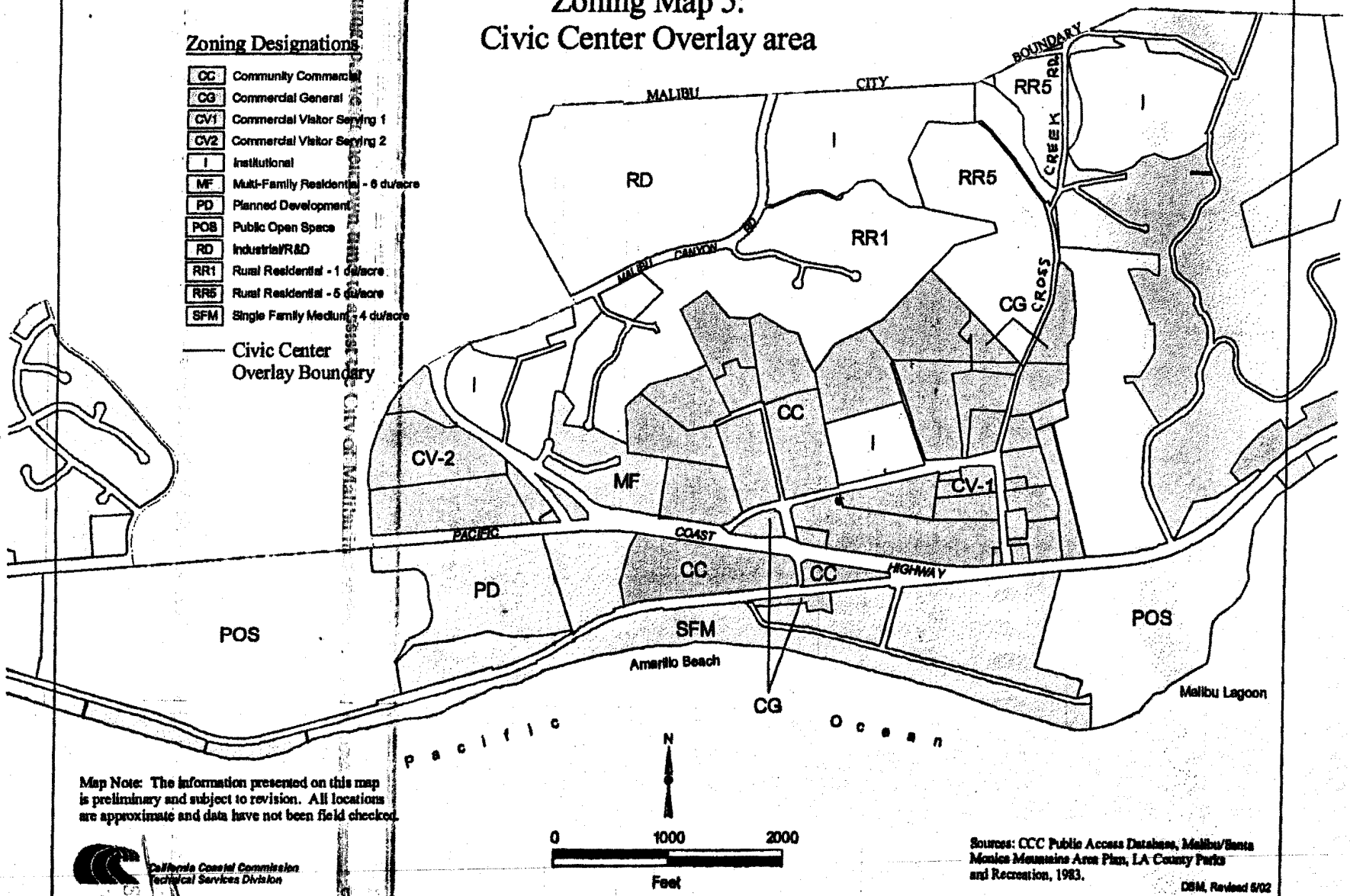
Distribution:

Sara Wan
Christina L. Desser
Cynthia McClain-Hill
John Woolley
Gregg A. Hart
Pedro Nava
Mike Reilly
Shirley Dettloff
Patrick Kruer
Dr. William A. Burke
Dave Potter
Scott H. Peters
Tom Soto
Soo Lee
Edward Laurence Albert
Trent Orr
Annette Rose
George Luna
Maria Elena Durazo
Amanda Susskind
Deborah Ruddock
David Allgood
Gary Timm
Susan McCabe

Local Coastal Program - City of Malibu

Preliminary Draft

Zoning Map 5: Civic Center Overlay area



Map Note: The information presented on this map is preliminary and subject to revision. All locations are approximate and data have not been field checked.

California Coastal Commission
Technical Services Division

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 5/02

SANTA MONICA MOUNTAINS
TRAILS COUNCIL

PO BOX 345 AGOURA HILLS, CA 91376 (818)222-4531 SMMTC@YAHOO.COM

August 1, 2002

Gary Timm
California Coastal Commission
89 S. California St. Suite 200
Ventura, California 93001

Dear Gary:

Enclosed is a letter from our organization. Please see that it is made a part of the record for the Malibu LUP and that a copy is distributed to each of the commissioners and to staff.

Thank you.

Sincerely,

Linda Palmer

Linda Palmer, Vice President

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SOUTH CENTRAL COAST DISTRICT

SANTA MONICA MOUNTAINS
TRAILS COUNCIL

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 1, 2002

Attention: Gary Timm
California Coastal Commission
89 S. California Street, Suite 200
Ventura, California 93001

REFERENCE: MALIBU LCP/LUP

Dear Mr. Timm:

The Santa Monica Mountains Trails Council (SMMTC) has enjoyed a long and productive working relationship with the California Coastal Commission. Together we have made great strides toward securing a trail network in the National Recreation Area.

The SMMTC's efforts do not stop at providing trails. We also advocate for the quality of the trail experience, as well. It is for this reason that the SMMTC Board believes your stringent restrictions on horse keeping in your draft Malibu LUP dated June 2002, are not realistic. The result would be a degrading of the quality of trail experience. While responsible horse keeping must be maintained throughout the National Recreation Area, we do not want to lose the recreational opportunity that horses provide.

We commend you on the Plan's strong support for trails and for the California Coastal Trail. We envision that eventually there will be trail camps and hostels along that and other long distance trails through the Coastal Zone.

Thank you for this opportunity to comment.

Sincerely,

Linda Palmer

Linda Palmer, Vice President

COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

August 12, 2002

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. Gary Timm, District Manager
California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Dear Mr. ~~Timm~~ Garz

DRAFT CITY OF MALIBU LOCAL IMPLEMENTATION PLAN

Thank you for the opportunity to review and comment on the Draft City of Malibu LCP Local Implementation Plan (LIP). Having completed a review of the document, the Department of Beaches and Harbors (DBH) would like to bring to your attention to issues pertaining to allowable signage at our beaches (*Sec. 3.13.3*) and temporary events (*Sec. 13.4.9*).

Allowable Signage

The Draft LIP would prohibit any outdoor advertising displays, structures and signs. The proposed ordinance would directly impact our Department's ability to fund our successful Water Awareness Training Education and Recreation (W.A.T.E.R.) Program, which is the County's inner-city youth aquatic education program. This program has relied almost entirely upon ad-generated revenue on existing beach facilities since 1985. The County has affixed public safety signboards to the lifeguard towers that provide the public with valuable safety information about current beach conditions. The portion of the safety sign that includes advertising funds this public education effort. The continued use of these and similar signs on existing beach structures was reaffirmed last May by the Commission in its conditional approval of two recent coastal development permits that allow assembly of new lifeguard towers at all of our beaches. In keeping with previous Commission findings, we ask that the LIP specifically allow existing outdoor advertising on the beach that is incorporated within the County's public safety board program, as long as the boards do not increase in size or change in design. Your concurrence with our request will ensure the continued success of the W.A.T.E.R. program, by providing a consistent revenue source that supports a valuable community program.

Temporary Events

Also of concern to our Department is the tightening of restrictions on temporary and special events on County beaches in Malibu. Our beaches play host to a wide variety of special events each year that routinely use the beach, our parking lots, or other public facilities. For these temporary events to be exempt from permitting obligations under the proposed LIP, the event must meet **all** of the following criteria:

A. It cannot be held between Memorial Day and Labor Day (unless shorter than one day, including set-up and take-down);
B. It cannot occupy any portion of the sandy beach or public parking area; and
C. It cannot charge for public admission (consistent with County policy).

Fax: (310) 821-6345
(310) 305-9503 13837 FIJI WAY, MARINA DEL REY, CALIFORNIA 90292
INTERNET: http://beaches.co.la.ca.us/

This "guilty until proven innocent" approach to regulation appears to be insensitive to the volatile nature of temporary event planning, in general, by requiring the issuance of a coastal development permit for virtually every type of short-term activity that is conducted on a sandy beach or in a beach parking lot. While event organizers may apply for an exemption through the City, this increased level of scrutiny would be an added burden for County and City staff, and would severely impact event organizers by increasing processing time and associated fees. Our special event permitting staff ensures that each of the events that receive a free County permit does not impact the public's use or enjoyment of the beach area that they occupy. The proposed LIP ordinance would adversely impact thousands of event days on Malibu beaches each year. These events include weddings, day camps, surf contests, religious activities, and other community-related events, as well as a variety of film and television venues. We believe that the added administrative and financial burden placed on the organizers of these events would actually discourage public use of Malibu beaches for these events.

As recently as April 2001, when asked to clarify the Commission's position related to temporary events on County-run beaches, our Department was provided with Commission guidance memoranda from 1993 and 1998. These guidelines mirror the proposed LIP policies, except for one subtle, yet critically important factor--current practice. As we have understood and practiced daily, all temporary events are exempt, except those that meet ALL of the stated criteria. This practice is reasonable in that it allows our permitting staff to easily screen all prospects before issuing a use permit. However, under the proposed Malibu LIP, an event would require a CDP if only ONE of the criteria apply. Additionally, the proposed LIP would restrict the use of public beach parking lots in a similar fashion, casting the net even wider and restricting public use for temporary events. These changes are unacceptable, and we request that the existing governance policies for these types of events on our beaches be retained. This action will preserve appropriate beach areas for continued public use and enjoyment, and maintain an acceptable level of control against possible abuse.

Thank you for this opportunity to address these important issues affecting the public's use of our beaches. If you have any questions, please call me at (310) 305-9533.

Very truly yours,

STAN WISNIEWSKI, DIRECTOR

Joseph J. Chesler, AICP
Chief, Planning Division

SW:JJC:lh

cc: Dusty Crane
Katie Lichtig, City of Malibu

Sarah Dixon
31875 Sea Level Drive
Malibu, California 90265

310-457-7854

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 29, 2002

Mr. Gary Timm
California Coastal Commission
85 South California Street, Suite 200
Ventura, CA 93001-2801

Re: Draft Malibu Land Use Plan Environmental Review Board Policies

Dear Mr. Timm:

Attached is a copy of my testimony at the June 20, 2002, in Huntington Beach, regarding the Draft Malibu Land Use Plan. I call your attention to comments and recommendations regarding the ERB, as well as policies now in effect. As I suggested in our brief conversation, I believe it would be helpful to arrange a meeting between Malibu ERB members who also serve on SEATAC, Mark Gold of Heal the Bay, Rosie Dagit of the Las Virgines Resources Conservation District Biologist, City of Malibu Planning and Administrative officials, and interested Malibu Planning Commission Members, and myself.

As you may know, I assembled the ERB in the early days of Malibu Citihood at the direction of the City Council. The board met regularly to evaluate development applications, review EIRs, and suggest revisions to meet Malibu General Plan policies and Coastal Land Use Plan policies. While, as one might expect, there were occasional howls of criticism from developers demanding fast tract approvals, it wasn't until Malibu's previous Planning Director Barry Hogan opposed utilizing the ERB that difficulties arose. Occasions when the ERB recommended rejection of applications were rare, and were only when applications clearly flew in the face of General Plan Policies and the City's Interim Zoning Ordinance.

As I understand, there is now support for ERB review from the Malibu Planning Commission. I believe, however, that there are numerous misunderstandings and false impressions that could be cleared up in a meeting, leading to resolution of differences and recognition of the true value of environmental review, as well as appreciation for the publicly employed scientists who are willing to give of their own time to assist the City of Malibu in preserving natural resources.

Please let me know your thoughts.

Sincerely

Sarah Dixon

Sarah Dixon
Attachment

Sarah Dixon, 31875 Sea Level Drive, Malibu, California 90265, 310-457-7854

July 10, 2002, Testimony Before the California Coastal Commission Regarding the Draft Land Use Plan, and Environmental Review Board (ERB) Policies and Implementation Policies in the Current Draft Malibu Land Use Plan

1. I want to remind everyone that the Coastal Commission has been protecting the coastal portion of the Santa Monica Mountains from urban sprawl over the past thirty years. I cannot imagine what Malibu would look like today without that ongoing protection. Many have forgotten that it was the Coastal Commission who saved Malibu from the dread growth inducing sewer system monster. And yet today I'm disappointed to see that the draft Land Use Plan supports urban sprawl in the Malibu Creek flood plain instead of mandating creative and equitable restoration of Malibu Lagoon to its historic configuration—with appropriate compensation to landowners.

2. I note that for every person in this room there are hundreds who hike, bike, surf, and swim in Malibu who can't be here today because they work all week to support themselves and their families. These people who cannot speak to you here make the Santa Monica Mountains and Seashore their natural day use park. They do not stay in expensive resort hotels and shop for recreation.

3. The riparian areas of the Santa Monica Mountains National Recreation Area are the best, cleanest, most natural remaining place where inner city kids can hike with a ranger and meet a frog for the first time. And that frog is part of a larger ecosystem that depends on our decisions for its very survival.

4. The coastal sage scrub of the Santa Monica Mountains is the air scrubber for the Los Angeles Basin (Santa Monica Mountains National Recreation Area Enabling Legislation).

5. You have plenty of science to support the policies in the draft. Vital background materials for the 1986 LUP were printed in a separate volume; and staff apparently didn't know they existed for use as a starting point database for the new draft. What a waste! I urge you to make sure the supporting science and background information are printed within the new LUP, so people will understand the why the policies are important.

Now I will turn to my subject for today: Environmental <u>Review Board (ERB) Policies and Local Implementation Policies in the Current Draft Malibu Land Use Plan</u>

Background: In the early days of Malibu's Cityhood, I was asked to assemble the City's ERB. Encountering the difficulty of locating scientists with *management* experience in the Santa Monica Mountains and Seashore, I looked to public agencies and organizations with responsibilities in the Santa Monica Mountains and Seashore, and to academic institutions, state and federal parks. I also looked to Los Angeles County's Sensitive Ecological Area Technical Advisory Committee (SEATAC). The list of disciplines represented on the ERB included **Coastal Morphology** (Dr. Anthony Orm, UCLA), **Botany** (Suzanne Good, State Parks Ecologist, *SEATAC Member*), **Water Quality** (Dr. Mark Gold, Heal the Bay), **Environmental Psychology** (Dr. Carlos Hagen Lautrup, Instructor Santa Monica College), **Archaeology** (Dr. Chester King), **Zoology** (Sean Manion, Las Virgines Resource Conservation District), **Biology** (Dr. Marti Witter (former City of Malibu Biologist, *SEATAC Member*), **Equestrian Matters** (Jean-Marie Webster, Santa Monica Trails Council), **Entomology** (Dr Walter Sakai, Santa Monica College, *SEATAC Member*), **Biology** (Rosi Dagit, Las Virgines Resource Conservation District, **Geology** (Donald Kowalewsky , former Los Angeles County Geologist),and **Public Recreation** (Sarah Dixon, Founding Member, Malibu Recreation Council, founding member; Plein Air Artists of the Santa Monica Mountains and Seashore; former employee City of Santa Monica Parks and Recreation; prime time wildlife documentary film maker). I was careful not to choose people who might have a conflict of interest.

Comment 1: The Current CCC Draft Malibu LUP seems to combine the best ERB elements of the 1986 LUP and the City of Malibu's General Plan.

Comment 2: The Draft does not specify disciplines to be represented in the makeup of the ERB. The fragile Santa Monica Mountains represent a singularly complex array of environmental resources to consider.

Recommendation: Specify the disciplines enumerated above to be represented on the ERB. Look to academia, public agencies and conservation organizations for members with management experience in the Santa Monica Mountains and Seashore. In particular, due to the fragility and hazard prone nature of Malibu's beaches, include an *academic* coastal morphologist (*not a wave uprush consultant*).

Comment 3: Independence is essential to a functioning ERB. While City Staff must by its nature respond to Council priorities of the moment, only an independent, non-politicized ERB can be relied upon for sound technical advice on a wide spectrum of issues over the long haul.

The Malibu City Council has in the past wisely avoided individually appointing ERB members; but we cannot know what future Councils might choose to do.

Recommendation: Define a *neutral* appointment process to avoid politicization and maintain independence of the ERB, as well as to assure a broad spectrum of members with *management* experience in appropriate disciplines.

Comment 4: LIP 13.7C (*See page 5 below*) appears to hand ERB assignments over to City Staff, who, as employees considering job security, might be less independent than ERB members.

and similar language

Recommendation: Delete LIP 13.7C, because the best qualified biologist or environmental specialist cannot replace the wide variety of disciplines required in environmental considerations in the biologically, geologically, and historically complex Santa Monica Mountains and Seashore.

Comment 5: Conflicts have recently arisen regarding the City's perception of the ERB and its functions, and scheduling practices that don't recognize the calendar obligations of busy professionals who give of their time to visit sites, analyze plans, and consider recommendations for bringing applications into conformance with regulations. The City and ERB members have different views as to why it has become difficult to assemble a quorum for meetings. A valued member, one who consistently worked creatively to help applicants through the process, recently resigned in frustration.

Recommendation: Before finalizing Environmental Review policies, Coastal Commission Staff should meet with ERB members and City Staff to clarify objectives and consider modifying environmental review policies for a better working relationship.

<u>California Coastal Commission Malibu Land Use Plan 1986</u>

P64: An Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management (modeled on the Significant Ecological Areas Technical Advisory Committee) shall be established by the Board of Supervisors as an advisory body to the Regional Planning Commission and the Board to review development proposals in the ESHAs, areas adjacent to the ESHAs, Significant Watersheds, Wildlife corridors, Significant Oak Woodlands, and DSRs. The ERB shall provide recommendations to the Regional Planning Commission (or decision-making body for coastal permits) on the conformance or lack

of conformance of the project to the policies of the Local Coastal Program. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources. Consistent with P271 (a)(7), projects shall be approved by the decision-making body for coastal permits only upon a finding that the project is consistent with all policies of the LCP.

P65 The Environmental Review Board shall consider the individual and cumulative impact of each development proposal within a designated Significant Watershed. Any development within a significant watershed shall be located so as to minimize vegetation clearance and consequent soil erosion, adverse impacts on wildlife resources and visual resources, and other impacts. Therefore, development should be clustered and located near existing roads, on areas of relatively gentle slopes as far as possible outside riparian areas in canyons and outside ridgeline saddles between canyons which serve as primary wildlife corridors.

City of Malibu General Plan Land Use Implementation Measure 31: Maintain an Environmental Review Board (ERB) composed of qualified professionals with technical expertise in resource management as a technical advisory committee. The ERB shall review and make recommendations on proposed development in or adjacent to an ESHA and development that may have a potential adverse environmental impact or which impose special environmental problems.

California Coastal Commission Draft Malibu Land Use Plan January 2002 Environmental Review Policies

3.36 The Environmental Review Board (ERB), comprised of qualified professionals with technical expertise in resource management, shall serve as an advisory body to the Hearing Officer, ~~Planning~~ Commission and the City Council to review and make recommendations on development proposals within or adjacent to ESHA, or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35. The ERB shall consider the individual and cumulative impact of each development proposal within or adjacent to ESHA. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB when required by this policy.

3.37 The ERB shall provide recommendations to the Planning Commission (or decision-making body for coastal permits) on the conformance or lack of conformance of the reviewed development project with the policies of the LUP. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources. The

decision-making body shall make written findings relative to the approved project's conformance with the ERB's recommendations.

3.38 All applications for development within or adjacent to ESHA shall be reviewed for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources, to the Environmental Review Board and the decision-making body.

LIP 13.7C. Except as provided in section 13.4 (Emergency Permits), the Environmental Review Board (ERB) or a qualified biologist or environmental specialist shall serve as advisors to the Planning Director, Planning Commission and City Council for coastal development permits within or adjacent to properties within the ESHA Overlay Zone or identified as being ESHA pursuant to provisions of the ESHA Overlay Ordinance Chapter 4. *(Chapter 4 is Shoreline Bluff Structures & Hazards.)* The ERB or qualified biologist or environmental specialist shall provide recommendations on the conformance or lack of conformance of the proposed project with policies of the certified LUP and may suggest mitigation measures designed to avoid or minimize impacts on environmentally sensitive habitat area resources.

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

John G. Wright
17200 San Fernando Mission Blvd.
Granada Hills, CA 91344

7/30/2002

California Coastal Commission
South Central Coast
89 South California Street
Suite 200
Ventura, CA
93001-2801

Re:Proposed changes in the Land Use Plan for Malibu, particularly the proposed 100 foot setback from "top of slope" on Point Dume gullys.

Gentlemen:

Enclosed is a copy of an assessor's map covering just one street on Point Dume, in Malibu. On this map are marked those properties which have been built upon since this area became urbanized more than fifty years ago. Every one of the lots marked with an X contains improvements which will be made non-conforming if the Coastal Commission Staff, in all its wisdom, has its way with the absurd recommendation that no improvements may take place or be altered within 100 feet of the top of the slope.

These X's are houses legally built at, or close to the top of the slope, in some cases partially down the slope, on just one of the gullys running inland from the ocean on Point Dume. The lots are deep, because the level area by the street ends in a back yard leading down into the bottom of the gully. Each one of the lots on the map has such a back yard, just as virtually every house, in every urbanized part of American has a back yard. Almost all of these sloping back yards have for decades been landscaped with trees, bushes, fences, benches, walks, and other urban improvements of all kinds.

Almost all have always had footpaths (some elaborate, with concrete steps and railings, a few just spaded out dirt trails) down into the gully and thence out to the beach. Many lot slopes have terraces and retaining walls and some have been left in

the more or less natural slope, except that almost all have been repeatedly cleared of native brush at the strong suggestion if not requirement of the fire department. (It is not unreasonable to assume that the local fire department is somewhat more knowledgable about local fire danger than those members of the Coastal Commission staff who recommend or demand that highly flammable native brush be left in place)

The few lots still vacant, as a matter of routine, are required be brushed, or the fire department performs the task and bills the homeowner. This brushing and removal of native growth, performed at the order of the city or county fire folks, does not extend just from the street to the "top of slope", or to 100 feet from the top of the slope, but extends directly into and through what the Coastal Commision Staff calls an "ESHA," all the way down to the back (gully bottom) of the owner's back yard. Every vacant lot, including all the sloping areas down to the bottom, is cleared every other year or so, for reasons one might have supposed would be obvious.

I am enclosing pages from Bob Perry's classic "TREES AND SHRUBS FOR DRY CALIFORNIA LANDSCAPES" Page 25 lists "High fire hazard species", and prominent among the plants is Artemisia californica, California Sagebrush. Note the language in PLANTING FOR FIRE SAFETY "We begin the process of fire safety with the selective removal of any highly flammable plant species--We are attempting to reduce the fuel volume and lower the intensity of any fire that should approach our buildings." Page 54 is even more explicit "(California Sagebrush) Its foliage contains a high amount of oil and is highly flammable during the summer"

Since 1946 more than fifty years ago,when the area was first urbanized, removal of these flammable plants has been of vital interest to the local fire departments and residents who have to live with this danger on the ground, while at the same time the Coastal Commission does its best to keep residents from abating the danger in its self-termed "ESHA". This flammable sage which the C.C. staff is so anxious to protect has firestormed vast areas of Malibu in the past; how can the staff be so sanguine that this will not happen again?

So here we have an area, urbanized since 1946, built up for forty or fifty years, where everyone's own personal segregated back yard, most set off with back yard fences, is now an "Environmentally Sensitive Habitat Area" according to the C.C. Staff, simply because it slopes. On the other side of the gully, on a different assessor's map, there are more forty to fifty year year old fences, gazebos, dog runs, horse corralls

cleared areas and two or three orchards existing on this same sloping backyard area.

God knows what the Habitat is, in all this urbanized neighborhood, that the staff finds to be so sensitive that from now on residences must be set back 100 feet from the top of their own backyard slope. Many of the lots slope all the way from the bottom of the gully to the street, with little or no level area, and so, under the proposed 100 foot setback, could never be built upon at all. This must come as welcome news to folks who have investment-backed expectations concerning productive use of their lots and their homes!!

I am one who voted for the Coastal Comission and am in general support of the philosophy of saving the coast for future generations and those who live inland. But this sort of rigid uninformed micro-management of an area with which they are clearly unfamiliar (all you have to do is walk up the gully included on this assessor's map, and nobody could convince you that it any longer fits a definition of an area of "exceptional ecological significance") just makes people rightfully angry at bureaucratic mindlessness.

And of course at the same time that these sloping urban back yards, with all their existing improvements, trails, brushed and disced areas, corrals, fences etc, are labeled an "ESHA", the tidepools at Little Dume, which clearly <u>are</u> environmentaly sensitive, are taken <u>off</u> of the list of protected areas!!! Go figure.

So, if it is not clear already, consider this an objection to the elimination of the environmentally sensitive designation for the Little Dume tidepools, which have heretofore been protected, and the irrationality and witlessness of calling these urban gullys "ESHA"s; and above all the the 100 foot setback from the so-called "ESHA"s, making all these X's into illegal structures, which cannot be enlarged or substantially changed and even worse cannot legally be protected from the fire danger below.

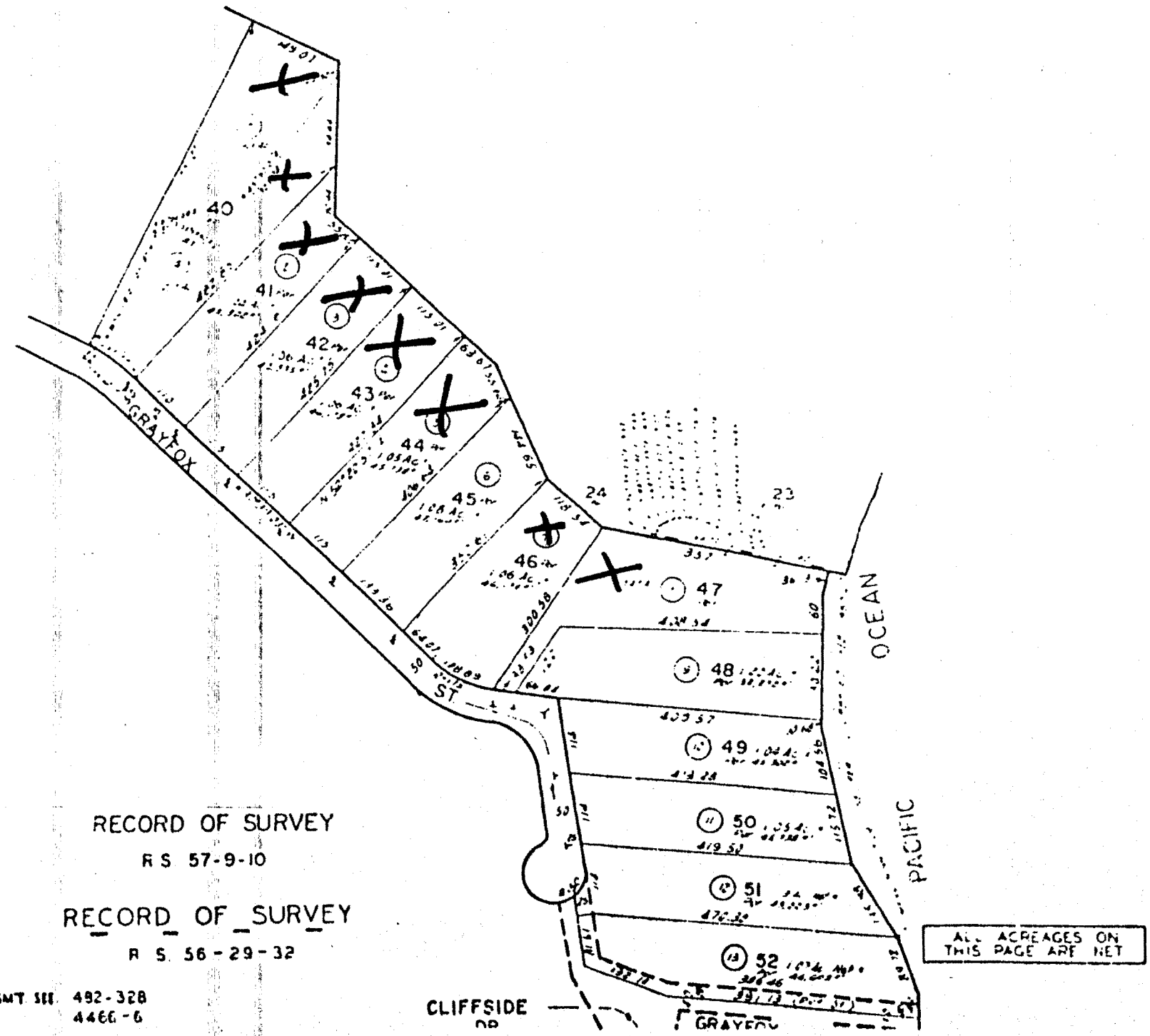
It is obviously better to be "grandfathered" in than not be able to build at all under the new guildlines, which might be the fate of many if not most of the still vacant Point Dume lots. But to stick all of these thirty, forty, fifty year old legally improved X's with that permanent heavy cloud over any possible changes or additions to the long-existing structures, and worse to deliberately expose them to fire danger by discouraging or prohibiting removal of "highly flammable" plants below, all in an area which clearly has not been an "ESHA" because of its urbanization since 1946, is

an almost classic example of bureaucratic overreaching and ineptitude.

Very truly yours,

John G. Wright.

Enclosures



RECORD OF SURVEY
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RECORD OF SURVEY
R S. 56-29-32

CODE
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FOR PREV. ASSMT. SEE 492-328
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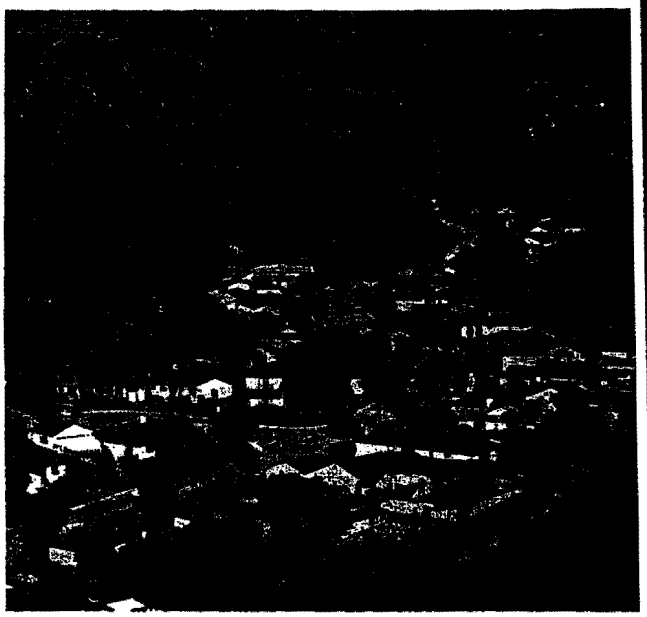
ASSESSOR'S MA
COUNTY OF LOS ANGELE

Planting for fire safety.

California landscapes experience anywhere from 9,000 to 12,000 wildland fires each year. Fire has been an ever present force for many decades in our state and has played an important role in the evolution and adaptation of most native plants. It can be stated that fire provides a beneficial role in our natural landscapes, by cleaning and revitalizing aging vegetation. However, it is of much greater concern that we are losing property and lives as we push our developments further into high fire hazard areas. More and more we are faced with the need to make our communites fire safe while anticipating the recurrence of fires around us.

The most frequent fire safety problem we are experiencing today, occurs in our residential developments which are located in foothill plant environments. In both new and existing housing projects, we often encounter homes which are located in areas of dense natural vegetation. Much of this vegetation is highly valued, and sometimes retained close to our buildings, which has resulted in many devastating fires. These fires not only cost property and lives, but lead to potential flood and erosion problems. From various studies and documentation of such occurrences, several observations and guidelines have been derived which help to provide reasonable fire safety. It is generally concluded that this goal is difficult to achieve, as many other issues are involved, ranging from slope stabilization, water use, and aesthetics, to costs and maintenance. Based upon these considerations, a set of recommendations can be suggested.



Above: Many developments occur in areas which surrounded by attractive natural vegetation, but highly susceptible to damage by wildland fire.

Design:

Fire safety begins with total project design. While landscaping plays a major role in this situation, it is clear to see that architectural design and site planning provide keys to our success. Landscaping alone cannot solve our problems if we continue to construct buildings with wood roofs and projecting overhangs, or when we nestle buildings into canyons and slopes within dense plantings of natural vegetation.

Above, below: Wildland fires of all scales lead to the struction of property and loss of lives. Fires pose a dir threat, but winter rains and flooding can be as extens in damage.

Vegetation management zones:

The basic prerequisite in providing fire safety begins with isolating our structures from fire hazard conditions. This is largely achieved through modifying and managing a landscape buffer around our buildings. It is recognized that a minimum distance of 100-150 feet around structures should receive a comprehensive landscaping program. However, there are many environments and site conditions where even more modification is necessary and each situation must be evaluated individually. Within this buffer distance, at least four management zones and planting treatments can be established. These include: Zone 1 –Selective thinning of native vegetation; Zone 2 – Low volume, slow burning planting; Zone 3 – Fire retardant planting; Zone 4 – Domestic planting. It is the combination of these planting treatments which can produce the most successful solution from the standpoint of safety, cost, maintenance, and aesthetics. These zones are discussed on the following pages.

Zone 1 – Selective thinning of native vegetation.

tarting with the undisturbed natural vegetation which urrounds a development, we begin the process of fire afety with the selective removal of any highly flammable lant species. This also includes removing large shrubby lants and dense groupings as a way to limit the overall liage mass. We are attempting to reduce the fuel volume nd lower the intensity of any fire that should approach our uildings. At the same time we do not want to expose too uch soil area as to cause erosion problems. Hopefully, is thinning process will be done in a manner to create a atural appearance and not be done in a simple straight ne technique. It will be necessary to keep abreast of turning plant growth every 3-5 years and to perform llow-up removal of high vegetation concentrations. The llowing lists of plants can provide us with suggestions r possible species to retain or remove.

High fire hazard species:

Adenostoma fasciculatum	Chamise
Adenostoma sparsifolium	Red Shanks
Artemisia californica	California Sagebrush
Eriogonum fasciculatum	Common Buckwheat
Salvia species	Sage

***Valuable watershed species:**

Arctostphylos species	Manzanita
Ceanothus species	Wild Lilac
Comarostaphylis diversifolia	Summer Holly
Garrya species	Silk Tassel
Heteromeles arbutifolia	Toyon
Juglans species	Walnut
Rhamnus species	Buckthorn
Rhus species	Sumac
Quercus species	Oak

*These plants provide good slope and soil stabilization, wildlife habitat, and are not as flammable as the high fire hazard species. However, all of these plants should be thinned to reduce their foliage mass, and be retained in limited numbers to prevent high intensity fires.

Zone 2 – Low volume, slow burning planting.

Vithin an intermediate zone, between the native landcape and a housing project, we intensify our efforts to educe the volume of vegetation and to replace it with low rowing, slow burning plant species. This is the first area in hich we actually provide planting and it frequently ccurs on slope and disturbed areas, which resulted from rading practices. We are attempting to achieve a plantng which consists of selected native and introduced lants which offer some natural character. Their low profile nd limited foliage mass can diminish the rate and ntensity of fires, as well as provide reasonable soil overage.

his zone can be established by direct seeding or by nstalling plants from containers. Some supplemental ater is needed to start this planting, but the proper pecies will be able to survive on their own after one to two easons. Periodic maintenance is needed to remove nvasive grasses and plants that become too large or rowded together. While several plants can be used in this ndscape zone, it has been found that most will burn hen exposed to intense fires. Any plant that is surviving ithout supplemental water will have very low moisture ontent in their leaves during the dry summer months. The ffectiveness of this planting is achieved by slowing fires ith plants that have little to burn. A mixture of plant types a good idea, as site conditions vary and different pecies will survive better in different locations. Plants hich are considered of value in low volume, slow burning ndscape zone include:

Low fuel volume native plants:

Eriophyllum species	Yarrow
Eschscholzia californica	California Poppy
Lotus scoparius	Deerweed
Lupinus species	Annual Lupines
Mimulus species	Monkey Flower
Penstemon species	Penstemon
Salvia columbariae	Chia
Salvia sonomensis	Creeping Sage
Trichostema lanatum	Woolly Blue Curls
Zauschneria species	California Fuchsia

Low fuel volume introduced plants:

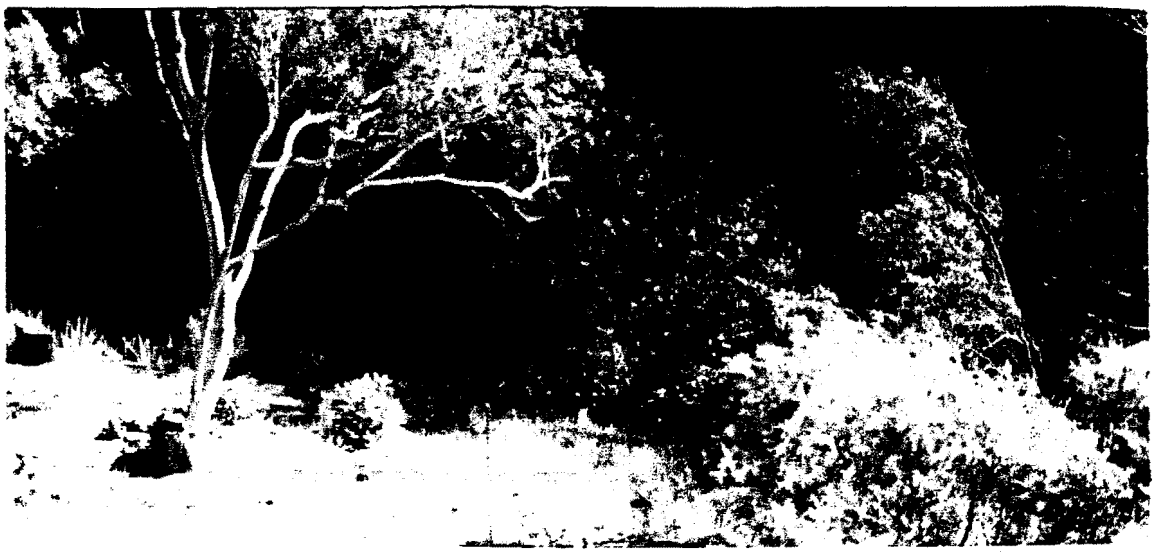
Artemisia caucasica	Silver
Atriplex glauca	Saltbush
Atriplex semibaccata	Creeping Saltbush
Cistus crispus	Rockrose
Cistus salviifolius	Sageleaf Rockrose
Santolina chamaecyparissus	Lavender Cotton
Santolina virens	Green Santolina

Artemisia. Sagebrush

Asia, Europe, U.S.A.

A diverse plant group found throughout the world, containing over 200 evergreen, deciduous and woody perennial species. Approximately 20 species are native to California and are commonly known for their grey-green leaves which are often highy aromatic. Three native species are most frequently used in dry landscapes and usually work best for naturalizing and revegetating disturbed areas within range of their natural environments. Other species have been introduced from various regions and are popular for garden use, with some showing good heat and drought tolerance. Such plants prefer loose and well draining soils and little, or no summer water. Due to the wide variety and extensive distribution of this plant group, additional research is needed to identify other useful species for various landscape applications.

Name	Character	Remarks
A. californica California Sagebrush	A bushy grey-green shrub, 3-6 ft. high, with a shallow fibrous root system. Finely divided leaves have a distinct sage-like fragrance, occur on thin, semi-woody stems and will be dropped under periods of high drought stress. Inconspicuous flowers occur July-Oct.	California Sagebrush is one of the most common and widely distributed members of the Coastal Sage plant community. Landscape use is restricted to slope planting, particularly road scars, and nuturalizing disturbed areas. Its foliage contains a high amount of oil and is highly flammable during the summer. Seeds require no treatment to germinate, but a low, 20-30% rate of establishment is usually achieved. Plates 66, 67
A. caucasica Silver Spreader	Low spreading shrub, 2-5 in. high and sometimes reaching 2 ft. across. Evergreen silvery-grey foliage is finely divided and accented in early summer by small yellow flowers.	An introduced species which shows very good sun, heat, and drought resistance. It grows in many plant environments from coastal edges to interior valleys and low deserts. Needs good drainage conditions and is best suited for rock gardens and small banks. With its low foliage profile, it resists fire well. However, it is not suited for large areas as interior portions of the plant will die out and give an overall spotty appearance. Plant from flats, 12-18 in. apart, and expect a relatively short life span ranging from 3-5 years. Plate 68
A. pycnocephala Coast Sagebrush	Low growing perennial shrub, 1-2 ft. high, spreading 3-4 ft. Handsome grey foliage, conspicuous pale yellow flower spikes occur Apr.-July.	A member of the Coastal Strand plant community of northern California, where it survives without summer water and tolerates salt spray. This native species is often used in domestic gardens and is valued for its foliage color along borders and in cut arrangements. Requires little water after establishment and should not be pruned except for the removal of dead flower stalks. This plant has shown good success in many coastal and inland landscapes, where it survives on heavy clay, as well as coarse and sandy soils. In warm areas, it needs some protection from intense sun and requires periodic summer water. Becomes leggy with age and should be replaced every 2-3 years. It can also be used in seed mixes for planting coastal slopes for naturalizing effects. Plate 69
A. schmidtiana Angel's Hair	Small perennial shrub, 1-2 ft. high, to 15 in. wide. Silvery grey-green leaves have finely divided lobes. Small spikes with inconspicuous flowers occur in spring.	A good border and rock garden plant with attractive foliage character. Tolerates heat, sun, and drought in all plant environments. A lower growing variety, *A. s.* 'Silver Mound', reaches 12 in. high, spreads 1-3 ft. Leaves are quite similar to Dusty Miller *(Centaurea)*. Good for small banks, provides fair fire resistance.
A. tridentata Big Basin Sagebrush	A many branched evergreen shrub, 5-15 ft. high and as wide. Trunks become furrowed with age, fragrant light grey-green leaves usually have three lobes on the tips. Inconspicuous flowers in late summer into early winter.	This plant is an extremely widespread shrub throughout the Great Basin area of North America. In California it also inhabits the edges of the Mojave and Colorado deserts on dry slopes and plains. It is most commonly used for naturalizing and slope planting on fill soils within areas of its normal distribution. However, it can become a very striking accent or specimen plant in sunny inland and desert gardens with its grey foliage and interesting branch structure. Should be planted in loose, well draining soils and needs no summer water after establishment. Plates 70, 71



Improved Trails, fences, cleared slopes in "ESHA"

Fire department's brushed slopes in "ESHA"

Buchalter
Nemer Fields
& Younger
A Professional Law Corporation

895 DOVE STREET, NEWPORT BEACH, CALIFORNIA 92658
TELEPHONE (949) 760 1121/ FAX (949) 720-0182

File Number:M0810-0001
Direct Dial Number : (949)224-6284
E-Mail Address: shori@buchalter.com

RECEIVED
AUG 0 6 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 1, 2002

Via Facsimile and E-mail
Gary Timm
California Coastal Commission
85 California Street, Suite 200
Ventura, CA 93001

Re: **Malibu Local Coastal Program**

Dear Gary:

Thank you again for taking the time to meet with Kari Kramer and me last Friday to discuss the comments of the Malibu Bay Company on the draft Malibu Local Coastal Program (LCP). At our meeting, one of the issues we discussed was the LCP policies regarding protection of views from public viewing areas and the designation of a public viewing area on the Malibu Bay Company's property, commonly known as the Chili Cook Off Site, in the Civic Center area of the city. We reiterate our request that the public viewing area depicted in Scenic Resources Map 3 be removed from the Chili Cook Off Site and relocated to public property elsewhere in the Civic Center area. We believe that there are a number of appropriate public areas that would provide an equivalent site for a viewing area.

After our conversation, we reviewed the comments previously submitted to the Coastal Commission suggesting LCP policy revisions regarding new development visible from public viewing areas and scenic roads. We believe that it may be difficult, if not impossible, to draft one umbrella policy that fits all circumstances, and that the problems that we discussed at our meeting with the current policy language may be a result of trying to fit all possible view scenarios into one policy. The view protection policy applicable to new development visible from scenic roads that extend into the canyon areas of Malibu should be different from the view protection policy for new development in the already-developed Civic Center area. Similarly, because of the amount of development already existing along Pacific Coast Highway, the treatment of new development along Pacific Coast Highway should be different than scenic roads in less developed areas. Moreover, as we discussed, specifying the views to be protected – particularly within the developed Civic Center area – provides greater guidance to affected landowners and developers in designing development proposals. With the goal of providing greater clarity and guidance for new development and view protection applicable to distinct areas of the City, we would like to suggest the following revised language (in strikeout/underline format) for LUP Policy 6.4 and LIP Policy 6.5:

LUP 6.4 New development shall not be visible from scenic canyon roads or public viewing areas outside of the Civic Center area 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 canyon roads ~~highways~~ or public viewing areas outside of the Civic Center area, through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, ~~minimizing grading,~~ incorporating landscape elements, and where appropriate, berming.

New residential and non Civic Center commercial development on properties visible from and inland of Pacific Coast Highway shall protect views of the ridgelines and the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, incorporating landscape elements, and where appropriate, berming.

For non-residential zoned properties within the Civic Center area, new development shall not obstruct views of the ridgelines and the Santa Monica Mountains from public viewing areas, and shall minimize impacts to views of the ridgelines and the Santa Monica Mountains from Pacific Coast Highway through measures such as clustering, and bulk limitations.

LIP 6.5, A. Development Siting

1a. New development shall not be visible from ~~scenic areas,~~ scenic canyon roads or public viewing areas outside of the Civic Center area 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 ~~highways~~ canyon roads or public viewing areas outside of the Civic Center area, through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, ~~minimizing grading,~~ incorporating landscape elements, and where appropriate, berming.

1.b. New residential and non-Civic Center commercial development on properties visible from and inland of Pacific Coast Highway should protect views of the ridgelines and the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, incorporating landscape elements, and where appropriate, berming.

1c. For non-residential zoned properties within the Civic Center area, new development shall not obstruct views of the ridgelines and the Santa Monica Mountains from public viewing areas, and shall minimize impacts to views of

the ridgelines and the Santa Monica Mountains from Pacific Coast Highway through measures such as clustering, and bulk limitations.

The purpose of the revisions is to describe the three different physical situations in Malibu where these policies would apply (scenic canyon roads, along Pacific Coast Highway, and the Civic Center), and provide clarification as to how the physical conditions affect application of the view protection policies. Minimizing grading was taken out for two reasons. First, grading is one means by which sites could be lowered in elevation so that they are less visible from scenic roads, and second, application of the LIP's strict grading standards (beginning at LIP page 160) will, in effect, ensure grading is appropriately minimized. In addition, we note that the LIP's strict development standards (beginning at LIP page 75) will also help to preserve views. Together with the scenic policies as revised, we believe the LCP would be consistent with Coastal Act Section 30251 to consider and protect the scenic and visual qualities of coastal areas.

We appreciate your consideration of these comments. Please do not hesitate to contact either Kari Kramer or me if you have any questions regarding this letter or any of our previously submitted comments as you finalize the LCP draft for the September hearing.

Very truly yours,

Buchalter, Nemer, Fields and Younger
A Professional Corporation

By

SUSAN K. HORI

Cc: David Reznick
Kari Kramer
Drew Purvis

G:\Hori\Malibu\LTGary Timm 0801.doc

RECEIVED
AUG 1 2 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 5, 2002

California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, California 93001

RE: PROPOSED MALIBU DOMESTIC ANIMAL LIMITATIONS

To Whom It May Concern:

It was with great disappointment that I learned of the California Coastal Commission's proposal to limit the number of domestic animals allowed on a parcel because Malibu has long been heralded as an outdoorsman's place complete with a wide range of recreation and animals, more particularly horses.

As a victim of the Department of Parks and Recreation's recent decision to ban horses from Will Rogers State Historic Park, the Commission's decision to move forward with this anti-animal legislation is wrong and will discourage people like myself from visiting or moving to Malibu.

I have forwarded the article relating your intentions to other interested parties, who along with me, greatly oppose this action and register our vehement opposition with a signature. Your careful consideration of this gross misuse of power is greatly appreciated by all of us, but more importantly by animals who have called or will call Malibu home.

Sincerely,

Sam Bachner
1517 S. Sepulveda Bl.
Los Angeles, CA 90025

NAME	ADDRESS	SIGNATURE
1. Kelly Harrison	3404 Merrimac Rd. LA 90049	
2. DAVID SCHNEIDER	8383 WILSHIRE BL. 90211	

COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

RECEIVED
JUL 11 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 7, 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Chairperson Wan and Commissioners,

We are writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. We are particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. We feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. We believe that this is not appropriate in riparian corridors. Riparian corriders are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. Riparian corridors provide wildlife habitat (including instream habitat for fish and aquatid organisims) and a necessary water filtration corridor that must be maintained to help filter pollution and meet coastal water quality standards (Basin Plan - Water Quality Standards, and Clean Water Act/CZARA mandates). We urge the Commission to support maintinance of functional riparian corridors in Malibu - and the rest of the state.

In addition, we support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, we are very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. We also urge a careful examination of the
wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands (CDFG Code - Coastal Act mandates), not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, we applaud your efforts to increase public access to the coast in Malibu and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

In conclusion, we urge support of your staff draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

Sincerely:

For Coast Action Group

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JUL 1 9 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ELIZABETH A. POLLOCK
11923 Bray Street
Culver City, CA 90230-6009

July 17, 2002

Ms. Sara Wan
Chair
California Coastal Commission

c/o Gary Timm
District Manager
California Coastal Commission
89 So. California Street, Suite 200
Ventura, CA 93001-2001

Re: Draft City of Malibu Local Coastal Program (including Revised Draft Land Use Plan ("LUP") and Draft Local Implementation Plan ("LIP")(June 2002)

Item W10a at July 10, 2002 Meeting

Dear Ms. Wan:

My Background

1. I recently began working with the Coastwalk volunteers who are helping to plan and implement the Malibu segment of the California Coastal Trail ("CCT").

2. My family has had a beachfront home in Malibu for more than 30 years, so I am familiar with the concerns of beachfront property owners.

3. I am a lawyer who has defended countless personal injury and other real property suits filed against landowners. Thus, I know what is likely to start a lawsuit and what a lawsuit is likely to cost.

Proposed Revisions

In order to improve public access to the beach, protect the rights of property owners and avoid needless legal proceedings, certain definitions and signage provisions in the LUP and LIP should be revised.

Definitions

A. Shoreline. Although the term "shoreline" is used repeatedly in the California Coastal Act and in the LCP, it is not included in the "Definitions" section of the LIP.

Litigation in the San Francisco Bay area (Littoral Development Co. v. San Francisco Bay Conservation etc. Com. (1994) 24 Cal.App.4th 1050, 29 Cal. R.2d 518) suggests that "shoreline" should be defined to be the "mean high tide line" as identified from time to time by the State Lands Commission.

I would encourage the Coastal Commission to adopt that definition and then to provide for the main route of the California Coastal Trail to be located at the "shoreline." That way, there will be no need to litigate the public's right to lateral access on the beach.

B. High tide line. As an additional way to minimize future litigation, I would recommend that the LUP be edited to ensure that the terms "ordinary high tide line," "mean high tide line" and "ambulatory high tide line" are defined and used consistently throughout the plan. Presently, Section 2.65 of the LUP refers to the "mean high tide line landward," but section 2.66 uses the "ambulatory mean high tide line" as the boundary. The LUP also does not address the fact that many property owners' deeds give them title out to an "ordinary high tide line" that is located far into the water. For example, my family's property line was determined by the survey done in 1961, and that is the line that is used for tax purposes.

C. Recreational use. This issue is intertwined with the issue of signage, which is discussed more fully below. Specifically, Section 12.4 of the LIP should be rewritten.

In section A., there is no reason not to use the term "pass and repass" in conjunction with lateral accessways. There are many private beaches where the public's access is limited to the area at or below the ordinary high tideline, and members of the public should be aware of that limitation. As an example, there are two signs on the beach next to the 27420 PCH vertical accessway:

Private Beach & Residences
Walk thru access
only to next public beach
300 yards south

And

Sheriff enforces trespassing code
P.C. 602
LACC 330-3322

Personally, I think "walk thru access" is a better term than "pass and repass."

Unfortunately, trespassing is a legitimate concern of the beachfront property owners. At my family's house, we had to padlock the front gate because strangers were walking through our fenced patio and porch to get to the beach. We had to change the fittings on our outdoor water spigots because people were helping themselves to our water. I would rather not talk about the dogs and people that have urinated and defecated on the beach in front of and under the house.

In Sections B. and C., I would eliminate this attempt to distinguish between active and passive recreational uses. Civil Code section 846 (recreational use immunity) defines activities with a "recreational purpose" to include both active and passive uses. It also mentions water sports, whereas no form of boating is mentioned in the LIP. If the goal is to prevent certain uses in certain areas, complex signs will be needed to identify the activities that are permitted or prohibited. It would be better to simply enforce current regulations governing horseback riding and the use of motorized vehicles and watercraft, e.g. dirt bikes, motorboats, jet skis.

The first sentence in the second paragraph of Section 12.7.1 A. of the LIP seems to be nonsensical as written.

Signage

Section 2.31 of the LUP states that "All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted."

Section 2.84 of the LUP provides: "No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit...."

1. Permit requirement.

Signs are a way for people to communicate when a face-to-face conversation is not possible. To require a permit before any sign may be posted on a beachfront property is draconian and unrealistic.

My family has "no parking" signs in our (privately owned) parking strip because one cannot get a car out of the garage if someone is parked in the parking strip. We need to know who is using the parking strip so we can ask them to move, if necessary.

Next door, the Fire Department posted a sign, "Fire Lane – Do Not Park Here" because the road is not wide enough for a fire truck if someone parks at that location.

Why should the fire department or we have to go to the Coastal Commission for permission before we can act to prevent a traffic bottleneck?

2. Boundary signs.

Section 2.84 of the LUP also provides: "...Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted."

I can understand why the Coastal Commission wants to be sure that the public has access to areas that are truly public, but it is contrary to law and counterproductive to prohibit landowners from marking and regulating the boundaries of their property.

There are two main reasons landowners should be able to mark their property – civil liability and prescriptive rights. In addition, there is the practical consideration that the amount of lateral access varies from place to place, and unless the public areas are identified in some way, people have no way of knowing what they can and cannot do at a given location.

a) Civil liability.

It should be noted that although the "recreational use immunity" offers some protection to landowners, any time a suit is filed, even if the landowner ultimately prevails, he will be required to pay all of his costs of defense and will not be able to recover that expense. Thus, landowners are understandably concerned when members of the public enter onto their land. (See e.g. Collins v. Tippett (1984) 156 Cal.App.3d 1017, 203 Cal. R. 366, in which a sunbather using a beach that was subject to a public easement by implied dedication sued the landowner for injuries suffered when a piece of stone fell off the cliff that was also owned by the landowner, but which was closed to the public.)

From my experience defending slip and fall cases, I know that loose sand or water on stone is a frequent cause of accidents. If a landowner (or accessway operator) knows that such a condition exists, the landowner must correct the condition or at least warn of the danger. Failure to do so may amount to "wilful" or "malicious" conduct that is not protected by the recreational use immunity. (Lostritto v. Southern Pac. Transp. Co. (1977) 73 Cal. App.3d 737, 140 Cal.Rptr. 905) In light of this risk, landowners and accessway operators should be allowed to post appropriate warning signs without having to get a permit first. (For concrete stairways, I would suggest: "CAUTION. Slippery when wet or sandy.")

b) Prescriptive rights.

First, private property owners are entitled by law to post their property as a means to ensure that it will not be lost by prescriptive easement.

Civil Code section 1008 provides that "No use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription," if the owner posts a notice in a specified manner..."

Second, even if a landowner elects to prevent prescription by recording a notice under Civil Code section 813, rather than by posting a sign, the landowner is entitled to place reasonable restrictions on the public's use of his land. Often, those restrictions are communicated by means of a sign.

Third, if beachfront property owners are not permitted to protect their interests by posting signs, they will find other ways to express their objection and to interfere with public use of their private property, e.g. the erection of fences or the hiring of guards to patrol the premises. This will be counterproductive to the Coastal Commission's goal of encouraging public access.

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Part of the problem is that the LUP repeatedly[1] uses the phrase, where "there is substantial evidence that prescriptive rights exist," but the LUP does not say who is going to determine whether that evidence exists and whether that evidence is substantial in situations where no coastal development permit is under consideration. .

Presumably, the idea is that each time a property owner applies for permission to post a sign, there also will be a determination of whether the public has acquired prescriptive rights in the property. (LIP 12.7.6) However, for each application, the Commission will need to hear and consider evidence on whether and how the applicant has objected to and/or interfered with public use of the applicant's land. This process will be time-consuming.

3. Recommendation

The CCT and other trails can only be mapped at locations where it is clear that the public is entitled to use the route, and on many properties, there has never been a legal determination that prescriptive rights exist. That is why I have suggested routing the CCT along the mean high tide line – one will get the maximum amount of trail with the minimum amount of controversy.

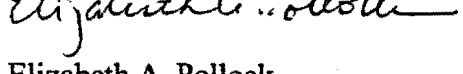
Also, I think most property owners have no objection to allowing "pass and repass" along defined routes. The problems arise when people actively trespass on property away from those routes or disobey existing animal control and other regulations.

My signage recommendation would be that landowners' signs be left as they are for now. However, an audit of the boundary signs could be incorporated into the inventory of public parking that is referenced in Section 2.31 of the LUP.

Conclusion

Preparation of the Malibu LUP is an incredibly complex task, and I have only addressed two small aspects of it – definitions and signage. I would like to congratulate the Commission for its efforts. I hope that my comments will be of some value to you as you work on the final text.

Very truly yours,



Elizabeth A. Pollock

cc: Stan Bluhm, Coastwalk (by email)

[1] See sections 2.3; 2.5; 2.50; 2.67 of the LUP; section 12.7.6 of the LIP.

RECEIVED
JUL 15 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 9, 2002

Via Facsimile

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Dear Chairperson Wan and Commissioners:

On behalf of Defenders of Wildlife and our more than 100,000 members and supporters in California, I am writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. The draft Malibu LCP is the product of a sound science-based process that should be used as a model for future LCPs. Defenders of Wildlife has already signed onto a letter to the Commission in support of the draft Malibu LCP, dated April 19, 2002. The April 19 letter details a number of issues, including public access and water quality. We continue to support the statements in that letter, but would like to take this opportunity to single out the issue that is most directly linked to Defenders' mission – the proposed designation of coastal sage scrub and chaparral as Environmentally Sensitive Habitat Area (ESHA).

In the draft Malibu LCP, Commission staff has recommended the designation of ESHA for 49.2% of the land area in Malibu. This designation is both consistent with the letter and intent of the Coastal Act and, after taking into account land that is already protected from development and land that is undevelopable due to slopes of more than 40%, will impact only 14.9% of the developable land in Malibu.

Under the Coastal Act, ESHA is "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could ~~be easily disturbed~~ or degraded by human activities and developments." Public Resource Code § 30107.5. The areas in Malibu proposed as ESHA meet this definition.

The City of Malibu serves as a link between the coast and the large, undeveloped areas in the Santa Monica Mountains. The predominant vegetation is the highly imperiled coastal sage scrub, which is an ecosystem of high biodiversity. There are also grasslands, woodlands, chaparral, and riparian areas. Indeed, this area contains a large number of watersheds – more than 30 streams discharge into the ocean within city limits. In essence, Malibu is a relatively intact-island ecosystem surrounded by encroaching urbanization.

As an intact island ecosystem, Malibu supports a wide diversity of species, ranging up and down the food chain. At the top, there is the mountain lion, which is very sensitive to large-scale habitat fragmentation. Research by leading conservation biologists has found that none of the existing local populations would persist without connecting corridors to the other populations. See California Resources

California Office
926 J Street
Suite 522
Sacramento, CA 95814
Telephone: 916-313-5800
Fax: 916-313-5812

National Headquarters
1101 Fourteenth Street, N.W.
Suite 1400
Washington, D.C. 20005
Telephone: 202-682-9400
Fax: 202-682-1331
www.defenders.org
www.kidsplanet.org

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Agency, "Missing Linkages: Restoring Connectivity to the California Landscape," (2001), and Sauvajot, R.M., et al., "Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys," (2000). This area also sustains gray fox, bobcat, badger, mule deer, steelhead trout, southwestern pond turtle, tidewater goby, least Bell's vireo, and tens of other fish, wildlife and plant species. Many of these species are either listed as stated or federally protected endangered or threatened species or species of special concern.

Looking at the factors that result in designating an ESHA, it is safe to say that the areas designated in Malibu fit the ESHA definition. All of the area designated as ESHA contains habitat that is both rare (especially coastal sage scrub) or important to rare species because it serves as a connector to large habitat areas or the area is so rare that any of this habitat is important to the long-term conservation of the species. In addition, this area is relatively intact. Thus, it functions as an integrated ecological system – with all parts necessary to continue to perform as an intact system. For these reasons, the ESHA in Malibu is valuable and the loss of this habitat will impact will impact the ecosystem as a whole as well as individual imperiled species. Finally, these areas could easily be disturbed or degraded by human activity and development. With increasing pressure from a growing population and the attractiveness of living in Malibu, development is a key threat to habitat in Malibu. Not only does development directly destroy habitat by clearing land, building structures and creating artificial night lighting, but increasing human presence also increases fire frequency.

The Malibu LCP's ESHA designation is based on sound science and must be upheld. There is one area, however, within the draft LCP that does need strengthening. The draft LCP currently allows a 10,000 square foot development envelope in all types of ESHA. Defenders does not believe that this is appropriate for riparian areas, which are particularly sensitive. We urge the Commission to modify the LCP to follow current policy which only allows development within riparian ESHA that is resource dependent.

Defenders understands that the proposed ESHA designation in Malibu will result in less development and thus will upset those interested in development. However, California, and Malibu in particular, is identified, in part, by the beauty of its coast. This beauty is more than just maintaining stunning views; it is also about maintaining the vitality and health of disappearing, fragile ecosystems, which includes sustaining top-level carnivores down to insects and plants.

The draft Malibu LCP is based on sound conservation science, incorporating what has been learned by conservation biologists during the last 25 years. Moreover, this LCP reflects the core values in the Coastal Act. For these reasons, we urge you to continue to support the staff's recommendations regarding the designation of ESHA in the draft Malibu LCP. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Kim Delfino
California Program Director

RECEIVED
JUL 15 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

965 Stunt Road
Calabasas, CA 91302
July 10, 2002

California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001-2801

Dear Honorable Chair Wan and Commissioners:

We are horse owners and residents of the Cold Canyon area (965 Stunt Rd). We would like to personally endorse the Malibu LCP. In contrary to vocal opinions of Don Wallace and others, I think the plan strikes a necessary balance between land use and abuse in the Santa Monica Mountains. I have personally witnessed the damage done to trails by unregulated use of horses and the blight caused by excessive and unnecessary clearance. We are no longer living in the wild west and as homeowners, we need to accept ecologically sound management practices even if we feel (I believe mistakenly) that the plan may impinge on our freedom to use the mountains as we wish. If the beauty of the mountains is to be preserved into the future, we need sound management, and your plan is fair and well conceived in regard to preservation goals and property rights. We are willing to abide by its requirements.

Your sincerely,

Robert Wayne
Blaire Van Valkenburgh

Mr. & Mrs. Christian Title
6101 Via Escondido
Malibu, CA 90265

RECEIVED
JUL 1 1 2002
CALIFORNIA
COASTAL COMMISSION

8 July 2002

CA Coastal Commissioners
45 Fremont Street #2000
San Francisco, CA 94105-2219

Dear Sirs;

I have been a resident of Malibu for twenty-five years. During this time I have enjoyed a lifestyle, which is common to many here in our coastal environment. At seventy years old I find myself unnecessarily impacted by organizations, which have no understanding of the personal freedoms that are the core of American life. Common sense, logic and fairness seem to have totally escaped your thinking. Programs that set up centralized autocratic policies exercising regimentation and suppressing local authority, is Fascism, plain and simple. The possession of our rights and privileges is the reason for our greatness as a society and a country. Your actions are an abuse of the authority, which was meant to regulate, not dictate.

I do not have children of my own, but one of my great pleasures is to visit and watch the children, young people and families in Bluff Park. The proposal to return this site to its natural state is beyond all rational thought. What we need is more areas like Bluff Park, to keep our children in healthy activities. If you take away the parks, trails and other areas that you deem as sensitive, you invite them to be in areas that promote everything that we are fighting to change.

I think you are out of order and any policies that restrict our basic freedoms must be re-examined.

Sincerely,

Dr. Christian Title

cc Senator Sheila Kuehl
Assembly member Fran Pavley

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JUL 1 2 2002
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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Wishtoyo

RECEIVED
JUL 11 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

8 July 2002

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Dear Chairperson Wan and Commissioners,

We are writing in support of the California Coastal Commission's draft Local Coastal Program (LCP) for the City of Malibu. We are particularly concerned that staff's recommendations regarding public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA) be supported. We feel that Commission staff's application of conservation science-based decision making to long-range land use planning activities as contained in the LCP is appropriate and should become a statewide model.

There are some areas where the LCP is weak and needs improvement. The first area has to do with has to do with the allowance of a 10,000 sq. ft development envelope in all types of ESHA. We believe that this is not appropriate in riparian corridors. Riparian corridors are particularly sensitive areas and, throughout most of the State's coastal zone, only resource dependent uses are allowed in these areas. We urge the Commission to do likewise in Malibu.

In addition, we support the policies relating to water quality contained in the original draft LCP and urge the Commission to explore additional ways to protect wetlands and adjacent open space throughout Malibu, in particular the area surrounding Malibu Creek in the Civic Center. However, we are very concerned that the level of commercial development proposed for the Civic Center area is far too intense and should be re-evaluated. We also urge a careful examination of the wetlands delineation that should be performed to determine where development may be allowed. Use of the State standard for wetlands, not the Army Corps, and consideration of practices that destroy wetland plants must also be reviewed. The Commission has a history of providing strong wetland protection throughout the coastal zone and should do so here as well.

Finally, we applaud your efforts to increase public access to the coast in Malibu and in particular, we support having the City establish a route for the California

3600 South Harbor Blvd., Suite 218 • Oxnard, CA 93035 • Phone (805) 382-4540 • Fax (805) 382-4541

Wishtoyo

Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance. Setting a goal for at least one vertical accessway every 1000 feet is more liberal than the Commission and Conservancy's adopted policy of every 500' but will still ensure that local residents not fortunate enough to own beachfront property as well as those who reside in inland areas will still be able to enjoy the beach.

In conclusion, we urge support of your staff draft LCP and strong protections for ESHA, water quality and public access to protect the State's interest as mandated by the Coastal Act.

Sincerely,

Mati Waiya
Executive Director

3600 South Harbor Blvd., Suite 218 • Oxnard, CA 93035 • Phone (805) 382-4540 • Fax (805) 382-4541

United States Department of the Interior

NATIONAL PARK SERVICE
Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, California 91360-4207

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

In reply refer to:
L76 (SAMO)

July 8, 2002

Mr. Gary Timm, District Manager
California Coastal Commission, South Central Coast District
89 S. California St., Suite 200
Ventura, CA 93001

Dear Mr. Timm:

The National Park Service thanks the Coastal Commission for the opportunity to comment on the June 11,2002, Draft Implementation Plan (IP) for the City of Malibu's Local Coastal Program. We would appreciate permission to submit more detailed comments within the next 30 days to allow for a recent change in staffing. Our main comment at this time is to require Environmental Review Board (ERB) review of projects within the Environmentally Sensitive Habitat Area (ESHA) overlay. The draft IP language currently references Environmental Review Board review as an option in conjunction with input from the City Biologist or other environmental specialist. As was demonstrated at the June 13th Coastal Commission workshop on native habitats in the Santa Monica Mountains, there is a wide breadth of knowledge regarding the interrelationship of habitats. Successful implementation of the Malibu LCP will depend heavily on the input of the ERB, as well as the willingness of the decision makers to implement ERB recommendations. The staff recommendation about the ESHA-worthiness of a property proposed for development should come from an expert panel rather than relying on the expertise of one staff member.

We continue to support measures that protect the sensitive resources of the Santa Monica Mountains National Recreation Area. The National Park Service considers all remaining undeveloped native habitat within the national recreation area to be sensitive owing to several factors, including impacts from habitat fragmentation, rarity of species, and decimation of native habitat types. We appreciate the Coastal Commission's efforts to accord the best protection of the native ecosystem while acknowledging development rights.

Thank you for considering the National Park Service's comments. If you have questions, please call Ray Sauvajot, Chief of Planning, Science and Resource Management, at (805)370-2339.

Sincerely,

Melanie Beck

Melanie Beck
Outdoor Recreation Planner

cc: Joe Edmiston, Executive Director, Santa Monica Mountains Conservancy
Russ Guiney, Superintendent, Angeles District, State Department of Parks and Recreation
Margo Murman, Executive Officer, Resource Conservation District of the Santa Monica Mountains

State of California • The Resources Agency
Gray Davis, *Governor*
DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-0001
Ruth G. Coleman, *Acting Director*
(916) 653-1570

faxed to Sara 7/12/02
at home 1:15p

July 11, 2002

The Honorable Sara Wan, Chairman
California Coastal Commission
45 Fremont Street
San Francisco, California 94105

Dear Chairman Wan:

I am writing to clarify that the Department of Parks and Recreation (DPR) is in on-going negotiations with the City of Malibu for the eventual removal of ball fields at Malibu Bluffs. DPR is in the process of amending the current General Plan to include the bluffs property. DPR expects this plan to be adopted in the future by the California Coastal Commission as a public works plan. Therefore, it is unnecessary for the City of Malibu local coastal plan currently under deliberation to address this issue at this time.

Sincerely,

Ruth G. Coleman

Ruth G. Coleman
Acting Director

cc: Members of the Coastal Commission:

Cynthia McClain-Hill	Gregg Hart
Christina L. Desser	Shirley S. Dettloff
Dr. William Burke	Scott Peters
Patrick Kruer	Joan Dean
Pedro Nava	Mary Nichols
John Woolley	Paul Thayer
Mike Reilly	Maria Contreras-Sweet
Dave Potter	

MOUNTAINS RECREATION & CONSERVATION AUTHORITY
Ramirez Canyon Park
5750 Ramirez Canyon Road
Malibu, CA 90265
Phone (310) 589-3200 Fax (310) 589-3207

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June 24, 2002

Ms. Sara Wan
Chairperson
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Comment Letter on Draft City of Malibu Local Coastal Program Local Implementation Plan

Dear Ms. Wan:

The Mountains Recreation and Conservation Authority (MRCA) offers the following comments on the June 2002 Draft City of Malibu Local Coastal Program (LCP) Local Implementation Plan (IP). The MRCA, the joint powers partner of the Santa Monica Mountains Conservancy (Conservancy), is composed of the Conservancy, Conejo Recreation and Park District, and Rancho Simi Recreation and Park District. Please note that the points outlined in this letter are almost identical to those items raised in the Conservancy's June 24, 2002 letter on the IP.

Due to the short time period available to comment, our comments in this letter are limited. MRCA supports the comments in the May 20, 2002 Conservancy letter on the January 10, 2002 Initial Draft City of Malibu LCP Land Use Plan (LUP) (enclosed). Many of the Conservancy's comments have not been reflected in the IP. (For example, MRCA, rather than the Conservancy, would be the appropriate entity to accept the in-lieu fees for impacts to native trees, IP, p. 138.) Some of those comments are restated and emphasized in this letter. The MRCA respectfully requests that you reconsider the Conservancy's previous comments (enclosed), and consider the following comments, for incorporation into the LUP and IP.

1. **Public agencies should be preferred over private associations for acceptance of public access easements.** See the Conservancy's May 20, 2002 letter (p. 3). For example, Item D (IP, p. 197) should be amended to state (underlined text indicates suggested changes):

> For all offers to dedicate or to grant an easement that are required as conditions of Coastal Development Permits approved by the City, <u>the City shall approve a government agency that seeks to accept the offer or the grant of easement</u>. Any government agency may accept an offer to dedicate or grant of an easement if the agency is willing to operate and maintain the easement. The City <u>may</u> approve any private association that submits a plan that indicates that the

> association will open, operate, and maintain the easement in perpetuity and in accordance with the terms of the recorded offer to dedicate or grant of easement...

2. **Current and anticipated essential park operations should be explicitly identified as Permitted Uses for Parks**. Table B of the IP identifies permitted uses allowed in the proposed City of Malibu Zoning Districts. The Conservancy's and MRCA's parks are (or should be) identified as Public Open Space (OS). Some land uses that are part of critical park management and operations activities are identified as "Not permitted (prohibited)" in the OS zoning district. The IP should clarify that critical park activities (e.g., related to interpretation, rehabilitation/restoration, protection of park resources, administration, etc.) may be allowed in OS.

   For example, prohibiting residential uses appears to prohibit park staff from living at the parks. The MRCA agrees that private residential uses should not be allowed in OS. However, limited ranger/park staff residences should be allowed in OS. In addition, plant nurseries and greenhouses should be allowed in OS so that park agencies can have native plant facilities on parks to implement habitat restoration. However, private retail nurseries should not be allowed. Professional offices directly related to park operations (e.g., park administrative offices) should also be allowed. Other park uses that appear to be prohibited, but which should be allowed in OS include: retail (e.g., nature stores), visitor-oriented goods (e.g., camp stores), live entertainment (e.g., for parties), and government facilities.

   "Parks, beaches, and playgrounds" have been identified as Permitted Uses in the OS zoning. "[A]ssociated parks operations and facilities" should be added to this list of Permitted Uses in OS. Table B and/or the text of the IP should be clarified by including the following language:

   > Any of these permitted park uses in OS should be necessary for park agency operations (e.g., related to interpretation, rehabilitation/restoration, protection of park resources, administration, etc.), protective of any sensitive resources to the maximum extent feasible, and consistent with other park management agencies.

3. **Additional permits or a Local Coastal Plan amendment should not be required to acquire land for parks in areas not zoned Public Open Space.** If a park agency such as the MRCA acquires land for open space and wildlife habitat preservation in an area that is not zoned OS, it appears that a coastal development permit (CDP) (and conditional use permit [CUP]),

or a LCP amendment, is required. This would create an unjustifiable burden on park agencies. For example, under the current list of Permitted Uses, "Parks, beaches, and playgrounds" are permitted in several zones other than Public Open Space, if a CDP and a CUP are obtained. "Wildlife preserve" is currently allowed only in Public Open Space and one other zoning district, and prohibited in all other zoning districts. Parks and associated uses and facilities should be allowed in all zoning districts.

4. **Park facilities and activities should be explicitly allowed in ESHAs.** Many, if not all, of the MRCA's and the Conservancy's parks and open space lands in the City of Malibu are located in ESHAs, as shown on the draft ESHA maps. Park facilities and activities such as nature centers, ranger stations, and staff residences should be allowed in ESHAs (see the Conservancy's May 20, 2002 letter, p. 9). In the Supplemental Findings section (IP, p. 129), a separate finding should be listed which states that additional park uses may be approved or conditionally approved in ESHAs if they are determined to be essential to park agency operations (e.g., related to interpretation, rehabilitation/restoration, protection of park resources, administration, etc.), consistent with other park management agencies, protective of any sensitive resources to the maximum extent feasible, and it has been demonstrated that there is no feasible alternative to ensure public safety.

5. **A coastal development permit should not be required allow temporary park events, to alter parking or park usage fees, and to change hours of operations at parks**. The Conservancy recommended that coastal development permits (CDPs) not be required for temporary park events, changes in park fees, changes in park hours of operations, and temporary trail closures (see May 20, 2002 letter, p. 5). MRCA concurs that a CDP should not be required for these activities. These decision should be left to the park agencies. The MRCA is willing to work with local municipalities, including the City of Malibu, to formulate and implement practical park management guidelines and rules.

6. **Clarification is needed regarding what permits are needed to construct trails**. Trails are identified as a Conditionally Permitted Use in environmentally sensitive habitat (IP, p. 125). The IP needs to be explicit about what steps the MRCA or the Conservancy would need to take in order to construct trails on park property. Current California Coastal Commission (CCC) regulations appear to allow for limited trail construction without a CDP.

Sincerely,

7. **Some parking requirements do not appear to be appropriate for parks.** For example, requiring paving (IP, p. 92) and landscaping (p. 93) may not be appropriate in some parks, where the goal is to retain the most natural environmental possible.

8. **Public park signs should be designed and approved by the relevant public park agency.** According to the IP, signs for public uses are exempt from obtaining a sign permit (IP, pp. 99-100), but the design of such signs shall conform to standard directional sign specifications promulgated by the Director and approved by the Planning Commission. That level of micro-management of park operations by the Commission or Planning Director is unwarranted.

9. **The roles and authority of the Environmental Review Board (ERB) need to be clearly identified in the Implementation Plan.** It is inappropriate to use the term "or" in the proposed language in the IP which states that (italics added) the ERB, *or* qualified biologist, *or* environmental specialist (or resource specialist) would review projects in or adjacent to an ESHA (IP, p. 220, 123). The IP should state that the ERB should review all projects in ESHAs and their recommendations should be incorporated into conditions of approval. (The language relating to ERB review in the LUP [LUP, p. 56; Policies 3.36-3.39] is more appropriate than that proposed in the IP.) Also stated in the Conservancy's May 20, 2002 letter, the majority of the ERB should be comprised of resource management professionals from government agencies or universities.

10. **Flexibility should be allowed regarding methods to preserve open space required as part of coastal development permits.** Open space deed restrictions (or in some case open space easements) are proposed to be required for habitat mitigation areas (p. 130-132) and for donor sites as part of the Transfer of Development Credits Program (p. 156). The methods to preserve the mitigation areas should include the option to (a) dedicate land in fee simple to an appropriate conservation agency, or (b) record overlapping conservation easements in favor of the City of Malibu and an appropriate conservation agency. Appropriate conservation agencies could include the Conservancy, MRCA, State Parks, and/or National Park Service.

11. **The MRCA supports the fund for construction and maintenance of new public beach accessways.** Fees would be collected as part of approvals of new non-visitor serving commercial development or office building development, and deposited in a fund administered by the MRCA to finance

construction and maintenance of new public beach accessways in the City of Malibu (IP, p. 204). The MRCA supports the memorandum of understanding with the CCC to use Malibu Access Special Deposit Funds for new beach access.

12. **The MRCA supports many of the ordinances and requirements in the Implementation Plan.** These include, but are not limited to: minimizing the removal of native vegetation as part of fuel modification (p. 80); requiring fire-resistant materials, and incorporating alternative fuel modification measures to minimize the total area modified (p. 82); ensuring that required fuel modification areas do not extend into ESHAs (p. 127); and requiring performance bonds for habitat restoration areas, and requiring legal preservation of mitigation land (e.g., recording an open space deed restriction over the restored site) prior to issuing coastal development permits (p. 131). In addition, it is appropriate that numerous findings are required prior to permitting land divisions, including the finding that the land division does not create any new parcels without an identified building site located outside of an ESHA, and the finding that the land division is consistent with all scenic and visual resources policies of the LCP (pp. 245-247).

13. **The majority of the application requirements for Coastal Development Permits are relevant and appropriate.** These include the requirement to include all pre-existing dedications and easements (IP, p. 216) that already constrain development on a subject parcel. Also required is a quantification of impacts to native plant communities.

Thank you for the opportunity to comment on this document. Please direct any questions and all future correspondence to Paul Edelman, Deputy Executive Officer, at the above address and by phone at (310) 589-3200, ext. 128.

Sincerely,

Jerome C. Daniel

Jerome C. Daniel
Chairperson

cc: CCC, So. Central Coast District (Gary Timm)
California Department of Parks and Recreation (Suzanne Goode)
City of Malibu (Katie Lichtig)
National Park Service (Woody Smeck, Superintendent)
Res. Cons. Dist. of the Santa Monica Mountains (Rosi Dagit)

Item 10-A

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Restore *LOCAL* to LCP Process

Dear Governor Davis, Senate President Pro-Tem Burton, Assembly Speaker Wesson, Senator Kuehl, Assemblymember Pavley, and California Coastal Commissioners:

Please help us restore local control and local community planning to the Local Coastal Program (LCP) planning process. Coastal Commission staff has hijacked creation of an LCP for the city of Malibu – ignoring two LCPs created by local citizens and local government. The draft Commission staff LCP and development plan would CLOSE a vital community park (throwing out thousands of families and youth baseball, soccer and other recreation teams), ELIMINATE hundreds of rental units in coastal areas of Malibu, virtually BAN horses agricultural uses in the coastal zone and designate most of Malibu as an "Environmentally Sensitive Habitat Area" (ESHA) without a shred of field study or environmental review of any kind. Help us STOP this effort to hijack local control over planning and zoning issues by unaccountable bureaucrats. We respectfully request your help to RESTORE local control, community planning and home rule over the LCP process by opposing the Commission staff's effort to impose an unsound, poorly conceived LCP.

Name	Address	Phone Number
ALAN A. HERD	1520 S. BEVERLY GLEN #407 L.A. CA 90024	310 285 9600
Ron Brownell	1730 CASERO PL. Escondido CA 92029	760-480-6114
Max Mitchell	327 N. ESCONDIDO BLVD ESC CA 92025	760-743-2001
Traci Devasher	Traci Devasher, 3700 Highland Dr #13, Carlsbad CA 92008	760-730-1223
Kevin Forrester	41103 Manchester Ave. Ste. 205 Enemitas CA 92024	760-944-1918
Larry Hoover	324 Benevento Dr Encinitas CA 92024	760 439 2233
Jeannette Pascual	1526 Lake Lake Ct Cardiff 92007	760-436-3089
Virginia Felter	2126 Redwood ct Encinitas CA 92024	760 942 2992
Kevin M. Burke	1034 Camino Del Mar Del Mar CA 92014	858 755 8580
Frank J. Vallotta	240 W. MISSION AVE STE D ESCONDIDO CA 92025	(760) 740-2030
Gwynne Hedge	3027 Via Sabinas Carlsbad CA 92008	760-434-1148
LAUREN Bertine Reiser	3821 SKYLINE Rd CARLSBAD CA 92008	1-760-729-6400

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Name	Address	Phone Number
Diane West	6313 Grand Valley Riverside	909 739 4044
Rosemaine DiMai	41743 Sequel Creek Rd Sequel	831 476 9493
Judy M. Brose	420 Sunflower Lane Corralitos	(831) 728-7778
Karen Para	200 Tres Pinos Rd. Hollister	831-630 5278
JEANNE RADSICK	3613 PANORAMA DR BAKERSFIELD 93306	(661) 872-6819
DARRELL SPARKS	5080 CALIFORNIA #150	(661) 383-9111
James A Knapp	9000 Ming Ave R-2 Bakersfield 93311	661-663-4533
John Scarborough	6341 N 11th St. Fresno 93710	559 431 3864
[illegible] Carey	7520 N. [illegible] Fresno 93711	432-1221
Terry McKee	3174 Magnolia Clovis CA 93611	559-490-1547
Susan Davis	P.O. Box 449, Auberry CA	(559) 855-2424
Sandra Darling	3262 W. Mesa Fresno CA 93711	(559) 435-6850
Name	Address	Phone Number

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Name	Address	Phone Number
Libby Gibson	1465 Main St El Centro CA	760-352-0923
Laura Hoyle	1570 Hilltop Dr. El Cajon 92020	619-447-350
Kay LeMenager	1488 Gustavo St El Cajon CA 92019	619-447-4931
Thelma Baker	316 W. Barbara Ave. Calipatria CA 92233	760-3487738
MARJORIE McLAUGHLIN	12142 #E ROYAL BIRKDALE, SAN DIEGO	858 618-1211 92128
A. Scott Hagel	685 Guadalupe Ave Coronado CA 92118	619-435-8080
Eric L. Miller	2493 Kathleen Place S.D. 92105	(619) 266-8165
Beverly Miller	2493 Kathleen Pl., S.D. 92105	(619) 266-4111
BILL KLEES	1539 ROSECRANS SD 92106	619-225-8200
MALCOLM C. TUCKER	4716 Barcelona Way Oceanside CA 92056	760 631-7955
DIANNE RATH	15732 Camino Codorniz San Diego CA 92127	858-672-1515
William E. Johnson	11617 Boulton Ave. San Diego 92128	858-487-6975
MATTHEW J GIACALONE	3625 CURLEW ST SAN DIEGO CA 92103	619 297-5494

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Name	Address	Phone Number
ANITA QUILLMAN	2146 ENCINITAS BLVD ENCINITAS CA 92024	760 436 7421
Theresa Coelho	27301 Valley Center Rd Valley Center CA 92082	760-749-5655
DIANNE CLAMPIT	942 Deodar Rd Escondido, CA 92056	760/735-9564
ERNEST G. COWAN	906 SYCAMORE #104 VISTA, CA 92083	(760)746-3901
ANTHONY AGUIRS	1150 BROADWAY #110 EL CAJON, CA 92021	(619)440-1180
JOANNE CLAYTON	3041 Brookpine Ct. Spring Valley 91978	(619)585-0711
PAMIDA MARTIN	415 Bonita Rd. Bonita CA 91902	(619) 479-9700
Mark Marchand	1228 Half Moon Bay, Chula Vista 91915	619/421-7811
PATTY DAVIS	653 Redland Rd El Cajon, CA 91901	619-421-6942
ROSEANNE WOOD	873 AUDREY WAY EL CAJON 92019	619-579-2803
ROGER HOLTSCLAW	805 SUNSPINT TRAIL DR EL CAJON CA 92019	619-440-5161
CHERYL BETYAR	13053 Camino del Valle Poway Ca 92064	858-485-8559

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Name	Address	Phone Number
Elizabeth Higgins	1087 Pine Dr, El Cajon 92020	619-441-2717
Name	Address	Phone Number
[illegible]	122 EA KIORCROFT S.D 92130	858.755.433,
Name	Address	Phone Number
CARYL ISENAN	5903 ISLAND AVE, SD 92101	619-232-5077
Name	Address	Phone Number
Joe Stachlig	18585 Caminito Posadero #124 San Diego 92128	858-451-30
Name	Address	Phone Number
Susan Mondell	12365 Lovingwater PT SAN DIEGO, CA	858-453-5367
Name	Address	Phone Number
Barbara DuDek	3249 Rosewood Dr Esc CA 92027	858-207-1209
Name	Address	Phone Number
David Brewett	10510 Canyonlake SD 92131	858-748-0098
Name	Address	Phone Number
DAVID A. GUNINGHAM	CORONADO, CA	
Name	Address	Phone Number
[illegible]	649 POMONA AVE 92118	619 435-0145
Name	Address	Phone Number
James Alan Sappenfield	333 Glorietta Pl Coronado CA 92118	(619) 435-2608
Name	Address	Phone Number
ANN THROCKMORTON	4925 Regla Court San Diego 92122	858.453.2819
Name	Address	Phone Number
Rick Snyder	10225 Rue Chamberry S.D CA 92131	858 693-16
Name	Address	Phone Number
[illegible] Ryan	40912 Reden Ct. Hemet, CA	909-652-2236
Name	Address	Phone Number
Karen Nelson	31858 Valore Ct. Temecula	909-699-0771

Restore *LOCAL* to LCP Process

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Name	Address	Phone Number
Vicki Montague	27570 Big Springs Hemet 92544	909 658 7369
[illegible]	813 Alta Vista Corona 92882	909 735 2529
[illegible]	359 E Hacienda Dr. Corona 92879	909 372 8800
[illegible]	953 E. Francis St. Corona, Ca 92879	909-735-5121
Donna Wheeler	422 Sutro Ct. Hemet CA 92544	909-306-0652
[illegible]	36786 Pressner Dr. Murrieta	909-698-7538
Kelly Bonanne Jones	33410 Corte Margarita Temecula Ca	909/314-7997
Martha Stevenson	35136 Orange Wildomar	909-678-9976
[illegible]	37467 Summit Pk Murrieta 92562	909 676.57.
Dennis Daglin	1147 Via Iroka Corona, CA 92882	909.739.7000
Sherry Baldwin	2010 Napoli #101, Corona, Ca 92881	909/737-1500
GARY GANGNES	391 DANUBE DR APTOS, CA	831-685-6828
JERRY SMITH	41-011 Rincon Rd Rancho Mirage CA	760 324 8045

Restore *LOCAL* to LCP Process

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Name	Address	Phone Number
CURTIS JENKINS	108 DUTTON AV SAN LEANDRO CA	510 409-0946
Antoinette Wilson	18582 Vaughn Av Castro Valley CA	510 889-0827
Nancy McQuaid	1909 Doria Circle, Pleasanton, Ca.	925-426-9270
Bill Olmstead	1242 LOBSTONE R. LIVERMORE, CA.	510-744-3555
Donna Smith	2052 Buena Vista Livermore	925-373-0995
Gina Piper	6111 Johnson Ct. Pleasanton, CA 94588	(925) 462-9175
Lois Harris	3320 Arona Ave Oakland 94610	834-2010
DAVE GRAVELLE	168 PONTE CT. LIVERMORE, CA 94550	925-245-126
Sandra Shaw	4275 Heyer Ave, Castro Valley CA 94546	510-728-35
Pam Wintrebowil	21060 Redwood Rd Castro Valley 94546	510 881-7899
MICHAEL TESSARO	P.O. BOX 10401 Pleasanton CA 94588	925 519-9099
CYNTHIA A. CHIASSON	P.O. Box 2401 CASTRO VALLEY, CA 94546	510-317-7141
Name	Address	Phone Number

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Name	Address	Phone Number
Charles E. Illsley	Merced County 10227 Ave. 26 Chowchilla, CA 95340	559-665-1420
Paul Salvadori	1239 El Portal, Merced CA 95340	209-386-4017
Ann Ritchie	14195 Mutumne Rd. Sonora, CA 94530	209-532-3432
Deborah Ritchey	1221 King Dr. El Cerrito	510-236-6940
William E. Brown	6614 Colton, Oak, CA	510-339-2868
Don Faught	351 Orchard Dr. Fremont	510/797-4366
Kevin Brown	2829 Forest Av., Berkeley, CA	(510) 593-4780
Eileen Jan Bunnowich	1736 Sonoma Ave. Berkeley CA	(510) 525-4873
Ann Bracci	808 Pacific Ave. Alameda	510-865-1398 94501
Charles Edee	1440 Hardy Ct Fremont CA 94536	510-797-3153
Maureen Nokes	5415 Corte Palomas Pleasanton CA. 94566	925-846-8867
BILL SWANSON	336 BRIDGECREEK WAY, HAYWARD	510-489-200 94544
Name	Address	Phone Number

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Name	Address	Phone Number
Robin Blake	PO Box 1933 Wilton, CA 95864	209 358-1749
Mike Kern	3425 Coffee Rd Modesto Ca. 95355	209 653 7408
Margo Imfeld	17477 E. Hwy 120 Ripon, Ca 95366	209-599-2300
Ed Jonker	730 East F St Oakdale Ca 95361	209-848-4311
Jan Brennan	P.O. Box 1325 Oakdale Ca 95361	209-848-2121
Jennie McDonald	P.O. Box 576525 Modesto Ca 95350	209 526-4040
Esther Wallace	139 Frances Ave Modesto 95354	209-653-7404
Beth Daniel	331 S. Main St. Turlock CA. 95380	209-669-8890
Nikki A. Gray	76 W. Monterey Ave Stockton 95204	209-948-3253
Marja M. Morrison	136 Corte del Encino Sonora CA 95370	209 532-3646
Marilyn Shabazz	2551 First St Atwater 95301	(209) 358-6429
Susan Kacher	1252 W 21 Merced 95340	2097234745
Raymond Rodriguez	3225 Cherokee Ave Merced CA 95340	209-384-1765

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Name	Address	Phone Number
[illegible]	1104 Rosecrans Rd. LA Ca	310-777-7800
[illegible]	355 N. Canon Dr, Beverly Hills CA 90210	310/573-3011
Mary Nissen	P.O. Box 1543, Rockford, Ca. 95237	209-727-3070
Vicki Jenkins	122 N. Church St. Lodi	209-368-5311
Marian Nunn	1144 W Magnolia Stockton	209 941-1790
Dave Fowler	1858 W. 11th St TRACY CA 95376	209832-5300
Susan Hepworth	13 S. MAIN ST, SUTTER CREEK, CA	209-267-0408
ELKE DUFFY	19850 PONDEROSA DR, VOLCANO, CA 95689	209-296-5302
Lowell Flemmen	7031 [illegible] Lodi, CA 95242	209 334-6071
Lloyd Griffin	4386 Brooks Rd Valley Springs	209 7722709 / 1721323
TIM MUETERTIES	3520 FAIRWAY DR ARNOLD CA 95223	209-795-5500
R.W. Brayton	PO Box 1497, Pioneer, CA	209-295-1360
Tammy Dee Warner	16991 Climax Rd. Jackson CA 95642	209-223-0240

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Name	Address	Phone Number
[illegible]	369 Foxborough Dr MT. VIEW 94041	650-969-9959
Judy Jarvis Ellis	435 Sheridan Ave #202 Palo Alto 94306	650.328.7027
Robert M. Stelzer	1600 Bay Laurel Rd. Menlo Park	650 685-7700
Leannah V. Hunt	2170 Byron St. Palo Alto CA 94301	650-327-1009
Shelley L. Williams, Jr.	11951 Brook Ridge Dr., Saratoga, CA 95070	(408) 252-4239
[illegible]	144 Lake Street San Francisco CA	415-505-7145
MARGOT LOCKWOOD	1300 HOBART - MENLO PARK 94025	650 323-0202
Arnaday J. Darnell	267 Oakhurst Pl. Menlo Park CA-94025	(650) 329117
[illegible]	228 Rainway MP	650 752-0712
[illegible]	725 Haverhill Dr. Sunnyvale CA	408-736-5693
Dave Wood	6074 Crossview Circle San Jose	408-983-2760
David Barr	23 Belleau Av. Atherton, Ca	650-368-1427
Name	Address	Phone Number

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Name	Address	Phone Number
[illegible]	2011 Ventura Blvd Camarillo	805-484-2121
Shanna Lotz	971 Westlake Blvd #100 WLV	805-495-2000
[illegible]	77 Rolling Oaks Dr T/O	805-495-0121
Merle White	2860 Thousand Oaks B, CA	805 496 8536
Helen L Schmid	1122 [illegible]	805 522 0890
[illegible]	976 Vallejo Ave Simi Valley	(805) 584-9034
[illegible]	3891 Steel Dr Simi Valley	805-526-4150
Jon Sweeney	4591 Bluewood Ct, Moorpark, CA.	(805) 529-6545
Peter Greer	767 Irvine Dr. T.O. 91360	805 496-3515
MARILYN DUNN-TORNELL	3970 VERDE VISTA DR. T.O. 91360	805 446-8711
JOHN [illegible]	161 S San Antonio Rd Los Altos Hills	650-917-7935
Willi Green	512 Dawn Dr Sunnyvale CA 94087	408 737-2300

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Name	Address	Phone Number
Bob Curtis	4651 Vintage Ranch Ln, Santa Barbara CA 93110	(805) 692-9790
Renee Tubb	246 Toro Canyon Rd. Carpinteria CA 93013	(805) 566-1927
Betsy Gordy	1733 Las Canoas Rd Santa Barbara CA 93105	805-966-3695
Barbara Palmadge	1517 Monarch Dr. Santa Ynez CA 93460	805-688-9881
Diana Bull	1715 State St Santa Barbara 93101	805-563-4115
Jena Gremsich	1415 Chapala St 93101	805-963-3157
Bob Hart	3412 State St Santa Barbara, CA 93105	805 687 7591
M. Royal-Eatherly	12311 Genaissance Ct Carpinteria 93013	805 565 8870
Kathy Nelson	7450 Yosemite Rd (805) 370 2800	
Jon Torne	5970 Verde Vista Thousand Oaks 91362	805-492-1543
Carol Knickerbocker	655 Walnut Park Ln. S.B. 93111	805-681-0242
[illegible]	465 Pennsylvania Thousand Oaks 93065	

• PLEASE SIGN •

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Name	Address	Phone Number
M.J. Snyder	225 Loma Metisse, Malibu	456-9029
Doreen Cooper	24743 VANTAGE PT. TERR. MALIBU	310-456-6947
Debby Valavicis	193 Loma Metisse Malibu	456-2010
Madelyn Cooper	29500 Heathercliff	310 457-2279
Lyta Valavicis	193 Loma Metisse Malibu	310 456-2010
Simon Lyda	111 Marquez Pl. PA. Palisades	310-459-8924
TAY RUBENSTEIN	29178 Heathercliff	310-457-6550
Susan Diamond	29500 Heathercliff	457-1326
Maria Stapel	2914 S Tree Rd	(310) 457-0657
Marlene Bourgeois	23676 Malibu Rd	(310) 456-3638
Brenda Beal	POB 2064	310 720 0724
Margaret Hauptman	31415 Anacapa View	310 457-4729

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Name	Address	Phone Number
[illegible]	25440 Malibu Rd Malibu, Ca 90265	456-5745
Natalie Milstein	6844 Wildlife Rd Malibu, Ca 90265	457-4116
Carole Brownstein	29235 Heatherclift Rd #8 Mal. Malibu Ca 90265	457-3491
Bridge Offer	21910 PCH Malibu Ca 90265	456-2008
Brenda Offer	21910 PCH "	456-6999
Heidi Bernard	4248 Lost Hills Road Oklahoma City, Ca	(818) 850-2985
Cara Wirth	6900 Dume Dr. Malibu, Ca.	310-457-7792
MARTIN BROWNSTEIN	29235 HEATHERCLIFF RD #8 MALIBU, CA	310-457-3491
PHILLIP MAYS	3135 DECKER RD. 90265	(310) 457-9223
ROGER SANATERA	6702 WILDLIFE RD. MALIBU 90265.	310-589-5752
Phyllis E. Klein	23914 B De Villa Way	
[illegible]	5617 High Peak Place	(818) 706-0504
Hana Eisenberg	5617 High Peak Place	(818) 706-0577

Agoura Hills CA 91301

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Name	Address	Phone Number
NIGEL HANS	6445 BONSALL DR.	4579091
NIGEL ANNELIESE	6445 BONSALL DR.	310-4579091
[illegible]	23852 PCH Malibu	310-317-219
[illegible]	21417 Del Valle Dr Malibu	3104579396
Susan Manners	29500 Heathercliff Rd #13	310 589 9099
Lenette S. de Sanguy	5919 Kanan Malibu	310 457-0762
GREGORY CARRIGAN	28922 GRAY FOX ST Malibu	310 457-7921
[illegible]	1820 Merlesser Ld	310 455-[illegible]
Jennifer Kirk	1137 N. Via Colinas WLV CA	805-4466517
Bradley Bauman	1540 El Cerrito Dr. T.O. CA	805 496 6629
[illegible]	3874 Puerco Cyn	310 456.0602
[illegible]	3874 Puerco Cyn	310-617-5800
[illegible]	30371 MORNINGVIEW DR	310-457-5470

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#172

Name	Address	Phone Number
Gordon Arford	29510 Heathercliff Rd.	457-7638
Name	Address	Phone Number
Diane G. Peale	3595 Decker Rd	457-4107
Name	Address	Phone Number
[illegible]	6300 GAYTON PL	457-3377
Name	Address	Phone Number
Carol Burton	5763 BUSCH DR. MALIBU	310-457-4863
Name	Address	Phone Number
Ronald E. Newman	6749 Zumirez Dr. Malibu	457-7250
Name	Address	Phone Number
Barbara A. McKee	26160 Fairside	456-3830
Name	Address	Phone Number
Lauren Lindhardt	6061 Prosco Cyn. Dr. Malibu	310-457-8060
Name	Address	Phone Number
Neal Harvey	P.O. Box 6565 Malibu	310-457-1200
Name	Address	Phone Number
Marsha Richardson	1028 Maple, Santa Monica	452-0805
Name	Address	Phone Number
Cynthia Solomon Olmo		
Name	Address	Phone Number
GARY ADLER	27139 Sea Vista Malibu	589-3916
Name	Address	Phone Number
Bershon Adler	27139 Sea Vista Malibu,	589-3916
Name	Address	Phone Number
Kathryn Weckerling	31529 Victoria Pt. Malibu Ca	310-457-6466

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Name	Address	Phone Number
Carl Cook	3554 Decker Cyn	(310) 457-2488
Edward A. [illegible]	30072 Andromeda	(310) 457-7017
Carol Crowenwoth-Lieu	28288 Roy De Cayna	457-3484
Kent Lieu	28288 Roy de Cayna	457-3484
Marie Oik	6688 W. Wildlife Rd	457-2114
R. von Sternberg	30530 Morning View Dr.	457-1100
Elizabeth Gaster	39 Malibu Colony	456 8521
Joan Sivan	30311 Morning View	457-1753
Jill Simons	5777 Calpine Dr	457-3527
Steve Murphy	6300 Crayton	643-4833
Dolly Martin	31026 Broad Beach Rd.	457-1895
Chris Spiros	6201 Francisco Dr.	457-1477
Name	Address	Phone Number

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Name	Address	Phone Number
Mr & Mrs Sandeberg	11940 White Water Lane,	589 1139
JEREMY WILLIAMS	11840 Beach Club Way	589-2655
Rose Altounian	11856 Beach Club Way	589-1196
Suzanne Laurence	32089 Centerhill Rd. WLV.	818 7040700
[illegible]	21604 PARVIN DR. S. GARDA	661-259-9385
[illegible]	11828 Beach Club Way	310 457-8894
Matt Hunt	PO Box 6531 Malibu CA 90264	310 577-1014
T.A. MURPHY	PO Box 6531 " "	310 383-2221
GRACE BLAVIN	910 LINDA FLORA DR	310-476-4771
JACK CORDOVA	11912 E. WHITWATER LN.	310-4573644
Charlie Reilly	920 Brookside Malibu	707-2885
Jane Windsor	3058 Sequit Dr	456-5060
Linda Honeyman	22917 P.C.H	310 456-2221

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Name	Address	Phone Number
Alyson Dutch	23000 Las Flores Cyn.	310.456.7438
JON KARSON	PO. Box 35023 LA CA. 90035	310-403-7849
Jaylin Ang	10390 Wilshire CA	310.276.9058
[illegible]	23601 Civic Ctr Dr #16 Malibu	310-456-0088
[illegible]	Box 6931 Malibu	
FRANK C BRADY	3011 Malibu Cnyn Rd Malibu	310-317-5900
RAY CRAIG	8711 PacCstHwy. Malibu	310-456-5486.
[illegible]	3728 Cross Creek Rd. Malibu	310-456-3230
[illegible]	33261 Decker Schl Rd Malibu	310 317-4433
Leon Ashman	21956 Carbon Mesa	456-7884
Judy Kuniaski	3227 El Nardo Ave	317-1731
Augustin Cordos	21956 Carbon Mesa	457-528
Irina Cordos	21956 Carbon Mesa	456-528

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Name	Address	Phone Number
Irene M. Stott	28953 Boniface Dr	
Lorna Ross	30002 Zenith Pt. Rd	
Robert Whitman	7026 DUME DR	
[illegible]	5846 Kanan Dume Rd	
[illegible]	1234 Corralitos Rd	
Marie N. Sperat	6642 S. Sunset Dr.	310/457-9734
FRED WERNER	28957 GRAYFOX ST	310 4577391
[illegible]	BOX 6136 MALIBU	
[illegible]	[illegible]	
James T. McKittrick	74 PARADISE COVE RD	589-0714
[illegible]	30601 VISTA SIERRA	457-7826
Isabel Miller	28946 Boniface DR.	457-7145
Maryam David	22351 PCH #C Malibu	456-8162

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Name	Address	Phone Number
Victoria R. Miller	6561 Wandermere Rd	(310) 457-3234
John A. Miller	6561 Wandermere Rd	(310) 457-3234
BRUCE TERRANOVA	6579 WANDERMERE Rd	(310) 457-6950
KIM TERRANOVA	6579 WANDERMERE Rd	(310) 457-6950
Gabrielle Hein	6556 Wandermere	457 4794
Kari Kramer	435 Beverwil Drive	551-0369
DAVID REZNICK	23705 W. MALIBU 24	456-0555
Charles B Green	29500 Westchester/Pacific Coast	457-4470
Margo Rose	21108 Las Flores Mesa/Malibu	456.6858
Arnold G. York	3958 Rambla Orienta Mal	456-5507
Mark Olson	1721 22nd St Sant Monica	315-3201
BEVERLY HAMMOND	29417 BLUEWATER RD	310-457-4031
ALLISON RAY	28338 REY DE COPAS LN.	310·457·7884

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Name	Address	Phone Number
Gary Childers	6805 Wildlife Rd, Malibu	(310) 457-5325
Denise Childers	6805 Wildlife Rd, Malibu	(310) 457-5325
[illegible]	6781 WILDLIFE RD, MALIBU	310-457-3042
Summer L. Prevost	6781 Wildlife Rd. Malibu	(310) 457-2012
Marilyn L. Prevost	6781 Wildlife Rd. Malibu	(310) 457-3042
Lisa Huebler	25228 Mal. Fw Rd. #D	(310) 456-3399
Barrie Livingstone	22601 P.C.H. #225 Malibu	310.317.9642.
JANET L. RUSSELL	22601 Pacific Coast Hwy #225, Malibu	310-317-9670
Corinne Anderson	1647 Folkestone Westlake Village	805) 374 9828
[illegible]	23922-C DeVillebiss Way, Malibu	(310) 456-3878
Cynthia Huenefeld	22030 Pacific Coast Hwy Malibu	310-317-9741
[illegible]	2955 VALMERE DRIVE	(310) 456-6434
Eugen Cordos	2354 Via Acero	457-1784

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Dear Governor Davis, Senate President Pro-Tem Burton, Assembly Speaker Wesson, Senator Sheila Kuehl, Assemblymember Pavely, and California Coastal Commissioners:

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Name	Address	Phone Number
Seymour Wansay	23762 Malibu Rd	310-456-2440
[illegible]	23754 MALIBU RD	310 456 1253
[illegible]	23952 Malibu Rd.	456-6474
[illegible]	23746 Malibu Rd	818-642-3272
[illegible]	23746 Malibu Rd	818.712.6945
Ruth White	5903 Ramirez	(310) 836 4628
[illegible]	19062 P.C.H. MALIBU	(310) 456 3018
[illegible]	6787 Dume Dr.	(310) 589-1973
C. Barry Hoffman	26674 LATIGO SHORE DR	310/457-4903
[illegible]	23712 Malibu Rd	310-456-1891
[illegible]	835 Hartzell [illegible]	454-7666
Lea Johnson	23405 PCH Malibu	456-643
Lidia Cordos	21956 Carbon Mesa	456-7884

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Name	Address	Phone Number
CORMAC O'HERLIHY	23661 PCH MALIBU	310 6-1747
RICK BARHARTT	28727 CONE PLACE AGOURA HILLS	818 865-07
William O'Herlihy	23661 PCH Malibu CA	457 1573
Bill Rhodes	23661 PCH Malibu	450-7676
KERRY O'BRIEN	23661 PCH MALIBU	457-1747
JERRY MILLER	23661 PCH Malibu	310 456-1747
CAREL CASEY	23661 PCH MALIBU	310 314-9575
TRACY BUNEITA	23661 PCH MALIBU	310-317-9331
STEVE WEISS	18748 PCH, MALIBU, CA	310.918.1977
VICTORIA DARBONNE	23661 P.C.H. MALIBU	(310).317-9390
ADRIANA DANIEL	23661 PCH Malibu	310 456 2992
Glen DuPont	23661 P.C.H. Malibu	310.317-9314
Candance Scott	23661 PCH Malib	310 317 9389

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Name	Address	Phone Number
Thomas Moore	5415 Via Rene Y.L. CA.	(310) 515-2766
Ann Moore	5415 Via Rene YL	(714) 695-9410
Chryssa Lightheart	22916 Portage Topanga	310-455 2041
Pauline M. Cuschieri	9600 W. Lake Ave, Abraham, Ca 90064	626-831-3090
Lana Eikenberry	3193 Benedict Canyon Dr, Beverly Hills	310-858 9302
Raymond Stanfa	20549 Little Rock Dr Malibu	(310) 317 4292
Karen L. Woodard	1056 Meadows End Dr Calabasas Ca.	818 591 2006
Peggy Ann Buckley	6815 Dume Dr. Malibu	(310) 457 0426
Elizabeth Campbell	25244 1/2 Malibu Rd	456 6565
[illegible]	1530 [illegible]	818 354 4952
Marilyn Bell	9154 San Vicente Blvd #6	(310) -659-3439
Lori Serrao	30342 Morning View Dr. Malibu	310 457-3770
IVANA SERECKA	32724 VISTA DE LAS ONDAS MALIBU	(310) 457 0040

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Name	Address	Phone Number
[illegible]	24343 Bluewater Malibu 90265	310-457-1222
Phyllis J Reutinger	24343 Bluewater 90265	310 457 1222
[illegible]	11902 White Water	457-3548
[illegible]	11902 White Water	457 3548
Richard F Zehran	11876 Corral Rey Ln	457-2295
Dorothy L. Russell	6923 Columbus Ave. N.H.	(818) 780-8811
[illegible]	18628 Palomino	818 881 5322
[illegible]	11926 White Water	310 457-1041
[illegible]	20944 De Mina St. WH	91364 818 348-5338
[illegible]	[illegible] Beach Malibu	818 704 0700
[illegible]	910 Linda Flora (LA)	323-870-5884
[illegible]	7832 Kentwood Ave CA 90265	310-670-4796
Marcia Francis	7832 Kentwood	310-670-479

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Name	Address	Phone Number
Pauline Knight	7528 S. Crenshaw Blvd. LA 90043	(323) 758-2605
Dolores Golden	3628 Aureola Bl LA 90008	310 645-6786
Pamela White	707 N. La Brea	(310) 671-8271
Greg Meadows	707 N. La Brea	(310) 671-8271
Larry Springs	707 N. La Brea	310-671-8271
Troy Lea	725 Flower Venice 90291	310-664-9765
Eugene Fant	2930 W Imperial Hwy 209	310 7678596
Patricia Douglas	2930 W Imperial Hwy #221	323 754-8283
Gene Hardy	5536 Carlin St	3239300904
Ralph Davis	4801 W. Slauson Ave #29	323 299-1744
Cathi Hall	3858 Carson Street Torrance	310-375-9528 x 4209
Gene Marsh	3916 Sepulveda Blvd C-5	(310) 638-1919
Derek Shaw	2815 W Slauson #2	(323) 293-1187

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Name	Address	Phone Number
Linda Jenkins	4437 W. Slauson Ave.	323-299-6781
[illegible]	1622 W. Pico L.A.	323 964 6888
[illegible]	8306 [illegible] St	323 758 4050
Chanette Duplessis	1337 Centinela Ave	(310) 259-3676
Wanda Dean	5843 5th Ave, LA 90043	323.293.3249
Jerry Cockell	8443 Crenshaw #105 Ingl. 90305	310 677 8520
James Lee	2662 S. Normandie Ave, LA. 90016	323-733-4912
Eloise Brown	2120 7th Ave. LA 90018	323 737-0106
Kim C. Moore	3860 Crenshaw Blvd Ste 299	LA 90008 323-[illegible]
Charles Brown	3011 W. Florence	323-751-3712
Kenneth Randolph	335 E. Manchester Ave	(310) 412-3394
Lorenzo Santiago	El Toro	949-859-9255
[illegible]	145 S. Fairfax	323 951-3805

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

THE UNDERSIGNED CALL FOR THE IMMEDIATE REMOVAL OF EVERY MEMBER OF THE CALIFORNIA COASTAL COMMISSION WHO SUPPORTS THE MALIBU LAND USE PLAN IN ITS CURRENT FORM.

WE ARE TIRED OF THE ARROGANCE AND DISRESPECT OF THE CURRENT COASTAL COMMISSION. THEY HAVE ADOPTED A MALIBU LUP OVER THE OBJECTIONS OF EVERY ORGANIZATION AND PROPERTY OWNER IN MALIBU. WE WILL NOT TOLERATE THIS ABUSE OF REGULATORY AUTHORITY. REGULATION WITHOUT REPRESENTATION IS TYRANNY. **GET RID OF THE MALIBU LUP OR GET RID OF THE COMMISSIONERS!**

NAME	ADDRESS	PHONE
[illegible]	3040 Foose Rd.	310-457-1948
Inger Hogan	3040 Foose Rd	310-457-1948
[illegible]	23344 Palm Canyon Ln	310 457 8247
[illegible]	[illegible]	[illegible]
Maryanne Mekas	2911 S Foose Rd	310-457-9136
Sally L Hombek	2911 S. Foose Rd	310-457-1697
Michael A Hombek	2911 S. Foose Rd	310-457-1697
Robin Branham	2821 S Foose dr	310-457-3594
[illegible] Branham	3065 FOOSE	310-457 391
Randy Berkeley	2821 Foose Rd	3104573594
Jay Connellan	2907 Foose RD.	310 589 0826
Isabel Fein	2821 Foose Rd Malibu	310 589 8112

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Name	Address	Phone Number
Jack Hendricks	6796 Shearwater Ln. Malibu, Ca	310-457-1294
Fran Kaufman	1251 Clipper S Cir. Malibu	805-379-3792
Romaine Andalora	6769 Shearwater Ln. Malibu	(310) 457-5768
Romaine S. Andalora	6769 Shearwater Ln Malibu	(310) 457-5768
Helena Kaufman	6796 Shearwater Ln Malibu	310-457-1294
[illegible]	6777 Shearwater Malibu	457-908[illegible]
[illegible]	6770 Shearwater Ln	457 4527
[illegible]	6776 Shearwater Ln Malibu	310-457-4130
Jacqueline Beatty	6794 Shearwater Malibu	310-457-3441
Elaine Leipzig	6724 Los Alan Malibu	310-457 0087
Lynn Vinnedge	6778 Las Olas Malibu	310-457-6499
Jeffrey Vitcher	6772 Shearwater Ln Malibu, CA	310 457 6894
[illegible]	6774 Las Olas	310-457-0438

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Name	Address	Phone Number
BILL MAGEE	32219 P.C.H, MALIBU, CA. 90265	310-456-2221
CHRISTIAN DOMES	27104 Malibu	310-456-1209
Sandra Planiden	4060 Maguire Dr. Malibu,	310-456-2221
Linda Hermann	22917 P.C.H.	310/456-2221
[illegible]	29012 Cryo Ave Agoura	310 457 6336
TOM BATES	P.O. BOX 541 TOPANGA	(310) 456-8009
Beate Falk	22917 P.C.H. Malibu	310-456-2221
Steve Karl Karl	25312 Malibu Rd	456-6461
Jim Souza	6080 Sunnycrest Dr	818-991-5634
RONALD R. SOUZA	6080 SUNNYCREST DR	818 991-5634
Enrique A. Iacangelo	26251 Hatmor Dr. Calabasas	(818)880-5659
DONALD BURPEE	30765 PACIFIC COAST HWY MALIBU CA	310-589-1155
Aaron Hunter	274 W. Tujunga Burbank	(818) 846-7035

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Name	Address	Phone Number
Joseph Kerman	26381 Lagunaboy	310 456-5899
[illegible]	23661 PCH	310 601-7662
Jackie Kline	23661 PCH	(310) 317-9378
Pat Z Snyder	7002 Beverlew Ave	310 457-7923
John Mills	3601 Vista Pacifica #9	310 456-6587
[illegible]	21901 Smokey Park Torrance	(310) 455-2232
[illegible]	390 Camino Collion Calabasas	818 222-6105
ELAINE HUNT	30607 LASONORA DR.	(310) 457-7327
PATRICIA GREENWOOD	5906 PHILIP AVE.	(310) 457-2774
Dean Myers	20710 PCH #10	310 924 5240
Julie Delgrecco	6457 Lunavista Place Malibu CA	589-1906
Steve Bridges	1530 Arroyo View Dr. Pasadena, Ca. 91103	818-354-8113

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Name	Address	Phone Number
Charles Rodgerson	2801 Corral Canyon Rd. Malibu	310-317-9313
Karen Gekelman	525 Sadie Topanga	310 4638331
David Gekelman	2801 CORRAL CANYON RD. MALIBU	310 456-5301
[illegible]	22147 PCH #8	MALIBU, CA (310) 266-7929
[illegible]	[illegible]	[illegible]
ASHA Chatk	24927 PCH MALIBU	456 1040
CLAUDIA LA CAVA	205 PARADISE COVE	457-2923
[illegible]	29803 Cuthbert Rd	310 893-5503
Susan Saul	3737 Broad Beach Rd	457-2666
Candi Scott	23061 PCH	3104562177 # 389
DAN O'HERLIHY	5820 Francis Cyn. RD.	457-7995
Dr. Joni Jordan	365 E Hillcrest, T.O.CA	805-3747600
Dr. Joni Jordan	Thousand Oaks, CA	805-3747600

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Name	Address	Phone Number
[illegible]	23732 MALIBU RD. MALIBU, CA 90265	774-5166
Arthur Ogden	23732 Malibu Rd Malibu 90265	774-5132
L. Stout	23732 Malibu Rd Malibu CA 90265	(310) 774-5128
PAUL SPIEGEL	23732 MALIBU RD 90265	310-48[illegible]-5709
Kimberly LEVAN	23732 MALIBU Rd, MALIBU 90265	(310) 774-5134
Kathryn Benton	30119 Harvester Rd MAL	(310) 457-5301
Matthew Benton	30119 Harvester Rd. MAL.	(310) 457-5301
TED BEASON	23706 HARBOR VISTA	(310) 456 7982
RUSSELL WARD	23351 PCH Apt. A MALIBU 90265	(310) 317-0212
JEFF CHERTOW	677 Gold Cyn Malibu 90265	(310) 457-0583
DAN WALKER	22119 PCH #1	456-1142
Susannah Jackman	10 Golden Ct. SF, CA	415-7753652
Eva Callahan	222 Upper Mountain Ave, NJ	07043

Restore *LOCAL* to LCP Process

Dear Governor Davis, Senate President Pro-Tem Burton, Assembly Speaker Wesson, Senator Kuehl, Assemblymember Pavley, and California Coastal Commissioners:

Please help us restore local control and local community planning to the Local Coastal Program (LCP) planning process. Coastal Commission staff has hijacked creation of an LCP for the city of Malibu – ignoring two LCPs created by local citizens and local government. The draft Commission staff LCP and development plan would CLOSE a vital community park (throwing out thousands of families and youth baseball, soccer and other recreation teams), ELIMINATE hundreds of rental units in coastal areas of Malibu, virtually BAN horses agricultural uses in the coastal zone and designate most of Malibu as an "Environmentally Sensitive Habitat Area" (ESHA) without a shred of field study or environmental review of any kind. Help us STOP this effort to hijack local control over planning and zoning issues by unaccountable bureaucrats. We respectfully request your help to RESTORE local control, community planning and home rule over the LCP process by opposing the Commission staff's effort to impose an unsound, poorly conceived LCP.

Name	Address	Phone Number
Kathleen Peterson	6626 Wandermere Rd. Malibu	310-457-7587
Natalie Solowey	31533 Victoria Pt. Rd Malibu	310-528-7543
Betsy Van Patten	6477 Zuma View Pl. #125 W.H.	310 367 4184
Marc Galisatoff	20150 Pharetra Dr.	818 679-9727
Samantha Hughes	4111 Cliffview Drive Malibu	310 457 1774
Candice Watters	28400 Vey de Copas	310 589 7615
Allen R. Mellott	54 Grant, Irvine CA 92620	(949) 857-8655
Gloria Berger	4938 Rupert St. La Canada	818-9527368
Judy Brodie	31440 Lobo Canyon, Agoura Ca.	818 9915029
John Brodie	31440 Lobo Canyon, Agoura CA	818 9915029
Nicole Dunkyn	28877 Gray Fox, Malibu CA	4576892
April Crosby	San Francisco, Cal	415 6818617
Donna Cohen	1528 Addison Road, Palos Verdes, Ca.	90260

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Name	Address	Phone Number
Anna Hutchinson	26737 W. Latigo Sh. Dr.	(310) 457-2977
[illegible]	21640 PCH	(310) 476-1286
Judy Heater	7107 Glasswood Ave	457-7711
Carol Randall	20852 Pacific Cst Hwy Malibu 90265	310/456-2476
[illegible]	30 Sea Vista Drive	456-2640
Bob Bradbury	30441 W. Morning View Dr	
Malibu, Ca	90265	310-457-4146
Ally Emritaz	3619 Malibu Country Drive	
Malibu, Ca	90265	310-456-5252
Geri Batty	3835 Cross Creek Rd, Malibu	310-456-5621
Alex Crane	15811 Royal Meadow Rd	818 591 9871
Sherman Oaks, Ca	91403	
Harriet Burpee	947 Farber Ave LA	323-256-2701

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Name	Address	Phone Number
Louis K.	Inglewood LA CA	310-927-2557
Carl L. Avrac	26005 Vegas Dr AVC	310 559-8474
Dana Clark	P.O. Box 1005	310 551-8724
Alonba Nizgarta	3535 Superwater Mesa	(310) 456-9456
[illegible]	31529 Victoria Pt	
	Malibu CA 90265	(310) 457-8639
[illegible]	550 Via de [illegible]	
[illegible]	Palos Verdes Calif	310-454-3076
[illegible] Nelson	304 Main Manhattan Beach	
	Rossmore Ca. 90720	562-5940842
[illegible]	3743 Cedar	562-5959904
	Long Beach Ca 90807	
Toni Eisenman	23358 Glenrye, Laguna Ca	(949) 768-8494

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Name	Address	Phone Number
ASHLIE & BARRY FARBENBLOOM	31230 BAILARD RD. MALIBU	818/889-0165
Elizabeth Campbell	25244½ Malibu Lake Malibu Ca	310 456
ZORICA DENTON	P.O BOX 6501 MALIBU	90265 457-904
Louisa Kelly	1530 Arroyo Way Pasadena	818 354-4817
Janice Dungan	31556 Victoria Pl Malibu	90265
Jennifer Lissay	25 Eagle Point A.U.	(9) 716-4523
Eileen Pearson	9858 Parcoal Ct Fallon	7149620283
Jim Cohen	1528 Alston Road, P.V.	CA. 378886
Carla Kathryn Peal	12401 Wilshire #300	Santa Monica
CA 310 - 8203595		
Chris Sorenson	22776 Pacific Coast Hwy	
Malibu, Ca	90265	310 - 456-5014
Kevin Buttram	2945 E. Ventura Blvd	805-278-6201 Oxnard Ca

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Name	Address	Phone Number
Chuck Johnson	2804 Pacific Av. Venice, Ca 90291	310 822-2800
[illegible]	11862 Corralero	310-457-1129
[illegible]	11952 Oceanaire Ln. Malibu CA	310 207-7722
George Quel	9644 Lincoln Blvd Marina Del Rey Ca. 90291	310 8231344
Ed Peters	31239 Bailard Rd Malibu, Ca 90265	4579635
Mark Sandler	22761 Pacific Coast Hwy Malibu, Ca. 90265	456 9824
Terrence Young	23555 Civic Center Way Malibu, Ca.	310-3422011
Miles Erickson	10751 Pacific View Rd Malibu, Ca 90265	310 457-1432

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Name	Address	Phone Number
Marianne Tatascore	11882 Stanfish Lane	
Fred Tatascore	11882 Stanfish Lane	
Oscar Stein	11928 Beach Club Way	310-589-94
Marsha Stein	11928 Beach Club Way	
Mary LaRue	877 W 8th St. Nowy Ca	
Fred Ruff	11434 Tonawanda St, Malibu Ca 90265	
Andi Ruff	4727 Ave Del Mar Malibu Ca 90265	
Bob Ruff	4727 Ave Del Mar, Malibu Ca 90265	
Billie Ruff	11434 Tonawanda St Malibu Ca 90265	
Marty Ordman	6774 Chandler Ln	
Malibu, Ca 90265		
Michael Ciaro	Malibu, Ca. 805 4978477	
Paul G. Azzi	215 Arena St, El Segundo, Ca (310) 45 1006	

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Name	Address	Phone Number
Nick Dille	6681 Wildlife	457-6440
Zack Nielsen	6681 Wildlife	457-6440
Kevin Nelson	6681 Wildlife	457-6440
Joshua Clayton	31760 Bailard	589-1057
Jamie Wood	1445 Manor Way Dr	818 242 4901
Glendale, CA	91205	
Marlin Green	11600 Wilshire Ca	477 9596
Jamie Jacobs	1401 S. Crest Dr LA	90035 2862444
John Kronzer	515 Latigo Cyn	818 575 9494
Malibu Ca	90265	
Lee Dee Kronzer	515 Latigo Cyn	
Malibu Ca	90265	818 575 9494
Tom Lone	2021 S.M.Bl, S.M, CA	4530577

PETITION

TO GOVERNOR GRAY DAVIS, SENATOR JOHN BURTON AND ASSEMBLYMAN HERB WESSON, ZEV YAROSLAVSKY, BRAD SHERMAN, SHEILA KUEHL AND FRAN PAVLEY:

THE UNDERSIGNED ARE ADAMENTLY OPPOSED TO THE CALIFORNIA COASTAL COMMISSION'S LOCAL LAND USE PLAN AND LOCAL COASTAL PLAN FOR MALIBU.

NAME	ADDRESS	SIGNATURE	DATE
Lee LaPlante	6247 Gayton Place	Lee LaPlante	4-30-02
Paul Grisanti	2800 VISTA MAR MALIBU	[illegible]	4-30-02
[illegible]	POR 90265	[illegible]	4-28-02
Betsy Van Patten	6477 Zuma View Pl. #125	Betsy Van Patten	4/28/02
JOYCE HARCZO	26667 COUNTRY CREEK LANE CALABASAS	[illegible]	4/28/02
Loretta Von Kessler	29178 Heathercliff Malibu	[illegible]	4/30/02
Christine Rodgers	2801 Corral Cyn. Rd. Malibu	[illegible]	4/30/02
KATHLEEN ROSSI	6208 TAPIA DR MALIBU CA	Kathleen Rossi	4-3[illegible]
Candance Scott	21338 Las Pilas Rd. Woodland Hls 91364		4.30.02
Jerry Chiller	23661 PCH Malibu CA.		4-30-02
GLEN MEYERS	6115 PASEO CYN DR.	Glen Meyers	4/30/02
CORMAC O'HERLIHY	23611 PCH MALIBU. CA	[illegible]	4/30/02
JAN KIBLINSKI	23611 PCH Malibu	[illegible]	4/30/02
LYLE SLATER	6022 Merritt Dr. Malibu Ca 90265	Lyle Slater	4/30/02
Bob Rubenstein	29178 Heathercliff Rd. Malibu, CA. 90265	[illegible]	4-30-02
[redacted]			
SHIRLEY SLATER	29178 Heathercliff Rd. Malibu	[illegible]	4-30-02
Jennifer Clarizio	29178 Heathercliff	[illegible]	4/30/02
Kathy Peterson	6626 Vandermere Rd.	Kathleen Peterson	4-30-[illegible]
Don Richston	7033 Dume Drive 90265	[illegible]	4/30/02
PAUL DIANDIAN	P.O. Box 942 MALIBU 90265		4/30/02
[illegible]	23801 Quiet Cove Circle Malibu CA 90265		4-30-02
Deborah Valavicus	193 Loma Merisa Malibu 90265	[illegible]	4/30/02
Vito Valavicus	193 Loma Merisa Malibu 90265	[illegible]	4-30-02
BILL RHODES	25429 Malibu RD Mal 90265	[illegible]	4-30-02
JOHN WATKINS	Bayside Copas Mal 90265	[illegible]	4-30-02
DAMON SKELTON	21360 1/2 RAMBLA VISTA 90265	[illegible]	4-30-02
Susan Lane	31737 Broad Beach Rd Malibu 90265	[illegible]	4-30-02
Amy McIntyre	22147 Pacific Coast Highway 90265	[illegible]	4/30/02
Kate Buckhans	23854 Malibu Cresta Dr.	CANCE DIERKHOUSE	4/30/02
C. Richard Fowler	6777 Wildlife Rd. Malibu 90265	[illegible]	4/30/02
William O'Malley	23661 PCH Malibu 90265	[illegible]	4/30/02
Glen DuPont	23661 P.C.H. Malibu CA 90265	[illegible]	4/30/02
Deborah McMaster	23661 PCH Malibu CA 90265	[illegible]	4/30/02

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

THE UNDERSIGNED CALL FOR THE IMMEDIATE REMOVAL OF EVERY MEMBER OF THE CALIFORNIA COASTAL COMMISSION WHO SUPPORTS THE MALIBU LAND USE PLAN IN ITS CURRENT FORM.

WE ARE TIRED OF THE ARROGANCE AND DISRESPECT OF THE CURRENT COASTAL COMMISSION. THEY HAVE ADOPTED A MALIBU LUP OVER THE OBJECTIONS OF EVERY ORGANIZATION AND PROPERTY OWNER IN MALIBU. WE WILL NOT TOLERATE THIS ABUSE OF REGULATORY AUTHORITY. REGULATION WITHOUT REPRESENTATION IS TYRANNY. **GET RID OF THE MALIBU LUP OR GET RID OF THE COMMISSIONERS!**

NAME	ADDRESS	PHONE
Peter Pohl	13015 Sunnyglen Camarillo	805-491-2944
Barry E. Miller	22358 Footing Way Canyon Lake	909 244 6920
Lou Marzinzik	30280 Bonguet Cir Santa	661 296 3093
Cheryl Morris	24829 San Bernardo Hidden Hills	818-884-3933
JAN WOODFILL	854 MALIBU MEADOWS DR CALABASAS	818-222-4600
Debbie Larson	28930 Crags Dr. Malibu Lake	(818) 706 0817
Bonnie Burkhart	5270 Kuno Creek Rd Agoura Hills, CA	91302
Nina Husky	24658 Calle Largo Calabasas CA	91302 818 224-3882
[illegible]	141 Lincoln Ln TO CA	91362 805 4950483
[illegible]	5610 Gaylark Ave Agoura CA	91306 (818) 454-1902
[illegible]	39 San Pica Way Goleta CA	93117 805 685 6615

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

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NAME	ADDRESS	PHONE
Nancy Troken	33 San Mateo Ave Goleta, CA 93117	(805) 685-3779
Lisa Roymar	31632 Coastal Hwy Gaviota	(805) 968-0702
Clare Jones	629 W Ash Ave Fullerton CA 92832	714 447 1059
Donna Jones	PO Box 753 Ventura CA 93009	(805) 797-170
Cindy Strauss	10015 Rubrick Ave. Chatsworth	(818) 341-2
Judy M. Lazzari	Box 801774 Santa Clarita, CA 91350	(661)-251-
Mary E. Kaufman	4185 San Marcos Camarillo CA 93012	
L. J. Pope	12301 San Fernando Rd. #412 Sylmar CA.	818-364-6327
Shelly A. Young	2576 Sapra St. Thousand Oaks, CA 91362	(805) 373-16
Mary Ann Mella	28916 Plummer St Agoura Hills, CA	818-991-8209

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HER

THE UNDERSIGNED CALL FOR THE IMMEDIATE
MEMBER OF THE CALIFORNIA COASTAL
SUPPORTS THE MALIBU LAND USE PLAN IN ITS (

Trail Trials

WE ARE TIRED OF THE ARROGANCE AND DISRESPECT OF THE CURRENT COASTAL COMMISSION. THEY HAVE ADOPTED A MALIBU LUP OVER THE OBJECTIONS OF EVERY ORGANIZATION AND PROPERTY OWNER IN MALIBU. WE WILL NOT TOLERATE THIS ABUSE OF REGULATORY AUTHORITY. REGULATION WITHOUT REPRESENTATION IS TYRANNY. **GET RID OF THE MALIBU LUP OR GET RID OF THE COMMISSIONERS!**

NAME	ADDRESS	PHONE
Sharon Rose	30615 Cold Rd Valencia	661 295-5727
Tony Corona	27740 Carmel Drive Valencia	661 295 5661
Suzy Cover	32548 Alsoc Cyn Rd acton 93510	661 2695533
Christy Calkins	10047 E Ave S6 Littlerock CA 93543	661 266-8630
Kimberly Dwight	2650 E Rushing Creek Palmdale	93550
Cassie Fitzgerald	20009 Sische Dr. Topanga, CA 90290	310 455-3354
Eric Fitzgerald	20009 Sische Dr. Topanga 90290	310 455 3354
Erin Leeds	1761 Deerhill Trl. Topanga 90270	310 455 1857
Melissa Brentsen	1211 N. McCadden Pl. #209 L.A. 90038	323-461-8083
Erica Balsam	400 N. Genesee Av #8 LA 90036	(323) 653-9518
Dennis Loiselot	15725 Brome Dr Canyon Country CA 91387	661-249-2451

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

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NAME	ADDRESS	PHONE
Penny Lane Sewell	5703 Calpine Drive, Malibu, CA 90265 ~~[illegible] #369~~	(310) 317-9493
Randy Palmer	5920 Bonsall	(310) 457-5922
Deidre Coghlan Evans	5703 Calpine Dr., Malibu	(310) 457-3930
Susan Nordberg	5739 Calpine Dr Malibu	310 457-9202
Laurie Morgenstern	5694 Calpine Dr Malibu	457-400[illegible]
Eron Morgenstern	5694 Calpine Dr Malibu	457-4004
Terrie Hepner	1596 Fair Ave Simi Valley 93063	805 527-7182
Jan Perkins	1743 Ida St. Camarillo, CA 93010	(805) 383-7592
Judy Pacione	22036 Collins #211 Woodland Hills 91367	818 346473
Jack Evans	5703 Calpine Dr Malibu 90265	3104577353
M.K. Weisfeldt	6511A Dume Dr. Malibu, CA 90265	(310) 457-4778

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NAME	ADDRESS	PHONE
[illegible]	5962 Kanan Dume Rd Malibu	310-457-3319
Robin Barton Peterson	5835 Trancas Rd Malibu	310-457-2426
Gary Peterson	5835 Trancas Rd Malibu, CA 90265	310-457-2426
PHIL BELLOMY	5962 KANAN-DUME MALIBU, CA 90265	
Debbie Fisher	27580 Windingway	310-457-8266
Susan Demas	2868 Fox Indian Dr.	310-589-0525
[illegible]	2011 S Refugio Rd Santa Ynez	805-688-8697
Anne Deren	744 Kensington Ave SM	90402
Trici Bammer	3814 LATIGO CYN	MALIBU
Walter H. Sauter	6102 Galahad Dr. Malibu CA	310-457-4948
Leah B. Sauter	6102 Galahad Dr. Malibu	310/457-4948
Rosalyn M Bonetti	6075 Via Colinita Malibu	310 457-7612

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NAME	ADDRESS	PHONE
Tina Williamson	3081 Cathedral Rd. Malibu	310 589-5580
Jeanine Hutchinson	6203 Dume Dr. Malibu	310 457-48
Allison Michael	1753 Fiske Dr. Pac Pal	310 573-198
Stafford Taylor	6453 Guernsey Ave Malibu CA	310 457
Bill McIntyre	6457 Guernsey Ave Malibu CA	310 457
Herl. Pavingarten	254 San Juan Venice	310 396 8229
Tatyana Patitel	5737 Busch Dr Malibu CA	90265
Paul Litz	5900 Busch Dr. Malibu	310 457-7496
Cara Julio	6453 Guernsey Dr Malibu CA	310 457 2327 90
Bill Quez	6205 Busch Dr, Malibu, Ca	
[illegible]	5500 Busch Dr Malibu	310 589 1965
Lolli Grebb	180 Paradise Cove Malibu	457-5

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NAME	ADDRESS	PHONE
Rebecca J. McKay	6257 Gayton Place MALIBU	310-4574977
Robin Elmasra	5815 Filare Hts MALIBU	310-457-5545
Julie O'Brady	5823 Filare Hts MALIBU	310-589-2022
[illegible]	" " " " " " MALIBU	
[illegible]	5815 Filare Hts MALIBU	310-457-5545
Robert Ryan	6257 Gayton Pl MALIBU	310 589 0336
Francine Ryan	6129 Bonsall MALIBU	310 457-1946
[illegible]	6300 GAYTON PL. MALIBU	310/457-3377
KATHY ZOTNOWSKI	22906 CALABASH ST. WHills CA MALIBU	91364
Paul NEMY	22906 Calabash St. Woodland Hills CA	91364
Susan Manus	28774 Sea Ranch Way, Malibu	90265
Susan Manus	4-26-02	

PETITION TO: GOVERNOR GRAY DAVIS
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ASSEMBLYMAN HERB WESSON

THE UNDERSIGNED CALL FOR THE IMMEDIATE REMOVAL OF EVERY MEMBER OF THE CALIFORNIA COASTAL COMMISSION WHO SUPPORTS THE MALIBU LAND USE PLAN IN ITS CURRENT FORM.

WE ARE TIRED OF THE ARROGANCE AND DISRESPECT OF THE CURRENT COASTAL COMMISSION. THEY HAVE ADOPTED A MALIBU LUP OVER THE OBJECTIONS OF EVERY ORGANIZATION AND PROPERTY OWNER IN MALIBU. WE WILL NOT TOLERATE THIS ABUSE OF REGULATORY AUTHORITY. REGULATION WITHOUT REPRESENTATION IS TYRANNY. **GET RID OF THE MALIBU LUP OR GET RID OF THE COMMISSIONERS!**

NAME	ADDRESS	PHONE
NICHOLAS HONDROGEN	6225 GAYTON PL MALIBU CA	3104573323
Ingrid Crespo	21920 Lamplighter Lane Malibu	36-4446
Gloria J. Ozarian	6255 Dayton Pl. Malibu	310-457-7822
Edward Ozarian	6255 Dayton Pl. Malibu	310-457-7822
[illegible]	6321 Gayton Place, Malibu, CA 90265	(310) 589-2893
Laura Wells	11613 Charisma Ct. Camarillo, CA. 93012	(805) 491-6118
Rosalie L. Willner	33267 Pacific Coast Rd. Malibu	
Faith E. Crosby	19272 Jennifer Lane, Huntington Beac	
PAUL AZZI	6385 ZUMA MESA DR MALIBU CA	

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

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NAME	ADDRESS		PHONE
Karen Avante KAREN AVANTE	5736 LeSage Ave	Wdlnd Hills	818 704-8173
Teresa Roe-Cunningham TERESA ROE-CUNNINGHAM	8031 McLaren Ave	West Hills 91304	818 592-0359
John P. Cunningham JOHN P CUNNINGHAM	8031 McLaren Ave	West Hills 91304	818 592-0359
Diane L Brewer DIANE L BREWER	1232 CARMEL DR.	Simi Valley CA 93065	805-581-05
Robin Greely Robin Greely	2100 Kingsmen Ave	Simi Valley Ca 93065	805-5820316
Eric Greely ERIC Greely	" "	"	"
Lynn Leonard Lynn Leonard	10525 Oklahoma Ave	Chatsworth CA 91311	818 709-7433
Charlotte Brodie CHARLOTTE BRODIE	15043 Tuba St.	Mission Hills, CA 91345	
Roy W Brodie Roy Brodie	15043 Tuba St	Mission Hill Ca 91345	
Debbie Foster Debbie Foster	17036 Sierra Hwy.	Canyon Country, CA 91357	
Geraldine Thompson GERALDINE THOMPSON	2829 ALTURA AVE	LA CRESCENTA	91214
Mercy Voyemont Mercy Voyemont	15038 Tuba St.	Mission Hls 91345	(818) 893-4941

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NAME	ADDRESS	PHONE
Gilbert Gonzalez	23938 Ranney House Ct. VALENCIA CA	(661)259-7608
Cheri Blue	13271 Herrick Ave Sylmar CA 91342	818 367-0066
Deborah Carver	14809 Ryan St. Sylmar CA 91342	
Julie Sefton	15445 Cobalt St #192 Sylmar, Ca 91342	
Paul Coleman	13485 Herrick Ave Sylmar Ca 91342	
[illegible]	9105 Arcadia Rd Altadena, CA 91001	
Kelly [illegible]	13346 Glenoaks Sylmar Ca 91342	
[illegible]	10196 Alonhurst Sun Valley CA 91352	
Kris Topay	401 W. Loma Alta Dr. Altadena, Ca 91001	
Patty [illegible]	13570 Beaver St. Sylmar, CA 91342	
Jim Thornton	13395 Phillippi Ave. Sylmar, CA 91342	818 364-0202
Jeanne Curtis	14809 Ryan St Sylmar, CA 91342	818 367-5750
Jeanne Catron-Gonzalez	23938 Ranney House Ct. Valencia CA 91355	661-259-7608

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NAME	ADDRESS	PHONE
Gabrielle Harris	6556 Wanderimer Malibu Ca 9026	
Linda Brown	29500 Heathercliff Rd. #179 Malibu, CA. 9026	
[illegible]	6105 Bonsall Dr. Malibu	
Rhonda Bryant	21333 Providencia St. Woodland Hills 91364	
Anne Blakeman	29846 Harness Malibu 90265	
Walt Jarolson	3760 Motor Ave, L.A. 90034	310-535-678[illegible]
Patricia L. Joy	1333 Grant St., Santa Monica 90[illegible]	
KARLA DANCY	9-23RD Ave Venice Ca 90291	
David Marks	1322 2nd St SM. 90291	
MAXY Jacobson	9-23RD Ave Venice 90291	
Tiffany Mitchum	6556 Wandermere Rd. Malibu, CA 90265	
Thea Inoue	6321 Grayton Pl., Malibu, CA 90265	
Dan Corning	6321 Grayton Pl. Malibu CA 90265	

PETITION TO: GOVERNOR GRAY DAVIS
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NAME	ADDRESS	PHONE
P.A. Hill	18776 Wisteria Hesperia Ca 92345	(760) 956-1526
Debby A Jakaub	11175 Peach, Hesperia	760-245-3477
Everette L Harvey	12426 Baldy Mesa Rd	760 949-8463
Sherri Pearson	19030 Senca Rd, Apple Valley, Ca.	760-946-1140
Don Crocker	11213 Navia Ln. Apple Valley Ca.	760-247-098
Cindy Barrett	12978 Whitehaven #2241 Hesperia CA 92345	(760) 949-4076
Michael Hoyt	22377 Viento Rd Apple Valley 92308	(760) 247-542
Kandia Hoyt	22377 Viento Rd Apple Valley 92308	(760) 247-54
Patricia Williams	PO Box 291354 Phelan Ca. 92329	868880
Lorrie Williams	PO Box 291354 Phelan CA 92329	868804
Dixie Gee	9360 Yucca St Apple Valley CA 92308	(760) 240-5109
Jack W. Morgan	P.O. Box 3104 26373 Valley View Apple Valley, CA 92307	760 247-4466
Gary L. Reinwand	16320 Winton Rd Apple Valley Ca. 92307	760-946-1842

PETITION TO: GOVERNOR GRAY DAVIS
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NAME	ADDRESS	PHONE
Gail Cleve	8134 Mono Dr. Hesperia, CA 92345	760 9472523
Diane Lundy	19848 Chaska Rd Apple Valley	760 242 4579
Toni Mariano	7199 SVL Box Victorville	92251 92392
Paul Kratofil	PO Box 422217 Hesperia CA	92340
Teresa Robles	10977 Hollister Rd Oak Hills CA	92345
T. Robles	10977 Hollister Oak Hills CA	92345
Steve White	12466 Baldy Mesa Rd Baldy Mesa CA	92392
Tasha White	12466 Baldy Mesa Rd Victorville CA	92392
Faith Steele	5858 Arrowhead Lk Rd Hesperia CA	92345
Ruth Steele		
Anne Steele	5858 Arrowhead Lk Rd Hesperia Ca	92345
Carolin Sieler	12449 Arrowhead Rd. Victorville CA	92392

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB

Zuma Mesa Property Owners Assoc — Pres - Becky McKay

THE UNDERSIGNED CALL FOR THE IMMEDIATE
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NAME	ADDRESS	PHONE
[illegible]	6321 Gayton Pl Malibu, CA	310-457-3521
[illegible]	6321 Gayton Pl Malibu, CA	3104575607
Charly Anderson	6225 Gayton Pl. Malibu, CA	(310) 457-1754
[illegible]	6225 Gayton Pl. Malibu, CA	(310) 457-1754
Gina Merz-McCloskey	27330 Pac. Cst. Hwy. Malibu CA	(310) 457-4037
R J Burnsby	[illegible]	[illegible]
Cheamran Baylin	29575 P.C.H.	310 457-5501
Judi Pace	2701 Seabreeze Dr., Malibu 90265	456-
[illegible]	30890 McReynolds, Malibu	90
[illegible]	23901 Civic Center Way #126 Malibu, CA 90265	(310) 317-
[illegible]	6107 Paseo Cyo Dr., Malibu, CA 90265	(310) 457-

Restore *LOCAL* to LCP Process

Dear Governor Davis, Senate President Pro-Tem Burton, Assembly Speaker Wesson, Senator Kuehl, Assemblymember Pavley, and California Coastal Commissioners:

Please help us restore local control and local community planning to the Local Coastal Program (LCP) planning process. Coastal Commission staff has hijacked creation of an LCP for the city of Malibu – ignoring two LCPs created by local citizens and local government. The draft Commission staff LCP and development plan would CLOSE a vital community park (throwing out thousands of families and youth baseball, soccer and other recreation teams), ELIMINATE hundreds of rental units in coastal areas of Malibu, virtually BAN horses agricultural uses in the coastal zone and designate most of Malibu as an "Environmentally Sensitive Habitat Area" (ESHA) without a shred of field study or environmental review of any kind. Help us STOP this effort to hijack local control over planning and zoning issues by unaccountable bureaucrats. We respectfully request your help to RESTORE local control, community planning and home rule over the LCP process by opposing the Commission staff's effort to impose an unsound, poorly conceived LCP.

Name	Address	Phone Number
	29350 W PCH	(310)5890773
	29350 W. PCH	310-589-0773
	29350 W. PCH	310-589-0773
	29350 W. PCH	310-589-0773
	29350 W PCH	310-589-0773
	31958 WATERWATER	310 589-0246
	29350 W. PCH	(310)589-0773
	29350 PCH	310589-0773
	515 Paigo Gr Rd	818 575-9495

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Name	Address	Phone Number
COCRANE Rose.	2700 NELSON WAY (Santa Monica)	(310) 581-8051
Jeremy D. Stivers	6038 Zumirez Cyn Rd	310-457-4383
Kate Ross	6531 Zumirez Dr, Malibu	(310)589-5924
A.C. DIMITRIADIS	4470 VISTA DEL PRESEAS	310 457-2987
Julie Siegel	31500 Victoria Pt Rd	310-457-0468
Brian McNamee	7275 Birdview	310-457-4625
Ron Boyd	33400 PCH MALIBU	310 457 9873
PAHL DIXON	31875 SEALEVEL MALIBU	310 457 7354
JAN CHOATE	854 MALIBU MEADOWS CALABASAS	818-222-2398
Name	Address	Phone Number
Name	Address	Phone Number
Name	Address	Phone Number

PETITION

TO GOVERNOR GRAY DAVIS, SENATOR JOHN BURTON AND ASSEMBLYMAN HERB WESSON, ZEV YAROSLAVSKY, BRAD SHERMAN, SHEILA KUEHL AND FRAN PAVLEY:

THE UNDERSIGNED ARE ADAMENTLY OPPOSED TO THE CALIFORNIA COASTAL COMMISSION'S LOCAL LAND USE PLAN AND LOCAL COASTAL PLAN FOR MALIBU.

NAME	ADDRESS	SIGNATURE	DATE
DAN LACKEY	22119 PCH		4/23
Matt Rapp	3549 Winter Cyn Malibu 90265		4/23
KIMBERLY LEVAY	P.O. BOX 6111, MALIBU, CA. 90264		4/23
ETTAN LEVIN	3536 COAST VIEW DR		4/23
Kalico Orion	P.O. 7342 Malibu		4/23
JACKIE MILLER	28946 BONITACE DR. MALIBU		4/23/02
JEFF CRAFTON	23732 MALIBU RD MALIBU		4-23-02
Teresa Renner	20019 Observation Dr. Topanga		4/23/02
GARY HARRYMAN	6620 S. Topanga Cyn Blvd Topanga		4-22-02
MARTHA ANDERSON	2440 MULHOLLAND TOPANGA		4.23.02
Grace Tudor	2837 Regina Ave, Thousand Oaks, CA 91362		4.23.02
Damiana Hart	2800 Neilson WAY Santa Monica CA 90405		4/23/02
PHILLIP BAILEY	30948 BROADBEACH RD. MALIBU 90265		4/23/02
ELIZABETH CAMPBELL	25244 1/2 MALIBU RD.		4/22/02
Matthew Ogden	6722 Fernhill Dr. Malibu 90265		4/23/02
MARIS GRUSKA	30608 Rey Dr. San Marino 90265		4/23/02
GARY MARQUIS	1707 CARmelina Ave CA 90025		4/23/02
MELANIE BERLINA	6722 DUME DR CA 90265		4/23/2002
KIRK MURRAY	269 PARADISE COVE MALIBU		4-23-02
BETTINE JOHNSON	" "		4-23-02
GAYLE PRITCHETT	3858 CROSS CREEK RD		4-23-02
BEVERLEY HIGGINS	33406 Pitray		4-23-02

PETITION TO: GOVERNOR GRAY DAVIS
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NAME	ADDRESS	PHONE
DIANE BREWER		
Diane Brewer	1232 Carmel Ct SV 93065	805-581-0560
ERIN MILLER		
Erin Miller	10344 Farralone Ave Chatsworth Ca 91311	
THERREE LOTH		
[illegible]	10030 Rudnick Ave Chatsworth CA 91311	818-407[illegible]
LANEY EVANS		
Laney Evans	9035 Topanga, Canoga Pk, CA 91304	
SHIRLEY HAGMAN		
Shirley Hagman	10336 Farralone Ave Chats 91[illegible]	
MARGARET PHIPPS		
Margaret Phipps	4194 Adam Rd., Simi Valley, CA 93063	
JUDY SMITH		
Judy Smith	19860 Graham St. Northridge, Ca 91324	
[illegible]	1060 Meadowcrest Dr. Calabasas 91302 CA	
[illegible]	1060 Meadowcrest Dr.	

Restore *LOCAL* to LCP Process

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Name	Address	Phone Number
Hilda Cados	21956 Carbon	456-0864
Stephen Paine	20122 PCH	456-1964
CHAMB	20124 P.CH	456-5660

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Name	Address	Phone Number
Theresa Wilson	Box 424 Basslake Ca. 93604	559-683-3715
Melvin Lee Gifford	PO Box 953 Strathmore Ca 93267	(559) 781-7900
Lynn M. Heintz	575 E. Alluvial #110 Fresno CA 93720	559.490.150
Anthony Gramber	2045 W. Bullard Fresno, Ca. 93711	(559) 432-9000
[signature]	4550 Arroyo Rd La Canada CA 91011	818/790-5534
Name	Address	Phone Number
Name	Address	Phone Number
Name	Address	Phone Number
Name	Address	Phone Number
Name	Address	Phone Number
Name	Address	Phone Number
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NAME	ADDRESS	PHONE
[illegible]	3838 Dorstead	457-7865
Crosby Trembly	29101 Sea Ridge Dr	456-2743
Martha Harding	30765 PCH	457-3576
Kathryn Alexander	1532 Decker	457-3091
Mel Eldy	11422 Tongerlea St	589-9003
Denise Johnson	29500 Heathercliff Rd. #213	457-4083
Al Coleman	29500 Heathercliff Rd 108	457-8713
Carol Pucciard	PO Box 6795 Malibu 90264	457-0456

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NAME	ADDRESS	PHONE
Elizabeth Beddow	6205 Cavalleri RD Malibu CA 90265	310-589-7014
Jan Smith	6234 CAVALLERI RD MALIBU CA 90265	310 589 2781
[illegible]	6205 CAVALLERI RD. MALIBU CA 90265	310589 701[illegible]
Louise G Beddow	6241 Cavalleri Rd Malibu 90265	(310) 589-85[illegible]

PETITION TO: GOVERNOR GRAY DAVI
SENATOR JOHN BURTOI
ASSEMBLYMAN HERB V

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THE UNDERSIGNED CALL FOR THE IMMEDIATE REMOVAL OF EVERY MEMBER OF THE CALIFORNIA COASTAL COMMISSION WHO SUPPORTS THE MALIBU LAND USE PLAN IN ITS CURRENT FORM.

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NAME	ADDRESS	PHONE
Tonya Hull	23852 Pac Coast Hwy #292 Malibu	310 589-5890
John Bloomfield	11613 Charisma Ct. Camarillo, CA 93012	(805) 491-6118
ZARA Bloomfield	11613 Charisma Ct. Camarillo, CA 93012	(805) 491-6118

PETITION

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NAME	ADDRESS	SIGNATURE	DATE
Kathryn Yarnell	11446 Tongareva St Malibu, CA 90265	Kathryn Yarnell	4-23-02
Mike Cunningham	21628 B. PCH	[illegible]	4/23/02
Elizabeth Baldwin	1316 Topanga Cyn.	Elizabeth Baldwin	4/23/02
Jim Rane	3858 Cross Creek Rd.	[illegible]	4/23/02
Paul Spiegel	5900 Clover Hts. Ave. Malibu	[illegible]	4/23/02
Matt Hausel	26660 Seaside Way #C-104 Malibu CA	[illegible]	4/23/02
Linda Tatum	33626 Pacific Coast Hwy. Malibu, CA	[illegible]	4/23/02
Jennifer Candor	22852 Pacific Coast Hwy. Malibu, CA	[illegible]	4/23/02
Donald Crosby	19272 Jerrilyn Ln Hunt. Beach, CA 92646	[illegible]	4/26/02
Donald Rupee	11446 Tongareva St Malibu, CA 90265	[illegible]	4-26-02
Mike Barpee	11446 Tongareva St Malibu, CA 90265	[illegible]	4/26/02

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Name	Address	Phone Number
MARK de PAOLA	28711 PCH	310-550-5910
Donny Melli	33016 PCH, MALIBU	(310) 457-1462
Christi M. Yga	22824 PCH Malib	818-889-9961
Hassan Massi	24650 BLUE DANE LN	310-456-8090
Daniel Massi	23652 PCH. Malibu	310-456-2733

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NAME	ADDRESS	SIGNATURE	DATE
HELMUT MARTINEK	28990 PCH, Suite 107	[illegible]	4-24-02
DONALD M. DESFOR	11836 BEACH CLUB WAY	[illegible]	4-24-02
[illegible]	[illegible]	[illegible]	[illegible]
RICK SHANE	c/o PFG 3599 CAHUENGA BLVD LA, CA	[illegible]	5/3/02

PETITION

TO GOVERNOR GRAY DAVIS, SENATOR JOHN BURTON AND ASSEMBLYMAN HERB WESSON, ZEV YAROSLAVSKY, BRAD SHERMAN, SHEILA KUEHL AND FRAN PAVLEY:

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NAME	ADDRESS	SIGNATURE	DATE
Judy Van Schouck	23922 Roville	Judy Van Schouck	4/24/02
DANA KNUDSEN	4077 Escondido	Dana Knudsen	4/25/02
Hassan Massi	24650 BLUE DANE LN	Hassan Massi	4/25/02
Barry Kinney	20991 Las Flores Mesa Dr.	[illegible]	4/25/02
LINN FULTON	25428 MALIBU RD	Linn V. Fulton	4.25.02
MARCIA MATTHEWS	29328 HEATHERCLIFF ROAD	Marcia Matthews	4-25-02
Kate Naughton	27609 P.C.H.	Kate Naughton	4-25-02
CORACE ARTHUR	29221 HEATHERCLIFF	[illegible]	4/26/02
PAMELA WHITHAM	7026 DUNE DR	Pamela Whitham	4/29/02
SUSAN COSENTINO	25009 PCH	SUSAN COSENTINO	4/30/02
[illegible]	[illegible]	[illegible]	[illegible]
LEON A. JOHNSON	21956 Carbon Cyn. Rd	Leon A. Johnson	4-30-02
BOB HELPER	29725 PCH	Bob Helper	5-1-02
Sally Capra	30369 Morning View Dr	Sally Capra	5-1-02
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
Marguerite Wherry	2975 Sequit Dr	Marguerite Wherry	5/20/02
KENNETH WHERRY	2975 Sequit Dr	Kenneth Wherry	5/20/02
Bonnie Harris	23100 Upper Pinnacle	Bonnie Harris	5/21/02
Gregory Harris	" " "	[illegible]	5/21/02

PETITION

TO GOVERNOR GRAY DAVIS, SENATOR JOHN BURTON AND ASSEMBLYMAN HERB WESSON, ZEV YAROSLAVSKY, BRAD SHERMAN, SHEILA KUEHL AND FRAN PAVLEY:

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NAME	ADDRESS	SIGNATURE	DATE
Mary Ellen Sherry	5825 Philip Ave, Malibu	M Sherry	4/26/02
NATALIE SOLTNAY	31533 VICTORIA PTRD. MAL	[illegible]	4/26/02
Amy Betorell	26663 LATIGO SHORE DR, MALIBU	[illegible]	4/26/02
Gail Copley	6328 Franceska Dr.	[illegible]	4-25-02
Carol A. Lane	25865 Buckskin Dr.	[illegible]	4/30/02
Mehrdad Sahafi	PARTNERS 4134 MAGUIRE DR. MALIBU, CA. 90265	[illegible]	04/25/02
Sasha Blair	4060 Maguire [illegible]	[illegible]	310 [illegible]
Ivan Kinsell	23405 PCH	[illegible]	4-25-02
[illegible]	215 Lorelei M. Malibu	[illegible]	4-25-02
John Cord Jr.	28811 PCH MALIBU	JOHN CORD JR	4-25-02
Peter Fleming	PO BOX 458 Pacific Palisades 90272	[illegible]	4-25-02
Pete Fox	19250 Rest Glen LA	P Fox	4-25-02
P. Manella	29510 Heathercliff	P Manella	4-25-02
TAY RUBENSTEIN	29175 Heathercliff Rd	[illegible]	4/25/02
Jack Braithwaite	35233 Malibu Point Malibu	[illegible]	4-28-02
Randall Crosby	332 EDGEBROOK DR, IONE CA		5-7-02
David Crosby			
Amy Crosby	323 Edgebrook Dr. IONE, CA	[illegible]	5-7

Restore *LOCAL* to LCP Process

Dear Governor Davis, Senate President Pro-Tem Burton, Assembly Speaker Wesson, Senator Kuehl, Assemblymember Pavley, and California Coastal Commissioners:

Please help us restore local control and local community planning to the Local Coastal Program (LCP) planning process. Coastal Commission staff has hijacked creation of an LCP for the city of Malibu – ignoring two LCPs created by local citizens and local government. The draft Commission staff LCP and development plan would CLOSE a vital community park (throwing out thousands of families and youth baseball, soccer and other recreation teams), ELIMINATE hundreds of rental units in coastal areas of Malibu, virtually BAN horses agricultural uses in the coastal zone and designate most of Malibu as an "Environmentally Sensitive Habitat Area" (ESHA) without a shred of field study or environmental review of any kind. Help us STOP this effort to hijack local control over planning and zoning issues by unaccountable bureaucrats. We respectfully request your help to RESTORE local control, community planning and home rule over the LCP process by opposing the Commission staff's effort to impose an unsound, poorly conceived LCP.

Name	Address	Phone Number
[illegible]	34031 Aurelio Drive	949-248-0807
[illegible]	982 Whitehaven Dr. San Jose 95128	(408) 293-2008
[illegible]	3441 E. Hill Dr. Santa Rosa 95401	(707) 525-5544
[illegible]	1397 Yosemite Dr. Milpitas 95035	408-605-3518
Larry Matteson	13505 Uvas Road Morgan Hill 95037	(408) 778-8878
Leonard A. Walther	2682 Westbury Dr. San Jose, CA 95132	(408) 923-9219
[illegible]	P.O. Box 6180 B.H., CA 90212	310-666-625[illegible]

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Name	Address	Phone Number
Nina Yamaguchi	16460 S. Kennedy Rd, L.G. 95030	408-861-8822
Mickey Shannon	24175 Dawn Edge Dr. Los Gatos	650 9472266
Paul L. White	1905 Agoita Ct. Walnut Creek 94598	925-934-4893
Tim L. Trimble	1788 INDIAN WELLS WAY CLAYTON 94517	925-673-0676
John Belford	1473 VENTURA DR, PITTSBURG CA 94565	925-439-2111

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Name	Address	Phone Number
Jean Powers	2429 Otis Dr Alameda CA 94501	510 814 4822
Melinda Sibert	1119 Via Alamosa Alameda 94502	510-523-0746
Naomi Lettman	9625 Shore point Ct. Alameda	(510) 523 6028
Hale Henry	339 Lugona Vista Alameda CA 94501	(510) 521-0960
Janet Halliburton	2575 MacArthur Oakland CA 94602	(510) 530-949
[illegible]	[illegible]	[illegible]
Jay Balter	850 Arrowhead San Dimas CA	909 599 2490
[illegible]	5912 Encinita Ave Temple City 91780	
[illegible]	625 Los Cerritos Rd Glendora CA 91740	626 285-9991
[illegible]	1207 Valebrook Pl. Glendora	CA-91740 & 626-914-4181
Nancy Hunt	903 Vista Verde Duarte 91010	626-359-1536
Cecelia Rudar	9716 Olive St, Temple City 91780	626-286-6295
Name	Address	Phone Number

Restore *LOCAL* to LCP Process

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Name	Address	Phone Number
Alma Smith	348 W. Foothill Blvd Mon. 91016	626 359 2321
Kelly Rich Green	19925 Stevens Creek Cupertino	408 260 5877
Rebecca A Gallardo	272 Riverview Dr. SJ	408-528-1400
Bill Wilson	3093 HALGRIM CT S.J. CA	408-259-9433
Linda Mae Carnaga	2653 Knollwood Dr. Campbell PK.	408-267-0720
[illegible]	15 Rice St San Jose CA 95126	408-280-1600
BOB HUNT	5611 COSTA MARTIMA, SAN CLEMENTE 92673	949-496-6130
Mary Ann Mathes	73 Nightingale Irvine CA 92604	949-551-0567
Shirley C Long	6352 Rockaway Dr. Huntington Beach	(714) 846-1583
Sandy Milsowic	2217 Ave. Olivia, S.C. CA 92673	949-498-4762
Ronald E Burkhart	856 Fairmont Cr. Walnut 91789	714 897-1745
Barbara DeGuiz	5181 Foxglove DR HB 92649	714 846-1247
Name	Address	Phone Number

PETITION TO: GOVERNOR GRAY DAVIS
SENATOR JOHN BURTON
ASSEMBLYMAN HERB WESSON

THE UNDERSIGNED CALL FOR THE IMMEDIATE REMOVAL OF EVERY MEMBER OF THE CALIFORNIA COASTAL COMMISSION WHO SUPPORTS THE MALIBU LAND USE PLAN IN ITS CURRENT FORM.

WE ARE TIRED OF THE ARROGANCE AND DISRESPECT OF THE CURRENT COASTAL COMMISSION. THEY HAVE ADOPTED A MALIBU LUP OVER THE OBJECTIONS OF EVERY ORGANIZATION AND PROPERTY OWNER IN MALIBU. WE WILL NOT TOLERATE THIS ABUSE OF REGULATORY AUTHORITY. REGULATION WITHOUT REPRESENTATION IS TYRANNY. **GET RID OF THE MALIBU LUP OR GET RID OF THE COMMISSIONERS!**

NAME	ADDRESS	PHONE
Talley Hutcherson	5904 Bonsall Dr. Malibu CA 90265	310 457 5538
Matt Willmott	5904 Bonsall Dr Malibu, CA	310 457 5838
Madison Hildebrand	21577 Ramona Vista / Malibu CA	310-456-1290
Ivan Genitti	Venice Beach, CA 90291 1704 Washington Way	310-821-7147
Donna Cadwell	425 N. Curtis Avenue Alhambra Ca.	(626) 289-5815
[illegible]	335 Rebit Ave., LA CA	(310) 441-1967
Ray Hutcherson	5904 Bonsall Dr., Ca. Malibu	(310) 457-5838
Shana McCoy	22860 PCH #207, Malibu	(310) 456094[illegible]
Larry Croy	P.O Box 4098 Malibu CA 90264	310 466-1351
Theresa Taylor	6453 Guernsey Ave. Malibu	310 457-232[illegible]
Kelly Jenson	5712 Busch Dr Malibu	310 4572211
Maria Teresa Sandler	33208 Decker School Rd Malibu	457 7167

Restore *LOCAL* to LCP Process

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Name	Address	Phone Number
[illegible]	2011 Ventura Blvd Camarillo	805-484-2121
Thomas Lotz	971 Westlake Blvd #100 W.L.V.	805-495-2000
[illegible] Scalia	77 Rolling Oaks Dr T/O	805-495-0121
Merle White	2860 Thousand Oaks B, CA	805 496 8536
Helen L. Schmidt	1122 Hudson Rd	805 522 0890
[illegible] Hannaford	976 Vallejo Ave Simi Valley	(805) 584-9034
[illegible] Pheune	3891 Steu Dr Simi Valley	805-526-4150
Don Sweeney	4591 Bluewood Ct, Moorpark, CA.	(805) 529-6545
PETER GREER	767 Irving Dr. T.O. 91360	805 496-3515
MARILYN DUNN-TORNELL	3970 VERDE VISTA DR. T.O. 91360	805 496-8711
JOHN GAZZOLI	161 S. San Antonio Rd Los Altos 94022	CA-917-7935
Willi Kraus	512 Dawn Dr. Sunnyvale, CA 94087	408 737-2300

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Name	Address	Phone Number
[illegible]	369 Foxborough Dr MT. VIEW 94041	650-969-9959
Judy Jarvis Ellis	435 Sheridan Ave #202 Palo Alto 94306	650.328.7027
Robert M. Stelzer	1600 Bay laurel Rd. Menlo Park	650 685-7700
Jeannah V. Hunt	2170 Byron St. Palo Alto CA 94301	650-327-1009
Shelley L. Williams, Jr.	11951 Brook Ridge Dr., Saratoga, CA 95070	(408) 252-4239
[illegible]	144 Lake Street San Francisco CA	415-505-7145
MARGOT LOCKWOOD	1300 HOBART - MENLO PARK 94025	650 323-0202
Arvada J. Darnell	267 Oakhurst Pl. Menlo Park CA. 94025	(650) 329 1177
[illegible]	228 Rainway MP	650 752-0212
[illegible]	725 Haverhill Dr. Sunnyvale CA	408-736-5693
Dave Wood	6074 Crossview Circle San Jose	408-983-2760
David Bruce	23 Belleau Av. Atherton, Ca	650-368-1427

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Name	Address	Phone Number
[illegible]	1104 Rosemary Rd LP Ca	310-777-780[illegible]
[illegible]	355 N. Canon Dr, Beverly Hills CA 90210	310/573-3[illegible]
Mary Nusen	P.O. Box 1543, Rockford, Ca. 95237	209-727-307[illegible]
Vicki Jenkins	122 N. Church St Lodi	209-368-5311
Marian Nunn	1144 W Magnolia Stockton	209 941-1790
Dave Forsby	1858 W. 11th St Tracy CA 95376	209832-5300
Susan Hepworth	13 S. Main St Sutter Creek CA	209-267-0408
ELKE DUFFY	19850 Ponderosa Dr, Volcano CA 95689	209-296-530[illegible]
Lowell Flammen	7031 Rio Vista Way Lodi, CA 95242	209 334-0671
Lloyd Griffin	4386 Brooks Rd Valley Springs	209 7722709 / 1721323
Tim Muetterties	3520 Fairway Dr Arnold CA 95223	209-795-5500
R.W. Brayton	PO Box 1497, Pioneer, CA	209-295-1360
Tammy Dee Warner	16991 Climax Rd Jackson CA 95642	209-223-0240

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Name	Address	Phone Number
Robin Blake	PO Box 1933 Winton, CA 95388	209 358-1749
Mike Kelly	3425 Coffee Rd Modesto Ca. 95355	209 653 7408
Margo Imfeld	17477 E. Hwy 120 Ripon Ca 95366	209-599-2300
Ed Jaspin	730 East F St Oakdale Ca 95361	209-848-4311
Jan Brennan	P.O. Box 1325 Oakdale Ca 95361	209-848-2121
Jennie MacDonald	P.O. Box 576525 Modesto Ca 95350	209 526-4040
Patrick Wallace	139 Frances Ave Modesto 95354	209-653-7404
Bella Daniel	331 E. Main St. Turlock CA. 95380	209-669-8300
Nick A. Gray	76 W. Monterey Ave Stockton 95204	209-948-3253
Marja M. Morrison	136 Corte del Encino Sonora, CA 95370	209 532-3646
Maryann Shabazz	3551 First St Atwater 95301	(209) 358-429
Susan Kacher	1252 W 21 Merced 95340	2097234745
Raymond Rodriguez	3225 Cherokee Ave Merced CA 95340	209-384-1765

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Name	Address	Phone Number
Charles E. Slate	Merced County 10227 AVE. 26 CHOWCHILLA, CA 95340	559-665-1420
Paul Salvadori	1239 El Portal, Merced CA 95340	209-386-4017
Ann Ritchie	14195 Wolumne Rd. Sonora, CA CA 95370	209-532-3432
Deborah Ritchey	1221 Kenyon Dr El Cerrito	510-236-6940
William E. Brown	6614 Colton, Oak, CA	510-339-2868
Don Faught	351 Orchard Dr. Fremont	510/797-4366
Kevin Brown	2829 Forest Av., Berkeley, CA	(510) 593-4780
Ellen Jane Brunswick	1736 Sonoma Ave. Berkeley CA	(510.) 525-4873
Ann Brown	808 Pacific Ave. Alameda	94501
Charles Edee	1440 Hindry Ct Fremont CA 94536	510-797-3155
Maureen Nokes	5415 Corte Palomas Pleasanton CA 94566	925-846-8867
BILL SWANSON	336 BRIDGECREEK WAY, HAYWARD	94544 510-489-2
Name	Address	Phone Number

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Name	Address	Phone Number
CURTIS JENKINS	108 DUTTON AV SAN LEANDRO CA	510 409-0946
[illegible]	18988 Vanch [illegible] Castro Valley CA	510 889 [illegible]
[illegible] McDonald	1909 Dorio Circle, Pleasanton, Ca	925-426-9270
Bill Olmstead	1242 LOBESTONE R. LIVERMORE, CA.	510-744-3555
Donna Smith	2052 Buena Vista Livermore	925-373-0995
Gina Piper	6111 Johnson Ct. Pleasanton CA 94588	(925) 462-9175
[illegible]	3325 Arroyo Ave Oakland, 94610	534-2010
DAVE GRAVELLE	168 PONTE CT. LIVERMORE CA 94550	925-245-1260
Sandra Shaw	4275 Heyer Ave, Castro Valley CA 94546	510-728-357
Pam Wintrowill	21060 Redwood Rd Castro Valley 94546	510 881-7899
MICHAEL TESSARO	P.O. BOX 10401 Pleasanton CA 94588	925 519-9099
CYNTHIA A. CHIASSON	P.O. Box 2401 CASTRO VALLEY, CA 94546	510-317-7141
Name	Address	Phone Number

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Name	Address	Phone Number
Vicki Montague	27570 Big Springs Hemet 92544	909 658 7369
[illegible] Nelson	813 Alta Vista Corona 92882	909 735 2529
[illegible] Tarship	359 E Hacienda Dr. Corona 92879	989 372 8800
[illegible] Hawa	953 E. Francis St. Corona, Ca 92879	909-735-5121
[illegible]	422 Sutro Ct. Hemet CA 92544	909-306-0652
	36286 Prairie Dr. Murrieta	909-698-7538
Nancy Jeanne Jones	33410 Corte Margarita Temecula Ca	909/314-7997
Martha Swanson	35136 Orange Wildomar	909-678-99[illegible]
[illegible]	37467 Summit Pk Murrieta 92562	909 676.5[illegible]
David Englin	1147 Via Iroka Corona, CA 92882	909-739-7000
Sherry Baldwin	2010 Napoli #101, Corona, Ca 92881	909/737-150[illegible]
Gary Gangnes	391 Danube Dr Aptos, CA	831-685-6828
Jerry Smith	41-011 Rincon Rd Rancho Mirage CA	[illegible]

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Name	Address	Phone Number
Elizabeth Higgins	1087 Pine Dr., El Cajon 92020	619-441-2717
[illegible]	1232 EA KIRCKCOT S.D 92130	858.755.4833
CARYL ISENAN	5903 ISLAND AVE, SD 92101	619-232-5077
Lori Stackhig	18585 Caminito Pasadero #424 San Diego 92128	858-451-3067
Susan Mansfield	12365 Lowingwater PT SAN DIEGO, CA	858-473-5367
Barbara DuDeck	3249 Rosewood Dr Esc CA 92027	858-207-1209
David Brewett	10510 Canyonlake SD 92131	858-748-0098
DAVID A. GILLINGHAM	CORONADO, CA 649 POMONA AVE 92118	619 435-0145
James Alan Sapp	333 Glorietta Pl Coronado CA 92118	(619) 435-2608
ANN THROCKMORTON	4925 Regla Court San Diego 92122	858.453.2819
Rick Snyder	10225 Rue Chamberry S.D CA 92131	858 695-16
[illegible]	40912 Redeau St. Hemet, CA	909-652-2236
Karen Nelson	31858 Valore St. Temecula	909-699-0771

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Name	Address	Phone Number
ANITA QUILLMAN	2146 ENCINITAS BLVD ENCINITAS CA 92024	760 436 7421
Theresa Coelho	27301 Valley Center Rd Valley Center CA 92082	760-749-5655
DIANNE CLAMPIT	942 Deodar Rd Escondido, CA 92056	760/735-9564
ERNEST G. COWAN	906 SYCAMORE #104 VISTA, CA 92083	(760)746-3901
ANTHONY AGURS	1150 BROADWAY #110 EL CAJON, CA 92021	(619)440-1130
JOANNE CLAYTON	3041 Brookpine Ct. Spring Valley 91978	(619)585-0711
PAMELA MARTIN	415 Bimini Rd Bonita CA 91902	(619) [illegible]
Mark Marchand	1728 Half Moon Bay, Chula Vista 91915	619/421-7841
Patty Davis	653 Redland Rd Bonita, CA 91902	619-421-6942
ROSEANNE WOOD	873 AUDREY WAY EL CAJON 92019	619-579-2803
ROGER HOLTSCLAW	805 Sunset Trails Dr El Cajon Ca 92019	619-440-5161
CHERYL BETYAR	13053 Camino del Valle Poway Ca 92064	858-485-8559

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Name	Address	Phone Number
Libby Gibson	1465 Main St El Centro CA	760-352-0923
LAURA HOULE		
Laura Houle	1570 Hilltop Dr. El Cajon 92020	619-447-3500
Ken LeMenager	1488 Gustavo St El Cajon CA 92019	619-447-4931
Thelma Baker	316 W. BARBARA AVE. CALIPATRIA CA 92233	760-3487738
MARJORIE McLAUGHLIN	12142 #E ROYAL BIRKDALE, SAN DIEGO	858 618-1211 92128
A. SCOTT HURAL	685 Guadalupe Ave Coronado CA 92118	619-435-8080
ERIC L. MILLER	2493 KATHLEEN PLACE S.D. 92105	(619) 266-8165
Beverly Miller	2493 Kathleen Pl., S.D 92105	(619) 266-4111
BILL KLEES	5100 92106 1537 ROSECRANS	619-225-8200
MALCOLM C. TUCKER	4716 Barcelona Way Oceanside CA 92056	760 631-7955
DIANNE RATH	15732 CAMINO CODORNIZ SAN DIEGO CA 92127	858-672-1515
William E. Johnson	11617 Boulton Ave. San Diego 92128	858-487-6975
MATTHEW J GIACALONE	3625 CURLEW ST SAN DIEGO CA 92103	619 297-5494

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Name	Address	Phone Number
NIGEL HANS	6445 BONSALL DR	4579091
NIGEL HANS	6445 BONSALL DR	310-4579091
[illegible]	23852 PCH Malibu	310-317-219
[illegible]	21917 Via Vista Malibu	3104579396
Susan Manners	29500 Heathercliff Rd #13	310 589 9092
Lenette S. de Sanges	5919 Kanan Malibu	310 457-0762
GREGORY CARRIGAN	28922 GARY FOX ST MALIBU	310 457-7921
CHERYL NOWOTNICK	1800 Harlequin Rd	310 455-2717
Jennifer Kirk	1137 N Via Colinas WLV CA	805-4466517
Bradley P. Gunmann	1540 El Centro Dr. TO. CA	805 496 6629
[illegible]	3874 Puerco Cyn	310 456.0602
[illegible]	3874 Puerco Cyn	310-617-5800
[illegible]	30371 MORNINGVIEW DR	310-457-5471

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Name	Address	Phone Number
[illegible]	25440 Malibu Rd Malibu, Ca 90265	456-5745
Natalie Pulliser	6844 Wildlife Rd Malibu, Ca 90265	457-4116
Carole Brownstein	29235 Heatherclif #8 Mal. Malibu Ca 90265	457-3491
Bridge [illegible]	21910 PCH Malibu, Ca 90265	456-2008
Brenda [illegible]	21910 PCH " "	456-6999
Heidi Bernard	4248 Lost Hills Oakhurst, Ca 93644	(818) 850-2985
Cara [illegible]	6900 Dume Dr. Malibu, Ca.	310-457-7792
MARTIN BROWNSTEIN	29235 HEATHERCLIFF RD #8 MALIBU, CA	310-457-3491
PHILLIP MAYS	3135 DECKER RD. 90265	(310) 457-9223
ROGER SAVATERA	6702 WILDLIFE RD. MALIBU 90265.	310-589-5752
Phyllis E. Klein	23914 B De Villow Way	
[illegible]	5617 High Peak Place Agoura Ca 91301	(818) 706-0504
Hana Eisenberg	5617 High Peak Place Agoura Hills, CA 91301	(818) 706-0577

• PLEASE SIGN •

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Name	Address	Phone Number
M.J. Snyder	225 Loma Metisse, Malibu	456-9029
Doreen Cooper	24743 VANTAGE PT. TERR, MALIBU	310-456-6947
Debby Valavicis	193 Loma Metisse Malibu	456-2010
Marilyn Cooper	29500 Heathcliff	310 457-2279
Lyta Valavicis	193 Loma Metisse Malibu	310 456-2010
Simon, Lydia	111 Marquez Pl. Pa. Palisades	310-459-8924
TAY RUBENSTEIN	29178 Heathcliff	310-457-6552
Susan Diamond	29500 Heathcliff	457-1326
Marie Hand	2914 S Tecate Dr	(310) 457-0657
Marlene Bourgeois	23676 Malibu Rd	(310) 456-3638
Bunky Beal	POB 2064	310 720 0724
Margaret Haugeman	31415 Amaya View	310 457-4729
Name	Address	Phone Number

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Name	Address	Phone Number
Bob Curtis	4651 Vintage Ranch Ln Santa Barbara CA 93110	(805) 692-9790
Renee Gutt	246 Toro Canyon Rd. Carpinteria CA 93013	(805) 566-1927
Betsy Gordy	1733 Las Canoas Rd Santa Barbara CA 93105	805-966-3695
Barbara Talmadge	1517 Monarch Dr Santa Ynez CA 93460	805-688-9831
Diana Bull	1715 State St Santa Barbara 93101	805-563-4118
Gena Dennison	1415 Chapala St 93101	805-963-3757
Bob Hart	3412 State St Santa Barbara, CA 93105	805 687 7591
M. Royal-Cathcart	12311 Genesee Ct Carpinteria 93013	805 566 8870
Kathy Nehring	7450 Foothill Rd	(805) 5702800
Lou Lorne	5970 Kanan Vista Thousand Oaks 91360	805-492-1543
Carol Kruckenberg	655 Walnut Park Ln. S.B. 93111	805-681-0242
[illegible]	4465 Pennsfield Thousand Oaks 93065	

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Name	Address	Phone Number
LISA GARRETT	23531 MALIBU COLONY DR	310-456-3671
PETER KLANE	28525 NEWTON CYN	310-457-4127
BENAY RASKIN	222 N. AVE 66th	323 931-3254
ROBERT HAUGHT	20458 P.C.H	310 456-0096
LOUIS RODRIGUEZ	1149 SO. ALVARADO	323 259-0932
Kimberly Stefanko	29222 Sea Lion Pl.	310.457.0779
JON KLANE	28525 Newton Cyn. Rd.	310-457-4127
[illegible]	31905 PCH Malibu	310 457-2483
[illegible]	31905 PCH Malibu CA	310 589-8420

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

Stanley W. Lamport
310.284.2275
slamport@coxcastle.com

Received at Commission Meeting

JUL 1 0 2002

From:

File No. 40687

July 10, 2002

The Honorable Sara Wan
Chair, California Coastal Commission
South Central Coast District
89 S. California Street, Suite 200
Ventura, CA.

Re: **Comments on Draft Malibu Local Coastal Program**

Dear Ms. Wan and Members of the Commission:

We represent the Land Use Preservation Defense Fund ("Defense Fund"), a non-profit entity dedicated to advancing the public interest in the fair regulation of land. The Fund represents the interests of concerned citizens living in the City of Malibu ("City") and elsewhere, who believe that the Local Coastal Program ("LCP") you are proposing for the City violates the Coastal Act and represents an unsound policy. This letter will address many of the concerns the Defense Fund has with the LCP. We are addressing our comments to both the Land Use Plan ("LUP") and the Local Implementation Plan ("LIP"). The Fund reserves the right to submit additional comments.

At the outset, the draft LCP violates Public Resources Code section 30523, which states in relevant part:

> It is the intent of the Legislature that local coastal programs certified by the commission should be sufficiently specific to meet the requirements of Section 30108.5, but not so detailed as to require amendment and commission review for minor changes, or to discourage the assumption by local governments of postcertification authority which ensures and implements effective protection of coastal resources.

Public Resources Code section 30108.5 in turn provides that a land use plan must be "sufficiently detailed to indicate the kinds, location and intensity of land uses, the applicable resource and development policies and, where necessary, a listing of implementing actions."

It is apparent from these provisions that a LCP is supposed to provide a general guideline to the City and measures to implement those guidelines. However, section 30523 makes it clear that the level of detail should not deny the City of the flexibility to decide the most appropriate way to apply those guidelines in any given case.

The draft LCP repeatedly violates Legislature's mandate in section 30523. The draft LCP micromanages the City's regulation of land use. It denies the City the discretion to employ measures that achieve the resource protection policies in the draft program that may differ from specific, restrictive measures the Commission is proposing.

The violation of Public Resources Codes section 30523 permeates the LCP. It is embedded in all of portions of the LCP that we are addressing in this letter.

The Visual Resource Regulations Violate the Coastal Act

The draft LCP contains a broad scenic resource regulatory scheme that is beyond the scope of the regulatory standards in the Coastal Act. As the Commission's staff acknowledged in a recent public forum, Chapter 3 of the Coastal Act defines the scope of the Commission's authority to regulate development through a LCP and coastal development permit. Public Resources Code section 30200 states that the policies of Chapter 3 "constitute the standards by which the adequacy of local coastal programs and the permissibility of proposed development subject to the provisions [of the Coastal Act] are determined."

As a result, the Coastal Commission does not have the power to impose policies and standards that are beyond the scope of policies described in Chapter 3. With respect to "scenic resources," the statute is fairly specific. Public Resources Code section 30251 states in pertinent part:

> 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. (Emphasis added.)

This statute, which is cited in the LUP, is the only one that addresses visual qualities. It is clear from the first sentence that it is limited to "coastal areas." The term "coastal areas" does not mean the same thing as the coastal zone, which is a defined term in the Coastal Act. While the Act does not define the word "coastal area," its is clear from other definitions that "coastal" refers to an area on or adjacent to the sea. Public Resources Code section 30101, for example, defines a "coastal-dependent development or use" as any development or use which requires a site *on, or adjacent to, the sea* to be able to function at all."

Thus section 30251 applies only to scenic qualities along the coast. In that regard, the Commission may adopt policies that protect views to and along the ocean and other scenic areas adjacent to the sea, to minimize the alteration of natural land forms in areas on or adjacent to the sea, to assure visual compatibility in areas on or adjacent to the sea and to restore or enhance visually degraded areas in such locations.

Even if the Commission attempted to improperly misread the statute by disconnecting the first sentence in section 30251 from the second sentence, the statute would still only permit the Commission to protect views to and along the ocean and scenic areas on or adjacent to the sea. Such an improper reading would at most improperly justify regulating minimized alteration of natural land forms, visual compatibility with surrounding areas and restoration of visually degraded areas. It would justify the broad "scenic" regulations proposed in the LCP.

The LCP goes way beyond the permitted scope of regulation under Public Resources Code section 30251. It not only relates to views of the beach and ocean (true coastal areas), it seeks to protect views of "mountains and canyons and views of natural habitat areas" all of which are non-coastal areas. (LUP, p. 110.) The LUP states that its "policies require that new development not be visible from scenic roads or public viewing areas" without regard to whether such development is located in a coastal area. (LUP, p. 110.) It states, "Protection is provided for prominent ridgelines by requiring structures to be set below the ridgeline and to avoid intrusions into the skyline." (LUP, p. 110.) The ridgelines in Malibu are not coastal areas under the statute.

Policies 6.1, 6.2 and 6.3 violate the statute by including non-coastal areas within the scope of scenic regulation and seeking to include the view of non-coastal areas within the scope of visual protection. Similarly, policies 6.4 through 6.34 also violate section 30251 by purporting to regulate the view of non-coastal areas and by imposing restrictions that are not related to the visibility of coastal areas or the preservation of land forms in the coastal area.

The regulations in the LIP are equally flawed. Sections 6.4 through 6.7 violate Public Resources Code section 30251 to the extent they are not related to the visibility of coastal areas or the preservation of land forms in the coastal area.

Furthermore, the LCP imposes an arbitrary maximum development area of 25 percent or 10,000 square feet for residential development that cannot be made invisible from scenic highways and public viewing areas. (LUP §6.5; LIP §6.5.A.2.) There is no rational relationship between this extreme restriction and the stated goal of preserving views. If, for example, the front of a residence is visible from a viewing area, but the remainder of the structure and other structures on the property are not visible, limiting the development area will not change the visibility of the residence. The extreme restriction limits the ability of the City to fashion its own approaches to achieve the same objectives in violation of Public Resources Code section 30523.

The ESHA Regulations Violate the Coastal Act

The Recreation and Land Use Preservation Foundation has prepared an analysis of the ESHA regulations in the LCP to help the public understand how those regulations work. We enclose that analysis with this letter and ask that you consider it in connection with the Defense Fund's comments.

The Ecological Findings for the LCP declares that "all relatively undisturbed habitats in the Malibu area constitute ESHA under the Coastal Act." The LCP not only imposes the limited development restrictions on land designated as ESHA, but on a 100-foot buffer area adjacent to the mapped ESHA. The Defense Fund believes that these restrictions violate the Coastal Act and other laws for the following reasons.

First, the LCP indiscriminately identifies land as ESHA that may not be ESHA. The Ecological Findings for Malibu states:

> "[A]ll relatively undisturbed natural habitats in the Malibu area constitute ESHA under the Coastal Act. Therefore, it is staff's opinion that, because of their significance within the Santa Monica Mountains ecosystem, all natural habitats in Malibu are ESHA *until a site-specific analysis with consideration given to habitat connectivity issues demonstrates otherwise.*" (Ecologial Findings, p. 15, emphasis added.)

It is clear from the findings, that the areas mapped as ESHA are not necessarily ESHAs, but are potential ESHAs. The Ecological Findings themselves refer to the areas identified on the maps as "potential ESHA areas." (Ecological Findings, p. 15.) Furthermore, LUP policy 3.7 states that areas that are now mapped as ESHAs may be removed from the designation if a site-specific biological study establishes that a property does not actually meet the ESHA criteria established in the LCP. LIP section 4.1 imposes an ESHA overlay zone over all land mapped as ESHA and imposes all of the severe ESHA use restrictions on all land mapped as ESHA in the LCP. At the same time, section 4.3.C provides that the City may find that the land does not actually meet the ESHA criteria.

The Coastal Act does not permit the Commission to impose the severe ESHA use restrictions on land that is not actually ESHA. Public Resources Code section 30107.5 defines an "environmentally sensitive area" as an area in which plant or animal life or their habitats <u>are</u> rare or especially valuable, not where such qualities could or might exist. Land either is an ESHA or is not an ESHA under the Coastal Act.

Declaring all undeveloped land as an ESHA until a site-specific biological investigation proves otherwise is not permitted under the Coastal Act. It also imposes an extreme and unfair burden on the property owner to refute a presumption that is not based on any specific biological assessment that was related to the property.

Second, the LCP's ESHA criteria is overbroad and inconsistent with the Coastal Act.. The definition of an "environmentally sensitive area" in the Coastal Act describes the exceptional condition, not the norm. The LCP has turned what was intended to be the exceptional circumstance into the general rule that applies to all undeveloped land. This overbroad definition is not consistent with either the language or the purpose of the Coastal Act. Furthermore, it is inconsistent with the policies that require the Commission to assure that "the maximum amount of prime agricultural land [is] maintained in agricultural production to assure

the protection of the area's agricultural economy." (Pub. Res. Code § 32241.) The Coastal Act clearly provides that land suitable for agricultural use "shall not be converted to nonagricultural use" unless such use is not feasible or would preserve other prime agricultural land. (Pub. Res. Code § 30242.) The overbroad definition of an ESHA in the LCP will make these policies unattainable.

Third, there is no rational basis for imposing all of the severe ESHA development restrictions on the arbitrary 100 buffer specified in the LCP. (See LIP §§ 4.5.4 & 4.6.1.) Public Resources Code section 30240 merely states, "Development in area adjacent to environmentally sensitive habitat areas...shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat...areas." There is no reason why someone could not make responsible use of land within 100 feet of an ESHA that would not significantly degrade the ESHA. There is no scientific evidence that any activity within 100 feet of an ESHA will significantly degrade an ESHA.

Once again, the Commission does not have the power to impose ESHA restrictions on land that is not ESHA. The ESHA buffer restrictions unnecessarily impose that result. Furthermore, they unnecessarily prevent the City from exercising local control consistent with protecting true ESHAs in violation of Public Resources Code section 30523.

Finally, the takings exception that would allow for limited use of land designated as ESHA employs the wrong standard. Both the LUP and the LIP allow for minimum economically viable use of the land. However, the proper constitutional standard is "reasonable investment-backed expectations."

The LCP Imposes Development Restrictions that Violate the Coastal Act

The LCP imposes broad and extremely detailed development regulations throughout the City that far exceed the Commission's regulatory mandate under the Coastal Act. Chapter 3 in the Coastal Act contains policies related to public access, recreation, marine environment, land resources, development and industrial development.

The land resources and development articles in Chapter 3 are fairly specific. The land resources sections deal with the protection of "environmentally sensitive areas" (Pub. Res. Code § 30240), preservation of agricultural land (Pub. Res. Code §§ 30241 – 30242), protection of timberland (Pub. Res. Code § 30243) and mitigation of impacts to archaeological and paleontological resources (Pub. Res. Code § 30244).

The development policies are equally limited. Public Resources Code section 30250 provides that new residential, commercial and industrial development, with certain exceptions, shall be located within or contiguous with or in close proximity to existing, developed areas or in cases where such areas are not available, in other areas with adequate public services and where it will not have significant environmental effects. Public Resources Code section 30253 states:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
>
> (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
>
> (4) Minimize energy consumption and vehicle miles traveled.
>
> (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Furthermore, Public Resources Code section 30231 allows the Commission to maintain the biological integrity of streams and lakes "to maintain optimum populations of marine organisms and for the protection of human health" through a variety of means listed in the statute.

These are specific regulatory functions. They deal with the general location of new development, specific measures related to specific types of natural hazards, land stability, consistency with air quality requirements, special recreational communities and discharges into streams. As noted above, the Commission is permitted to address views of coastal areas and to provide for access to the beach. These policies do not allow the Commission to micromanage every aspect of the City's land use regulation.

The development regulations in LIP sections 3.5, 3.6, 3.8, 3.9, 3.10, 3.11 (with respect to areas that are not ESHAs), 3.12, 3.13 and 3.14 have nothing to do with the Chapter 3 policies. If it is not blocking access to the beach or the view of a coastal area and it is not located in an ESHA, the Commission has no business regulating the size of a side yard, the height of a wall or fence, the projections of structures into yards, or whether a house has a second unit. Nor should the Commission be regulating the minimum width of a house, the minimum floor area, the maximum size of a home or the height of a residence that is not blocking the view of a coastal area. The Commission does not have the power to regulate signage that is not interfering with coastal access or blocking the view of coastal areas.

Nor is there any basis for the Commission to broadly regulate the activities that occur in the vicinity of native trees that do not affect streams or marine water quality. The broad native

tree ordinance in Chapter 5 of the LIP is not justified by any Chapter 3 policy. Not every native tree provides stream nutrients or provides shading for streams. Nor is there any justification for preventing the broad range of restrictions in the vicinity of native trees and depriving the City of the means to determine whether such activities would actually threaten the survival of the tree.

Not only does the Commission lack the authority to establish the broad, detailed regulations that are in Sections 3 and 5 in the LIP, but once again these restrictions violate Public Resources Code section 30523. Imposing these specific requirements on the City in the LCP will strip the City of its local regulatory control. It will require the City to seek Commission approval to make any changes to these regulations to address its local needs. It is the very result the Legislature directed the Commission to avoid in enacting section 30523.

For all of these reasons, the Defense Fund respectfully requests that the Commission drastically scale back the LCP and produce a more focused program specifically directed to the issues the Commission is permitted to consider in the Coastal Act.

Very truly yours,

Stanley W. Lamport

SWL/rl
Enclosure

40687\963767v1

Recreation & Land Use Preservation Foundation

P.O. Box 472
Malibu, California 90265
(818) 880-8977
reclupf@earthlink.net

HOW THE MALIBU LOCAL COASTAL PROGRAM APPLIES

The Malibu LCP consists of two documents containing policies and ordinances the City of Malibu will have to apply in deciding what use you will be permitted to make of your land. The Land Use Plan ("LUP") is a collection of policy statements that set forth the governing parameters. It has 144 policies dealing with the use of "land resources" alone. The Local Implementation Plan ("LIP") consists of over 300 pages in ordinances that implement in detail the policies in the LUP.

The bulk of the regulation centers on the designation of most of the land in the City as Environmentally Sensitive Habitat Areas or ESHAs. This summary is a step by step review of how the ESHA designation works and how it restricts the use of your land.

What is an ESHA?

Coastal Act section 30107.5:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

What does it mean when property is designated as an ESHA?

Coastal Act section 30240

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

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

What land is designated ESHA in the Plan?

Virtually all land in the Santa Monica Mountains is an ESHA under the Commission's interpretation in the LCP. **LUP Policy 3.1** states, *"ESHA types include riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs and wetlands."*

The Commission's Ecological Findings for Malibu confirms that *"all relatively undisturbed habitats in the Malibu area constitute ESHA under the Coastal Act"* and that all such habitats in Malibu are considered ESHA until site-specific analyses prove otherwise.

The ESHA regulations apply not only to land that is designative as such, but also to adjacent land that is not ESHA. **LIP Sections 4.1 & 4.2** state, *"The environmentally sensitive habitat overlay zone shall extend not only over an ESHA area itself but shall also include buffers" which consist of "those areas within 100 feet of designated ESHA."*

Even if your land is not initially designated an ESHA, the City may be required to later declare your property to be ESHA when you apply to build on your property. Under **LIP Section.4.4.2** when you apply to the City to build on your property, you will be required to pay for site inventory, which will determine *"the presence or potential for sensitive species or habitat."* It either is found, you must then pay for an expensive site-specific biological study that will examine the biological resources on your site, the soil types, microclimate and wildlife corridors among other things. Under **LIP Section.4.3**, the City may declare your property to be an ESHA based on that site-specific biological study.

Can someone get their land out of an ESHA designation?

It is possible, but not likely. Getting out of an ESHA will entail an extremely expensive process that will require you to run the gauntlet of both the City and the Coastal Commission.

LUP Policy 3.7 states: *"If s site-specific biological study, prepared pursuant to Policy 3.35 [requiring a complete inventory of the plant and animal species on the property as a prerequisite to any permit application] contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6 [when the habitat has been illegally removed, degraded or a species of concern has been eliminated] the City Biologist and the Environmental Review Board shall review all available site-specific information to determine if the area in question should no longer be considered ESHA."*

LIP Section 4.1 states any modification of an ESHA designation in the LCP will require a LCP amendment subject to Commission approval.

Thus, after spending enormous sums on a biological study and further substantial sums at multiple public hearings between two separate agencies that could take more than a year, your fate will be left to the discretion of the Commission who declared your land to be an ESHA or ESHA buffer in the first place.

What if I can't get out of an ESHA?

You will not be able to develop any portion of your land that is designated ESHA.

LUP Policy 3.8 states that *ESHAs "shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas."*

LUP Policy 3.9 states, *"Public accessways and trails are considered resource dependent uses."*

Furthermore, the portion of your property that is adjacent to an ESHA will be restricted, including a 100 foot setback from the ESHA in which no development can occur. **(LIP Section 4.6.1)** Plus any new development must provide a buffer of no less than 100 feet from the outer edge of the tree canopy for oak and other native woodland. **(LIP Section 4.6.1)**

What if all of my land is an ESHA?

LUP Policy 3.10 states, *"If the application of the policies and standards contained in this LCP regarding use of property designated as ESHA, including the restriction of ESHA to only resource dependent use, would likely constitute a taking of private property, then a use that is not consistent with the ESHA provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking. In determining the minimum amount of development to be allowed, the City shall use the 'economically viable determination' section of the implementation portion of the LCP"* Note that the standard the Commission is using is not the standard established by the U.S. Supreme Court. The Supreme Court says you cannot be denied all reasonable investment backed expectations, which is not as limited as "economically viable use."

LUP Policy 3.11 states, *"Applications for development of non-resource dependent use within an ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property and shall include information necessary for the City to determine whether application of the ESHA policies and standards would result in a taking."*

LUP Policy 3.12 states, *"The maximum allowable development area (including building pad and all graded slopes, if any, as well as any permitted structures) in ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less, provided that the conditions enumerated in parts a-c of Policy 3.13 are met. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1 acre) in size, provided that the conditions in parts a-c of Policy 3.13 are met. These maximum development areas shall be further reduced if necessary to protect sensitive resources, particularly in riparian ESHA. Mitigation of unavoidable adverse impacts to ESHA shall be required."*

LUP Policy 3.13 states, before approving your project in an ESHA, the City must find based on evidence before it *"(a) a resource dependent use would not provide an economically viable use of the project site, (b) the amount of development represents the minimum necessary to provide the applicant with an economically viable use of the property, and (c) the project is the least environmentally damaging alternative that satisfies [the foregoing finding]."*

LIP Section 4.7.1 states that even if you can meet this burden, *"The development area shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance."* Thus, if the City or the Commission declares use of your property to be a nuisance, you have nothing.

Can I have horses in an ESHA?

LIP Section 3.11.2.A states, *"New confined animal facilities for keeping of horses or other ungulates for personal recreational use shall be prohibited in ESHA, or ESHA buffer, except as otherwise provided in Section 4.7."*

LIP Section 4.7.4 states, *"Development permitted within coastal sage scrub or chaparral ESHA may include one accessory animal structure such as a stable within the approved development area. A stable may be included within the approved development area or within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater that 4:1, does not require additional grading, and does not result in any expansion to the required fuel modification area."* Note, that this section allows horses in only two types of ESHAs. It does not allow for horses in riparian woodland, coast live oak, valley oak savanna or grassland ESHAs.

Where you can have a stable as an accessory structure, **LIP Section 3.11.2.G** states, that the *"animals shall be maintained in an area a minimum of 50 feet from any building used for human habitation."*

Under **LIP Chapter 5,** you cannot locate a stable within or near the protected zone (defined as five feet of the drip line or 15 feet from the trunk) ~~of~~ an o~~ak~~, C~~ali~~~~fornia~~ W~~alnut~~, ~~Western~~ Sycamore, alder or toyon that has trunk 6 inches or more in diameter or two or more trunks measuring a total of eight inches or more in diameter. **LIP Section 5.4.B** states that *removal of such trees "shall be prohibited for the construction of accessory structures."* **LIP Section 5.4.B** states that *structures "shall be sited to prevent any encroachment into the protected zone and to provide an adequate buffer outside the protected zone of individual native trees...except where no other feasible alternative exists for the construction of one primary structure permitted under the applicable zoning."* Remember that a stable is an accessory structure and not a primary structure. There is no process to allow a stable within the protected zones of these trees.

These provisions essentially eliminate horses in the ESHA. Given the confined development area permitted, it will be the unusual property that will be have land in the limited development area that is more than 50 feet from the house. Stables are permitted only as accessory uses, so you cannot have a barn on a lot by itself. It will be the unusual situation where you can have a barn in the fuel modification zones (which extend up to 100 feet from a structure) that will not

increase the fuel modification area. If any grading is involved, no matter how little, the barn is banned in the fuel modification zones outside the limited development area.

Can I have an orchard or a vineyard in an ESHA?

LIP Section 3.11.1.A states, *"The conversion of vacant land in ESHA or ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard or other agricultural use shall be prohibited, except as otherwise provided in Section 4.7."*

LIP Section 4.7.3 states, *"Development permitted within coastal sage scrub or chaparral ESHA may include limited orchard or vineyard use within the irrigated fuel modifications area (Zones A and/or B if required) for approved structure(s) only if such use is not located on slopes greater than 3:1, does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from herbicides or pesticides."*

Once again, this use is permitted in only two types of ESHAs. It will be limited to an area within 100 feet of your residence and only on a limited basis.

What if I am in an ESHA and I don't meet these standards?

Under **LIP Section 13.5.A** you have a non-conforming use or structure. As a result, the following restrictions will apply.

LIP Section 13.5.B states, *"Non-conforming uses as defined by 13.5(A) shall not be intensified, or expanded into additional locations or structures."*

LIP Section 13.5.C states, *"Non-conforming structures as defined by 13.5(a) may be repaired and maintained if it does not result in enlargement or expansion of the structure. However, demolition and/or reconstruction that results in replacement of more than 50 percent of non-conforming structures, including any demolition and/or reconstruction that was previously undertaken, is not permitted unless such structures are brought into conformance with the standards of the LCP."*

LIP Section 13.5.G provides that if the structure is damaged or destroyed by a natural disaster it can be repaired or replaced only if it meets the conditions in Section 13.4.6. **LIP Section 13.4.6** provides that you can replace a damaged structure (which is defined to include landscaping) only if it *"conforms to existing zoning requirements applicable at the time of replacement."* In the case of property in a ESHA overlay zone, it means the property must meet the extreme limitations of the zone.

This means that what you have today on your property you probably cannot sell because any substantial renovation will require the new owner to remove what you have that is non-conforming and to comply with the ESHA restrictions. Plus, any buyer would have to factor into

the price the risk of losing the value of the improvements if the property is destroyed by fire or other disaster.

Do I really have to pay a fee to clear vegetation on my land?

LIP Section 4.8.1 states that you will have to "mitigate" for *"unavoidable impacts to ESHA from removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance."* The section gives you three choices: (1) paying for the restoration of another degraded habitat of equivalent size, (2) acquiring land that is an intact habitat of equivalent size and converting it to deed restricted open space, or (3) an in-lieu fee that will go into a fund administered by the Santa Monica Mountains Conservancy.

Received at Commission
Meeting

JUL 1 0 2002

From:

TAXPAYERS FOR LIVABLE COMMUNITIES

A NON-PROFIT PUBLIC BENEFIT CORPORATION

July 10, 2002

Hon. Members of the California Coastal Commission
C/O Gary Timm
89 South California Street
Suite 200
Ventura, CA 93001

Dear Honorable Commissioners:

Taxpayers For Livable Communities ("TLC") is a nonprofit public benefit corporation, with its principal place of business in Malibu, California. TLC was organized in part to respond to the legally complicated and contentious process directed by the Legislature at *Public Resources Code* Section 30166.5. TLC's mission includes the protection of representative government and citizen participation in land use policy making.

TLC has two lawsuits pending against the City in connection with the City-adopted LCP. In one of those cases, TLC achieved its primary objective of invalidating the City's LCP, based on the City's judicially binding admission "***that its LCP is a dead letter for all purposes.***" Accordingly, the City's LCP will have no stature in litigation the City may take against your actions under AB 988. In our other case, we obtained an injunction based on clear and convincing evidence of the City Council's past violations of the Open Meeting Act. We seek a declaration of the rights and duties regarding many allegations of Brown Act violations.

As of today, the City Council of Malibu has now disavowed two completely separate local coastal plans it prepared, each one costing the taxpayers hundreds of thousands of dollars. While we share the universal concern about completing the Malibu LCP by an artificial deadline, we nevertheless reluctantly accept it as a necessity to finally bring home rule to the City of Malibu – a goal TLC shares and strongly promotes.

When you consider comments from the city and many of the citizens who claim that they are being deprived of their right of access to their local government, please bear in mind that your partner in the collaborative AB 988 process, the elected officials of the City of Malibu, have squandered their considerable land-use authority by:

1. Secretly developing and implementing a strategy still not disclosed;
2. Delivering to the public hearing process, a finished plan that was written without notice, public input or workshops, and adopted without substantial modification and **WITH NO COUNCIL DEBATE;**
3. Failing to comply with the Coastal Act public participation requirements;
4. Failing to use an open and transparent process, such as public workshops to obtain the citizen's comments and promote genuine understanding of the proposed

Implementation Plan; and

5. By failing to fill the policy vacuum with coastal policies debated and adopted by the City Counsel after it had withdrawn two coastal plans.

The net result is a public policy-making disaster. Regardless of your own inclinations, from your vantage point of the competing arguments, you must be dismayed by the misinformation, gross exaggerations, and tone of this false, distorted and destructive process that falls far short of compliance with the democratic principals the citizens of Malibu are entitled to.

Insufficient Public Participation

The Coastal Act contains the strong and mandatory policy requiring ***maximum public participation*** set forth at *Public Resources Code* Section 30006, and 30503. The underlying policies are also found throughout the State *Planning and Land Use* law. While the Commission has its own rules and procedures to ensure an opportunity for public input, that opportunity was never intended to supplant the requirements of full public participation at the local level. By the City's consistent abnegation of its responsibilities to ensure public participation, the totally of its acts have deprived the citizens of their constitutional right to local land use determination. Nothing in *Public Resources Code* Section 30166.5 excuses the City from providing that right and the Coastal Commission, as a state agency of appointed officials, cannot provide a substitute for it. Thus, this policy-making process is fatally flawed.

The citizens of Malibu should not be punished for the irresponsibility of its leaders. The Commission, acting in its quasi-judicial capacity, can and should adopt your staff's findings that the City repeatedly failed to provide maximum public participation. Then, if the City seeks judicial relief regarding this Commission's actions, your finding may be entitled to great weight in the court's evaluation of this important question. More importantly, a quasi-judicial finding regarding the important issue of whether the citizens were afforded maximum public participation will assist the citizens of Malibu in determining where the responsibility lies for such short comings and respond in the only process left to them – the ballot box.

Scientific Support For Coastal Commissions 'ESHA Policies

A review of the neutral scientific literature regarding the issue of "*connectivity*" underlying the Commission's proposals regarding a broad definition of ESHA and the need to include, among other biotic communities, coastal sage scrub, turned up a number of independent sources of support. Thus, it cannot gainfully be said that there is no scientific support for the theoretical underpinnings provided for the ESHA policies proposed by Dr. J. Allen.

In a paper authored by Richard D. Hunter[1], Robert N. Fisher[2], and Kevin R. Crooks[3], none of whom has any association with either the Coastal Commission or with the City of Malibu, the following general principals were observed:

[1] Talon Associates, P.O. Box 131, Bodega, CA 94922
[2] USGS-Biological Resources Division, Department of Biology, San Diego State University, San Diego, CA 92182-4614
[3] Department of Wildlife Ecology, University of Wisconsin, Madison, WI 53706-1598

> "*Habitat fragmentation has been targeted as* ***one of the most serious threats to biological diversity worldwide*** *(Wilcove et al. 1998), and in areas with increasing urbanization, fragmentation is virtually inevitable (Soulé 1991). Perhaps nowhere is this threat more evident as in coastal southern California. The region encompasses less than one-sixth of California, but as of 1990 contained over 16.5 million people, 56% of the state's population .. . . [m]assive population growth has severely fragmented native habitat in coastal southern California. Mediterranean scrub habitats are particularly threatened; development over the past century has destroyed all but 10% of native coastal sage scrub habitat (McCaull 1994).* (Emphasis added.)

. . . . .

> *The severe effects of habitat fragmentation on the composition, structure, and function of ecosystems have made a compelling case for preserving existing, and restoring severed, habitat connections within fragmenting landscapes (Noss 1983, Harris 1984, Wilcox and Murphy 1985, Terborgh and Soulé 1999). Landscape-level connectivity is essential to allow for the natural movement of animals among foraging and breeding sites, the dispersal of individuals from natal ranges, genetic exchange between populations, natural range shifts in response to climate change and the continuity of ecological processes such as hydrology, succession, and seed dispersal (Noss 1983, Noss and Cooperrider 1994, Terborgh and Soulé 1999). Where connectivity is not retained across developing landscapes, many plant and animal populations will eventually disappear.*

. . . . .

In a separate and equally independent study without ~~any relationship to coastal~~ planning in Malibu by Soule, Bolger, Alberts, Wright, Sorice, Hill (1988) entitled *Reconstructed Dynamics of Rapid Extinctions of Chaparral Requiring Birds in Urban Habitat Islands. Conservation Biology: 2(1) 75-92* the impact on birds caused by habitat fragmentation was analyzed. For certain sedentary species, connectivity is the most important landscape feature for maintaining species diversity.[4] The following are excerpts from that study:

> *Mediterranean Scrub Habitats when fragmented have higher extinction rates than other temperate zone communities. Birds can be used as indicator species . . . Fragmentation has been shown to lead to the extinction of chaparral requiring birds including gnatcatchers and the roadrunner. . . . The vulnerability of chaparral requiring birds is highly predictable in isolated, fragmented areas. . . . Rapid extinction is inevitable in small, fragmented areas because of inbreeding, small population fluctuation, environmental variation, and the already mentioned increase predation rate. Chaparral requiring species don't fly far. . . . A break in their*

[4] Mediterranean Scrub Habitats when fragmented have higher extinction rates than other temperate zone communities. Birds can be used as indicator species. Soule, Bolger, Alberts, Wright, Sorice, Hill (1988). Reconstructed Dynamics of Rapid Extinctions of Chaparral Requiring Birds in Urban Habitat Islands. Conservation Biology: 2(1) 75-92.

> *habitat is a barrier to their movement. . . . Chaparral-requiring species such as the California quail, roadrunner, wren tit, Berwick's wren, cactus wren, black tailed gnatcatcher, California thrasher and the rufous sided towhee. . . are present in the Santa Monica Mountains and Malibu. . . . . Narrow strips of connecting vegetation can act as vitally important corridors for chaparral requiring species. Some, like the wren tit and rufous-sided towhees are able to take advantage of 1-meter wide strips to move from fragment to fragment.*

By all appearances these independent scientists can be regarded as "un-biased third parties." Their articles were based independent evaluations of the disturbance impact of roadways and development, to provide an initial assessment of the extent of landscape-level connectivity in coastal southern California.

The Hunter/Fisher/Crooks study was based on the use of individual-based movement models to evaluate reserve design and predict population persistence. Both of these studies are in a promising new field that has been generating excitement in the scientific community (Ims 1995, Turchin 1998, Terborgh and Soulé 1999). Scientists are presently examining habitat patches, core areas, and connectivity constrictions from models and monitoring through radio-telemetry, track, scat, and remotely triggered cameras surveys (Sauvajot et al. 2000, Haas 2000, Lyren 2001, Crooks 2001). Field surveys of habitat patches and core areas have yielded predictive models of the influence of patch size and isolation (Crooks 2001). Field surveys on wildlife corridors have quantified the dimensionality of corridors and roadway underpasses necessary to facilitate movement of mammalian carnivores (e.g. Haas 2000). Such field surveys are being used to validate and refine habitat connectivity models.

Proposed Policy Changes

One of the most outrageous abuses of the truth by the opponents of meaningful coastal planning is the falsification of proposed Land Use Policy 3.11. That proposed policy provides that the site design and size of any development approved **in ESHA or ESHA buffer** shall be limited, restricted, and conditioned to minimize impacts to ESHA on and adjacent to the property. The maximum allowable development area **in ESHA or ESHA buffer** shall be 10,000 square feet or 25 percent of the parcel size whichever is less. Maximum development areas shall be further reduced if necessary to protect sensitive resources, particularly in riparian ESHA.

TLC supports this policy on the simple ground that certain portions of lots or in some cases the entire lot, are simply not suitable for extensive development given the broader goals of preservation of ecological values. Yet this policy would still allow a significant amount of development, even in the worst case. This policy is not a significant departure from existing development policies given the state-wide policies and regulations set forth in the *California Environmental Quality Act, Fish and Game Code, Coastal Act*, and Malibu's own General Plan. Development on such lots is also limited by taking into account limitations from fire and landslide and the citywide policy of "**preservation of the rural character of Malibu.**" Thus, this policy promotes the general welfare and does not threaten it.

Nevertheless, TLC proposes some important policy changes to ensure the protection of key coastal values. Isolated fragments are necessary for the habitat needs of many species present in the Santa Monica Mountains, including in particular birds, insects, and air-borne propagating plants. Proposed Land Use Policy 3.3, which currently allows for relaxation of the ESHA standards for fragmented or extremely isolated ESHA, should be modified to ensure these considerations are included in the analysis.

In order to allow a strong ESHA policy to function properly, staff should provide more specific guidelines to guide the determination of what constitutes and ESHA. Perhaps more importantly, areas adjacent to ESHA or so-called buffer areas should also more particularly be defined. It is not in the interest of a strong ESHA protection policy to create ill-defined "no-build" zones based on the combination of ESHA-buffer and vegetation clearing policies.

The City of Malibu has a strong policy requirement in its General Plan regarding the scientific contribution of its Environmental Review Board ("ERB") in making many of the determinations required under the proposed LCP. We think it imperative that this General Plan policy be added to the Coastal Plan. It would be difficult for the Commission to be accused of dictating to the City this requirement, when it is already a part of its land use constitution. Adding the necessity of an ERB into the Coastal Plan simply ensures that this analysis becomes part of the issuance of a coastal development permit.

Respectfully submitted,

CORIN L. KAHN
Attorneys For TLC

Malibu Coastal Land Conservancy

Received at Commission Meeting

JUL 1 0 2002

From:

July 11, 2002

California Coastal Commission

Dear Commissioners:

Attached is the letter from Dr. Wayne Ferren, Jr. regarding the properties that are located in the flood plain in the Civic Center Area.

We respectfully request, as per Dr. Ferren's recommendation, that the four parcels in the Civic Center area be left as undesignated white space until such time that additional studies can provide sufficient data to determine if an Environmentally Sensitive Habitat overlay is appropriate

Please consider his finding that these properties are, in fact, disturbed wetlands, and that all discing of the area should cease until further studies are conducted.

Sincerely,

Ozzie Silna
Malibu Coastal Land Conservancy

Monte Nido Valley
Community Association

Post Office Box 8054
Calabasas, CA 91372

July 10, 2002

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Sara Wan, Chair California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

re: Testimony on Draft Malibu LCP

Dear Chair Wan and commissioners,

The Monte Nido Valley Community Association represents the approximately 300 households in Monte Nido, a mountain community halfway between the City of Malibu and the City of Calabasas. Our association has for decades been actively engaged in efforts to protect open space and parklands in the Santa Monica Mountains.

The present draft of the Malibu LCP contains serious flaws which will have a detrimental impact on all residents in the Santa Monica mountain communities. Policies in the LCP that deal with brush clearance appear to be in direct conflict with Los Angeles County Fire Department brush clearance requirements. They also appear to conflict with standards established by the California Fair Plan and other homeowner insurance carriers.

We agree with the position of Los Angeles County Regional Planning Department that the expansion of the ESHA designation to cover virtually all of the chaparral in the Santa Monica mountains has no basis either in science or law. The draft plan allows development within ESHAs, which is not currently permitted. Paradoxically, this has the effect of destroying the very purpose of ESHAs which was to provide special protection to sensitive habitats. If the commission insists on this unprecedented interpretation of the Coastal Act, it is virtually guaranteeing multiple lawsuits from other governmental bodies, private organizations and individuals. A local coastal plan for the city of Malibu can achieve appropriate planning goals without such a radical approach to resource protection as embodied in this draft plan.

Sincerely,

Gary Bardovi
President

RONALD F. AND LOLA M. PALMER
5269 HORIZON DRIVE
MALIBU, CA 90265

RECEIVED
JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 9, 2002

Coastal Commission Hearing
Chris Goehler
Waterfront Hilton Resort
21100 Pacific Coast Highway
Huntington Beach, CA 92648

To Coastal Commissioners:

We request the following statement to be read into the Minutes of the Coastal Commission Hearing of July 10, 2002:

We oppose the appointed members of the Coastal Commission usurping the rights of the citizens of Malibu to write there own LCP. We strongly feel democracy is under siege.

The numerous new ordinances restrain, restrict and subvert the use and enjoyment of private property in Malibu. The imposing of punitive fees and regulations punish and restrict patriotic expression of every citizen of Malibu with absurd regulations such as Ord. 3.13.3L which restricts our citizens to the display of only one national flag.

The excessive extension of ESHA zones appears in our opinion to be a tool of control rather legitimate concerns for the environment.

There are already adequate coastal regulations. Let Malibu have local control and self determination.

Sincerely,

Ronald F. Palmer

Lola M. Palmer

THE MALIBU LOCAL COASTAL PLAN:

STRENGTHS AND WEAKNESSES

MALIBU COASTAL LAND CONSERVANCY

Save What's Special

Received at Commission Meeting
JUL 1 0 2002
From:

PREPARED BY THE MALIBU COASTAL LAND CONSERVANCY

JULY, 2002

AB 988 & History of Malibu's Local Coastal Plan

- 1986: LA County Malibu Land Use Plan certified
- 1991: City of Malibu incorporated
- 1995: Malibu General Plan adopted
- 2000:
  - March: After 5 years of planning and approximately $200,000, Malibu's appointed LCP Committee submits a draft LCP to the Coastal Commission for review.
  - May: City Council disbands the Local Coastal Plan Committee
  - June: Newly elected City Council formally withdraws March 2000 draft LCP
  - July: City of Malibu submits hastily prepared LCP that is incomplete and inconsistent with the Coastal Act
  - Aug: Hertzberg and Burton co-author AB 988 instructing the Coastal Commission to draft and certify Malibu's Local Coastal Plan by September 15, 2002
  - Sept: Governor Davis signs AB 988 into law
- 2002:
  - May: Senate Pro Tem John Burton and former Speaker Hertzberg send letter reaffirming their support for AB 988 and the certification date of September 15, 2002

DISINFORMATION CAMPAIGN AGAINST COASTAL COMMISSION

- City Council Files an Amicus Brief on the Marine Forest Society lawsuit to declare Coastal Commission unconstitutional.

- A new non-profit, 'Californians for Local Coastal Planning, formed in Feb. 2002 and based in Malibu, fields a statewide telephone survey in Planning Departments in coastal counties to evaluate their 'experience' with the Coastal Commission. A copy of the survey instrument reveals that only negative experiences were probed, while positive experiences were ignored.

- Local City officials launch personal attacks on Commissioners. Chair Sara Wan told to pack her bags and move out of Malibu.

- Disinformation campaign launched in local press and in Sacramento. (see example next page)

- Local elected official vows publicly not uphold the law on public access.

- City of Malibu joins David Geffen in lawsuit against the Coastal Commission, the Coastal Conservancy, their respective Executive Directors, and Access for All, a non-profit to extinguish his recorded 'Offers to Dedicate' public access (7/8/02)

EXAMPLE OF DISINFORMATION CAMPAIGN AGAINST MALIBU DRAFT LUP

"Possible effects of the draft LUP by the California Coastal Commission"

Anyone in or near an ESHA would need both a biologists's report and an economist's report to build or remodel .

In an ESHA, the owner of a single family home:

- *Cannot construct a guest house*
- *Cannot clear brush in accordance with fire regulation*
- *Cannot fence their property*
- *Cannot put in a vegetable garden*
- *Cannot keep a horse and have a barn*
- *Cannot install a garbage disposal*

Even if a homeowner is not in an ESHA but merely in an ESHA 'buffer' or adjacent to an ESHA, then they:

- *Cannot plant a rosebush*
- *Cannot light a tennis court*
- *Cannot take out a tree of thin out a bush*
- *Cannot build a new home that would be visible form PCH or Kanan Dume or any canyon roads*

Arnold York, Publisher
The Malibu Times
Thursday, January 10,2002
Page 1

MALIBU LCP: MAJOR ISSUES

1. ESHA: Environmentally Sensitive Habitat Areas
2. Environmental Review Board
3. Provision of Low Cost Visitor Serving
4. Level of Development in the Civic Center
5. Public Access
6. Bluffs Park

ESHA: The Standard for ESHA Has Been Met

- The test for ESHA is threefold:
  - the habitat must be rare
  - the habitat must be especially valuable because of its special nature or role in the ecosystem
  - the plant, animal or habitat must be easily disturbed or degraded by human activities and development

- Coastal Sage Scrub and Chaparral meet the standard for ESHA in Malibu:

  Rarity: Estimates are that 70-90% of all coastal sage scrub has been lost to agriculture and urban land uses. Chaparral has limited distribution in Malibu.

  Value: Coastal Sage Scrub provides habitat for nearly one hundred species of plants and animals that are currently classified as rare, sensitive, threatened or endangered by federal and state agencies.

  Disturbance: Fire clearance and irrigation have cumulative impacts well beyond their boundaries that facilitate the growth of invasives and a decline in the habitat as a result of impacts to seed dispersal and regeneration after fire.

- Exclusion of public open space lands and land on slopes of >40% reveals that only 15% of the remaining acreage is Malibu is classified as ESHA.

- The LUP allows for a development area of 10,000 sq. ft. or 25% of parcel in ESHA.

PROTECTING THE ENVIRONMENT AND ESHA IS IMPORTANT TO THE RESIDENTS OF MALIBU

- In three polls over the last 4 years, Malibu voters identified the protection of the environment as a high priority issue :

Survey Questions	March 2002 High Priority	March 2000 High Priority	Nov. 1998 High Priority
Importance of protecting Malibu's environmentally sensitive habitat (ESHA)	75%	69%	63%
Importance to stopping the contamination of Santa Monica Bay and Malibu Lagoon.	82%	63%	98%
Importance of preserving Malibu's Small Town Ambiance	81%	69%	71%
Importance of managing traffic congestion on Pacific Coast Highway	87%	71%	71%

Survey Footnotes
Each survey was conducted with random telephone polls of a statistically valid sampling Malibu Voters. Details of survey questions sample sizes and techniques are available upon request.

Survey Date	Poling Organization	Sponsored By
November, 1998	Gobe Research and Analysis	The City of Malibu
March 2000	Fairbank, Maslin, Maslin & Associates	Residents of Malibu
March 2002	Rock Strategic Research Group	Malibu Coastal Land Conservancy

THE DEPARTMENT OF FISH & GAME RECOGNIZED THE VALUE OF PROTECTING THE MALIBU ENVIRONMENT.....19 YEARS AGO.

- When reviewing the County's 1982 draft for Malibu's Local Land Use Plan, the Department of Fish & Game (DFG) noted that the Malibu planning subarea contained "large, undeveloped areas that are adjacent to the major urban areas of Los Angeles....that contains many streams, a large coastal lagoon, and extensive wildlife habitat."

- DFG expressed concern that the distinctions between Disturbed Sensitive Resources (DSRs), ESHA's Significant Watershed, Resource Mangagment Areas and significant oak woodlands were unclear and that the plan offered "no assurance that any adquate restrictions" would be applied to land use.

- DFG deemed it "essential that ***large areas of land*** be reclassified to reflect their true status as ESHA's" and noted that most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including ***chapparal or grasland***."

- DFG noted that the presence of these areas was essential for the survival of these species and identified those areas to include ***"grassland and coastal sage scrub communities***, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

ENVIRONMENTAL REVIEW BOARD

- The ERB was created in the 1986 LA County Malibu Land Use Plan:

P64 An Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management...shall be established by the Board of Supervisors as an advisory body to the Regional Planning Commission and the Board to review development proposals in the ESHA, areas adjacent to the ESHA's, Significant Watersheds, Wildlife Corridors, Significant Oak Woodlands and DSRs. The ERB shall provide recommendations to the Regional Planning Commission ***(or decision-making body for coastal permits)*** on the conformance if the projects to the policies of the Local Coastal Program" (Emphasis mine)

Malibu Local Coastal Program, Land Use Plan, 1986, p.24

- The ERB was then reaffirmed in the 1995 Malibu General Plan:

LUP Implementation Measure 31: Maintain an Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management as a technical advisory committee. The ERB shall review and make recommendations on proposed development in or adjacent to ESHA and development that may have a potential adverse environmental impact or which impose special environmental problems.

City of Malibu General Plan, 1995, Land Use Element, p.1-31

ENVIRONMENTAL REVIEW BOARD

- The January 2002 CCC draft LUP continued the tradition of the Environmental Review Board as affirmed by the 1986 Malibu LUP and the 1996 Malibu General Plan:

  "The Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management,, shall serve as an advisory body to the Hearing Officer, Planning Commission and the City Council to review and make recommendations on development proposal within or adjacent to ESHA or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35.

  City of Malibu, Local Coastal Program, Initial Draft Land Use Plan, January 2002, p. 56

- The Revised Draft of the City of Malibu Local Coastal Program Land Use Plan (LUP) guts the integrity of the Environmental Review Board (ERB):

  "The Environmental Review Board (ERB), or other ~~comprised of~~ qualified professionals with technical expertise in resource management, shall ~~serve as an advisory body to the Hearing Officer, Planning Commission and the City Council to~~ review and make recommendations to the Planning Director, Planning Commission and/or City Council on development proposals within or adjacent to ESHA or other areas containing sensitive resources as identified through a biological study, as required pursuant to Policy 3.35.

  City of Malibu, Local Coastal Program, Revised Draft Land Use Plan, June 2002, p.57

Provision of Low-Cost Visitor Serving Accommodations in the City of Malibu

- The Revised Draft of the City of Malibu Local Coastal Program Land Use Plan (LUP) seriously weakens the provisions for low cost visitor serving accommodations within the City limits.

- Developers are only required to provide one "lower-cost" accommodation for every 15 "luxury" accommodations that are approved.

- The Recommended Modifications to the Draft Land Use Implementation Plan further weaken that requirement by allowing payment of an in-lieu fee of only $10,419 per 'required' unit of lower cost accommodations instead of requiring an in-lieu fee for each 'luxury' accommodation created. Thus developers reap a reduction of 93% in the total amount of $$ initially proposed for the provision of "lowermost" visitor serving accommodations.

- The draft LUP and LIP no longer require that the replacement 'lower-cost" visitor accommodations be provided within the Malibu City limits. Now, these accommodations can be provided anywhere in the "Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County and Ventura County."

LEVEL OF DEVELOPMENT IN THE CIVIC CENTER

- The General Plan requires that the City of Malibu not be commercialized or suburbanized. A specific plan is required in both the '86 LUP and the '95 General Plan to determine the level and location of appropriate development in the Civic Center area. In the '95 General Plan there is reference to the land in the Civic Center as a Disturbed Sensitive Resource Area. While the area was, in part, filled prior to passage of the Coastal Act, it has continued to be degraded in subsequent years.

- The zoning overlay that existed prior to the incorporation of the City allowed for the original landowners to have FAR elements that if allowed to stand will allow in excess of 1 million square feet of commercial development in the Civic Center area which is entirely in a floodplain.

- The City has already proceeded to consider applications for commercial development by the majority of the landowners in the Civic Center. Most of the applications call for a development agreement with the City which would allow the landowners to increase the level of development in the Civic Center.

- The CCC draft LUP/LIP does not, in any way, reduce the level of allowable development in the Civic Center. The current level of development being proposed will result in the commercialization and suburbanization of Malibu. All scientific studies recommend reclamation and restoration i.e. the UCLA Study (1999), the Huffman and Carpenter Study (2001), consistent with the recommendations of the Malibu Lagoon Task Force.

BLUFFS PARK OR NO GOOD DEED GOES UNPUNISHED

- Bluffs Park is located at the foot of Malibu Canyon Road and PCH - west of the highway. It is located entirely on State Park Land. It contains some of the most extraordinary viewshed in all of Malibu.

- Timeline:

1979: State Parks acquires Bluffs Park with 1976 State Bond Act money.

1982: State Parks & LA County request a coastal development permit for the construction of two 'temporary' ball fields because a restoration project at the Malibu Lagoon displaced two ball fields. Special Condition #4 requires that the ball fields be removed within 5 years....unless the permit is extended.

1985: CCC denies permit request to convert all 93 acres to a 'community park.'

1986: A CCC permit adds some facilities and extends the timing that the temporary fields can stay in place. Special Condition #4 is revised to address the Planned Phasing Out of the Ball fields: "*The ball fields permitted in this permit may remain as an interim use. Nothing in this permit commits the COunt of Los Angeles or the State of California to provide ball fields on this site permanently. The County of Los Angeles shall actively seek alternative local recreation facilities, including ball fields, within the Malibu-Calabassas area.*"

1996: CCC informs the City Council that the City should not pursue additional improvements for the ball fields at Bluffs Park due to conditions of the permit and the need to relocate the fields as per the original permit and amendment.

20[illegible] The City alleges that the Coastal Commission is 'taking their ball fields away" and ignores State Parks formal request that the ball fields be relocated and Bluffs Park returned to State Park uses.

[redacted]

Received at Commission Meeting

JUL 1 0 2002

From:_____

June 25, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

Dear Commissioners:

On behalf of the California League of Conservation voters, I would like to thank you for your recent action adopting the draft land use plan (LUP) of the local coastal program (LCP) for the City of Malibu. Of particular importance, is your support for continuous public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA). This designation applies conservation science-based decision making to long-range land use planning activities, and we hope this will become a statewide model.

Your certification of the LCP will be a much-needed update of the LUP prepared by Los Angeles County prior to Malibu's incorporation, and it underscores the importance of updating older LCPs throughout the coastal zone. The current draft Malibu plan provides a model for how updated LCPs should address the need to revise ESHA designations based on new biological information, incorporating the precautionary principle and reflecting what has been learned regarding conservation biology in the last 25 years.

CLCV also recognizes the important coastal protection benefits provided by your draft policies relating to water quality and urge you to explore additional ways to protect wetlands and adjacent open space throughout Malibu, and in particular the area surrounding Malibu Creek in the Civic Center. The current development plans proposed there is too intense to adequately protect water quality and the Malibu estuary. The best management practices to protect marine water quality in the Malibu LUP should be included in all LCPs, with some adaptation for local conditions. Indeed, when most of the state's LCPs were drafted, the term "nonpoint source pollution" was not even a part of the planning vocabulary.

Lastly, we applaud your efforts to increase public access to the coast in Malibu, and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance, and should not continue to be a private enclave for local residents. Setting a goal for at least one vertical accessway every 1000 feet will ensure that local residents not fortunate enough to own beachfront property will be able to enjoy the beach forever.

political action for environmental protection | www.ecovote.org
1212 broadway, suite 630 oakland, ca 94612 t:510.271.0900 f:510.271.0901

We strongly urge you to finalize these ESHA, water quality and public access policies when you act to adopt the entire Malibu LCP in September. We know you will be under tremendous pressure to do otherwise and ask that you stand firmly behind the exemplary action you took in January.

Sincerely,

Jon Rainwater
Executive Director

cc: Gov. Gray Davis
Sen. John Burton
Hon. Herb Wesson
Hon. Mary Nichols
Sen. Sheila Kuehl
Sen. Byron Sher
Assembly member Fran Pavley
Assembly member Fred Keeley
Sup. Zev Yaroslavsky

To: California Coastal Commission Meeting date: July 10, 2002

Subj: Comments on June 2002 draft Malibu LCP Implementation Plan

Please make the following comments a part of the record of this hearing.

Page 21 - definition of Remedial Grading - this definition is inconsistent and more lenient than that on Pg. 160 G. Remedial Grading - "...For the purposes of this Section, remedial grading is defined as grading recommended by a full site geotechnical report approved by the Director and City Geologist..." Recommend using language on Pg. 160.

Page 24 - definition of Stringline Rule "a development standard used to establish beachfront structure setbacks" From where - the roadway, side property, ocean? It would be more useful to use the language on Page 64 under G3 Beach/yards setbacks for dwellings and Decks or at the very least refer to the page on which the stringline rule is found since it is not listed in the index.

Page 36 - 3a. refers to the slope/density formula established in this document (draft Imp. Plan) for all subdivision applications - could not find the actual formula. If it has been omitted recommend using the one that has been applied by the City of Malibu since 1993 as listed in the Malibu Subdivision ordinance.

In addition, recommend using Malibu General Plan Implementation Measure 126 in the Land Use Element. This formula was supposed to be used to reduce the sizes of structures that are built on slopes to reduce the visual impact. Even though the city adopted it in the General Plan it has never been implemented by ordinance.

Page 76 - 3.8.A.4.a. - Site Development Criteria. Only the maximum F.A.R. of 15% is listed. So that requirements are consistent between the LUP and Imp. Plan recommend the maximum F.A.R. allowed for the various commercial zones when amenities are offered also be listed here. (See Page 77 4f. Additional Square Footage.)

Page 123 top of page. Language appears to be missing - the sentence does not flow from the previous page.

Page 247 15.3 B. Certificates of Compliance (as amended). The requirements in B may be impossible to obtain. The County approved land divisions for Malibu land as far back as 50+ years ago. The reference to a "complete title history" is illogical. Title companies do not research land divisions or insure their compliance with law. In many cases the current owners of lots are "innocent buyers" who have no idea whether or not a parcel was created "legally when subdivided". Already developed properties need to be exempt from this requirement as there is usually nothing that can be done about any "irregularities" that may have taken place at the time the property was divided. There also needs to be some relief from these requirements in the cases where records simply are not available because of the time that has passed since the division. It is not reasonable to apply retroactively, new development rules for the 3rd, 4th, 5th owners of a parcel divided many years ago, for which records are unavailable - nor should that fact be construed to mean that the parcel was illegally divided. A "grandfathering" ordinance needs to be developed and applied to subdivisions that predate the Coastal Act

Lucile Keller, 310-457-7086
4984 S. Encinal Cyn., Rd. Malibu, Ca. 90265

Received at Commission Meeting

JUL 1 0 2002

From:_____

Received at Commission
Meeting

JUL 1 0 2002

malibu coalition for slow growth comments july 10, 2001

to: Chairperson Wan and Members of the Commission
from: Malibu Coalition for Slow Growth

PROTECT OPEN SPACES
The vast majority of malibuites want their open spaces and eshas protected as shown by three surveys.

We support strong esha and open space protection. In the 10 years since cityhood there has been enormous growth in malibu and the cumulative impact of unconstrained development since the 1986 LUP has been devastating.

We fear that if uncontolled growth continues ,which it surely will, there will be very little natural open space left for human enjoyment and Malibu will go the way of the other seaside cities in L.A. county for Malibu is the last remaining seaside community in all of Los Angeles County that is not completely urbanized.

The remaining open spaces and scenic views offer a much needed respite to visitors from the stresses of urban life and offers a paradise to those fortunate to live in such a special place.

If we are to have any natural resources and open space left for visitors and residents to enjoy, the remaining eshas and other sensitive resources must be protected today ,otherwise paradise will be completely lost never again to be regained.

WETLANDS
In most instances,Staff has done a good job of balancing esha protection with the needs of reasonable development.

But staff has not addressesd sufficiently three important areas.

Both the undeveloped Trancas and Malibu Creek floodplain and historic wetland must be perserved not only as restored wetlands and foraging areas for the animals who depend upon these wetland areas for their survival but as passive recreation areas for people to enjoy.

The Malibu Creek flood plain has been targeted for restoration by the Malibu Creek Watershed Committee made up of numerous public agencies and by UCLA.
Slow Growth been advocating that through land swaps that all new commercial development be set above the flood plain of Malibu Creek and that the floodplain be a park containing wetlands, foraging areas and recreational opportunities for everyone.

Staff has followed the city zoning in the Malibu Creek floodplain which is complete disaster if this vital area to be protected as the treasured natural resource that it is . This area is targeted by the city for more than 1,000,000 square feet of new commerical development. Everyone is wondering why the coastal commission has repeatedly ignored this most important historic wetland and floodplain.

The city has given the creekside of Malibu Creek and the area recommended by all for restored wetland the highest of commercial designations. It allows for light industrial uses such as warehouses, and other high intensity uses to be built in the direct path of the flood waters and on historic wetlands.

While most cities are trying to beautify their creeksides,

the city is allowing uses that detract from and ruin the banks of Malibu Creek and prevent necessary wetland restoration. This is a travesty beyond belief if nothing is done to repair this situation now.

The Trancas Wetland has been targeted for restoration by both the State Coastal Conservancy and under the Santa Monica Bay Restoration Plan. The National Park Service has this area on its acquisition list. Please, designate this whole undeveloped portion as the esha which it is.

TrancasField

Trancas Field consists of 2 parcels totaling 63 acres of vital habitat . It is a rich foraging area for wildlife including deer, coyote, badger, rabbits, snakes and many migrating and native birds, including birds of prey. This is one of the last open fields in Malibu, with a blue line steam containing riparian habitat traversing it and it is worthy of esha protection because of the abundant wildlife that depend on Trancas Field's continued existence for their very existence.

Please protect what is left of the important open spaces of the treasure that is Malibu so that the people of today and of tomorrow will have some small bit of nature to always enjoy.

Thank you for considering our comments.

Received at Commission Meeting

JUL 1 0 2002

From:_____

PONY CROSS FARM

Mrs. Stephanie Abronson
543 Cold Canyon Road
Monte Nido, CA 91302-2206

Phone (818) 222-PONY • Fax (818) 337 7575 • Email: Stephanie@abronson.com

10 July 2002

California Coastal Commission
Chairperson Sara Wan & Commissioners & Staff
So. Central District Office
FAX 805-641 1732

Dear Chairperson Wan, Commissioners and Staff:

Below is my letter regarding the Draft Malibu LCP/LUP/LIP. I respectfully request that copies be made for all the Commissioners, Alternate Commissioners and Coastal Commission Staff.

RE: Draft Malibu LCP/LUP/LIP Item 10a

Dear Commissioners:

I am a responsible horse owner and land owner in the Santa Monica Mountains next door to Malibu. The Resource Conservation District of the Santa Monica Mountains has held my farm in high regard, and in 1997 was a note example of "Best Management Practices" in their "Horse Management Program" videotape. I strongly oppose this extremely flawed Draft Malibu LCP/LUP and LIP as it currently stands today, and recommend that you go back to re-examine what you plan to foist upon all the people, and add honest scientific evidence of land management issues.

I know how to manage my own property. There is over a 200-year history of livestock being kept in my neighborhood and throughout the communities of Malibu, Monte Nido, Topanga, Fernwood, and Pacific Palisades, etc. There is little or no damage to the Oak Trees, or for that matter, other native trees, in the Santa Monica Mountains in this 200-year history. The greatest danger to the trees comes from overgrowth of brush under trees, which in turn causes the burning of the trees in wildfire, not from livestock and wildlife which have been living under the trees for centuries.

Oak Trees and other native trees are a self-renewing resource, and can do so without our help. Oaks are one of the most prolific trees in the Santa Monica Mountains, of which Malibu is a part. Our animals and ourselves have a God given right to protection from the sun in the shade of a wonderful tree. We have a God given right to keep animals and care for animals.

As you interpret the California Coastal Act, your severe restrictions are onerous and cause hardship on property owners. The restrictions you are imposing violate common sense and many laws for the county, state and federal governments. Use the Coastal Act for what it was originally intended – to protect the seashore.

With sincere detestation and disgust for your currently unprincipled implementation of the Coastal Act,
I remain angrily,

Stephanie Abronson

Mission Impossible

Testimony to the CCC on 7/10/02
by Jeff Harris, MD, MPH
23712 Malibu Road
Malibu, CA 90265

Inappropriate sometimes very personal objectives and motivations have given you as California Coastal Commissioners a mission impossible, that of approving a Local Coastal Plan(LCP)dictated by your staff for a local government in this case, the City of Malibu, its residents and visitors.

The California Coastal Commission is not the appropriate governmental structure to write an LCP. Your staff has demonstrated repeatedly that they do not have knowledge of local topography, geography, biology or resources and problems within our community. Nor are you or your staff elected or otherwise accountable to the voters in Malibu or even to its many visitors.

I have long been an activist for water quality and for healthy public recreation in Malibu and elsewhere. The grass roots organization that I joined, Californians for Local Coastal Planning supports appropriate legal and staff participation from both the California Coastal Commission and the Water Quality Control Boards.

However, a Local Coastal Plan must be developed locally through democratic local government processes. Citizens must be able to thoroughly question and debate local coastal land use maps, policies and ordinances before they can buy into such a plan and be held accountable to it.

Many of you Commissioners even as insiders to this process have not and probably will not have the time to read all details and pursue all the maps in the drafts of the LCP and LUP which keep changing even up to the current time of this hearing. And many sections of your staff's drafts are missing, inaccurate and/or inconsistent, illegal and unworkable.

Imagine how Malibu citizens feel. The latest City of Malibu staff matrixes have not been reviewed and debated by Malibu residents or our City Council. While we may support many policies of the City staff and some from the Commission staff, we still do not support many we are hearing for the first time here today, nor many that are yet undiscovered or not thoroughly understood or debated.

This LCP process is inherently wrong and not in compliance with the legislative intent in the Coastal Act, NOAA administered federal law governing the Commission and most importantly our State and United States Constitutions.

If you vote to continue these inherently illegal and bad LCP processes, the only outcomes will continue to be many bad policies, area designations and ordinances which will backfire. We will not live like a Colony to an unaccountable State Agency. We recently celebrated July 4th as Independence Day for our nation. Don't force us into a similar set of circumstances with CCC dictated proclamations, as well as taxes, liabilities and other costs without representation.

Once they are properly informed, many citizens and visitors to California will not stand for the many bad policies and the undemocratic nature of this so-called LCP process. Don't create a backlash and don't waste your time trying to micromanage a community.

Instead I appeal to you to produce the conditions for a win, win process for the CCC and local governments and citizens in Malibu and elsewhere. Vote today to send your staff's LCP back to the City of Malibu for a year long thorough evaluation and then adoption by Malibu's citizens and City Council. Vote to have regular staff meetings between the CCC and the City and its citizens during that time. Vote to restore and continue the Coastal Act's Locally Written and Voted On Process.

Kathleen Burr-Ballesteros
Executive Director
Los Angeles County Farm Bureau
1006 W. Lancaster Blvd., Lancaster, CA 93534
Phone – 661-948-6571
Fax – 661-949-3251

Received at Commission Meeting

JUL 1 0 2002

From: _____

Today I represent the Board of Directors for the Los Angeles County Farm Bureau and over 5,000 Farm Bureau **families** within the County of Los Angeles. I am not a resident of Malibu nor do I live in the close proximity of Malibu or the Santa Monica Mountains.

Section 30241 of the Coastal Act states: "The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses:

a. By establishing stable boundaries separating urban and rural areas,

b. By limiting conversions of agricultural land surrounded by urban uses where the conversion of the land would be consistent.

Section 30241.5 of the Coastal Act sets guidelines for Agricultural land; determination of viability of uses; economic feasibility evaluation. Section 30242 sets guidelines for all other suitable agricultural land use that is not covered in section 30241.5 – containing the words "continued agricultural use".
Nowhere in the current LCP for the city of Malibu do you see the words "continued agricultural use".

It is apparent to me that the current Coastal Commission seems willing to ignore Constitutional and legislative provisions that declare the importance of farms and ranchers within the existing environment – California Constitution, Article XIII, Section 8 "(which) heralds the importance of land used for the 'production of food or fiber' along with attendant open space values that significantly contribute to the environment. The farmers and ranchers of today, as well as, animal agricultural enthusiasts are the first stewards of the land – they are environmentalists and well as conservationists.

The Thurman Agricultural Policy Act provides that:
"A profitable and healthy farming industry must be sustained by a sound natural resource base of soils, water, and air that is developed, conserved, and maintained to assure sufficient quantities and highest optimum quality possible." Food & Ag Code Section 802(g).

One of the major principles of the state's agricultural policy shall be "to sustain the **long-term productivity of the state's farms by conserving and protecting the soil, water and air that are agriculture's basic resource."** Food and Ag Code Section 821(c)

Section 51200 Legislative Findings state:

- That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic sources, and it is necessary not only to the maintenance of the agricultural economy for the state but also for the assurance of the adequate, healthful and nutritious food for future residents of this state and the nation"!
- That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

Nowhere do you find within the guidelines of the first Malibu LCP or the revised LCP any of the words I have quoted.

Chapter 3 of the current plan identifies specific zoning uses prohibited from compatible/appropriate zoning districts – which translates to no raising of horse or agriculture-related animals, no boarding of animals – no animals. Will Malibu be the first city in California where no domestic animals - are allowed?

Within this LCP as it relates to agriculture, the following are several of the areas that must be revised:

- Agriculture must be separated from all other regulations in this LCP. Agriculture is unique and the right to farm or grow food is a land owners given right and has been for 100's of years. Now you set there and presume you have the right to take this away?
- Agriculture must be separated from new development regulations – nowhere is it stated "except for agriculture". Therefore, we know that it was your intention to include it. We need to assure that agriculture will not be impacted with permits; review; EIR's and other requirements that would make agriculture unprofitable.
- A farmer or rancher must be allowed to change use for his land – to change his crop to grapes, apples, avocados, or be able to put in a crop!
- The coastal zone is home to an extreme number of different commodities as well as a huge equestrian population. The loss of this agricultural economy would cost California in the billions.
- Sections 3.11.1A and 4.7.3 limits the growing of any orchards, vineyards or crops that this will virtually eliminate all agriculture!
- With your confined development area & confined animal sections 3.112A, 4.7.4, 5.4.B – you have made it extremely impossible for barns, horses, kids to raise sheep, etc.

The sections as they relate to oak trees, wetlands, and designation of ESHA's are all areas where sound science has not been used. When biologists for the County of Los Angeles do not agree with your biologists – something is seriously wrong. Let us sit down at the table with you – come to compromises – work out our differences – we are willing to do that. Are you?

Executive order 12866 from President Clinton states quote:

- "the American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; and most important – that regulations are effective, consistent, sensible and understandable.

It will be an extremely sad day when the farmer-rancher-equestrian becomes the endangered species and we are at the mercy of governmental agencies that in the name of protecting our environment to such an extreme – that we are not allowed to enjoy what is rightfully ours.

It seems to me that all through history Americans have fought against "absolute control" by governmental agencies in the name of "what them deem best for us". We feel it is not the commission's place to make absolute agricultural policy for thousands of farmers and other citizens, yet that is exactly what this LCP for the City of Malibu does. Agriculture should be at the forefront of the decision making process – when it affects agriculture. It is unfortunate that the commission does not have the fortitude to enlist the help of these experts, but chooses to jeopardize the agricultural livelihood of some of the richest agricultural land in the state.

Thank you.

Received at Commission Meeting
JUL 1 0 2002

f. Environmental Review (Page 57)

Please modify policies 3.36, 3.37, and 3.38 to read as follows: From: _____
(requested changes are in bold)

3.36 **MAINTAIN an** Environmental Review Board (ERB) comprised of qualified professionals **with scientific and** technical expertise **and experienced in** resource management **in the Santa Monica Mountains, to serve as an advisory body to the Planning Director, Planning Commission and/or City Council** to review **development proposals, complaints, ordinances, and any other matters of interest referred to it by the City Biologist, Planning Director, or other entities.** The ERB shall consider the individual, cumulative **and secondary** impacts of each development proposal ~~within or adjacent to ESHA~~(see below policy). The City may impose....

3.37 The ERB ~~or other qualified professionals~~ shall provide recommendations to the **Planning Director, Planning Commission** (or decision-making body for coastal permits), **or City Council** on the conformance or lack of conformance **of the referred material** with the policies of the LUP. Any recommendation of approval shall include mitigation measures **which fully offset the impacts, as set forth in the State of California CEQA Guidelines, section 15370, subdivisions (a) through (d).**

3.38 All applications for development within or adjacent to ESHA shall be reviewed by **ERB** for conformance with the LUP, and recommendations shall be made regarding project alternatives, modifications and mitigation measures, if such measures are necessary to mitigate unavoidable impacts to coastal resources..~~to the Environmental Review Board and the decision-making body~~.

The term "*other qualified professionals*" is **nonspecific and unacceptable! An "other qualified professional" could potentially be an "architect" from Las Vegas" that our current City Council has deemed to be a "qualified professional". Please STRIKE all references to "other qualified professionals" throughout the LUP and LIP.**

It is **vitally important** that the **qualifications required** of ERB members is to have "**scientific**" and "**technical**" expertise, as well as "**experience**" in resource management in the **Santa Monica Mountains**, just like the requirements for L.A. County ERB.

Jo Ruggles

RAMIREZ CANYON ASSOCIATION, INC.

C/O 5924 RAMIREZ CANYON
MALIBU, CALIFORNIA 90265

December 15, 2001

Received at Commission Meeting

JUL 1 0 2002

From:_____

Mr. Gary Timm, District Manager
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Re: Draft Malibu Land Use Plan

Dear Mr. Timm:

The Ramirez Canyon Homeowners Association has received a draft copy of the Malibu Land Use Plan. We would like to express our specific concern regarding an apparent plan for a "Paradise Cove Trail" (Park Lands Map 2; Zuma Beach to Escondido Beach).

The Paradise Cove Trail appears to be superimposed over Ramirez Canyon Road, our private residential gated road. It also appears to traverse across Pacific Coast Highway to Paradise Cove Beach. As you may be aware, there is no crossing over Pacific Coast Highway at this juncture. There is only a very narrow one lane tunnel unfit for pedestrians, also within the gated community of Ramirez Canyon.

We believe the trail as proposed trespasses constitutionally protected rights of private property owners. Accordingly, in order to properly assess the ramifications of your proposal, we would appreciate receiving specific information regarding this proposed trail including a more thorough description of its' exact location parcel by parcel. You have expressed your interest in receiving comments regarding this draft proposal, and we believe clarification of this particular issue is of the utmost importance to our community.

Thank you in advance for your prompt cooperation in this matter.

Sincerely,

Kathryn J. Holguin, President
Ramirez Canyon Homeowners Association

cc: City of Malibu

Donald Nierlich
510 Palisades Ave.
Santa Monica, CA 90402
310 394-2799
nierlich@ucla.edu

ITEM W 10a
July 5, 2002

Received at Commission Meeting
JUL 1 0 2002
From:

Ms. Sara Wan
Chair
California Coastal Commission

C/O Mr. Gary Timm
District Manager
California Coastal Commission
Ventura, CA

Re: Malibu Land Use Plan and descriptive language for the California Coastal Trail.

Dear Ms. Wan:

The Malibu Land Use Plan is nearing adoption, and seeing that it has particular importance in describing the California Coastal Trail and important public-access standards, we are taking this opportunity to comment anew, as well as reiterate and reaffirm several points that we have made in prior letters. We greatly appreciate the effort that the Commission and its staff have given in crafting the Malibu LUP and particularly those sections relating to the CCT; it is visionary of a time when future generations can fully enjoy our state's most precious resource. Finally, although we do not deal with it further in this letter, we wish to indicate our support for the document's language in regards to ESHAs and particularly those ESHAs along the beaches, bluffs and the immediate off-shore areas. Our reference for this letter is the June 2002 draft LUP.

Definition of the CCT:

We heartily support the language describing the definition, design and objectives of the CCT in sections 2.56 and 2.57, as well as the more general statements in section 2.46. We believe that it effectively captures the essential features of the legislation that created the CCT as well as the concept of a coastal trail system that is being used by other State agencies in its planning.

CCT Siting and Design:

We generally concur with the statements of 2.58 as a workable description of the CCT that is applicable to its design along the whole California coastline. Importantly, however, we urge acceptance of several changes that we strongly feel are needed to provide a more complete description. The changes in wording (indicated in bold) in the first paragraph, and additional paragraphs to be added are as follows:

"The trail should be sited and designed to be located along or ~~as~~ close to the shoreline where physically **feasible** and aesthetically ~~feasible~~ **desirable. Where it is not feasible to locate the trail along the shoreline due to natural landforms or legally authorized development that prevents passage at all times, inland bypass segments located as close to the shoreline as possible should be utilized.** ~~Shoreline trail segments that may not be passable at all times should provide inland alternative routes.~~

[new]"Alternative inland routes should be provided where shoreline trail segments may not be continuously passable due to tides, seasonal changes, or environmental or other concerns."

[new] "The trail may be natural or built as appropriate to location, surroundings and use."

Finally, we urge a small change later in 2.58 in order not to imply that a shoreline route has less importance than an inland route and not to separate "base" from "Santa Monica Mountains", exchange the words, "base and shoreline" to read, "shoreline and base".

CCT Signage Program Standards

For section 2.60, we have several suggestions:

"The trail should incorporate adequate signage **that incorporates the CCT logo (to be designed)** at all access points, trailheads, parking lots, road crossings, and linkages or intersections with other trails or roads ~~which incorporates the CCT logo (to be designed)~~

"The trail should provide adequate safety signage, including but not limited to, signs warning of **natural hazards,** road crossing signs——"

[Made a separate item] "Where appropriate, signs should be developed in coordination with **the Department of Parks and Recreation**, CalTrans, ~~and/or~~ City and County Public Works Departments, and/or any other applicable agencies."

We suggest, here (2.60) and in Sections 2.52 ~~and 2.73, that the requirement that signs be in~~ Spanish and English be deleted. Because policy in regards to CCT signage has not yet been generally addressed by the Commission or other agencies, this guideline is premature.

Shoreline Access

2.69. Coastwalk strongly believes that two sentences should be added to this section to assure pedestrian passage as well as to provide a standard elsewhere in Malibu for CCT bypass and alternative segments:

"To the extent feasible, encumbrances to pedestrian use (such as mailboxes, utility poles, etc.) shall be restricted to the street-adjoining one foot of the sidewalk."

"These same standards shall apply elsewhere in Malibu where CCT bypass segments must be routed along PCH."

My name is Donald Nierlich. I represent Coastwalk and am also a member of the Coastal Trail Working Group, a committee of state planners and volunteers planning the completion of the California Coastal Trail under the legislature's SB908 mandate.

The language in the Malibu LUP about coastal access, trails and the California Coastal Trail is of great importance. The CCT is now more than 65% complete; for example all of San Francisco has a signed coastal trail. But there are still challenging areas, one being Malibu where there is resistance to the public access necessary for walking the shoreline. Malibu has a beach on par with any in Southern California, and virtually all of the Malibu shoreline from the county line to the Malibu pier is passable at low tide. But there are so few vertical accessways through the constant line of houses that one is often blocked by natural features of the coast when the tide isn't so low, or easily trapped by an incoming tide.

We are very appreciative of the effort and skill that your staff has demonstrated in crafting the sections relating to access and trails in the Malibu LUP—and urge the Commission to adopt it. This language can serve as a model for the implementation of the CCT up and down the state.

However, we do want to highlight one point that is detailed in a letter that I have provided, of what we believe should be addressed differently.

It is envisioned that the CCT will be a system of parallel trails or threads providing continuous passage along the coast. An essential part of this is a trail along the shoreline, in some cases provided by no more than a guarantee of public lateral access (and vertical access as needed) along the beach or adjacent coast, and appropriate signage. Additional threads will provide for bypasses where the shoreline is permanently blocked by landform or legal development; where the shoreline is sometimes blocked by tides, seasonal impacts or environmental sensitivity; and where a separate thread is needed to provide for bikers and other non-motorized wheeled users.

Our letter suggests changes to section 2.58 to accomplish these goals without hamstringing a community's effort to plan the CCT in their locale.

Thank you.

Beach, Blufftop and Specific Accessway Standards

2.87 and 2.89. Requiring beach access at 1000-2,500 ft intervals as indicated in these sections is most appropriate: 1. It enhances public access to the shoreline in severely deficient areas; 2. It provides for public safety because now, with so few access points, walkers can be trapped along these beaches on incoming tides; 3. It serves the residents by spreading public use; 4. In effect, it makes more parking available for beach visitors who arrive by car; 5. Because the beaches are different, it enhances the diversity of recreational and educational opportunities; and 6. It supports the objective of siting the CCT along the beach. We see this as one of the most positive aspects of the LUP.

Land Use Plan Policies

Section 2.50. The Commission might consider changing the last sentence of this paragraph to read: "Both new development and the trail alignment shall be sited and designed to provide ~~maximum~~ privacy for residents and ~~maximum~~ safety for trail users." During planning, both privacy and safety will be matters of judgment and difficult to maximize; moreover, criteria other than privacy (of residences) and safety (on trails) are important for effective design. Alternatively, the sentence in question might simply be deleted.

Once again we wish to applaud the Commission, its planning staff, and the planners and residents of Malibu who have participated in drawing up the LUP for their effort and remarkable accomplishment. There have been many difficult issues, and yet for those issues relating to access, trails and the CCT, we feel that they have been thoughtfully and constructively ~~addressed~~.

Yours truly,

Donald Nierlich

Donald Nierlich
Coastwalk CCT Steering Committee
L.A. County Trail Committee
Coastwalk Board

cc. Peter Douglas, Linda Locklin, Steve Horn, Ken McKowen, Richard Nichols, Linda Hanes

CALIFORNIA COASTAL COMMITTEE MEETING

July 10, 2002 Huntington Beach , California

I know that what I have to say will probably not affect your actions today.
But this is a "hearing", and you should hear and record what so many of us think.

Nor do I imply that what led to our situation was viciously planned by the authors of AB988.
However, what we have today is the consequence of this legislation.

I believe AB 988 was created by legislators who attempted to solve a problem without clearly understanding the Malibu situation, and without considering the consequences of this law.

Like most places, Malibu population is divided into three basic segments. There is a right radical, a left radical, and a large majority of moderate folks, most of whom in Malibu are environmentally sensitive (or they wouldn't be here.) The right supports a lot of development. On the left, there are extreme "no growth" attitudes

On the right, I have seen developers destroy a majestic tree rather than move a brick a foot. . On the left, I have, in my own living room, been told I should not have my house.
(So carefully built, I might add...with damage to not a branch.) In Malibu, both sides are vociferous, feisty, and very set in their ways. Incidentally, most are not filthy rich as depicted. Nor are we exclusive "nimbys".

In a letter to our papers two legislators who backed AB988 say they were impacted by Malibuites (they didn't say right or left.) They were tired of being harassed and wanted relief from the fights over our LUP. They could have just said no to those " pests". Instead, they solved the problem. They took our right to create an LUP from us, and gave it to you...State Agency political appointees. That way, the developers couldn't sue the City for taking their development rights away, and the no-growth lovers would also be quiet. There are two problems though: your idea of an LUP is another draconian extreme that I can't see living with; and the AB 988 act is clearly unconstitutional.

Once again: AB988 is a bad law because it takes self-governance from us. Even if you changed your LUP today to make it livable, it would still be wrong because as citizens of a democracy we must apply democratic means to solve our problems. We must have reasonable local control. We have the tools. We need to use them.

Ruth White,
President, Ramirez Canyon Preservation Fund;
Director, Ramirez Canyon Home Owners Association
5903 Ramirez Canyon Road Malibu, California 90265

Received at Commission Meeting

JUL 1 0 2002

From:_____

THE FOLLOWING GENERAL MODIFICATIONS SHOULD BE ADDED TO THE L.C.P.

1. Notwithstanding anything stated in any other provision in the L.C.P., when a restriction is stated in the L.C.P. which has the sole purpose and intent of insuring the safety of a structure from geologic hazard, such a restriction may be modified or mitigated if a licensed Geotechnical Engineer and a licensed Soils Engineer and licensed Structural Engineer all provide reports that state that the proposed structure will be safe from geologic hazard for a minimum of 100 years.

   Example: The L.C.P. requires setbacks from the edge of a steeply descending slope, i.e. a "bluff setback", for a deck or wading pool in order to insure the safety of the structures; however, if the bluff top and descending slope were solid rock with no potential for failure and this fact is warranted by a licensed Geologist and Structural Engineer, then the specified setback in the L.C.P. has no purpose. There is no nexus.

2. Notwithstanding anything stated in other provisions in the L.C.P., mitigation of one of the implementation provisions is permitted when a project that strictly conforms to the provision has a much greater negative impact on environmental resources than the proposed project that includes the mitigation.

   Example: Assume a person owns two legal five-acre parcels of property located in an ESHA. The person proposes a project which specifies the building area on one lot be increased from a maximum permitted under L.C.P. of 10,000 square feet to 12,000 square feet; however, the person proposes to mitigate the impact of the additional 2,000 square feet by merging the two five-acre parcels into only one parcel and deed restricting nine of the 10 acres as open space. The mitigation eliminates the clearing on 10,000 square feet, and a new septic system, increased visual resource impacts, etc. on the second five-acre parcel, and this mitigation greatly furthers the goals and objectives of the L.C.P., over the strict adherence to the provision in the L.C.P. that does not allow for any mitigation!

Received at Commission Meeting

JUL 1 0 2002

From: Norm Hayne

ACCESS FOR ALL
CALIFORNIA COASTAL PROTECTION NETWORK
CALIFORNIA NATIVE PLANT SOCIETY
CALIFORNIA OAK FOUNDATION • CALPIRG
CENTER FOR BIOLOGICAL DIVERSITY
CITIZENS FOR A VEHICLE FREE NIPOMO DUNES
DEFENDERS OF WILDLIFE
ENDANGERED HABITATS LEAGUE
ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO
ENVIRONMENTALISTS OF SANTA MARIA VALLEY
FRIENDS OF BLACK LAKE CANYON
FRIENDS OF LAS FLORES CREEK
FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL
LEAGUE FOR COASTAL PROTECTION • MENDOCINO COASTWATCH
MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION
NATURAL RESOURCES DEFENSE COUNCIL
PALOS VERDES/SOUTH BAY AUDUBON SOCIETY
PLANNING AND CONSERVATION LEAGUE
SAN DIEGO AUDUBON SOCIETY • SAN DIEGO BAYKEEPER
SAN LUIS OBISPO COUNTY CHUMASH COUNCIL
SAN MATEO LEAGUE FOR COASTSIDE PROTECTION
SANTA BARBARA CHANNELKEEPER
SIERRA CLUB
SOUTH COAST WILDLANDS PROJECT
SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP
VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

April 19, 2002

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105 - 2219

Received at Commission Meeting
JUL 1 0 2002
From:_____

Dear Commissioners:

Together we represent millions of Californians and we write in support of the California Coastal Commission for your recent action adopting the draft land use plan (LUP) of the local coastal program (LCP) for the City of Malibu. We especially appreciate your support for continuous public access, water quality and the designation of coastal sage scrub and chaparral in the Santa Monica Mountains as environmentally sensitive habitat area (ESHA). A review of the record indicates the ESHA designation is based, in part, on

the importance of habitat connectivity to the recovery and viability of species that rely on these dwindling habitat types for survival. Wildlife species are being directly and adversely impacted by the continued and increasing fragmentation of this important ecosystem. We feel that applying this type of conservation science-based decision making to long-range land use planning activities should become a statewide model.

Your certification of the LCP will be a much-needed update of the LUP prepared by Los Angeles County prior to Malibu's incorporation, and it underscores the importance of updating older LCPs throughout the coastal zone. The current draft Malibu plan provides a model for how updated LCPs should address the need to revise ESHA designations based on new biological information, incorporating the precautionary principle and reflecting what has been learned regarding conservation biology in the last 25 years. While many coastal landscapes do not contain coastal sage scrub and chaparral (that's in part why it is ESHA in the Santa Monica mountains) they do support other sensitive habitats whose future health and biological viability depends on the application of the type of science and analysis you utilized as the basis of your decision for Malibu.

We also support your draft policies relating to water quality and urge you to explore additional ways to protect wetlands and adjacent open space throughout Malibu, and in particular the area surrounding Malibu Creek in the Civic Center. Development proposed there is too intense to adequately protect water quality and the Malibu estuary. As is the case with habitat protection, we now have the benefit of increased understanding of the sources and impacts of polluted runoff and faulty septic systems. The best management practices to protect marine water quality in the Malibu LUP should be included in all LCPs, with some adaptation for local conditions. Indeed, when most of the state's LCPs were drafted, the term "nonpoint source pollution" was not even a part of the planning vocabulary.

Lastly, we applaud your efforts to increase public access to the coast in Malibu, and in particular, we support having the City establish a route for the California Coastal Trail. This 27-mile stretch of coastline is a resource of statewide importance, and should not continue to be a private enclave for local residents. Setting a goal for at least one vertical accessway every 1000

feet will ensure that local residents not fortunate enough to own beachfront property will be able to enjoy the beach forever.

We strongly urge you to finalize these ESHA, water quality and public access policies when you act to adopt the entire Malibu LCP in September. We know you will be under tremendous pressure to do otherwise and ask that you stand firmly behind the exemplary action you took in January.

Respectfully Submitted,

ACCESS FOR ALL • CALIFORNIA COASTAL PROTECTION NETWORK CALIFORNIA NATIVE PLANT SOCIETY • CALIFORNIA OAK FOUNDATION CALPIRG • CENTER FOR BIOLOGICAL DIVERSITY • CITIZENS FOR A VEHICLE FREE NIPOMO DUNES • DEFENDERS OF WILDLIFE ENDANGERED HABITATS LEAGUE • ENVIRONMENTAL HEALTH COALITION OF SAN DIEGO • ENVIRONMENTALISTS OF SANTA MARIA VALLEY • FRIENDS OF BLACK LAKE CANYON • FRIENDS OF LAS FLORES CREEK • FRIENDS OF THE RANCHLAND • FRIENDS OF PT. SAL LEAGUE FOR COASTAL PROTECTION • MENDOCINO COASTWATCH MONTEREY DUNES COALITION • MOUNTAIN LION FOUNDATION NATURAL RESOURCES DEFENSE COUNCIL • PLANNING AND CONSERVATION LEAGUE • SAN DIEGO AUDUBON SOCIETY • SAN DIEGO BAYKEEPER • SAN LUIS OBISPO COUNTY CHUMASH COUNCIL • SAN MATEO LEAGUE FOR COASTSIDE PROTECTION • SANTA BARBARA CHANNELKEEPER • SIERRA CLUB • SOUTH COAST WILDLANDS PROJECT SURFRIDER FOUNDATION • THE URBAN WILDLANDS GROUP VERNALPOOLS.ORG • WETLANDS ACTION NETWORK

cc: Gov. Gray Davis
Sen. John Burton
Hon. Herb Wesson
Hon. Mary Nichols
Sen. Sheila Kuehl
Sen. Byron Sher
Assemblywoman Fran Pavley
Assemblyman Fred Keeley
Sup. Zev Yaroslavsky

Alvarado, Smith & Sanchez

A PROFESSIONAL CORPORATION

IRVINE OFFICE:
4 PARK PLAZA
SUITE 1200
IRVINE, CALIFORNIA 92614
(949) 955-6800
FAX (949) 955-6899

611 W. SIXTH STREET
SUITE 2650
LOS ANGELES, CALIFORNIA 90017
(213) 229-2400
FAX (213) 229-2499

Received at Commission Meeting

JUL 1 0 2002

From:

July 9, 2002

MARTIN N. BURTON

MBURTON@ASANDS.COM
(213) 229-2405

California Coastal Commission
South Central Coast District
89 South California St., Ste 200
Ventura, CA 93001

Re: Draft Malibu Local Coastal Program Land Use Plan ("Draft LUP") and Draft Local Implementation Plan ("Draft LIP")
File No. L212.1

Dear Commissioners:

This office represents Edward Dingilian and his parents, Dikran and Louise Dingilian, who have owned two residential lots in the densely developed Point Dume area of Malibu for nearly 50 years (see aerial photograph of lots and Point Dume area, attached). The Dingilians continue to have concerns about the Draft LUP and the Draft LIP, as summarized below:

Summary

- **No substantial evidence exists to support designating canyons in Point Dume as Environmentally Sensitive Habitat Area ("ESHA").**
  - **Well-established and universally-accepted standards, including the Commission's own policies, unequivocally exempt Point Dume from any ESHA designation between Pacific Coast Highway and the headlands.**
- **The Draft LUP and Draft LIP still fail to establish objective standards to determine ESHA.**
- **The Draft LUP Improperly Impinges on the City of Malibu's Sole Province of Regulating Land Use.**

Background

AB 988 provided for the Coastal Commission to prepare a Land Use Plan and "after public hearing and consultation with the City of Malibu," to adopt the Land Use Plan of the Local Coastal Program for the City of Malibu by September 15, 2002.

Last year, an initial Draft LUP was circulated which, for the first time ever, designated unspecified canyons in Point Dume as ESHA, contrary to well-established standards, policies, and practices. Further, nearly a year after the initial Draft LUP was prepared, the Draft LUP has still established no objective standards for defining ESHA. Finally, the Draft LUP overreaches into the sole domain of the City in regulating land use.

DISCUSSION OF CONCERNS

No substantial evidence exists to support designating canyons in Point Dume as ESHA.

Well-established and universally-accepted standards, including the Commission's own policies, unequivocally exempt Point Dume from any ESHA designation between Pacific Coast Highway and the headlands.

The Draft LUP injects a new, undefined term into the ESHA discussion: "Point Dume Canyon ESHA" (see revised Draft LUP Policies 3.26a, 3.50, Draft LIP Section 4.6.2.A). Not only is this term utterly lacking any detail, but the designation of ESHA within the developed residential area of Point Dume is completely inconsistent with the Coastal Commission's past and present practices, policies, and every standard currently in effect. No substantial evidence justifies the Commission's departure from such longstanding standards, practices, and policies.

ESHA designation carries serious consequences for property development and conservation. The California Coastal Act places "strict limits on the uses which may occur in an ESHA" (see *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493). Therefore, ESHA should be applied only to those areas in which there is widespread agreement among government agencies and the scientific community. Currently accepted standards exempt completely all of Point Dume between Pacific Coast Highway and the headlands from ESHA.

- **The 1986 Plan Exempts Point Dume From ESHA**: The extent of ESHA in the City of Malibu is set forth in the Commission-certified 1986 County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (the "1986 Plan"). The 1986 Plan, by virtue of its thoroughly researched conclusions and longstanding use throughout the City of Malibu, the County of Los Angeles, and the Coastal Commission itself, remains the premier source for designation of ESHA. The 1986 Plan designates no ESHA whatsoever in the residential

developed areas of Point Dume. Instead, certain drainage channels are designated "Disturbed Sensitive Resource Areas" ("DSRA"), areas that, by definition, contain modified habitats that no longer offer their original, undisturbed biological significance. DSRA designation carries far less onerous development restrictions while still offering sufficient environmental protection.

- **The Commission Itself Supports the 1986 Plan Designations**: The Coastal Commission has never treated Point Dume canyon areas as ESHA, and no new evidence has been introduced as to why it should begin now. "The Commission has found, in past permit actions, that the canyons of Point Dume are *disturbed sensitive resource areas*," not ESHA. Coastal Commission Staff Report, CDP Application No. 4-99-211, June 22, 2000 (emphasis added).

- **ESHA Should Not Be Designated in the Developed Area of Point Dume, Where Habitat Has Been Badly Fragmented**: "Large scale connected habitat areas are to be preferred over similar-sized but fragmented areas." J.C. Allen (Coastal Commission staff), "Ecological Findings for Malibu," March 8, 2002, page 10. The theory of habitat connectivity has no application where habitat connections have been lost. ESHA designations are not appropriate in such areas. These are areas "where development is concentrated on the coast, much of which is already badly fragmented (e.g. Point Dume and the eastern end of Malibu)." J.C. Allen (Coastal Commission staff), "Ecological Findings for Malibu," March 8, 2002, page 9. The residential development of Point Dume, cut off by Pacific Coast Highway and lying north of the headlands, does not qualify as ESHA.

- **The Draft LUP's New ESHA Exception Exempts Point Dume**: The Draft LUP continues to maintain a broad definition of ESHA, but now provides that a new "*exception to this ESHA designation is where native trees, coastal sage scrub, or chaparral exist in such small isolated patches that they will not maintain long term viability as habitat due to existing development, including fuel modification.*" (Emphasis added.) The admittedly disconnected, fragmented, and densely developed residential area of Point Dume is destined for further development, not for long term habitat restoration, consistent with Coastal Act policies (see below). Point Dume's residential development qualifies for this exception by its own terms.

- **ESHA Should Not Be Designated In Existing Concentrated Developments Such As Point Dume**: The California Coastal Act has expressed a preference to cluster "new residential, commercial, or industrial development ... within, contiguous to, or in close proximity to, existing developed areas able to accommodate it." Public Resources Code Section 30250 (see Chapter 5B of Draft LUP). The Legislature has determined that policies which "serve to concentrate development in close proximity to urban and employment

centers may be more protective, overall, than specific wildlife habitat and other similar resource policies." Bolsa Chica, *supra*, 71 Cal.App.4th at 509. The "moderate topography" of greater Point Dume area "has permitted the development of *a broad band of residential uses*....Point Dume, south of Pacific Coast Highway, *accommodates the greatest amount of development. A higher-density cluster of residential uses has evolved* along the northwestern flank of this area and commercial uses are located along the highway." Draft LUP, Chapter 5A (emphasis added). ESHA designation in the intensely developed area of Point Dume defeats the sound legislative policy of clustering development in such high density areas.

- **ESHA Should Not Be Designated in Formally Defined "Calvo Exclusion" Areas**: The California Coastal Commission has already determined that construction of single family residences in certain areas have no potential "for significant adverse impacts on scenic resources ... on environmentally sensitive areas ... or on public access to or along the coast." Public Resources Code Section 30610.1. These areas, known as "Calvo Exclusion" areas, have been definitively identified by the Coastal Commission itself and allow development to supersede ESHA designations. See *Buckley v. California Coastal Commission* (1998), 68 Cal. App. 4th 178). The Point Dume area comprises a large proportion of Calvo exclusion property, and therefore cannot qualify as ESHA. No new evidence has been brought before the Coastal Commission to support changing these designations.[1]

The Draft LUP Fails to Establish Specific ESHA Criteria

The Draft LUP refers only to the general, statutory definition of ESHA. The Draft LUP quotes the broad language of the California Coastal Act (Public Resources Code Sections 30000 et seq.) without specifying any criteria to determine ESHA:

> Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily

[1] The Draft LUP contains other objectionable features which, if Point Dume were exempted from ESHA designation, would no longer be relevant. Foremost among these is a buffer area requirement. Originally the Draft LUP required a 100 foot buffer area from "top of slope". (Policy 3.26.) Presumably in response to objections, the Draft LUP was revised to delete this requirement; however, the replacement provision may be just as onerous, requiring a setback from "top of slope" for "all the required irrigated fuel modification area (Zone A and B, if required)," potentially requiring 100 feet or more. (Policy 3.26a.) In addition, other objectionable items include: restrictions on total developable area and accessory structures (Policy 3.12); prohibitions and restrictions on fencing, leaving property owners unable to protect property against trespass, invasion of privacy, and predators such as coyotes, a policy inconsistent with fence permits granted by the Commission in the past (Policies 3.50, 3.51, 3.52); prohibition of night lighting (Policy 3.53).

> disturbed or degraded by human activities and developments shall be designated as Environmentally Sensitive Habitat Areas....

Draft LUP Policy 3.1; see Public Resources Code Section 30107.5.

Commission staff have apparently devised numerous maps purporting to show ESHA designations. These maps, however, offer no certainty or reliability, because of the impermissibly broad "catch-all" provision that has yet to be removed from the Draft LUP:

> **Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA** and shall be accorded all the protection provided for ESHA in the LUP. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis shall be considered ESHA, unless there is compelling site-specific evidence to the contrary.

Draft LUP Policy 3.5 (emphasis added).

Indeed, Coastal Commission staff "**recommends that all natural terrestrial habitats in Malibu be regarded as ESHA** and that any determination to the contrary must be established by a site-specific analysis...." "Summary of Ecological Findings for Malibu" (12/24/01) ("Commission Biologist's Report"), page 2 (emphasis added).

Without specific criteria, it is impossible to tell whether the Dingilians' properties – or, indeed, any property – will be regarded as ESHA; and if they are regarded as ESHA, it is impossible to tell what must be shown to demonstrate they are not. The burden is on property owners to demonstrate their property is not ESHA, an important threshold issue they must resolve, at their expense, before they begin development. The Dingilians' property, for example, is undeveloped and for that reason alone may be ESHA. The Draft LUP must develop specific criteria for determination of ESHA.

The Draft LUP Improperly Impinges on the City of Malibu's Sole Province of Regulating Land Use

Whatever the legitimacy of AB 988 in impermissibly delegating a local government's powers to the Coastal Commission, depriving Malibu residents of their constitutional remedy "at the ballot box" for land use decisions, AB 988 clearly does not authorize the Coastal Commission to extend its reach into areas which are properly the sole province of local government. The Coastal Act sets forth clear parameters for the development

of local coastal programs, protective of the vital and exclusive role to be played by local governments:

> It is the intent of the Legislature that local coastal programs certified by the commission should be sufficiently specific to meet the requirements of Section 30108.5, **but not so detailed as to require amendment and commission review for minor changes, or to discourage the assumption by local governments of postcertification authority which ensures and implements effective protection of coastal resources.**

Public Resources Code Section 30523 (emphasis added).

While the Coastal Act establishes general policies governing coastal development, the precise content of local plans remains within the sound discretion of local government. Yost v. Thomas (1984), 36 Cal. App. 3d 561. The Coastal Act leaves local government broad discretion to determine the contents of its land use plans and to determine how to implement those plans. San Mateo County Coastal Landowners Ass'n v. County of San Mateo (1995) 38 Cal. App. 4th 117.

Accordingly, the Draft LUP submitted to the City of Malibu should contain only those provisions necessary to accomplish the objective of AB 988, which is to transfer primary land use decisionmaking authority to the City of Malibu. To the extent the Coastal Commission's Draft LUP attempts to go beyond this limited – and uncertain – mandate, the Coastal Commission exceeds its authority.[2]

The Draft LIP and the Draft LUP (Chapter 5.C.2) attempt to usurp land use authority from the City. The most egregious of these attempts, which serve no legitimate Coastal Commission objective and fall completely outside the scope of the Coastal Commission's authorization, include the following:

- Prohibition of construction activities from November through March (Draft LUP 3.3.5).
- Prohibition of subdivision without retiring an equivalent number of lots either directly or through a TDC program, even in clustered development communities where Coastal Act encourages development (Draft LUP 5.38).
- Prohibition of land divisions resulting in building on slopes over 30% (Draft LUP 3.97).

[2] Nor would the City's supposed or apparent acquiescence cure this deficiency, inasmuch as the City is necessarily placed in a position of "picking its battles" in negotiations, when if given its rightful discretion from the outset it would certainly have developed an entirely different land use regime than that forced upon it by Commission staff's aggressive interpretation of AB 988.

- Regulation of landscaping (Draft LUP 4.8), height of structures (Draft LUP 6.7), and color of building (Draft LUP 6.11).

AB 988 does not authorize the Coastal Commission to dictate the terms of these decisions which lie within the pure land use authority reserved to local municipalities.

The Draft LUP remains deficient. Until the residential development of Point Dume is exempted from ESHA designation, specific biological criteria for ESHA are developed, and full land use authority is restored to the City of Malibu, the Draft LUP will remain vulnerable.

The Dingilians are prepared to work with the Coastal Commission to develop a legally sufficient Land Use Plan for the betterment of all of Malibu. We look forward to doing so.

Sincerely,

ALVARADO, SMITH & SANCHEZ
A Professional Corporation

Martin N. Burton

MNB:spa

cc: Mr. Edward Dingilian

Received at Commission
Meeting

JUL 1 0 2002

From:_____

July 8, 2002
Comments to draft LCP
City of Malibu Local Coastal Program

California Coastal Commission
89 South California Street
Ventura, CA 93001-2801

Chairperson Wan and Commissioners,

We are writing to offer recommendations regarding the California Coastal Commission's draft Local Coastal Program Cultural/Archaeological Resource Sections. Although certain elements of the Plan are a step in the right direction, such as mandating Native American consultation during Phase I Inventories that require excavation or monitoring, the LCP falls short in terms of adequately protecting cultural resources. Recommendations for improving the cultural resource section of the LCP are outlined generally in the following paragraphs and are discussed section by section following the general outline.

An overarching problem with the cultural/archaeological resource sections is that Native American consultation comes too late and is too limited in scope. If this deficiency is not corrected, development projects within the city of Malibu run the risk of handling culturally sensitive issues inappropriately. By actively soliciting Native American input from the initial stages of development projects, developers are less likely to run into cultural resource problems in the long run.

Though limited concern for the protection of these resources is expressed in Chapter 11 of the LCP Local Implementation Plan, little attention is given to the rights and concerns of Chumash people. Such rights and concerns include ensuring protected Indian access to sites that may be of ceremonial value to Chumash people and establishing procedures consistent with, but not limited to, NAGPRA for repatriation of ceremonial and other. artifacts belonging to the ancestors of the Chumash people.

A third concern with the LCP is that there is no mechanism through which the Planning Director's ruling as to the importance or existence of cultural resources can be appealed. One cannot expect the Planning Director to be an expert in the field of cultural and archaeological resources. Therefore, it is imperative that a procedure be established to review and/or appeal the Director's decision at all stages of the process.

A fourth concern is that there is no mechanism through which Chumash people and tribal representatives have equal say in the determination of the project archaeologist as qualified. Too often, the developer's hired archaeologist lacks specific knowledge about the indigenous group with which the cultural resources are associated. This can often lead to an incorrect assessment as to the relevance, both scientific and cultural, of sites

within the development area. If the Commission establishes a procedure for hiring archaeologists that incorporates input from Chumash people, city officials, and the project applicant, many of the potential problems with incorrect assessment can be eliminated.

A fifth concern is that, though consultation with the Native American Heritage Commission is strongly encouraged in the early planning phase of projects, and mandated if an EIR determines it is likely that archaeological resources exist on the site, the Local Implementation Plan does not require consultation with the NAHC, and in fact, does not mention NAHC once throughout the entire document.

The broad areas of concern with this document are that not enough attention has been given to the rights and concerns of Indian people. If these cultural and archaeological resources are to be adequately protected, then consultation with local Indian people needs to play a significant role in the entire process, not just through the use of Native American monitors. On the following pages we have provided a more detailed analysis of the specific problems associated with this document. Please also refer to the attachment "History of Native Societies of Malibu" by Chester King for additional reference.

Thank you for taking the concerns and suggestions represented here into consideration.

Sincerely,

Mati Waiya
Executive Director Wishtoyo Foundation

Angela Mooney-D'Arcy
UCLA Tribal Legal Development Clinic

SPECIFIC RECOMMENDATIONS & CRITICISMS

Section 11.3 Cultural Resource Review (A) Preliminary Review

The Planning Director's Preliminary Review should include consultation with local Native Americans before a final determination as to the project's potential adverse impacts on cultural resources is made.

There should be a process by which the Director's determination may be appealed and reviewed.

Alternatively, or in conjunction with the previous recommendation, the Director should be required to justify her/his decision in writing. Such decisions regarding why a particular determination was made should be made available to the public.

Section 11.3 (B) Initial Evaluation

The Initial Evaluation should include, in addition to a review of the relevant documents and a field survey of the project site, oral history and testimony from tribal elders and other Chumash people.

The archaeologist preparing the Initial Evaluation should be subject to Chumash approval. If the Chumash disapprove of a particular archaeologist an additional or alternative archaeologist should be selected. The Commission may want to include a section in the plan that outlines procedure for archaeologist selection. A procedure that requires input from the developer, the city, and Chumash people and organizations, will result in the selection of an archaeologist whose conclusions are more likely to be acceptable to all concerned parties.

There should be a process by which the Director's determination may be appealed and reviewed.

Section 11.3 (C) Phase I Inventory

Consultation with local Chumash people should be required regardless of whether or not the Director determines that any excavation or monitoring shall take place.

Guidelines for determining what constitutes a "qualified Chumash Cultural Resource Monitor" should be established by a committee made up of city officials and interested Chumash parties.

Section 11.3 (D) Phase I Inventories Shall Include

Phase I Inventories should also include contacting the Native American Heritage Commission in order to determine whether any sites within the proposed development area are on the California Sacred Lands Inventory.

Section 11.3 (F) Phase II Evaluation (3) City Review and Approval

Approval of Phase II design/work plans should not be left solely to the Planning Director. The qualified Chumash cultural resources monitor should also have the power to approve or reject the design/work plan. This stipulation will ensure that the design/work plan in place is respectful of Chumash tradition and responsive to Chumash concerns.

Section 11.3 (F)(4) Exceptions

(a) The terms "substantial evidence" and "unlikely to contain important cultural resources" need to be defined explicitly. Chumash people and organizations should play a role in defining these terms.

(b) In the event of discovery of important cultural resources during excavation, care should be taken to treat human remains and associated cultural objects appropriately. Therefore, in the event of this type of discovery, the most likely descendants need to be contacted for further instructions. This section should incorporate the relevant portions of the Native American Graves Protection and Repatriation Act and all applicable state laws.

Section 11.3 (G) Phase III Mitigation Programs (2) Purpose

The scope of mitigation should include mitigation measures suggested by interested Chumash parties. Over time, this procedure will facilitate city and state efforts to understand whether or not Native American interests in cultural resources are being effectively met.

The scope of mitigation should also include procedures for ensuring that any artifacts found at the site will only be transferred to museums or other centers that meet Chumash approval. First priority for artifacts should go to Chumash owned or operated organizations capable of effectively handling the artifacts.

Section 11.3 (G)(3) Cultural Resource Impact Mitigation

Mitigation measures should also include ensuring that the right of Chumash people to access their sacred sites is protected. In the event that a site is determined to be sacred through consultation with the Native American Heritage Commission, through case-specific ethnographic research, or through other acceptable methods, the site should be protected from outside harm such as vandalism and graffiti, and should remain accessible to Chumash people.

In addition to deeding important cultural resource sites into permanent conservation easements, a policy should be established whereby Native American stewardship of these important cultural resources becomes part of the permanent conservation easement.

Section 11.3 (I) Review and Approval

There should be an appeal process through which the Director's rulings are subject to challenge.

Section 11.4 Cataloging and Filing of Information

All Chumash people involved in the project, either as interview subjects, monitors, or other consultants should also receive copies of all documents generated through the cultural resource review process.

For sites that are determined to be culturally and/or spiritually significant, all documents generated by the review process should also be placed on file with the Native American Heritage Commission.

Section 11.5 Archaeological Discoveries

The Archeological Resource Protection Act and NAGPRA should be referenced in this section in order to ensure that the proper state and federal laws regarding repatriation and protection of important cultural resources are followed.

HISTORY OF NATIVE SOCIETIES OF MALIBU
by Chester King Ph.D. July 5, 2002

THE CHUMASH

Over 97% of human history in Malibu is the history of the Santa Monica Mountains Chumash. Over 3/4 of the remaining less than 3% of history is the history of one ranch. The history of residential and commercial development of Malibu constitutes less than half of a percent of local history. Most development is less than 50 years old and is not historically significant. Most archaeological sites identified in Malibu are the remains of Chumash ancestral settlements. These sites are important because they are the only material record of at least 10,000 years of human history.

At the time of Spanish colonization, in Malibu, the main language was Santa Monica Mountains Chumash. At the time of the Spanish missions, the native name chumash referred to inhabitants of Santa Cruz Island. In 1891, Powell referred to languages related to the Santa Cruz Island language as Chumash (1891). The name Chumash has been accepted as an ethnic designation by anthropologists and descendants of people baptized at the Spanish missions. Chumash territory includes San Luis Obispo, Santa Barbara, most of Ventura, southwestern Kern, and northwestern Los Angeles Counties. The Spanish responsible for the conquest of California considered the Chumash to be the most advanced native society in California. Spanish explorers observed that the Chumash differed from surrounding nationalities in their emphasis on manufacturing and trade which was facilitated by a bead money economy. The Spanish admired the Chumash for their skill as craftsmen and traders and their work ethic. The Spanish also observed that the Chumash were unique in their development of maritime fishing. They noted that the Central Chumash population was greater than the populations of other areas of California. Because of the large number of men who could be organized for warfare, the Spanish feared the Chumash more than any other group encountered during the establishment of Spanish rule.

Present knowledge of Chumash social organization before Spanish colonization comes through the synthesis of documents produced during the Spanish conquest, ethnographic notes collected by John Harrington and others, and archeological data. The historic documents include mission registers and diaries. As historic research progresses, ethnographic notes and archeological data (including material in museum collections) are studied further, and theories explaining differences in social organization are developed, knowledge of Chumash society before Spanish colonization will become more refined.

The hereditary chief (wot) was the central authority of the political system. There was sometimes more than one chief at a village. In Chumash folklore, the primary village chief was Eagle (Slo'w), the second chief was his nephew Falcon (Xelex), and the third chief was Raven (Qaq). Chiefs are described as having great prestige and moral authority. They were wealthy and capable of buying costly items, providing hospitality to guests, sponsoring fiestas, and rewarding those who have helped them. The most important duty of chiefs was the management of stores containing food and wealth. These were used to maintain the chief and his family, to feed visitors, to aid the needy, and to give fiestas. Stores were filled by donations from families which could afford them. Additionally, chiefs managed the territories under the control of their villages and decided if trespassing should be punished by war. Chiefs sometimes instigated wars by taking wives of other chiefs, acts reminiscent of the cause of the Trojan War. Chiefs had two messengers (ksen) who relayed messages to other villages concerning ceremonies and other matters. Regional political organizations were frequently solidified through marriage relationships occurring between people from villages over 50 miles apart. The village of Humaliwo was historically the seat of the paramount chief who had jurisdiction over a large part of the Santa Monica Mountains. It is probable that chiefs of nearby villages were relatives of chiefs of Humaliwo. The settlement of Muwu at the western end of the mountains was the capitol of the Lulapin (Central Chumash) nation.

Another individual important in the Chumash village was the paxa. He was the official responsible for training and initiating members of the secret men's 'antap society. It was his duty to organize ceremonies at the request of his chief. It was also his responsibility to choose new chiefs from legitimate candidates when necessary. 'Antap membership was based on relationship to a sponsor who paid a large sum of money to the society, or membership could be obtained by abstaining from eating deer meat and following other restrictions while a youth. Chiefs and their assistants were initiates of the 'antap society. The 'antap helped the paxa and the chief sponsor fiestas. They were also the dancers and musicians at fiestas. They collected contributions for the chief and pointed out those who did not make adequate contributions. Events such as fiestas involved and integrated all the major institutions of Chumash society. Fiestas usually celebrated events which were important in the belief system, such as solstices, and brought people together for economic activity. The 'antap could kill people by poisoning only if they had the permission of the chiefs. The chief, paxa, 'antap and messengers constituted the basic village administrative unit. It appears that these individuals, with the possible exception of the messengers, were from high ranking families.

Astrologers and diviners ('alshuqlash and 'alaxalapsh) were apart from the 'antap society. These individuals did not seem to have a particular village affiliation and could travel freely. It was their duty to name children, counsel them concerning their future, administer Datura, forecast rain, and heal the sick. These people were usually old men or women who attained their positions by seeking knowledge.

Households varied in size, although ethnohistoric and archeological data for settlements in the Santa Monica Mountains indicate they averaged five or six people. The typical household was organized around a nuclear family. At smaller settlements people often married partners who were natives of other settlements. After marriage, men regularly went to live at their wife's village. Sometimes, wives went to live at their husband's native village, and occasionally, both partners moved to another village. Some chiefs had more than one wife. Second wives often lived at their native villages and were visited by their husbands who usually continued to live in their own native villages. In cases, more than one wife might live in the same household with the chief. Chiefs' houses were often larger than those of other families.

In addition to residential houses, sweat lodges and menstrual lodges were present at most villages. Sweat lodges were not only used by men for sweating rituals, but also as a place to sleep. Sweat lodges additionally served as a place for giving instruction prior to initiation into the 'antap society.

At the time of Spanish colonization, the Chumash maintained the most complex bead money system that has been documented anywhere in the world. Documentation includes historic accounts, ethnographic notes, and beads from archaeological sites. The Chumash assisted with propogating plants and animals and collected them for food. Protohistoric Chumash society was one of the most complex non-agricultural societies documented anywhere in the world. The study of the development of Chumash society is relevant to understanding the evolution of complex societies. A succinct discussion of old Chumash culture and society is presented by Blackburn (1975).

At the time of European contact, the Chumash had an elaborate oral literature, knowledge of astronomy, an elaborate material culture, and thorough knowledge of their natural world. The Chumash of the Malibu coast used boats that were made of planks sewed together with yucca cordage and caulked with asphaltum. The maneuverability and speed of these boats impressed Spanish explorers (Blackburn 1975 and Hudson, Blackburn, Curletti and Timbrook 1977, Hudson, and Underhay 1978, Hudson and Blackburn 1982, 1983, 1985, 1986, and 1987, Hudson, Timbrook, and Rempe 1977).

Chumash oral tradition held that at the time of the winter solstice a peon game (guessing game with hand held counters) was played in the sky between sky coyote (the north star who is always watching over us and is dependable because he is always in the same place) heading one team and the sun heading the other

team. If coyote's team won there would be a good year, if the sun won he would take his winnings as peoples lives and it would be a bad year. Chumash astrologers studied the sky to gain insight to the outcome of this game.

The Malibu coastline, like the coast of the Santa Barbara Channel to the north, trends east to west. This apparently resulted in the formation of many places well suited to boat launching and to conditions of up-welling which provided a rich marine environment. These conditions contributed to a high density of population along the coast. Within the boundaries of the City of Malibu, four villages have been identified which were occupied during the period of recruitment to Spanish missions between 1785 and 1810 . These were, in order west to east, the villages of Lisiqshi (Arroyo Sequit), Sumo (Point Dume area-Zuma), Lojostogni (Solstice) and Humaliwo (Malibu).

At time of initial European colonization, the area inhabited by the Chumash measured approximately 200 by 70 miles. In size, this compares to the smallest states of the eastern United States. The total Chumash population included between 15,000 - 20,000 people. The Chumash of the Santa Monica Mountains occupied approximately 3% of the area and included approximately 1300 people or 6.5% of the Chumash population. The Chumash did not have standing armies or full time police. However, despite its small size, Chumash society developed institutions that maintained regional political and administrative organizations, a market economic system, and a complex belief system. Chumash society was similar in scale to other societies which occupied the more densely populated areas of western North America before European colonization. Research with mission registers indicates Chumash (in common with people in many societies studied by anthropologists) could identify kinship ties with almost all of the people with whom they would normally interact. Kinship relationships integrated the families of political leaders throughout the Chumash national area.

Chumash cultural sites are important for providing an identity for the City of Malibu. The city takes its name from Humaliwo an important Chumash village which served as a capitol for the Santa Monica Mountains area. Once disturbed or destroyed, the information contained in archaeological sites is lost forever. The non-renewable nature of the archaeological record makes protection of archaeological sites a high priority for individuals and communities who value the preservation of knowledge. They are also important to Chumash who are descended from the people taken to the Spanish missions as places of historic significance and as sources of knowledge.

Populations of Native Villages
The mission baptismal registers indicate the minimum populations of villages in Malibu. The numbers of identified baptisms are listed in the table below. Many baptisms at San Fernando do not include village designations.

Total Recruits
Lisiqshi 53
Sumo 47
Lojostogni 33
Humaliwu 113

It is probable that, prior to the introduction of diseases by the Spanish colonists, twice the number of people recruited by the missions lived at the villages prior to 1770. Between 1770 and 1800, some of the interior Santa Monica Mountain villages were abandoned prior to recruitment by missions. It appears that people from these villages joined other villages that were occupied into the mission period. At the conclusion of his diary for the August 1795 expedition to locate a site for San Fernando Mission, Fr. Vicente de Santa Maria wrote:

... I observed that the whole pagandom, between this Mission [San Buenaventura] and that of San Gabriel, along the beach, along the camino reál, and along the border of the north is fond of the Pueblo of Los Angeles, of the rancho of Mariano Verdugo, of the rancho of Reyes, and of the Zanja. Here we see nothing but pagans passing, clad in shoes, with sombreros, and blankets, and serving as muleteers to the settlers and rancheros, so that if it were not for the gentiles there would be neither pueblo or rancho; and if this be not accepted as true let them bring proof. Finally these pagan Indians care neither for the Mission or the missionaries [Englehardt 1927: 9].

Archaeological remains from the post 1782 occupation at CA-LAn-229 (Talepop at Malibu Creek State Park) and post 1782 burials at the historic village of Humaliwu indicate that the people of Santa Monica Mountain Chumash villages were involved with the operation of the large cattle ranches founded during the last decade of the eighteenth century. The abandonment of some villages was probably the result of migration to cattle ranches at Malibu, Las Virgenes, El Conejo, Encino, Simi and Cahuenga. (Edberg 1982: 41).

RECOMMENDED READINGS CONCERNING THE CHUMASH

Blackburn, Thomas C. (editor)
1975 December's Child: A Book of Chumash Oral Narratives. University of California, Berkeley.

1976 Ceremonial Integration and Aboriginal Interaction in Aboriginal California. In Native Californians: A Theoretical Retrospective, edited by Lowell J. Bean and Thomas C. Blackburn, pp. 225-244. Ballena Press, Ramona. Hudson, D. Travis and Thomas C. Blackburn

1978 The Integration of Myth and Ritual in South Central California: The 'Northern Complex.' The Journal of California Anthropology 5(2): 225-250. Malki Museum, Banning.

1982 Food Procurement and Transportation. In The Material Culture of the Chumash Interaction Sphere, vol. I. Anthropological Papers No. 25, editor Thomas C. Blackburn. Ballena Press, Menlo Park.

1983 Food Preparation and Shelter. In The Material Culture of the Chumash Interaction Sphere, vol. II. Anthropological Papers No. 27, editor Thomas C. Blackburn. Ballena Press, Menlo Park. 1985 Clothing, Ornamentation, and Grooming. In The Material Culture of the Chumash Interaction Sphere, vol. III. Anthropological Papers No. 28, editor Thomas C. Blackburn. Ballena Press, Menlo Park.

1986 Ceremonial Paraphernalia, Games and Amusements. In The Material Culture of the Chumash Interaction Sphere, vol. IV. Anthropological Papers No. 30, editor Thomas C. Blackburn. Ballena Press, Menlo Park.

1987 Manufacturing Processes, Metrology, and Trade. In The Material Culture of the Chumash Interaction Sphere, vol. V. Anthropological Papers No. 31, editor Thomas C. Blackburn. Ballena Press, Menlo Park. Hudson, D. Travis, Thomas Blackburn, Rosario Curletti and Janice Timbrook

1977 The Eye of the Flute: Chumash Traditional History and Ritual As told by Fernando Librado Kitsepawit to John P. Harrington, illustrated by Campbell Grant. Santa Barbara Museum of Natural History, Santa Barbara. Hudson, D. Travis, Janice Timbrook, and Melissa Rempe

1977 Tomol: Chumash Watercraft as Described in the Ethnographic Notes of John P. Harrington. Anthropological Papers 9, edited by Lowell J. Bean and Thomas C. Blackburn. Ballena Press, Socorro. Hudson, D. Travis and Ernest Underhay

1978 Crystals in the Sky: An Intellectual Odyssey Involving Chumash Astronomy. Cosmology and Rock Art. Anthropological Papers 10, edited by Lowell J. Bean and Thomas C. Blackburn. Ballena Press, Socorro. King, Chester

1976 Chumash Inter-village Economic Exchange. In Native Californians: A Theoretical Perspective, edited by Lowell J. Bean and Thomas C. Blackburn. Ballena Press, Ramona. [First Published in The Indian Historian 4(1)].

1990 Evolution of Chumash Society: A Comparative Study of Artifacts Used in Social System Maintenance in the Santa Barbara Channel Region Before A.D.

1804. Revised Ph.D. dissertation, with a new preface and updated bibliography. In The Evolution of North American Indians, a 31-Volume series of outstanding dissertations edited by David Hurst Thomas and published by Garland Publishing, New York.

ARCHAEOLOGICAL SITES AND ARCHAEOLOGY

Archaeological sites are places where human activity has altered the earth. The sites of the villages that were recruited from by the Spanish missions are located in the vicinity of settlements occupied during most of the last 8000 years. Between these sites are sites of settlements occupied during different periods. In addition to permanent settlement sites, other sites in Malibu were occupied during particular seasons while people were conducting activities away from their villages. These camp sites include sites occupied while gathering and roasting yucca and sites occupied while gathering acorns. In addition to occupation sites, archaeological sites include ovens used to roast yucca and other foods, bedrock mortar sites used to process acorns and other seeds, rockshelters used for storage, sites where stone materials were quarried, and rock art sites. In the Santa Monica Mountains, rock art sites include rockshelters that contain pictographs (paintings) and rocks with cupules (circular depressions). Archaeological research in California has resulted in the recognition of regularities in changes of artifacts used in most areas of the state. Analysis of collections from Malibu and surrounding areas historically occupied by Chumash speakers has resulted in relatively detailed knowledge of changes in many artifacts. We know little concerning the organization of settlement sites. Virtually no information has been obtained concerning changes in houses or settlement plans. This information has not been gathered because California archaeologists can not afford to conduct extensive excavations.

Archaeological techniques, when properly applied, result in ability to observe the distribution of places where particular activities were conducted within houses and outdoors. The distribution of features such as hearths, house floors, ovens, storage pits, shrines that can be observed as alterations to soil or as clusters of rocks or other objects provide information concerning site organization. The distribution of artifacts including manufacturing refuse indicate the distribution of activities in relation to features and the presence of features even when the features can no longer be observed as soil changes because of subsequent soil development. Stratigraphy and knowledge of sequences of artifact changes can be used to distinguish different time periods present at sites and to observe changes in settlements over time.

CHUMASH HISTORY

Continuity in the development of burial practices and socio-technic artifacts are generally accepted as indicating that Chumash society evolved in place for over 9000 years before European contact. The

absence of clearly documented relationships with other languages also indicates that Chumash society evolved in place for a long time. The evolution of Chumash society is reflected in changes in artifact forms and diversity, plant and animal food refuse, organization of cemeteries, and shifts in settlement patterns. During all periods people in the Chumash area invested more energy for maintenance of their economic system and used more varied types of beads and ornaments than other native California societies.

Present knowledge of the earliest occupations in Malibu is very limited. This is due to a number of causes. One is the probable small size of early groups, another the reduced probability of charcoal, bones, and shells being preserved in earlier sites. Also some early coastal sites were probably inundated by the rise in sea level associated with the melting of ice at the end of the Pleistocene. It is also usually difficult to define the earliest occupations at early sites because of poor preservation of stratigraphic features. Discoveries of large fluted points on the California coast, at Tulare Lake and many dry lakes in eastern California, and the association of similar points with large Pleistocene animals at sites in the Great Plains and the Southwest indicate that the earliest well defined populations in the western USA hunted large game animals. Post-Pleistocene populations apparently increased their reliance on collecting and processing wild plant foods and small game.

In Malibu, several cemetery and residential contexts have been excavated that are around 7500 years old. At this time, artifacts and food remains recovered from sites in the Santa Monica Mountains and the Santa Barbara Channel area indicate that people living along the coast were fishing with bone hooks, using boats or rafts to trade with the Channel Islands, and were taking sea mammals and large fish. Early mainland residential sites frequently contain large numbers of millingstones (manos and metates). It is believed that the millingstones were used to process small seeds. The mortar and pestle which were historically used to pulp acorns and islay (wild cherry pits) are not found in large numbers in early contexts. Presence of deer and other bone in middens and stone points and knives indicate that hunting was important.

There was an increase over time in the amount of energy used by the growing society. Obtaining and using most of the new sources of energy required the development of a society which was able to store more food and able to make larger capital investments such as those associated with building larger boats and making large nets. The storage of large amounts of food enabled people to increase their reliance on acorns and other crops whose yields are unreliable and widely fluctuate. During the Early period (6000-600 B.C.), there was an increase in both the size and number of mortars and pestles and a decrease in the use of manos and metates. These changes apparently reflect increases in use of acorns and islay (Prunus ilicifolia).

Most early settlements were small hamlets defensively situated on elevated land forms. During the Early period, some settlements increased in size and the largest probably contained several hundred people. The larger settlements were often less defensively situated than their smaller predecessors. Analysis of artifacts used to maintain social relationships indicate that during the Early period political power was largely dependent on the acquisition of wealth and ritual power.

By around 600 B.C., political power was increasingly inherited and was differentiated from ritual control. After this time, the more powerful ritual objects such as stone pipes, libation vessels, stone effigies, and, pointed charmstones were apparently owned by people who were not political leaders but inherited rights to perform rituals. Separation of political power and priestly power is characteristic of most native Californian societies.

There was a tendency over time to choose less defensive village locations and to increase effort spent on economic activity such as bead manufacture. These trends indicate that over time society became more

integrated politically and economically. Differentiation of new bead types indicate the development of new economic subsystems. It appears that after A.D. 1000, there was a rapid growth of economic systems which culminated in the highly developed economic system observed by early Spanish explorers. Shortly after the 1542 Cabrillo voyage, many small Chumash hamlets were abandoned, there was an apparent increase in the number of hermits and small families living in rockshelters in remote areas, and some of the largest historic towns were founded. These changes in population distribution can be attributed to growth in importance of trade centers and the development of more integrated political confederations that were necessary to encourage trade.

PROTECTION OF ARCHAEOLOGICAL SITES IN MALIBU

Development activities have caused Malibu to loose many important cultural sites and the integrity of remaining sites continues to be damaged. The 1973 Mammoth decision resulted in the requirement that large projects requiring permits were subject to the California Environmental Quality Act. After 1973, most archaeological research in the Santa Monica Mountains has been related to the preparation of Environmental Impact Reports by private archaeology companies. Los Angeles County and the California Coastal Commission allow developers to choose consultants for CEQA evaluations and have no ability to review the evaluations. Developers have learned to choose archaeologists who are client oriented and/or unable to recognize the significance of archaeological sites. This has resulted in a decrease in the quality of research conducted in the Malibu area. Few mitigation programs have been conducted in the Malibu area and those that were conducted did not result in significant contributions to archaeological knowledge. There have been no published reports concerning archaeological investigations conducted in Malibu since 1973.

One of the purposes of the Malibu Interim Zoning Ordinance was protection of archaeological and historical sites. The ordinance provided procedures to protect cultural resources. The procedures emphasized identification and evaluation of sites. The ordinance discouraged the use of data recovery as a mitigation measure. Cultural Resource Review was required for all projects prior to the issuance of a planning clearance, development permit, geological/geotechnical exploratory excavation permit, sewer permit, building permit, grading permit, or prior to the commencement of government-initiated or funded works except those projects necessary for emergency purposes. The ordinance closely follows Appendix K of CEQA. Decisions concerning cultural resources were made by the Planning Director. The Directors have decided that cultural resources can not be preserved because council members do not want to review projects involving cultural resources.

Mitigation measures can include avoiding damage to the important cultural resource site by Planning construction to miss important cultural resource sites, covering important cultural resource sites with a layer of soil before building tennis courts, parking lots, or similar facilities and deeding sites into conservation easements.

Procedures should ensure that all reports resulting from the conduct of any cultural resource review shall be filed with the Regional Historical Resources Information Center. All artifacts discovered in connection with any cultural resource review shall be recorded in the manner required by the State of California. All site records, field notes, maps, photographs, notes by Native American monitors, reports by consulting archaeologists, and other records resulting from the conduct of any cultural resource review shall be cataloged amd currated in accordance with the United States Department of the Interior Guidelines.

Any person who discovers important cultural resources during the course of construction for a project shall notify the Coastal Commission of the discovery. Once important cultural resources are discovered, no further excavation shall be permitted without approval of the Coastal Commission.

Wayne R. Ferren Jr.
Biological Consultant
Santa Barbara, CA 93101

09 July 2002

California Coastal Commission
State of California

Dear Commissioners:

I write to provide observations and commentary on a group of parcels on the Malibu Lagoon floodplain collectively known as the "Civic Center" site and adjacent lands, or the "Malibu floodplain and fields". I visited the parcels in December 2001 and July 2002 at the request of the Malibu Coastal Land Conservancy.

Background and overview. Undeveloped lands in proximity to environ-mentally sensitive habitats, which occur in otherwise urban settings, can have important functions themselves, particularly in support of the maintenance of the environmental complexity of coastal habitats such as wetlands. Even in a degraded state, open space lands can have surprising significance. However, a lack of site data due to an absence of thorough evaluation does not itself suggest a lack of sensitivity or importance of an area. It may simply mean that more information needs to be gathered to provide the basis for an accurate assessment of environmental sensitivity.

Site 1 - Chili Cook-off Parcel. Evidence from early maps and photos of the area, as well as written reports, suggest that this site, east of Highway 1, supported a coastal wetland complex that has been filled in artificially to the current elevation. Although the site is now dominated by invasive non-native plant species, particularly *Cynodon dactylon* [Bermuda Grass] that are repeatedly mowed or sprayed each year, a number of native plants survive the treatment, and occur scattered along the roadsides or throughout the parcels. These native species include but are not limited to plants generally associated with upland habitats such as *Malacothrix saxatilis* (Seacliff Daisy) and *Lessingia filaginifolia* (California Aster), plants generally associated with wetlands such as *Baccharis salicifolia* (Mule Fat) and *Heliotropium curassavicum* (Heliotrope), and various facultative hydrophytes such as *Ambrosia psilostachya* (Western Ragweed), *Asclepias fascicularis* (Fasciculed Milkweed), and *Isocoma mensiezii* (Coast Golden Bush).

Site 2 - Chevron Parcel. This site occurs west of Highway 1 and also is characterized by fill and repeated disking. It supports a combination of invasive exotic species similar to Site-1, and also supports scattered native species such as Coast Golden Bush, Western Ragweed, and Fasciculed Milkweed.

Site 3 - Yamaguchi Parcel. This site occurs east of Highway 1 and is contiguous to sloped land to the east and wetland habitat to the north. The parcel was once part of a plant nursery complex and today is repeatedly disked as with the other sites. The dark soils and presence of many facultative hydrophytes suggest portions of the parcel supports wetland habitat. The native facultative species include *Distichlis spicata* (Saltgrass), *Cressa truxillensis* (Alkali Morning Glory), *Atriplex triangularis* (Annual Saltbush), Heliotrope, and Western Ragweed.

Site 4 - Ioki Parcel. This site occurs east of the Chili Cook-off Parcel and south of the Yamaguchi Parcel, from both of which it is separated by roads. It also was in agriculture, apparently has been filled to some degree, and has been repeatedly disked. Although it is dominated by invasive exotic species, a few scattered natives such as Alkali Morning Glory do occur at the site.

Commentary. Although each of the parcels in question are altered in significant ways from their original pristine states, the four undeveloped parcels are in proximity to each other and are part of the existing floodplain of the lower Malibu Creek and estuary complex. Observations by others of foraging by birds of prey as well as by egrets and herons suggest that the parcels are probably important in helping to maintain the food chain support function of the Malibu wetland and floodplain complex. The dense population of small mammals such as ground squirrels and gophers observed at the site are the probable cause for predatory bird use. Proximity of the open space parcels to each other increases their individual significance for bird use, and proximity of the parcels to the sensitive habitats of Malibu Creek and Estuary provides added potential significance for current use by birds that also frequent or depend on the Malibu wetlands.

These remnant open space habitats, regardless of their degraded states may provide important environmental functions. Additional studies on bird use of each parcel on an annual basis would help provide the data from which an assessment on sensitivity could be made.

Because there is a need for additional information regarding animal use of and/or dependents on the resources of the parcel, and because of the apparent potential for the sites to support native plant species including facultative and obligate hydrophytes, I believe it would be premature to place a land use designation on the site and not have an accompanying overlay of environmental sensitivities. If the Malibu LCP is approved in some form in the near future, it would be prudent to leave the four parcels as undesignated white space until such time that additional studies provide sufficient data to determine if an environmentally sensitive habitat overlay is appropriate.

Thank you for this opportunity to provide additional discussion on the Civic Center Parcels. I regret I cannot be here in person to address the Commission. Please contact me directly if I can be of further assistance.

Sincerely,

Wayne R. Ferren

Wayne R. Ferren Jr.
Santa Barbara, California 93101

Meeting

JUL 1 0 2002

From:_____

Malibu Creek Floodplain & Fields
(Malibu Lagoon Adjacent Areas - Civic Center)

Environmentally Sensitive Habitat in the California Coastal Zone

by Robert Roy van de Hoek
for Malibu Coastal Land Conservancy
& Wetlands Action Network
July 9, 2002

Robert Roy van de Hoek
PO Box 192
Malibu, CA 90265
310-456-5604

Malibu Creek Floodplain & Fields (Lagoon Adjacent Areas - Civic Center)

This report focuses on open space areas in the Malibu Creek floodplain, land where buildings have not been constructed, and where various flora and fauna utilize the land for foraging and other activities. There are three appendices to this summary report for your review in assisting in determining the proper ESHA (Environmentally Sensitive Habitat Area) overlays and levels of coastal protection for this area.

I also incorporate by reference and recommend for your review my 40+ page report on Seaside Heliotrope and a report on Disturbance Ecology, both submitted last month to the Commission during public testimony at the hearing for the 90/Marina Freeway expansion, as well as my report on the Great Blue Heron, submitted to the Long Beach office of the California Coastal Commission. Additionally, I incorporate by reference the staff report and findings on the Bolsa Chica LCP, November, 2000 and letters regarding ESHA designation and protection needs from Pete Bloom, Ron Jurek and Brian James Walton, all of whom made recommendations to the Commission regarding the foraging needs of raptors on the Bolsa Chica Mesa and the totality of the ESHA being greater than only the location where birds were nesting or roosting. One other document to incorporate by reference is the findings document for More Mesa, LCP which was approved in the late 1980s in Santa Barbara.

These above referenced documents provide rationale, both scientific and policy related, that support the lowlands of the Malibu Creek floodplain being designated as open space, wetlands and ESHA (Environmentally Sensitive Habitat Area.)

Floodplain

Nearly the entire Malibu Civic Center area lowlands have been identified by FEMA (Federal Emergency Management Agency) or the County of Los Angeles as a floodplain. Given the significant watershed that drains through Malibu Canyon into this area, the topographic features confirm this designation to be true from a geographic and geomorphological definition.

As some considerable amount of pavement and rooftops (impervious surface) have already been installed in this Civic Center area, retail stores in the Malibu Country Mart that have been in existence for any length of time will verify that their stores flood out when heavy winter rains arrive. A film showed to the Coastal Commission at the June hearing in Long Beach portrayed a severe rain storm flooding of this area in 1995, with automobiles appearing to have to nearly "swim" to navigate the area.

Wetland Characteristics

Wayne Ferren, widely respected wetland expert and head of the Museum of Systematics & Ecology at the University of California Santa Barbara, visited the Civic Center site in December, 2001, and July, 2002 and stated his conclusion that some parts of the area in the Civic Center were Coastal-jurisdictional wetlands that would be of different sizes depending on the rainfall of any particular year. He stated it was clear that some 8-10' and in some areas even more of fill had been dumped on top of the wetland. Still, there is evidence of wetland characteristics in some areas, even with the fill, and in some areas where fill is not obscuring the reality of the landscape as a wetland, which would be the usual situation for lands in a floodplain at the mouth of a stream of significance in size, such as Malibu Creek.

Ken Schwarz, Ph.D., and Anthony Orme, Ph.D., of UCLA, completed coring studies and a report, in an effort to properly characterize the historical nature of the lands adjacent to and surrounding Malibu Lagoon. This effort was part of a larger report coordinated by Dr. Richard Ambrose on the Malibu Lagoon and floodplain region for the State Coastal Conservancy. Dr. Schwarz and Dr. Orme found evidence that much of the floodplain that is now essentially open fields in what is referred to as the Malibu Civic Center Area was once part of the estuary of Malibu Creek, sometimes inundated with saltwater/brackish water, and sometimes being a place where the Creek itself would traverse back and forth across, as streams naturally do at their mouths near the sea. They found there to be estuarine muds and clay interfingered with flood event sediments from Malibu Creek directly beneath the fill (pers. comm., July 9, 2002, Ken Schwarz.)

According to the California Coastal Act and legally accepted definitions for the determination of wetlands in the coastal zone, only one of three characteristics need be present to determine the site is a wetland. Vegetation in some areas, and soil in other areas help to determine a wetland.

During and after the spring of 2002, I surveyed the site and found the following:

Obligate and facultative wetland plants in a 71m x 117 m area in the Yamaguchi parcel.

Role in the Ecosystem

The most compelling reason for designating some significant portion of the Malibu floodplain as open space and/or ESHA (Environmentally Sensitive Habitat Area) is that this land plays an important role in the ecosystem that includes (to the south) Malibu Lagoon (ESHA), (to the east) Malibu Creek stream (ESHA) and the ESHA that exists to the west at Bluffs Park, where a coastal sage terrace still exists.

Sensitive raptors and migratory bird species depend on this area for foraging on the many small mammals, insects and amphibians that exist on the lowlands of the Malibu Creek floodplain. This situation is analogous to that of the Bolsa Chica Mesa adjacent to the Bolsa Chica Wetlands and More Mesa adjacent to wetlands in the coastal zone in Santa Barbara. In both of these instances, the Coastal Commission designated these open space fields as ESHA because of their important roles in the respective wetland ecosystems.

There are wetland vegetation patches in several locations throughout the Malibu Creek floodplain, in the Yamaguchi parcel, the Ioki parcel, Chili Cook-off parcel, "Colony/Chevron" parcel (across the road from Chevron and to the northwest of the private golf course and entry to Malibu Colony. These wetland vegetation patches require a complete delineation according to Coastal Act standards. They also require surveys for pollinators, especially where near these wetland plants, there also exist other native plants, like Milkweed, which is the favored plant for Monarch Butterfly caterpillars. Pollinators of several types are necessary to travel between fields like these and the wetlands/lagoon plants nearby. Proper surveys of pollinators are needed to determined the role of this land in the ecosystem.

Case Study: White-tailed Kite

In a draft Environmental Impact Report submitted to the City of Malibu by the Malibu Bay Company for a potential development on the Ioki and Chili-Cook-off fields, Dr. Edith Read documented nesting of White-tailed Kites in nearby Winter Canyon. The White-tailed Kite is a sensitive species, with the highest level of protection afforded to a bird species by the California

Dept. of Fish & Game. While the practice of hunting of this species no longer is prevalent in the state because of this protection, suitable foraging spaces like that in the Malibu Creek floodplain are disappearing rapidly.

White-tailed Kites have been observed to be foraging in the Yamaguchi and Ioki fields in the Malibu floodplain on numerous occasions. If these fields are paved over and the small mammals, thus, removed from these areas, it is unlikely the White-tailed Kites will remain nesting nearby, as there are no other open fields where food sources suitable to the White-tailed Kite remain in this part of Malibu.

There are only two other sites in the 27-mile long City of Malibu coastline where White-tailed Kites have been observed foraging: the Trancas Creek Floodplain (Trancas fields/Trancas Ropers & Riders) and the Pt. Dume/Heathercliff fields. These three locations, interestingly all owned to some extent by the Malibu Bay Company, offer not only the last remaining significant flatlands available to speculative development, but also the last remaining foraging grounds in Malibu to the protected White-tailed Kite.

Malibu Creek floodplain Sensitive Species

White-tailed Kite: Forages in Ioki, Yamaguchi fields and Colony Guard field (across from Chevron station and to the West of the Malibu Colony guard entrance. Developer draft EIR documented nesting White-tailed Kites in the region (nearby Winter Canyon.) Although I have not personally observed nesting White-tailed Kites, I have, on numerous occasions observed and documented foraging and resting White-tailed Kites in the Civic Center area. Gophers and small Rodents are the primary food sources of this species.

Great Blue Heron: Forages in Ioki, Yamaguchi and Chili Cook-off fields. While Great Blue Herons are often thought of as wading birds, anywhere from 25-60% of their diet can come from land mammals (especially juvenile Great Blue Herons, whose fishing abilities are not yet refined at early ages). Gophers, Squirrels, Snakes and Rodents are among the abundant food sources that lure the Great Blue Heron to the floodplain fields.

Red-Shouldered Hawk: A riparian-obligate species, this beautiful and state-sensitive bird is present in the Malibu Creek floodplain and Fields because this habitat is immediately adjacent to Malibu Creek.

Great Egret: Forages in Ioki, Yamaguchi, Egret Pond and Chili Cook-off fields. While Great Egrets are often thought of as wading birds, feeding on fish, their diet includes land animals, including Grasshoppers, Beetles, Rodents and Reptiles.

Snowy Egret: Forages in Egret Pond, the one area that would clearly become a larger wetland if it were not for an artificial berm built by landowners and disking done adjacent to the pond - both to prevent water and vegetation from spreading beyond certain artificially created boundaries of this freshwater/brackish water wetland. Frogs, tadpoles and aquatic insects are part of their diet.

Black-crowned Night Heron: Nests in Civic Center area -- sometimes in trees in Malibu Country Mart, sometimes in trees on Malibu Bay Co. (Perenchio) property. Last year, trees that had been used the previous nesting season by Black-crowned Night Herons on the Malibu Bay Co. property were cut down without any coastal permit (removing significant vegetation in the coastal zone.) I have counted 13-17 nests during one season. Many nests are not observable

because the birds nest in dense vegetation of the trees, not observable without close inspection, which would harass the birds.

Northern Harrier, Burrowing Owl, Peregrine Falcon, Barn Owl, Great Horned Owl, Short-eared Owl, Long-eared Owl all have been observed foraging in the Malibu Creek floodplain.

Conclusion on the above-listed birds:
The patterns I have observed at Malibu mimic the Bolsa Chica. I can provide photos of all diurnal raptors and ardeids listed above. After reading the reports of Peter Bloom, Ron Jurek and Brian James Walton, I believe their observations at Bolsa Chica confirm mine on bird use at Malibu Lagoon, that is that ESHA needs of Malibu Creek and Malibu Lagoon are served by surrounding adjacent fields, including some wetlands and some uplands.

Missing: Year-Long and Seasonal Studies of Animal & Plant Populations

What is missing in the available literature and biological documentation for the Malibu Creek floodplain & Fields and the Trancas Lagoon Floodplain & Fields is a comprehensive year-long study of the plants and animals that exist as part of the wetlands ecosystems in these two important areas. Only single day observations by developer-directed consultants are in existence, which leaves a spotty picture at best to a biological researcher.

Similarly, in 1982, the California Coastal Commission found that More Mesa in Santa Barbara was missing the same sort of information, and they required the land owner to fund a year-long study, completed by University of California Santa Barbara, where small mammal trapping, insect surveys, bird surveys and vegetation/flora identification could be done during the various seasons of the year. Because of Southern California's unique climate and bioregional "place," a year-long study is necessary in order to properly identify all of the various species that exist in such a location during various migration times, rainfall occurrences and seasonal growing periods.

After the survey was completed, the findings of the Commission concluded that this area was in need to being declared an ESHA because of the role this land played in the wetland ecosystem (wetlands adjacent to this Mesa land.)

While such detailed survey information was to a somewhat similar degree also missing at the Bolsa Chica Mesa, some of that area (the Eucalyptus grove) was already determined to be ESHA by the California Dept. of Fish & Game. This designation, along with raptor biologists' observations, assisted in helping the Commission to determine that the entire lower bench of the Bolsa Chica Mesa should be protected in order to protect the biological integrity of the ESHA.

Whether or not this area is ESHA remains a question that needs to be answered in order to satisfy the curiosity of all parties and to assist State Parks, Malibu Coastal Land Conservancy, City of Malibu or other parties whose mission is to represent the public's interest, in determining whether or not to pursue possible land acquisitions in the Trancas and Malibu floodplain and field areas. While many observations lead one to suspect that this land would seriously affect the creek/lagoon/coastal sage ecosystems if the land's resources were to vanish due to development, the question needs further study to determine the exact role these lands play in the surrounding ecosystems. I recommend, as Wayne Ferren has, that this area, as well as the floodplain and field areas surrounding Trancas Lagoon be designated as "White Space" - allowing further scientific analysis and detailed year-round surveys to be completed and analyzed prior to sealing the fate of these lands to the will of the bulldozers and foreclosing the possibility of a fully restored, recovered and re-connected greater Malibu Lagoon wetland ecosystem.

Malibu Lagoon Floodplain & Fields
Notes/Survey on Wetland Vegetation
Part 1

by

Robert Roy van de Hoek, 2002

The combination of the following nine species in the Malibu Lagoon Floodplain & Fields has curiously been undocumented by consultants hired by the City of Malibu and Malibu Bay Company. In this area, while a short distance away from tidal influence, these transitional coastal wetlands are called Delta Alluvial or Delta Palustrine Scrub, found on fairly level surfaces.

Scientific Name	Wetland Category
Cressa truxillensis	Facultative wet
Malvella leprosa	Facultative wet
Heliotropium curassavicum	Obligate
Rumex crispus	Facultative
Baccharis salicifolius	Facultative wet +
Atriplex semibaccata	Facultative
Cyperaceae sp.	Obligate
Leymus triticoides	Facultative wet +
*Haplopappus venetus**	Facultative wet

(*now *Isocoma menziesii*)

Fieldwork at Malibu Chili-Cookoff Site on 29 May 2002
Distribution of *Heliotropium curassavicum* in five populations

Population 1. East Drainage	18m (N-S) x 32m (E-W) = 576 sq. meters.
Population 2. West Drainage A	2m (N-S) x 2m (E-W) = 4 sq. meters.
Population 3. West Drainage B	1m x 2m = 2 sq. meters.
Population 4. Dog Area A	2m x 2m = 2 sq. meters with *Rumex crispus*
Population 5. Dog Area B	44m (N-S) x 22m (E-W) = 968 sq. meters
Population 6. PCH Edge	12m (N-S) x 13m (E-W) = 157 sq. meters

Monarch Butterfly Habitat in *Asclepias* at Chili-Cookoff Site

Population 1. *Asclepias* Monarch Butterfly foraging area along drainage.

Population 2. *Asclepias* Monarch Butterfly foraging area near Car Wash.
Population 3. *Verbena* sp. with purple flowers.

Miscellaneous observations

Squirrels and gophers. Abundant butterflies and moths. *Lepidium* sp., *Euphorbia* sp., Filaree, various grasses, and *Brassica* sp. as disturbance plants that is good for mammals. Gophers feed on grass and mustard roots. Squirrels feed on various plant leaves.

Concluding Observations

As farming has ceased at the Malibu Lagoon floodplain & fields many years ago, the areas have passed through natural succession and reverted to wetlands. These lands receive regular weeding activities that include weed-whacking, plowing, and some poison application for squirrels and gophers. Wetland plants are expanding, perhaps even more quickly by the plowing and weeding. Wetlands plants are adapted to disturbance. The disturbance can be plowing or weeding, or flooding by tides and winter rains. All of these activities disturb the soil. Even mammals, such as gophers and squirrels are both studied by scientists and considered disturbance in the amount of soil that they move around and build into mounds. These transitional wetlands are vital to the overall wetland ecosystem at Malibu Lagoon. For example, *Heliotropium curassavicum* is found in one small population at Malibu Lagoon, but there are five populations in the Chili Cook-off site as backup to prevent local extinction of the plant.

Malibu Floodplain & Fields
Notes/Survey on Wetland Vegetation
Part 2
Malibu Colony Across from Chevron Station

Robert Roy van de Hoek
1 June 2002

The survey was conducted from outside the 10 foot high fence that has prevented a survey inside the wetland. However, a fairly comprehensive inspection could be completed from the roadside at the fence with binoculars. I situated myself on a tall tree so that I could obtain an aerial perspective with the use of the binoculars. I was able to discern two large plant populations in the wetland with the indicator plant called *Cressa truxillensis.*

Cressa truxillensis (alkali plant) is identified by Wayne Ferren as a wetland plant that would be found in a wetland type referred to as "IRREGULARLY ESTUARINE AND SEASONALLY FLOODED PALUSTRINE WETLAND." This wetland type was documented in the United States Environmental Protection Agency's report by Wayne Ferren and others on Southern California wetland types.

Isocoma menziesii (coast goldenbush) is also identified by Wayne Ferren as a wetland plant that would be found in a wetland type referred to as "IRREGULARLY ESTUARINE AND SEASONALLY FLOODED PALUSTRINE WETLAND." This wetland type was documented in the United States Environmental Protection Agency's report by Wayne Ferren and others on Southern California wetland types.

The dimensions of population 1 were 25 m (E-W axis) x 44 m (N-S axis) = 1100 sq. meters in total size. The dimensions of population 2 could not accurately be determined due the greater distance away from the fence. A very rough estimate would indicate that it may be over 400 sq. meters in size. Both populations were noted to be in full flower with its white blossoms. In addition, my earlier field observations have shown that population1 has more than tripled in size as it has grown significantly since first measured in 1999. It is apparent that the annual discing-plowing of this wetland has expedited the spread of this wetland plant indicator. However, the discing and plowing has prevented the establishment of some other wetland plants. Close to the fence where the plow cannot reach, five other wetland species are prevalent, which add further credence to the wetland of *Cressa truxillensis*. These four species would be widespread throughout the area if plowing were not to occur, as evidenced by their presence along the fence, just outside the plow zone. In essence, there are five wetland indicator plants on the property. The other four species include *Atriplex semibaccata, Isocoma menziesii* (formerly *Haplopappus venetus), Rumex crispus,* and *Plantago lanceolata.* The combination of these species makes it more definitive as a wetland than having a single species of obligate wetland plant. This area is no longer a tidal wetland, however there is historical evidence that it probably once was. Still, it is a unique wetland within 1/4 mile of the sea.

Scientific Name	Wetland Category
Cressa truxillensis	Facultative wet
Rumex crispus	Facultative
Atriplex semibaccata	Facultative
Ambrosia psilostachya	Facultative wet
Isocoma menziesii	Facultative wet

Concluding Observations

As farming has ceased in the Malibu floodplain & fields many years ago, the areas have passed through natural succession to revert to wetlands. These lands receive regular weeding such as weed-whacking, plowing, and some poison application for squirrels. Wetland plants and mammals are expanding even more quickly due to the plowing and weeding. Wetland plants are adapted to this disturbance. These plants are accustomed to disturbance. The disturbance can be plowing or weeding, or flooding by tides and winter rains. All of these activities disturb the soil. Even mammals, such as gophers and California (Beechy) ground squirrels are considered disturbance animals due to the soil mounds they create for their burrows. Rabbits have also been observed here, and they do not burrow, so they come from native shrub habitat bordering these wetlands. They live near the Coyotebush and Laurel Sumac. Over the last three years, I have observed both Great Blue Heron and Great Egret on a weekly basis utilizing this wetland for prey of insects and mammals. Red-shouldered Hawk, an obligate riparian species also hunts this property regularly. These wetlands are vital to the holism of Malibu Lagoon and Malibu Creek.

These floodplain lands are inextricably linked in numerous ways to the wetlands nearby at Malibu Lagoon State Park and the coastal sage scrub at Malibu Bluffs State Park. these floodplains are transitional between the lagoon/creek and the bluffs.

These kinds of wetlands have the appearance to some mis-informed scientists who usually work for developers as being "ruderal," their conclusion being that they are not functioning or important. The definition of "ruderal" indicates disturbance. Delta wetlands are often in a state of disturbance from flood waters and ocean tide inundation. If wetlands occur in the disturbance, are they unimportant? No.

It must be remembered that a wetlands ecosystem of the type found at the mouth of the stream known as Malibu Creek is a tripartate-linked region of lagoonal wetlands, transitional wetlands and upland coastal sage scrub. A fourth system, riparian, is also wetland dominated and forms an additional link to transitional wetlands and uplands.

In the 1950s and 1960s Willows and *Baccharis salicifolius* occurred in the Chili Cook-oof area. Today, *Baccharis salicifolius* still occur there, although in a small area.

A Cottonwood tree has established near the Skateboard Park. Sycamores are next to the cottonwood. Bald Eagles, which prey on fish, nested as last as the 1950s in Sycamores of Malibu Creek at the old bridge over "troubled" waters there.

Coast Golden Bush, aka Coastal Isocoma, as a Wetland Species of Coastal California

(with particular emphasis on Malibu Lagoon Floodplain)

by
Robert Roy van de Hoek
Wetlands Action Network

Coast Golden Bush is known to scientists today (Jepson, 1993) as *Isocoma menziesii*, but until the 1980s was known as *Haplopappus venetus*(see Munz, 1959, 1974). Le Roy Abrams (1960, vol. 4, p.284), in the Stanford University tome of four volumes, titled the *Illustrated Flora of the Pacific States*, listed the common name as Coastal Isocoma, but listed the scientific name as *Haplopappus venetus* subsp. *vernonioides*. For the scientist that is not trained as a botanist, and the lay public, it is important to note that *Haplopappus* is now an out-of-date synonym for *Isocoma menziesii*. These two scientific names refer to the same plant, there simply was a nomenclatural change of name priority, as sometimes happens in botany. During the time that Coast Golden Bush was known as *Haplopappus. venetus*, the Federal Government Guide to Wetland Plants called it an facultative wet species. the federal government assembled a team of botanists and ecologists under the auspices of the U.S. Fish & Wildlife Service to complete an exhaustive "national list" of plants that are found in wetlands. The highest category of a wetland plants is "Obligate," the next highest category is "Facultative Wet" and "Facultative +."

California is designated a unique climate region with a unique flora, but also as an ecological type, Coastal southern California is a Mediterranean-like climate and vegetation. Coastal California is the only area of the United States that receives no summer rain. The result is that our wetland soils during summer and fall become quite dry at the surface with no saturation near the surface and often do not develop nor form the requisite soil type. These two factors of saturated water in soil and soil type are criteria for wetlands delineations that the U.S. Army Corps of Engineers developed for the United States. It is important to note that this "Corps" designation had as its basis the eastern U.S. and areas that receive significant summer rainfall at an important time of the year (i.e. summer), when plant growth needs water. This designation does not work in California with a long dry-summer and fall season, that actually begins in spring (May). Thus, California has a seven-month (May-November) dry season. Joy Zedler (2001, 2002 pers. comm.) has, through her position with the National Academy of Sciences, indicated that California is unique in its wetlands due to climate, vegetation and flora. Wayne Ferren (2002, pers. comm.) supports this observation by Joy Zedler, in his independent observations.

The 1993 Jepson Manual (p.295) described Coast Golden Bush, *Isocoma menziesii* var. *vernonioides*, habitat as: **"protected sites on dunes, marsh, shores, and lagoons."** Le Roy Abrams (1960, vol.4, page 284) described the habitat as, **"Type locality: marshes near the sea ... coastal valleys, in sandy, often subsaline places."** Whether we rely on the expert description in the texts of the Jepson Manual or Abrams' Manual, we realize that Coast Golden Bush is a native plant of coastal shore dune (transitional to marsh), marsh, and lagoon, essentially coastal wetlands. A closely related species, restricted to marshy areas and coastal areas of Santa Catalina and San Clemente Islands, has been placed on the California Native Plant Society's CNPS 1B list, an important indicator to scientists and conservationists that it is warranted to be considered an endangered species. In time, as we develop and destroy more of our coastal wetlands, the Coast Golden Bush will also warrant placement on the CNPS 1B list, and need to be placed on a federal government endangered

species list. In my opinion it deserves consideration now as development risks such as is occurring at an ever increasing pace in the southern California counties of Ventura, Los Angeles, Orange, and San Diego.

Coast Golden Bush, in addition to being a wetland species, is a narrow endemic species of the coastline and seashore, restricted to southern and central California, found only along the immediate coast, from San Francisco to San Diego, and also on some of the Channel Islands of southern California, according to Abrams (1960).For example, Junak, et. al. (1997) listed Coast Golden Bush distribution for seven of the eight Channel Islands, but as absent on Santa Barbara Island. Santa Barbara Island is completely surrounded by ocean on all sides and is only a one-square mile island Four other wetland species are also listed as absent for Santa Barbara Island: *Heliotropium curassavicum* (Obligate Wetland), *Distichlis spicata* (facultative wet+ wetland species), *Cressa truxillensis* (Facultative Wet), and *Malvella leprosa* (Facultative Wet). As all of these plants are wetland species that require mesic conditions, it is no wonder that both are not found on the arid (wetland-absent) Santa Barbara Island. These five plants are all found along the coast of Malibu and the Santa Monica Mountains at mesic situations where floods of streams near the sea, (i.e. stream mouths such as Zuma Creek, Malibu Creek, Trancas Creek, and Arroyo Sequit Creek. These are the four major streams of Malibu.

Coast Golden Bush and Delta Alluvial Scrub Nature of Malibu Lagoon Floodplain & Fields

In Malibu civic center area, Coast Golden Bush is found in three areas: "Chili Cookoff" open space (owner: Malibu Bay Co.) , "Yamaguchi" open space (owner: Yamaguchi), and "Malibu Colony Guard Station" open space (owner: Perenchio). Coast Golden Bush is a plant that is sensitive to disturbance, whether human or natural, (i.e., disking/plowing/raking/mowing) of the soil as is done annually in the three above-mentioned Malibu civic center properties. However, relict individual populations of Coast Golden Bush can be found at the margins of these three open space properties where the machinery disturbance cannot reach them. For example, Coast Golden Bush is able to survive near fence lines and other obstructions which prevent equipment from being able to reach it. It is plainly evident that if plowing were discontinued, much of the civic center would become covered in Coast Golden Bush and would soon be dominated by this wetland native shrub. It would become a true "Delta Alluvial Scrub Community."

The association of Coast Golden Bush to the eight other wetland obligate and facultative plant species supports the contention of nearly all of the Malibu Civic Center open space properties as "Delta Alluvial Scrub Community" wetland. This is a type of wetland recognized by the U.S. Environmental E.P.A., as well as scientists at various universities, from U.C. Santa Barbara, U.C. Davis, and California State University Northridge. The plowing and mowing of the Malibu Civic Center open spaces has disturbed the land, making it difficult to ascertain except to the trained eye and unbiased scientist that the entire area would be covered in wetland indicator vegetation if it was no longer disturbed every year by disking and allowed to revert to natural wetlands that existed prior to agricultural use of the land. It is important to note that this Delta Alluvial Scrub is an "open stature" vegetation, not a closed canopy as in a forest. Therefore, it is desirable as foraging and nesting locations for a suite of raptors and herons. It is ideal habitat for the following state-protected and sensitive raptors, many of which are observed in these areas on a regular basis:

Raptor Avian Species

California Burrowing Owl (annual fall through winter hunter of insects)

Northern Harrier (annual visitor in fall and winter to the open space areas).
White-tailed Kite
Short-eared Owl
Peregrine Falcon
Red-shouldered Hawk
American Kestrel
Red-tailed Hawk
Barn Owl
Long-eared Owl

Wet-coastal Prairie-Meadow Passerine Birds Now Rare Elsewhere in Los Angeles County
Western Meadowlark foraging for abundant insects.
Several Swallow species and White-throated Swift foraging for abundant insects.
California Loggerhead Shrike

Ardeid Avian Species
Great Blue Heron (forages primarily for gophers and young squirrels).
Great Egret (forages primarily for insects, reptiles, and some small mammals).
Snowy Egret (at Egret Pond) but flies over the Malibu open space).
White-faced Ibis (on a few occasions, but not regular).

Waterfowl Avian Species utilize the Malibu Civic center open spaces in wet winter months.
The abundant grass seeds combined with insects from squirrel dug-soils, and shallow ponding water attracts the following plant-specialist waterfowl:
Ross Goose
Mallard
Northern Shoveler
Canada Goose
Cinnamon Teal
American Widgeon
American Coot

Several species of shorebirds utilize the Malibu open space
Plovers such as the Killdeer
Mountain Plover (not in recent years)
Long-billed Curlew
Whimbrel

The American Osprey regularly flies over the Malibu Estuarine Lagoon to catch Striped Mullet (anadromous fish), and then flies to floodplain open spaces to a high perch, where it consumes the fish. This ecological linkage between deep water habitat of the lagoonal estuary and transitional wetlands will be found in innumerable ways through the zoological realm, not just for birds but for mammals and insects as well. Only through a more intensive ecological investigation of at least a year in length, as recommended in Wayne Ferren's report letter, will an adequate picture of the wetlands-floodplain ecosystem be discerned.

The California Loggerhead Shrike which nests in shrubs of the transitional wetlands, impales prey in the sharp spines of Boxthorn, Cactus, and saltbush, as well as fences), along floodplains, coastal sage scrub ecotonal edge areas to wetlands. They catch their prey of insects, small reptiles, and small mammals, however in lagoons, prairies, floodplains, and transitional wetlands. Here is another demonstrable linkage of adjoining ecosystems from uplands to wetlands. As I observed over the last two years, the regular use of the Malibu floodplains and opens spaces in the civic center areas by this shrike is another example of

ecological linkages and corridors between lagoonal wetlands, transitional wetlands, floodplains, and uplands. The shrike uses Coast Golden Bush dominated ecosystems in transitional wetland areas. I observe the California Loggerhead Shrike each year, not only at Malibu Lagoon/floodplain areas, but also at the Trancas Lagoon/floodplain fields.

Recommendations:

Discontinue disking and mowing the Malibu civic center properties.
Monitor the increased use by raptors, passerines and Ardeids as the native plants, native insects, and native plants return to these open space areas.
Do not develop these properties, but encourage the native Delta Alluvial Scrub (transitional wetlands) species.
Acquire these properties for California State Parks.

Heal the Bay

3220 Nebraska Avenue
Santa Monica CA 90404

ph 310 453 0395
fax 310 453 7927

info@healthebay.org
www.healthebay.org

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JUL 1 0 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 8, 2002

California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

RE: Comments on the City of Malibu's Local Implementation Plan

Dear Coastal Commissioners:

On behalf of Heal the Bay, an environmental group with over 10,000 members dedicated to making Santa Monica Bay and Southern California coastal waters safe and healthy again for people and marine life, we thank you for the opportunity to review and comment on the Draft City of Malibu Local Implementation Program (LIP). In this letter we present our general concerns first, followed by specific comments.

General

The Coastal Commission staff has done a good job. The Implementation Plan is detailed and provides clear direction to the City for regulation of water quality and on-site disposal systems (OSDS).

There are some areas where the requirements of the LIP overlap with those of other regulations such as the municipal stormwater permit for Los Angeles County, or with existing laws in Malibu's City Code. Heal the Bay agrees that these areas need to covered in the LIP as well, to ensure the Coastal Commission maintains oversight on important issues affecting coastal water quality. In instances where there is conflict between the LIP and other regulations, the more stringent regulation should apply unless the City provides compelling evidence otherwise. Further, in cases where new state or federal laws come into effect, such as AB885 which is expected to take effect in 2004, the City may need to seek amendments to the LIP in order to comply with new laws.

The LIP has major shortcomings in the following areas: maintenance and monitoring programs, clarity on use of the term "maximum extent practical", and clarity on protection of areas of special biological concern (ASBS).

Lack of Adequate Water Quality Monitoring Programs

Wastewater

Water quality monitoring is not emphasized enough in the LIP. Water quality monitoring should be a major part of any water quality management plan (WQMP), as well as the City's wastewater management plan (WMP). This should include monitoring of receiving waters for impacts from OSDSs. This monitoring must be conducted for all OSDS that may affect surface waters, and specifically for all OSDS located in critical areas with impaired water quality and impaired beneficial uses, such as the Civic Center/Cross Creek Plaza area, the Malibu Lagoon area or right on the coast. In non-

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critical, unimpaired areas, every permitted OSDS should be required to monitor impacts to receiving waters, either individually or by contributing to a local monitoring program. Surface water monitoring must include nitrogen compounds, phosphorous compounds, total suspended solids and bacteria. Groundwater monitoring must include nitrogen and phosphorous compounds, and bacteria.

Runoff

Any activity that requires a coastal development permit should have a monitoring plan to determine impacts to receiving waters and to insure that BMPs and other water quality protection measures are adequately protecting water resources. Without a water quality monitoring requirement, the City will be unable to determine the effectiveness of BMPs, whether BMPs are appropriately designed, and whether BMPs are adequately maintained to meet a desired objective. A maintenance program for BMPs is not functionally equivalent to a monitoring program. Receiving waters must be monitored to insure BMPs are functioning as expected.

In addition, simply stating that the City will require new and existing development to comply with existing RWQCB regulations, NPDES permit-based monitoring, WDRs, or SUSMP, is inadequate. For example, these monitoring programs are not designed to detect the impacts of individual OSDSs, confined animal facilities, etc. on receiving waters. Also, the NPDES permit for LA County stormwater does not cover smaller construction projects (less than 1 acre), which may drain to an ESHA or to a waterway. The natural resources of the City of Malibu need to be protected in some cases beyond the requirements of RWQCB regulations such as NPDES permits and the SUSMP. These regulations are designed for general purposes, such as construction projects and monitoring programs in urbanized areas of LA County. Malibu has important coastal resources, delicate inter-tidal zones, open space, riparian corridors, and wildlife habitat that must be protected from the impacts of development. The City should review RWQCB policies and modify them to make them more stringent, to best protect local resources.

"Maximum Extent Practical"

The terms "maximum extent practical" and "maximum extent feasible" are blanket concepts used throughout the LCP and LIP, which must be clearly defined prior to the Commission's acceptance. For example, the definition of maximum extent practical/feasible could be: "Implement the requirement unless there has been a thorough analysis of the legal ramifications of implementation, financial costs, and impacts to environmental and/or city resources. In the event that the requirement can not be fully implemented, the project proponent shall receive a variance from the City or Commission, and mitigate the requirement either on-site or as close to the site as possible."

Delineating ESHA

The City must differentiate among different types of ESHA. Areas of special biological significance (ASBS) are encompassed in the ESHA delineation but they must be protected beyond the ESHA protections. For example, no discharge is permitted to ASBS whatsoever (as stipulated in the Ocean Plan). Also riparian, wetland and coastal

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bluff ESHA should be classified separately from other ESHA and further protected by prohibiting any non-resource-dependent use within the ESHA and its 100-foot buffer.

Permit Approvals and the Environmental Review Board

The LIP must clearly state the criteria that determine which projects are subject to review by only the City of Malibu and which projects require Commission permit approvals. Also, the LIP needs to clarify which projects go to the Malibu Environmental Review Board (ERB) before Planning Commission and/or City Council approval.

Economically Viable Use Determinations

The term "economically viable use" is used throughout the document and must be defined. The "economically viable use determination" methodology referred to as being in the LCP is not in that document. This methodology will determine the amount and type of development allowed in ESHA and it must be clearly defined and subject to public comment.

Chapter 3 – Zoning Designations and Permitted Uses

3.6.G.9 – Residential Development Standards – shoreline protective devices

Please remove the term "new sewage disposal system" from the third line. New OSDS should never be sited in an area subject to a known natural hazard (e.g. high erosion rates or tidal conditions) where the possibility of OSDS failure exists.

3.9.2.B – Development Standards for Special Uses – drive-up windows

Pleases add a third requirement stating that "All commercial businesses with drive-up windows or remote tellers shall comply with the requirements of Ch.17 (water quality Protection Ordinance).

Chapter 4 – Environmentally Sensitive Habitat Area Overlay

4.1 – Purpose

Please define the term 'significant disruption' as used in the sentence beginning "Only uses dependent on the sensitive resources and which do not result in significant disruption of habitat values shall be permitted in the ESHA overlay zone." What parameters are to be used in making such a decision? The City or Commission need to clearly define general parameters to be utilized by the decision making body.

4.4.1 – Supplemental Application Requirement – California Department of Fish and Game

Please rename this section "State and Federal Departmental Approvals". In addition, please add to the end of the sentence after 'Game', "and where appropriate, the Los Angeles Regional Water Quality Control Board, the US Army Corps of Engineers, the US Fish and Wildlife Service and the National Marine Fisheries Service."

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4.4.2 – Supplemental Application Requirements – biological study

Please add a section "K. An analysis of water quality impacts, such as sedimentation, nutrient loading, and pathogen loading, and mitigation measures to be implemented."

4.5.1.A – Conditionally Permitted Uses – wetlands

Please remove "Aquaculture" from this section.

4.5.2.A – Conditionally Permitted Uses – streams

Please define what projects constitute "necessary water supply projects". Does this mean dams, reservoirs, or individuals diverting water directly from a specific water body? Again, the City or Commission needs to clearly define these projects, and the parameters for evaluating their necessity.

4.5.2.B – Conditionally Permitted Uses – streams

Please add to this subsection: "Bioengineering is the only acceptable method of bank stabilization and flood protection for new development, and the preferred method for redevelopment. All redevelopment should replace hard structures with bioengineered structures. Where bioengineering for flood protection is not feasible, new projects must be re-designed to avoid the need for hard alternatives for flood protection."

In addition, there is little discussion throughout the LIP of the need for a long-range program for maintaining and restoring bank/channel stability in all natural streams and creeks. A watershed approach to slope stabilization, like water quality, is essential for managing natural water resources. Use of concrete or other hard structures in stream banks displaces the water's energy to another portion of the stream and only transfers the problem of bank stability. Increased runoff velocities result in increased erosion of stream banks, and further degrade the biological productivity and structural integrity of the creek. Without a policy in place to prevent hardening of stream banks, the result will be a race to armor streams and creeks while forfeiting future beneficial uses of the natural resource.

4.7 – Viable Uses

Once again, the term "maximum extent feasible" is a blanket concept used throughout the LCP, which must be clearly defined prior to the Commission's acceptance. For example, the definition of maximum extent feasible could be: "Implement the requirement unless there has been a thorough analysis of the legal ramifications of implementation, financial costs, and impacts to environmental and/or city resources. In the event that the requirement can not be fully implemented, the project proponent shall receive a variance from the City or Commission, and mitigate the requirement either on-site or as close to the site as possible."

The term "economically viable use" must be defined. The "economically viable use determination" methodology referred to as being in the LCP is not in that document. This methodology will determine the amount and type of development allowed in ESHA and it must be clearly defined and subject to public comment.

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4.7.3 – Viable Uses – agricultural uses

Please clarify the meaning of "does not increase the possibility on in-stream siltation or pollution from herbicides or pesticides." What parameters are used to determine "possibility"? Any operation which disturbs soil or uses herbicides or pesticides has the possibility to increase levels of those pollutants in waterways if appropriate BMPs are not used. Also, with agricultural uses, other pollutants, such as nutrients and chlorides, need to be considered. Heal the Bay recommends modifying the sentence to state "does not increase in-stream siltation, or pollution from chlorides, nutrients, herbicides or pesticides." There should also be a monitoring component associated with these permitted uses. Also please add a statement that "There shall be no discharges from agricultural uses to designated ASBS".

4.7.4 – Viable Uses – confined animal facilities

Please add "; and will not contribute to in-stream siltation, pathogens, or nutrients." to the end of the last sentence.

4.8 and 4.8.2 – Mitigation and Wetland mitigation

Monitoring and maintenance of restored or newly created habitats must be for a minimum of 25 years, and must include a requirement to fix any problems in the functioning of the restored/created habitat. A 5- to 10-year monitoring and maintenance period is too short. Restored/created habitats may not survive a year of extreme weather, or they may appear stable and then decline slowly and lose habitat functions over several years. If this happens, the developer who destroyed natural resources continues to benefit from development, while the public sees no continuing benefit from mitigation which failed to serve its purpose for longer than 5 or 10 years.

4.8.1.A.2 – Habitat Impact Mitigation

Please modify the word 'may' to 'will' in the last sentence so that it reads "...the City will collect the security and complete the work on the property."

4.8.1.C.1 – Habitat Impact Mitigation

Please modify the sentence beginning with "The fee shall..." to read as "The fee shall be based on the habitat type, the cost per acre to restore or create comparable habitat type, the acreage of habitat affected (based on the final approved project), and a monitoring and maintenance program for the restored habitat of no less than five years."

4.8.2.C – Wetlands

Please delete everything after "However, in no event will the mitigation ratio be less than 2:1". It is extremely difficult to demonstrate that created wetlands are functionally equal or superior to natural wetlands, particularly within the short monitoring periods that are required. A 2:1 ratio gives a margin of safety to offset the uncertainty inherent in measuring wetland function. Wetland function must be measured using a scientifically sound method, such as the hydrogeomorphic (HGM) model, and must be monitored over a much longer period, such as 25-100 years, to ensure the long-term functioning of created wetlands.

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4.8.2.F – Wetlands

Please modify the word 'may' to 'will' in the third sentence so that it reads "...the City will collect the security and complete the work on the property."

Chapter 6 – Scenic, Visual, and Hillside Resource Protection Ordinance

6.5.2 – Development Standards-drainage devices

Please add the sentence, "No hillside development drainages shall be permitted to discharge to ASBS."

Chapter 8 – Grading Ordinance

8.3.I and 8.4.C – Development Standards and Seasonal Restrictions on Grading

Is there a mechanism to determine the effectiveness of erosion and sediment control measures? A water quality monitoring program is needed to ensure that such ordinances are being implemented effectively.

Chapter 10 – Shoreline and Bluff Development Ordinance

10.3.2 – Required Findings and Analysis

Please define the term 'significant adverse impacts' as used. Again, what parameters are to be used in making such a decision? The City or Commission need to clearly define general parameters to be utilized by the decision making body so that the outcomes made are as objective as possible.

10.4.C – Development Standards

In the list of measures, please add "6. Beach Erosion Monitoring Program. The developer must monitor the project for a period of no less than five years to determine the effects of such shoreline protection devices on public resources and loss of beach, sand or coast beyond the property's development. If the developer chooses not to comply with such a monitoring program, the permit will be denied, or the developer may contribute funds to a Commission-created program to study the costs and benefits associated with shoreline erosion in California."

10.4.P – Development Standards

Please remove the word "new" from the first sentence. Shoreline and bluff protection structures are not permitted to protect new development. There should be no new development in locations that are so unstable as to require shoreline protection whether it is "hard" or "soft" in nature. The only acceptable means of protecting shoreline from new development is through landward setbacks.

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Chapter 13 – Coastal Development Permits

13.14.B – Emergency Permits

The application for an emergency permit must include a timetable for removal of the permitted temporary measure(s), and a restoration plan including a long-term solution for the problem that necessitated the emergency permit.

13.14.1 – Reporting of Emergency Permits

The Planning Director should consult with the Environmental Review Board whenever possible to ensure that the least environmentally damaging temporary alternative is selected, as directed in section 13.13.E.

Chapter 14 – Enforcement Program

14.1.A.6 – Site Restoration Bond

Please modify the second sentence beginning with "Room additions..." to read "Room additions, repairs, remodels of 50% or less and new construction of a single family residence on a single lot are exempt from this requirement, unless the Building Official finds such a bond is required to protect the public health, safety, welfare and natural resources."

14.1.G. – Minimum Requirements

Please add "and protection of natural resources" to end of the first sentence of this paragraph.

Chapter 17 – Water Quality Protection Ordinance

17.4.1 – Construction Phase Erosion Control and Polluted Runoff Control Plan

Heal the Bay strongly supports the prohibition of grading and clearing during the rainy season for development located within or adjacent to ESHA, and development that includes grading on slopes greater than 4:1.

17.4.4 – Verification of Ongoing BMP Maintenance and Conditions of Transfer

Please clarify at what point in the permitting process these agreements must be verified. Also, Heal the Bay prefers that responsibility for maintenance of structural and control BMPs be assigned to groups other than Home Owners Associations. In general, Home Owners Associations lack technical expertise and their level of commitment to maintaining BMPs may vary over time and with different residents participating. We feel they are not appropriate entities for BMP maintenance. The other responsible parties listed in this section (the developer, a public entity, or other legally-enforceable agreements) are acceptable entities.

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17.5 – Development Standards

It is not clear that these standards apply to new development and to redevelopment. Please make this clear with a statement at the beginning of this section.

17.9 – Hydromodifications

The second sentence of the second paragraph of this section should read: "Bioengineering is the only acceptable method of bank stabilization and flood protection for new development, and the preferred method for redevelopment." Immediately after this sentence, please add: "All redevelopment should replace hard structures with bioengineered structures. Where bioengineering for flood protection is not feasible, new projects must be re-designed to avoid the need for hard alternatives for flood protection." Please delete the last sentence of this paragraph, beginning with "Any permitted alterations shall include…"

We support the 100-foot vegetated buffer for riparian areas. We also believe that for riparian areas that support an endangered species the required buffer width should be 300 feet.

The "economically viable use determination" methodology to be used by the City to determine the minimum allowable development in ESHA is not in the LCP. This methodology must be clearly defined and subject to public comment.

Chapter 18 – On-Site Wastewater Disposal System Standards Ordinance

18.4 – Operating Permits for OSDSs

We strongly support the LIP requirement of operating permits for all new, expanded or modified OSDSs or for a change in the type or intensity of use for an existing OSDS. We suggest that in deference to the City's budget and personnel constraints, the City be provided an implementation period for this requirement. All new, expanded or modified OSDSs for commercial or ~~multi-family residential~~ uses, and for any OSDSs located in areas with impaired water quality and impaired beneficial uses, such as the Civic Center, Malibu Lagoon and Surfrider Beach, should be issued operating permits by 2004. These include commercial, multi-family residences and single-family residences. Remaining single-family residential OSDSs should be issued permits by 2007.

Part J of this section specifies which systems will require a standard operating permit (SOP) and which will require a renewable operating permit (ROP). This section states that SFR in areas of low environmental sensitivity will require an SOP, but does not specify the permit required for SFR in areas of high environmental sensitivity where discharges may affect surface water, groundwater, or other sensitive resources. Please clarify the permit required for SFR in areas of high environmental sensitivity.

18.6 – Wastewater Management Plan

We recognize that the City has already begun developing a wastewater management plan which may be largely consistent with the requirements in the draft LIP. The LIP should require that plan be submitted to the Commission for approval, and that

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updates to the plan be submitted every five years. In addition the LIP should require the City to provide annual progress reports on the further development and implementation of the WMP to the Commission.

18.9 – Maintenance, Operation and Monitoring

The new operating permits will require monitoring programs (Part A). Monitoring for effluent and its effects on receiving waters is crucial to detecting problematic systems and correcting the problems. The LIP should specify that monitoring must include the treatment system, and, where discharge may reach surface or groundwater, those receiving waters. Receiving water monitoring should be integrated with other programs, such as the Surface Water Ambient Monitoring Program (SWAMP) administered by the LA RWQCB and regional groundwater monitoring.

A plan for the education program required in Part B of this section should be submitted to the Commission every three years. A report and evaluation of the previous program and its effectiveness should be submitted at the same time.

Part E of this section addresses point-of-sale inspections. Point-of-sale inspections are essential for bringing all OSDSs into a management database. This is the best way for the City to develop such a database. Point-of-sale inspections will also insure that malfunctioning systems are detected and repaired at least when the property changes ownership. For existing systems, this may be the only time an inspection is conducted. Since the vast majority of the City's existing OSDSs serve single-family residential (SFR) uses, these properties must be included in this ordinance to ensure the majority of OSDSs are inspected and permitted. Many SFR properties in Malibu are near surface waters or groundwaters and will degrade water quality if they are not functioning properly. This ordinance is long overdue and must be enforced for all OSDSs.

Heal the Bay supports a strong Local Implementation Plan for the City of Malibu. We believe that with the modifications suggested above the Implementation Plan can achieve clean up of water quality problems and long-term protection of Malibu's coastal resources. If you have any questions about our comments please do not hesitate to call Shelley Luce at 310-453-0395 ext. 105.

Sincerely,

Shelley Luce
Staff Scientist

James Alamillo
Beach Report Card Manager

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MALIBU BAY COMPANY

July 9, 2002

Received at Commission Meeting
JUL 1 0 2002
From:

Sara Wan, Chair
And Coastal Commissioners
California Coastal Commission
85 California Street, Suite 200
Ventura, CA 93001

Re: Malibu Local Coastal Program ("LCP")

Dear Madam Chair and Members of the Commission:

The Malibu Bay Company ("MBC") is the owner of approximately 110 acres of undeveloped property on twelve separate parcels in the City of Malibu. MBC has previously submitted comments on the Draft Land Use Plan ("LUP") to the Coastal Commission and the designation and mapping of Environmental Sensitive Habitat Areas in the City of Malibu.

MBC and the City of Malibu are processing a development agreement regarding the future use and development intensity of its twelve properties. A draft environmental impact report analyzing the potential impacts of the development agreement will be circulated for public review within the next two months. We have discussed with your staff the key provisions of the development agreement, and the distribution of land uses that would be implemented under the development agreement if approved: open space dedication and preservation, limited residential and commercial development. The draft LCP does not reflect or anticipate the land uses that are contemplated under the development agreement. We believe that certain revisions should be made to the LCP at this time to facilitate and encourage landowners and cities to utilize this land use planning tool.

We have reviewed the revised Draft LUP and the Draft Local Implementation Plan ("LIP") prepared by Coastal Commission staff. We have prepared detailed comments, including suggested revisions to several of the draft policies, which are set forth in a matrix enclosed with this letter and request that our comments be considered as part of the Commission's deliberations and discussions on the Malibu LCP. Our comments are briefly summarized for you in this letter, and are as follows:

1. **Revisions to the LUP's ESHA Mapping.**

MBC has submitted site-specific jurisdictional delineations and habitat studies with respect to its Point Dume Property. The Point Dume property is proposed to be dedicated to the City and developed for active recreation uses under the proposed development agreement.

The Revised Draft LUP "ESHA and Marine Resources Map 2" designates two drainage/canyon areas on the site as ESHA. In our letter dated May 31, 2002, to Charles

Damm, California Coastal Commission, we addressed the ESHA designation on Point Dume and noted that this designation was based upon the County of Los Angeles' LUP map which designated these areas as ESHA under the mistaken assumption that the dark vegetation as viewed from aerial photographs represented oak woodlands. The County's map clearly labels this ESHA as an "oak woodland," despite the fact that the vegetation on this portion of Point Dume never included any "oak woodlands." Presently, the easterly drainage is vegetated with mulefat and willows in the northern reach, and eucalyptus trees in the southern reach. The westerly drainage is dominated by coyote bush.

Our biological consultant, Dr. Edith Read of PSOMAS, has met with Dr. Jon Allen of the Commission's Ventura office, on the Point Dume site to review the conclusions of the site-specific study. Both Drs. Read and Allen agreed with Dr. Read's vegetation mapping of the site. We have requested that vegetation mapping of these drainages be acknowledged by the Coastal Commission, and that – with the exception of the willow/mulefat area at the northern end of the easterly drainage – that these drainages be removed from the LUP ESHA map as they do not currently or have in the past contained habitat that meet the criteria for ESHA as described in the Coastal Act, or the draft Malibu LUP.

Section 3.7 of the Revised Draft LUP provides a process to revise the LUP ESHA Map if areas previously mapped as ESHA no longer contain habitat that meets the definition of ESHA. MBC has completed these site-specific studies, and because of the work that has been performed to date and consultation with Coastal Commission staff, MBC believes that it is entirely appropriate at this time for the Commission to revise the LUP ESHA map to remove all but the willow/mulefat area in the easterly drainage from the map, and not defer this decision to a later date.

2. **ESHA and Wetlands Protection.**

The Revised Draft LUP includes two policies that require clarification to provide landowners with appropriate notice and due process with respect to biological conditions on their properties. Policy 3.6 states that any area mapped as ESHA shall not be deprived of protection as ESHA on the basis that "the habitat has been illegally removed, degraded or species of concern have been eliminated." The Revised Draft LUP adds a new Policy 3.80a that mirrors this provision with respect to any wetland area mapped as ESHA or otherwise determined to have previously been wetlands, and provides that these areas not be deprived of protection on the basis that "the habitat has been illegally removed, filled, degraded, or that species of concern have been eliminated." First, Policy 3.6 should only apply to those areas that have been mapped as ESHA under maps adopted by the Coastal Commission and City as part of the Malibu LCP process so that landowners are provided with reasonable notice that their property contains a mapped ESHA. In addition, the protection should only apply to those areas which contained the mapped habitat at the time of designation. (Note

previously the situation described at Point Dume where the mapped oak woodlands habitat was never present on the property. The landowner should not be required to protect oak woodlands, if such an area never existed.) With respect to Policy 3.80a, the determination that an area was a wetlands must also have been made by an agency with jurisdiction to render such a determination, such as the U.S. Army Corps of Engineers or the Coastal Commission. Finally, it should be clarified that the protections afforded by these provisions do not apply to conditions that may have existed prior to enactment of the California Coastal Act or the Clean Water Act. Our suggested revisions to these two policies are set forth in the enclosed matrix of our comments on the LUP.

3. **Trancas Canyon Trail Designation.**

The Revised Draft LUP "Park Land Map 1" appears to designate a "Trancas Canyon Trail" on the MBC's residentially-zoned property adjacent to Pacific Coast Highway. This property has been fenced for over twelve years, and no public access over the property exists, including prescriptive easements. In response to our repeated requests, Coastal Commission staff has been unable to determine the exact location of the trail. We request that before the LCP certified, the exact location of this trail should be established. The mapping should clarify that it is not on private property, but located along or on Trancas Canyon Road.

4. **Public Viewing Area on Chili Cook Off.**

The Revised Draft LUP "Scenic Resources Map 3" designates a public viewing area on MBC's Chili Cook off property located in the Civic Center area. We reiterate our request that the Scenic Resources Map be revised to remove the public viewing area designation from this property.

We also request that LIP policy 6.5 be clarified so that it does not unreasonably restrict development both public and private development within the Civic Center area which may be visible from a public viewing area. As currently drafted, this policy can be interpreted to prohibit or severely restrict any new development which is visible from a scenic road, such as Pacific Coast Highway, or a public viewing area. Our suggested revisions to LIP policy 6.5 and LUP policy 6.5 are set forth in the enclosed LUP and LIP comment matrices.

5. **Infill Development.**

The Draft LIP includes a definition of infill development that limits application of this planning concept to single lots. This definition fails to recognize that there may be situations in which undeveloped lots are surrounded by existing residential or commercial development, adjacent to developed streets and highways, and for which public services either are or can be easily connected. These areas should be given special consideration

under the LCP. Our suggested revision to the LIP's definition of "infill" is set forth in the enclosed matrix of our comments on the LIP.

6. **Visitor Serving Uses in the Civic Center Area.**

MBC's Chili Cook-off Site in the Civic Center Area is currently zoned CG or General Commercial. Although the Coastal Commission staff indicated a general reluctance to change the City's current zoning designations for most properties, the LUP Zoning Maps change the zoning of the Chili Cook-off Site from CG to CV-1. LIP Section 3.3.J states that the purpose of the CV-1 district is "to provide for visitor serving uses, including motels and bed and breakfast inns, which serve visitors and residents that are designed to be consistent with the rural character and natural environmental setting." This property is located in the heart of the Civic Center area on Pacific Coast Highway and is surrounded by commercial, institutional, and visitor-serving (retail/restaurant) uses. It is hardly an area that would be considered rural or within an unique natural environmental setting requiring preservation.

Under the draft MBC/City development agreement, the Chili Cook-off Site is proposed for a mix of retail and commercial uses which will provide services for visitors and residents, including restaurants, retail establishments, limited office space and a civic arts plaza that will include an amphitheater and movie theater. The current table of permitted uses within this zone would not permit development of the amphitheater and movie theater. MBC requests that Table B be revised to permit these uses within the CV-1 zone in the Civic Center area only because of the central role (both geographically and functionally) the Civic Center area plays for the City of Malibu. These facilities will serve both visitors and residents of the City and will provide a gathering place for municipal ~~and regional~~ events that will attract visitors to the area. Certified Local Coastal Programs for other coastal cities, such as Laguna Beach, include theaters within its Commercial/Tourist Corridor (i.e., visitor-serving use area). MBC believes that these facilities provide a visitor-serving use and that the requested revision to Table B would be entirely consistent with prior Coastal Commission LCP certification decisions. In addition to the amphitheater, the Chili Cook-off Site is proposed to be developed with a number of open space amenities that would be attractive to visitors coming to this area, and these open space areas should be encouraged and included as visitor-serving uses.

In addition to designating movie theaters as a permitted use within the CV-1 zone, we also have suggested other revisions to Table B in the enclosed LIP comment matrix which include a request that a designation for general retail uses by added, and that certain service-oriented uses (such as dry cleaners, bakeries and banks) be permitted on the ground floor of a building. Finally, we have suggested a revision to the land uses allowed within the CV-1 zone in both Table B and LIP Chapter 3 that would establish a cap on General Commercial uses that could be developed within the CV-1 zone in the Civic Center area only.

7. **Malibu Bay Company Development Agreement.**

We request that the Commission consider revising its LCP policies to recognize and facilitate the use of development agreements. While the Commission staff has made some revisions to sections to recognize development agreements, there are other sections which should also be similarly revised. In addition, we wish to comment on and oppose the inclusion of LIP Policy 12.10.J as it affects development of some of the commercial uses contemplated under our development agreement. This policy would require all new non-visitor serving commercial development or office building development to pay a $1.50 per gross square foot fee to fund construction and maintenance of new public beach accessways in the City. We do not believe that the Commission staff has demonstrated a sufficient nexus to justify the imposition of this fee applicable to all commercial and office building development. There has been no evidence provided to support a finding that all commercial and office building development so burdens or hampers the ability of the City to provide beach access that blanket fee is required to alleviate this impact. This fee should only be applied where there has been a finding based upon substantial evidence that the proposed development creates a significant impact on public access which is not mitigated by the project, should this fee be used to mitigate that impact. Our comments and suggested revisions are set forth in the enclosed LIP comment matrix.

We appreciate your consideration of our comments, and would be happy to provide additional information or clarification upon your request.

Very truly yours,

David Reznick
Malibu Bay Company

Enclosures: LUP Comment Matrix
LIP Comment Matrix

Cc: Charles Damm
Gary Timm
Dr. Jon Allen
Katie E. Lichtig, City Manager

MALIBU BAY COMPANY COMMENTS

REVISED DRAFT CITY OF MALIBU LAND USE PLAN (LUP)

JUNE 2002 DRAFT

Topics and Issue	Policy No./ Page No.	Comment and Suggested Revision
ESHA Protection	Policy 3.6, Page 50	This policy provides protection for any area mapped as ESHA on the basis that the habitat was illegally removed or degraded, or that species of concern have been eliminated. Clarification should be provided to reference that mapping refers to maps adopted and made a part of the certified Malibu LCP; that the area mapped as an ESHA has been confirmed through the LUP process to constitute an ESHA; that the word "illegal" should be changed to "unpermitted;" that the term "degraded" should be omitted because degradation could occur through indirect, off-site impacts or through natural causes (e.g., invasion of exotics) which do not require a permit and are not under the control of the landowner; and that the elimination of the species of concern must be as a result of a deliberate, unpermitted act, and not because of changes brought about by natural forces. **Suggested revision:** Any area mapped as ESHA in the certified LCP and subject to verification as an ESHA pursuant to the procedures outlined in this LUP, shall not be deprived of protection as ESHA, as required by the policies and provision of the LCP, on the basis that the habitat has been ~~illegally~~ removed~~, degraded,~~ without a permit(s) issued by the governmental agency(ies) with regulatory authority over the ESHA, or species of concern have been eliminated as a result of the unpermitted activity.
Wetlands Protection	Policy 3.80a, Page 65	This policy provides protection for any wetland area mapped as ESHA "or otherwise determined to have previously been wetlands" on the basis that the wetland was illegally removed or degraded, or that species of concern have been eliminated. Clarification should be provided to reference that mapping refers to maps adopted by the City as part of its General Plan, or the ESHA maps that are a part of the certified Malibu LCP; that the determination that an area is a wetland was made by a governmental agency with regulatory authority over the wetland; that the word "illegal" should be changed to "unpermitted;" that the term "degraded" be omitted as degradation can occur through indirect, offsite impacts or through natural forces (e.g., invasion of exotics) which do not require a permit and are not under the control of the landowner; and that the elimination of the species of concern must be as a result of a deliberate, unpermitted act, and not because of changes brought about by natural forces. **Suggested revision:** Any wetland area mapped as ESHA in the certified LCP or the City's General Plan, or otherwise determined to have previously been wetlands by the U.S. Army Corps of Engineers or the California Coastal Commission pursuant to the Clean Water Act or the California Coastal

Topics and Issue	Policy No./ Page No.	Comment and Suggested Revision
		Act, shall not be deprived of protection as required by the policies and provision of the LCP, on the basis that the habitat has been ~~illegally~~ removed or filled without a permit(s) issued by the governmental agency(ies) with regulatory authority over the wetland, ~~degraded,~~ or species of concern have been eliminated as a result of the unpermitted activity.
Scenic and Visual Resources	Policy 6.5, Page 116	Policy 6.5 does not allow for consideration of unique circumstances such as infill areas in which the development, although visible from a scenic road, does not impair the viewshed and is located in within an area surrounded by development. **Suggested revisions:** For residential development, the maximum allowable development (including the building pad and all graded slopes, if any, as well as any permitted structures) ~~for residential development~~ shall be limited to 10,000 square feet or 25 percent of the parcel size, whichever is less on sites visible from scenic roads or public viewing areas, or on slopes over 3:1. The maximum development area shall be further restricted if necessary to protect visual or other sensitive resources. The limitation on square footage or percent of parcel size shall not be applicable to infill development as defined in the LCP Local Implementation Plan. All permitted structures shall be located within the approved development area. The maximum allowable development area for commercial development shall be restricted by the maximum floor area ratio, unless otherwise increased through approval of a development agreement, specific plan or planned development. This policy shall not apply to ocean side parcels subject to policy 6.18.
ESHA Designation	ESHA and Marine Resources Map 2	A site-specific study has been prepared and reviewed with Coastal Commission staff (including a site visit). There is no disagreement regarding the vegetation and habitat mapping of the site. The vegetation present on site does not meet the criteria for ESHA designation. **Suggested revision:** Revise map to remove the ESHA designation from the westerly drainage of Point Dume, and the southerly reach of the easterly drainage of Point Dume that is vegetated by eucalyptus.
Scenic and Visual Resources	Scenic Resources Map 3	The LUP Scenic Resources Map 3 designates a public viewing area on the Malibu Bay Company's "Chili Cookoff" site. There are other available public properties within the Civic Center area that can provide a public viewing area. **Suggested revision:** Delete public viewing area designation from the Chili Cook off site.
Public Access and Recreation	Park Land Map 1	The map shows a "Trancas Canyon Trail," but its location has not been clearly established as to whether it is located private property or within or adjacent to a public road. **Suggested revision:** Revise the map to clearly designate the location of the Trancas Canyon Trail as being within the public right-of-way or immediately adjacent to Trancas Canyon Trail, and not on private property.

MALIBU BAY COMPANY COMMENTS
CITY OF MALIBU LOCAL IMPLEMENTATION PLAN (LIP)
JUNE 2002 DRAFT

Topic and Issue	Policy No./ Page No.	Comment and Suggested Revision
Definitions: Aggrieved Person	2.1, Page 3	The current definition of "aggrieved person" is overly broad in that it would not require the individual to either submit in writing or present orally his/her concerns. **Suggested revision:** AGGRIEVED PERSON – any person who, in person or through a representative, appeared at a public hearing of the City of Malibu or the California Coastal Commission in connection with the decision or action on a Coastal Development Permit application, ~~or who, by other appropriate means~~ and orally presented to the hearing body his/her concerns regarding the proposed action, or who submitted in writing its concerns regarding the proposed action prior to a hearing before ~~informed~~ the City of Malibu or the California Coastal Commission ~~of the nature of his/her concerns or who for good cause was unable to do either~~. "Aggrieved person" includes the applicant for a Coastal Development Permit.
Definitions: Infill Lot	2.1, Page 15	The current definition section only defines "Infill Lot, Residential Zone" and applies the term "Infill Development" to construction of a single-family dwelling and/or duplex within an existing, geographically definable residential community which is largely developed or built out with similar structures. This does not permit consideration of development on more than one lot which is an infill property or development in an urbanized area (e.g., commercial) that is also surrounded by existing developed areas. **Suggested revision:** INFILL LOTS, ~~RESIDENTIAL ZONE~~ -. . . . [Add the following to the end of the definition] The term "Infill Development" may also be applied to (1) residential development of more than one lot, but less than 15, or (2) non-residentially zoned properties, and only if the property described in (1) or (2) is located between an existing road and other developed properties, and for which roads and services are already existing and available to serve the already-developed surrounding uses.
CV-1 Zone; Allowed Uses	3.3.J.3., Pages 42-43	Because of its location, the Civic Center area of the City serves a number of purposes for residents and visitors to the City. Therefore, the range of retail, commercial and visitor-servings uses permitted within this area should be broad enough to ensure that all of the uses, functions and facilities that are anticipated and planned for the Civic Center Area can be accommodated. **Suggested revision:** Revise the last paragraph in Policy 3.3.J.3, Lot Development Criteria to read: In addition to the regulations contained in this Chapter, all uses in the CV-1District shall be subject to the applicable

Topic and Issue	Policy No./ Page No.	Comment and Suggested Revision
		standards specified in the Malibu Local Implementation Plan. A maximum of 60% of a CV-1 zoned area in the Civic Center area can be developed with uses allowed in the CG zone, subject to the permit requirements and applicable standards for those uses as set forth in the Malibu Local Implementation Plan.
Commercial Development Standards – Include Development Agreement	3.8.A.4.a. (Site Development Criteria), Page 76	The current provision addresses planned developments, does not specifically identify development agreements or specific plans as vehicles to provide additional square footage. **Suggested revision:** [Revise the last sentence of this policy to read:] a. . . . Additional square footage for commercial development located in the Civic Center area may be approved, ~~up to the maximum allowed for the parcel under the Land Use Plan~~, only if it is included as part of a planned development, specific plan, development agreement, or other comprehensive plan. ~~A approved as a~~ Local Coastal Program amendment certified by the California Coastal Commission is required if the additional square footage exceeds the maximum allowed for the parcel under the certified LCP.
ESHA Overlay, Supplemental Application Requirement, DFG Approvals	4.4.1, Page 123	This provision requires applications for new development on sites containing or adjacent to a stream or wetland to include evidence of preliminary approval from the California Department of Fish and Game. There are two problems with this provision as drafted. First, the California Department of Fish and Game only regulates streams, lakes and other watercourses within its jurisdiction; it does not regulate wetlands. Second, the Department of Fish and Game is subject to CEQA; therefore, it will not grant preliminary approval absent CEQA documentation which would not be prepared prior to submitting an application for new development. Granting any form of "preliminary approval" could subject the Department to a CEQA challenge that it has precommitted to a decision without proper CEQA analysis. **Suggested revision:** 4.4.1. California Department of Fish and Game. Applications for new development on sites containing or adjacent to ~~a stream or wetland~~ jurisdictional streamcourses or watercourses shall include evidence of ~~preliminary approval from~~ preapplication consultation with the California Department of Fish and Game."
Scenic and Visual Protection; Development Standards	6.5.A., Page 142	Policy 6.5.A is unduly restrictive for properties within the Civic Center Area. Scenic Resources Map 3 designates a "public viewing area" on the Chili Cook Off site in the Civic Center area. Included within the Chili Cookoff property's viewshed are the City Hall complex and other properties proposed (and zoned under the LCP) for commercial development. Application of this policy could prohibit or restrict development of those commercially zoned areas or expansion/reconstruction of City Hall. **Suggested revisions:** 1. New residential development shall not be visible from scenic areas, scenic roads or public viewing areas to the maximum extent feasible. If there is no feasible building site location on the proposed project site where development would not be visible, then the developments shall be sited

Topic and Issue	Policy No./ Page No.	Comment and Suggested Revision
		and designed to minimize impacts on scenic highways or public viewing areas, through measures including, but not limited to, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming. For non-residential zoned properties within the Civic Center area, new development should minimize viewshed impacts to the maximum extent feasible through measures such as landscaping, clustering, and bulk limitations. 2. For residential development, w~~W~~here 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 and in no case shall the maximum development area (including the building pad and all graded slopes, if any, as well as any permitted structures) ~~for residential development~~ exceed 10,000 square feet or 25 percent of the parcel size, whichever is less. The limitation on square footage or percent of parcel size shall not be applicable to infill development. All permitted structures shall be located within the approved development area. The maximum allowable development area for commercial development shall be restricted by the maximum floor area ratio, unless otherwise increased through approval of a development agreement, specific plan or planned development. This policy shall not apply to new development on parcels located on the ocean side of Pacific Coast Highway as provided in Section 6.5.E. (Ocean Views).
Public Access; Fee on Commercial Development	12.10.J., Page 203	All new non-visitor serving commercial development or office building development shall be conditioned to require the applicant to pay a fee into a Mountains Recreation and Conservation Authority Fund to finance construction and maintenance of new public beach accessways in the City. The amount of the fee is $1.50 per gross square foot of the structure. The fee should only be applied where a nexus between the proposed development and a significant impact on access has been found based upon substantial evidence in the record, and the impact on public access has not been otherwise mitigated through provisions of on-site beach access or means. **Suggested revision:** A. Where the City finds, based upon substantial evidence in the record that a proposed ~~Approval of~~ new non-visitor serving commercial development or office building development creates a significant, unmitigated impact on public access, the development shall be conditioned to require that, prior to issuance of the coastal development permit, the applicant shall pay a fee into a fund maintained by the Mountains Recreation and Conservation Authority (MRCA) to finance construction and maintenance of new public beach accessways in the City of Malibu. The amount of the in-lieu fee shall be $1.50 per gross square foot of the structure.
Development Agreements	13.27.1, Page 239	This policy requires that all development agreements be processed as amendments to the LCP, and that approval by the City Council of a development agreement cannot take effect until and unless certified by the Coastal Commission as an amendment to the LCP. This provision conflicts with

Topic and Issue	Policy No./ Page No.	Comment and Suggested Revision
		state law (Government Code Section 65869 which permits a city to enter into a development agreement and that development agreement to be in effect if an LCP has been certified for that city. In those instances, Coastal Commission approval of the development agreement is not required. A development agreement or an amendment to a development agreement that is consistent with the LCP and which requires no changes to the LCP should not be required to obtain Coastal Commission approval. **Suggested revision:** 13.27.1 Applicability. Upon approval by the City Council, a development agreement shall be applicable to any development project located within the area covered by the certified LCP. Development Agreements for development projects which require either a General Plan Amendment or Zone Change shall be processed as Amendments to the Local Coastal Program consistent with procedures in Chapter 19 of this ordinance. Approval by the Council of a development agreement that is not consistent with the LCP, shall be by ordinance and shall not take effect until and unless certified by the California Coastal Commission as an amendment to the LCP. . . .
Development Agreements	13.27.6., Page 240	This policy would require amendments or cancellations of development agreements to be certified by the Coastal Commission. First, if the amendment is consistent with the LCP, it should not require Coastal Commission certification. The Coastal Commission is not a party to the agreement and its approval of an amendment that is consistent with the LCP should not be required. Second, cancellation of a development agreement should not require Coastal Commission approval as the Coastal Commission is not a party to the development agreement and the cancellation determination should be made by the parties to the development agreement (i.e., City and developer), not the Coastal Commission. **Suggested revision:** 13.27.6 Amendment or Cancellation An application ~~to amend or~~ to cancel in whole or in part a development agreement may be made by mutual consent of all parties to the agreement or their successors in interest. An application to amend in whole or in part a development agreement may be made by mutual consent of all parties to the agreement or their successors in interest and shall be submitted and processed consistent with Chapter 19 as LCP Amendment only if the amendment is not consistent with the LCP.
Retail Uses	Table B	There is no designation provided for general retail uses such as clothing stores that do not sell visitor-oriented clothes. **Suggested revision:** A category of use termed "General Retail" should be added to the CG, CN, CC and CV zones.
General Services and Office/Health Uses (2nd floor restriction)	Table B	Certain service-oriented, retail businesses which provide services for visitors are restricted to second story (or above) spaces in the CV-1 and CV-2 zones. These services include bakeries, barbershops and beauty salons, dry cleaners, and banks. As they provide services utilized by the public,

Topic and Issue	Policy No./ Page No.	Comment and Suggested Revision
		including visitors and residents alike, the upper story limitation should be removed from Table B. **Suggested revision:** Delete Footnote 4 from all of the uses listed under General Services, and the Banks/financial service use under Office/Health Uses within the CV-1 and CV-2 zones.
Dining, Drinking and Entertainment (Movie Theaters)	Table B	Movie theaters are not permitted in the CV-1 and CV-2 zones. This is a use that is patronized by both visitors and residents and should be permitted within the CV zones. Many other certified LCPs for coastal cities include movie theaters as a permitted use in the equivalent of the visitor-serving zone as its provides an amenity for visitors and provides evening entertainment for longer-stay visitors. The current Table B encourages visitor-serving uses for primarily day-use visitors, and does not encourage visitor-serving uses for longer-stay visitors. The range of uses should be expanded to include uses that can be patronized by longer-stay visitors, and not just day-use visitors. **Suggested revision:** Under the Dining, Drinking and Entertainment Uses in Table B, replace the bullet (not permitted designation) with "CUP" under CV-1 and CV-2 for movie theaters.
Retail, General Services, Office/Health Uses, Dining, Drinking and Entertainment in CV-1	Table B	Because of its location, the Civic Center area of the City serves a number of purposes for residents and visitors to the City. Therefore, the range of retail, commercial and visitor-servings uses permitted within this area should be broad enough to ensure that all of the uses, functions and facilities that are anticipated and planned for the Civic Center Area can be accommodated. **Suggested revision:** Add a new footnote 11 to the CV-1 column heading on the first page of Table B, and add the following text to footnote 11 on the last page of Table B: A maximum of 60% of a CV-1 zoned area in the Civic Center area can be developed with uses allowed in the CG zone, subject to the permit requirements and applicable standards for those uses as set forth in the Malibu Local Implementation Plan.

10 A

TAXPAYERS FOR LIVABLE COMMUNITIES

A NON-PROFIT PUBLIC BENEFIT CORPORATION

July 10, 2002

Received at Commission Meeting

JUL 1 0 2002

From:_____

Hon. Members of the California Coastal Commission
C/O Gary Timm
89 South California Street
Suite 200
Ventura, CA 93001

Good Morning (Afternoon) Commissioners:

I too am speaking to you on behalf Taxpayers For Livable Communities ("TLC"). There is scientific support for coastal commission's ESHA policies.

An initial review of the scientific literature completed long before AB988 regarding the issue of "***connectivity***" underlying the broad definition of ESHA has turned up a number of independent sources of support. Thus, it cannot gainfully be said that there is no scientific support for the theoretical underpinnings provided for the ESHA policies proposed by Dr. J. Allen.

In a paper authored by Richard D. Hunter, Robert N. Fisher, and Kevin R. Crooks, none of whom has any association with either the Coastal Commission or with the City of Malibu, the following general principals were observed:

1. Citing Wilcove,1998: "*Habitat fragmentation has been targeted as* ***one of the most serious threats to biological diversity worldwide.***" Citing Soulé, 1991: "*in areas with increasing urbanization, fragmentation is virtually inevitable.*" Citing McCaull 1994: "*Mediterranean scrub habitats are particularly threatened; development over the past century*

[illegible] PCH Box [illegible], Malibu, California [illegible] or contact us by email at TLCnetwork@earthlink.net

has destroyed all but 10% of native coastal sage scrub habitat."

2. Citing Noss 1983, Harris 1984, Wilcox and Murphy 1985, Terborgh and Soulé, 1999: "*The severe effects of habitat fragmentation on the composition, structure, and function of ecosystems have made a compelling case for preserving existing, and restoring severed habitat connections within fragmenting landscapes.*" Citing Noss, 1983, Noss and Cooperrider, 1994, and Terborgh and Soulé, 1999: "*Landscape-level connectivity is essential to allow for the natural movement of animals among foraging and breeding sites, the dispersal of individuals from natal ranges, genetic exchange between populations, natural range shifts in response to climate change and the continuity of ecological processes such as hydrology, succession, and seed dispersal.*"

3. Hunter, Fisher, and Crooks concluded: "*Where connectivity is not retained across developing landscapes, many plant and animal populations will eventually disappear.*"

4. The impact on birds caused by habitat fragmentation was analyzed in a separate and equally independent study by Soule, Bolger, Alberts, Wright, Sorice, and Hill (1988) entitled *Reconstructed Dynamics of Rapid Extinctions of Chaparral Requiring Birds in Urban Habitat Islands. Conservation Biology: 2(1) 75-92.* These scientists concluded: "*Mediterranean Scrub Habitats when fragmented have higher extinction rates than other temperate zone communities.*" Fragmentation has been shown to lead to the extinction

of chaparral requiring birds ~~some of which are present~~ in the Santa Monica Mountains and Malibu. . . . .

5. They also concluded that for some birds: "*Narrow strips of connecting vegetation can act as vitally important corridors for chaparral requiring species. Some are able to take advantage of 1-meter wide strips to move from fragment to fragment.*"

By all appearances the work of these and other independent scientists clearly provides scientific support for Dr. Allen's analysis and the broad ESHA program proposed by the Commission.

Respectfully submitted,

On behalf of TLC

23850 PCH Box 283, Malibu, California 90265 or contact us by email at TLCnetwork@earthlink.net

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

Received at Commission Meeting

JUL 1 0 2002

From:_____

July 3, 2002

To: California Coastal Commissioners
and Other Interested Persons

From: David C. Cowardin, Section Head
Community Studies II Section

SUBJECT: COMMENTS ON PROPOSED MODIFICATIONS TO THE PROPOSED CITY OF MALIBU LOCAL COASTAL PROGRAM
AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Thank you for the opportunity to review and comment on the revised City of Malibu draft Local Coastal Program Land Use Plan, dated June, 2002, and the recommended modifications to the draft Local Implementation Plan dated June 11, 2002, prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The following comments, as well as those in the attached letters that were previously forwarded to the Commission and to Commission staff, are intended to convey the Department's position on policy content of the City's LCP.

LAND USE PLAN

Chapter 3 – Marine and Land Resources

Language added to various policies relating to Environmentally Sensitive Habitat Areas (ESHAs) creates inconsistencies in the intent of these development standards.

3.7 The additional language is not consistent with the original wording of the body of the policy. It would appear that the new language "If an area is not ESHA ..." is really equivalent to the existing language "... if the area in question should no longer be considered ESHA ...." Therefore, we believe that any change to the ESHA boundary requires an LCP amendment.

3.10, 3.11, 3.12, etc.

Simplifying these policies only represents minor tinkering with a flawed concept; that is, permitting non-resource dependent development in ESHA. The County sees this as a violation of the Coastal Act and cannot support these and other policies on the same subject in the LUP.

3.26b Taken alone, the plain language of this provision and its treatment of fuel modification zones is a reasonable protection for ESHA. However, in the context of other provisions that permit non-resource dependent uses in ESHA, implementation of 3.26b would create a contradiction whereby "buffers" could become more restrictive than ESHA.

3.42 Land divisions should still be "consistent with all the policies of the LUP," language that has been omitted.

LOCAL IMPLEMENTATION PLAN

Chapter 4 – ESHA Overlay

Two areas have been added without explanation to the list of habitats considered ESHA. Concurrently, more intense development is allowed in coastal sage scrub (recognized by the state as endangered) and in chaparral (treated by the Coastal Commission as significant) ESHA. This diminishes the importance of coastal sage scrub and brings into question the extraordinary treatment given to chaparral.

4.3.B ESHA DETERMINATION - Added:

1. **Designated Area of Special Biological Significance, or Marine Protected Area** – These areas are not defined, and no criteria are provided to make a determination as to their location or extent.

The Department of Regional Planning requests that this letter be made a part of the official record for the City of Malibu Local Coastal Program and that the Commission consider the points that are described above. The Department's concerns regarding the draft LIP are consistent with some of the issues described in our previous letter to Mr. Gary Timm dated December 31, 2001, relating to the Commission's proposed draft Land Use Plan for the City of Malibu, as well our letter to you dated June 26, 2002, relating to the proposed LIP. These letters are attached for your reference. If you have any questions regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

DCC:GMN:SMT

Attachments

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

COPIES FOR COMMISSIONERS

December 31, 2001

Mr. Gary Timm
California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

SUBJECT: DRAFT City of Malibu Land Use Plan

We would like to provide additional comments on the Draft City of Malibu Local Coastal Program Land Use Plan (LUP). This letter incorporates the concerns of Dr. Daryl Koutnik, Senior Biologist, and supplements our previous letter to you dated October 25, 2001. There are aspects of the draft plan related to environmentally sensitive habitat areas (ESHAs) that we believe should be revised; detailed comments related to this issue are attached. We will address three aspects of the ESHA policies: 1) Many of the proposed ESHAs do not meet the Coastal Act definition, 2) An alternative approach to protecting coastal resources exists that would address your staff ecologist's concerns, and 3) The Coastal Act allows only resource dependent uses in ESHAs. We are especially concerned with these policies because sections of the LUP staff report include the Santa Monica Mountains portion of the coastal zone in its analysis. The inclusion of some of these ESHA concepts in the unincorporated area would be inappropriate.

ESHA Designation

Your staff's proposal regarding ESHAs is a dramatic change from the way ESHAs are depicted on the 1986 certified LUP for Malibu and the Santa Monica Mountains. In the 1986 LUP, limited areas of wetlands, streams, riparian corridors and selected oak woodlands were designated as ESHAs on the "Sensitive Environmental Resources" map. (See attached Figures 1-4) These are the types of areas that are identified in your staff report as "clearly ESHA." (Allen, J.C. 2001. Ecological Findings for Malibu. Staff Report, Draft City of Malibu Land Use Plan. Page 1.) Other important areas that did not meet the Coastal Act definition of ESHA were identified and given additional protection in the 1986 LUP. These areas include Significant Watersheds, Wildlife Corridors, Significant Oak Woodlands and Savannas, and the Malibu/Cold Creek Resource management Area.

We agree with the inclusion of wetlands, riparian areas and dunes as ESHA in the draft LUP. However, the ESHA maps accompanying the draft LUP indicate that most of Malibu's undeveloped land, which includes a variety of plant community types such as chaparral, coastal sage scrub, and coast live oak, has been placed in the ESHA category. Preservation of habitat connectivity and wildlife corridors is cited in the staff report as a main reason for designating such large areas as ESHA. (Ibid, 8-12) Although we agree that these are important factors to consider, we do not think that the ESHA designation is warranted or required to preserve habitat connectivity.

320 West Temple Street • Los Angeles, CA 90012 • 213 974-6411 Fax: 213 626-0434 • TDD: 213 617-2292

Development in ESHAs

Redefining ESHAs in a manner which so greatly expands their area is significant because, as stated in the staff report, "Development is never allowed within these habitats except for a small number of specified activities." (Ibid, 1) Section 30240 of the Coastal Act allows only resource dependent uses in ESHAs. The draft LUP also would prohibit new agricultural and confined animal uses in ESHAs. To expand ESHAs as proposed in the draft LUP would then prevent many individuals from engaging in these important, traditional aspects of the rural and recreation lifestyle of the mountains.

Associated with the extensive expansion of ESHAs proposed in the draft LUP is the issue of "takings," addressed in policies 3.9 and 3.10. These policies would allow some limited amount of development in an ESHA, which seems contrary to Coastal Act Sections 30240 and 30007.5. It also seems contrary to case law as cited in *Sierra Club v. California Coastal Commission (Mendocino County)* (12 Cal.App.4th 602), where the California Court of Appeal said: "The LUP in this case, for example, may provide significant habitat protection, but it allows non-resource-dependent (residential) development in violation of the Act." Further, the proposal to allow development in ESHAs is not addressed in the Summary of Ecological Findings prepared by your staff ecologist. It appears that in attempting to avoid future "takings" lawsuits prompted by the excessive designation of chaparral and other habitats as ESHAs, the LUP will be inconsistent with State law.

In conclusion, we believe the goal of protecting coastal resources can be achieved in a very effective fashion without designating all undeveloped land as ESHA, but instead using an approach similar to that taken when the Commission certified the County's LUP in 1986. Although you were not able to meet with us prior to the January 10, 2002 hearing, we would like the opportunity to work with your staff to resolve these and other issues in a mutually beneficial fashion so that the Local Coastal Programs for the City of Malibu and the unincorporated Santa Monica Mountains will be compatible and reflect the most effective way of achieving the goals of the Coastal Act.

Thank you for your consideration of our comments and suggestions. Please contact Gina M. Natoli or me at 213/974-6422 if you have any questions. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Ronald D. Hoffman
Supervising Regional Planner

RDH:GMN

Attachments

LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING
Additional Comments on the DRAFT City of Malibu Land Use Plan

Environmentally Sensitive Habitat Areas (ESHAs)

ESHA Map – The map is not "scientifically" based, but based chiefly on existing ground disturbance. ESHA criteria should be developed, and there should be more specific ESHA identification.

- The statement that the map will "change over time" makes the ESHA map a moving target. How would anyone know with certainty the status of a property?
- There are essentially no coastal resources identified as ESHA.

Policy 3.3 – This is too vague, too broad: what are the ESHA criteria? California Department of Fish and Game, not the California Native Plant Society (CNPS) listings of sensitive communities should be used.

Policy 3.4 – We agree with a five-year review of the ESHA map.

- Habitat restoration should not qualify as ESHA until it is successfully completed.

Policy 3.9-3.10 – These policies defeat the ESHA protections and are inconsistent with Section 30240 of the Coastal Act.

Policy 3.15 – Defining a "dune" ESHA seems to be redundant. All EHSAs are supposed to be protected along with other sensitive resources.

- Is the least tern known to nest in any locations within the City of Malibu?

Policy 3.16 – Unless sensitive habitat areas are identified, how can new vehicular uses be avoided within them? Are you using "sensitive habitat areas" interchangeably with "ESHAs?"

Policy 3.37 – What are the study criteria? Also, see comment on CNPS above. (Policy 3.3)

HABITAT

Page 37 - Does the Santa Monica Mountains dudleya occur within the Malibu boundary? What are the locations of the Santa Susana tarplant (Charmlee Park)?

Page 39 - Why have significant oak woodlands and significant watersheds been eliminated?

- Although important, chaparral is not designated as a sensitive habitat by California Fish & Game; this is also true for Venturan sage scrub and coast live oak woodland. (Neither are sensitive.) Last paragraph, "...use that is not consistent... will be permitted," defeats the purpose of the policy protections. Perhaps the ESHA boundaries should be drawn more practically.

Policy 3.2 – Several listed canyons are not "exceptional undisturbed habitats," i.e. Escondido and lower Trancas.

Policy 3.11 – Good as a method to provide development guidelines in ESHA and parkland buffers.

- The development standards are similar to those of the Significant Watershed category in Table 1 of the 1986 certified LUP: why, then, remove the resource category?

RECOMMENDED CHANGES

Policy 3.3 - Remove reference to the California Native Plant Society list, since it is not subject to public review. State and Federal lists should be used because they are subject to public review.

Policy 3.64 – An inventory of trees should be by species, not "type."

Policy 3.65 – Change "type" to species.

- The in-lieu fee should be based on International Society of Arborists value of removed tree.

Policy 3.67 – "Vacant land" implies that nothing is present, but natural vegetation and wildlife are present; "undeveloped land" is more accurate.

Policy 3.91 – A lagoon management plan should be left to State Parks and Recreation.

Policy 3.100 – The last sentence is not clear. Is a word missing?

Policy 3.104 - Washout areas should be more than fifty feet from riparian areas.

BIOLOGICAL RESOURCES

Policy 3.35 – There is no distinction between new development applications within or outside an ESHA for the biological inventory requirement. This requirement might be eliminated if more clearly defined ESHAs are provided.

Policy 3.37 – Need a more specific requirement than "a map depicting the location of biological resources" (e.g., vegetation map and constraints map or sensitive elements.)

- "Analysis of any unauthorized development" should include a time frame (i.e., post Coastal Act). New owners typically do not know a property's development history. Would this analysis include the presence of scrub habitats in non-native grassland if human-induced fire frequency were lessened to pre-European settlement of North America? Given the expansive coverage of the proposed ESHAs and their buffers, the policy will effectively be a full employment act for biologists and add a minimum of $10,000-$20,000 to the cost of a single-family residence. Are there any exemptions for additions to existing residences?

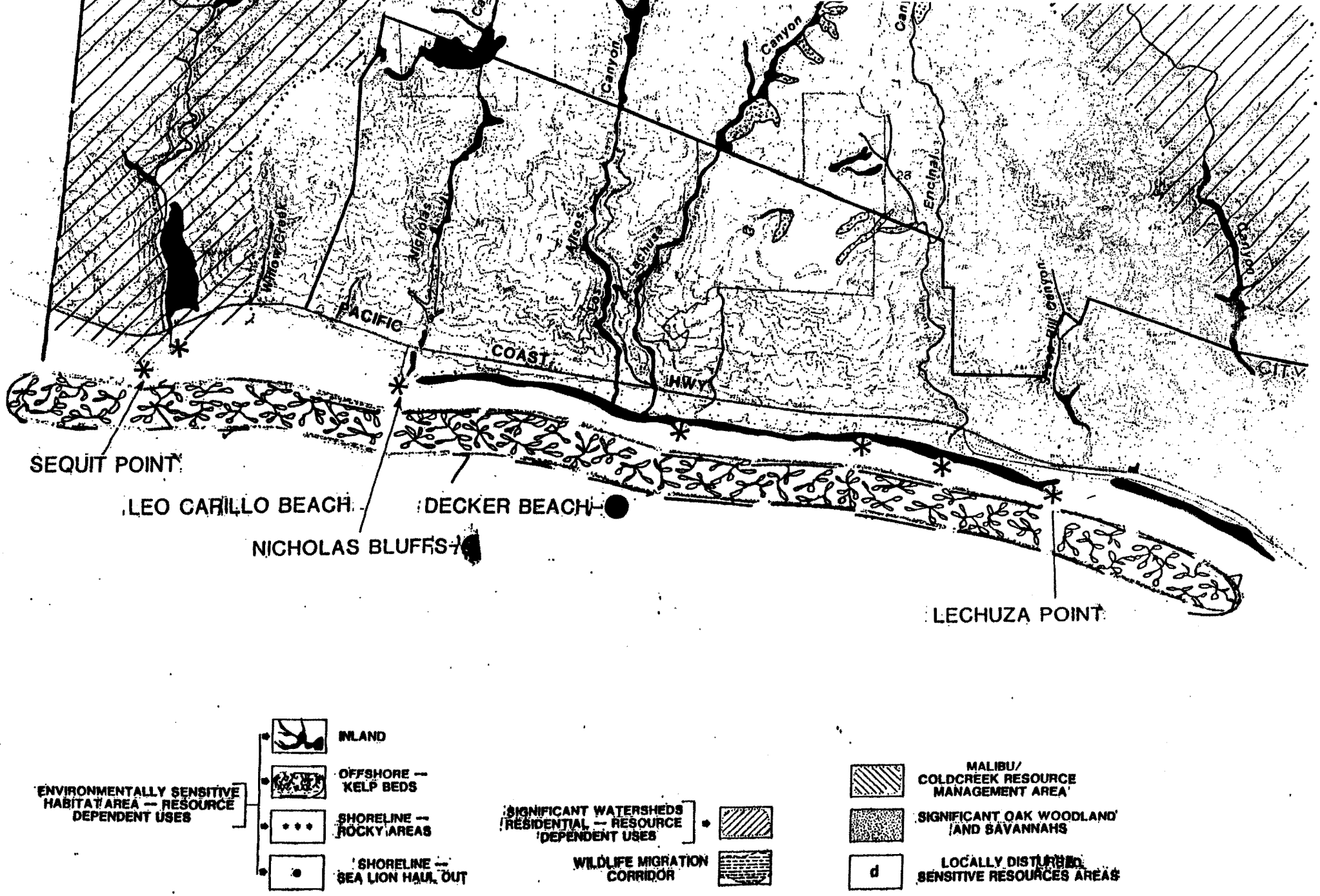
Policy 3.38 – Circular requirement: "ERB...to review...development...within or adjacent to ESHA," or if sensitive resources are identified by a biological study "pursuant to Policy 3.37," which applies within or adjacent to ESHA.

- First use of the term "Sensitive Environmental Resource Areas," but the term is not defined. Only ESHAs have been identified. "Sensitive Environmental Resource Areas: are identified and mapped in the 1986 certified LUP as Significant Watersheds, Significant Oak Woodlands, Wildlife Corridors, etc.

GENERAL DEFINITIONS

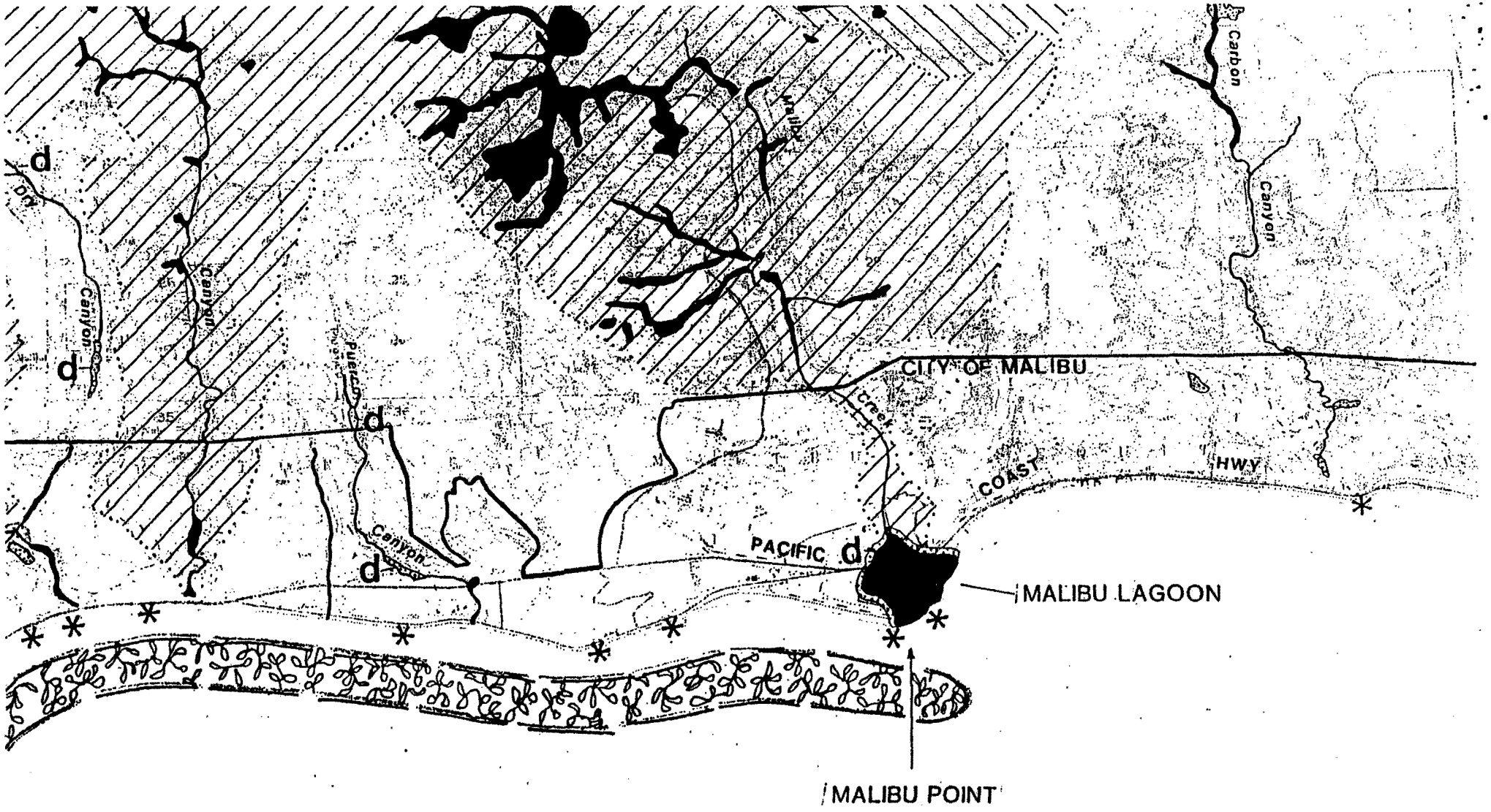
Policy 3.13 – The use of the term "significant impacts" has CEQA implications, but projects in the coastal zone that may have impacts to sensitive resources are not necessarily significant impacts under CEQA.

- "Fully mitigated" needs to be defined; is this mitigation in real terms or mitigation as determined by conditions of a development permit?



1986 Malibu LUP Sensitive Resource Areas

Figure 1



ENVIRONMENTALLY SENSITIVE HABITAT AREA -- RESOURCE DEPENDENT USES
- INLAND
- OFFSHORE -- KELP BEDS
- SHORELINE -- ROCKY AREAS
- SHORELINE -- SEA LION HAUL OUT

SIGNIFICANT WATERSHEDS RESIDENTIAL -- RESOURCE DEPENDENT USES

WILDLIFE MIGRATION CORRIDOR

MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

SIGNIFICANT OAK WOODLAND AND SAVANNAHS

d - LOCALLY DISTURBED SENSITIVE RESOURCES AREAS

1986 Malibu LUP Sensitive Resource Areas

Figure 3

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

June 26, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: COMMENTS ON THE PROPOSED LOCAL IMPLEMENTATION PLAN FOR CITY OF MALIBU LOCAL COASTAL PROGRAM AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Dear Chair Wan:

Thank you for the opportunity to review and comment on the City of Malibu draft Local Implementation Plan (LIP), prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The Department recognizes the great burden that the legislative mandate has placed on your staff to prepare a comprehensive program. It is also recognized that your staff was required to prepare and present a document to Malibu that included all issue areas considered by the Coastal Act, as well as other items of concern to the Commission.

These comments are intended to convey the Department's position on specific issues discussed in the LIP chapters, and are summarized for the Commission's consideration in the following paragraphs.

Chapter 3 – Zoning Designations and Development Standards
This chapter, together with Table B, addresses permitted uses and specific development standards for each zone district. Some uses that could be found compatible and appropriate with similar permitted uses are prohibited in certain zone districts (e.g., restaurants, health clubs and hotels are not allowed in the Commercial Recreation zone district). Certain standards are unclear or questionable, while other standards are very specific and could overlap with existing municipal code standards.

Table B — The following identifies some specific uses prohibited from compatible, appropriate zone districts:

PRIVATE RECREATIONAL FACILITIES ZONE DISTRICT: Equestrian riding and training facilities and activities including boarding of horses, domestic animals, etc.; Raising of horses and other agriculture-related animals; Boarding of animals as a commercial use; Restaurants; and Camping.

COMMERCIAL RECREATION ZONE DISTRICT: Plant nurseries; Restaurants; Visitor-oriented goods, such as recreational equipment and clothing; Health clubs; and Hotels.

4.8.A The only new development allowed in an ESHA should be resource dependent.

4.8.1.C.2 The in-lieu fee should be broadened to allow the funds to go to other State and Federal agencies that are property owners in the Santa Monica Mountains.

Chapter 6 – Scenic, Visual, and Hillside Resource Protection Ordinance
The provisions regulating types of night lighting seem overly restrictive in their prohibiting most types of lighting in residential areas.

6.5.G Parameters should be set for the specific types of night lighting prohibited in residential areas, as it could be interpreted that all lighting for all private recreational facilities, including swimming pools, and holiday decoration lighting would be prohibited.

Chapter 8 – Grading Ordinance
This chapter discusses controlling the amount of grading and landform alteration. However, when the amount is described as a finite amount, it must be appropriate and feasible.

8.3.B Setting the maximum grading (total cut and fill) amount to 1,000 cubic yards may be too small. It would be more feasible to minimize the ground disturbance in percentage relative to the size of the lot or development.

Chapter 9 – Hazards
Incorrect chapter references are confusing and should be corrected, as well as typographical errors throughout this chapter and draft Implementation Plan.

9.4.F Chapter 21 does not exist in the Local Implementation Plan document.

Chapter 13 – Coastal Development Permits
The provisions of this chapter generally follow the procedures contained in the California Code of Regulations. A number of typographic errors relating to section numbers make the chapter somewhat difficult to follow.

13.4.1.B.4 Fences should not be designated as significant non-attached structures.

13.4.2.C The September 5, 1978 letter should be included in an appendix.

13.4.8 The September 5, 1978 letter should be included in an appendix.

13.5.A(2) The meaning of this subsection is not clear.

13.6.4.B Lots created before the effective date of the Coastal Act should be exempt from this provision.

13.19 The Coastal Commission should not be involved in the review and approval of legal documents relating to public access and conservation/open space easements.

regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

David C. Cowardin
Section Head, Community Studies II Section

DCC:GMN:SMT

Attachment

cc: Laura Shell, Deputy, Third Supervisorial District

COASTAL CITIZENS FOR FAIR ZONING

Received at Commission Meeting

JUL 1 0 2002

From:_____

TO: **COASTAL COMMISSIONERS AND STAFF**
FROM: **COASTAL CITIZENS FOR FAIR ZONING**
July 10, 2002

Dear Commissioners,

We respectfully request that you answer the following questions and questions contained in the text in writing.

1) WHY IS THE COASTAL COMMISSION RECOMMENDING DEVELOPMENT BE PERMITTED IN ESHA? 2

2) DOES THE COMMISSION RECOGNIZE THE NEGATIVE AND UNINTENDED CONSEQUENCES OF DOWNZONING BEACHHOME NEIGHBORHOODS? 3

3) DOES THE COMMISSION INTEND TO FRUSTRATE THE INTENTION OF THE LEGISLATURE TO PROVIDE AFFORDABLE HOUSING IN THE STATE? 4

4) HOW DOES THE COASTAL COMMISSION EXPECT TO SUSTAIN LEGAL CHALLENGES TO THE LCP'S MITIGATION REQUIREMENTS? 5

5) DOES THE COMMISSION UNDERSTAND THAT THE EXTRAORDINARY COSTS OF IMPLEMENTING THE PLAN MAKE IT UNWORKABLE? 6

6) IS IT THE INTENTION OF THE COMMISSION TO PROHIBIT MULTIFAMILY HOUSING DEVELOPMENT IN MALIBU? 7

7) THE SCENIC RESOURCES ORDINANCE VIOLATES THE COASTAL ACT 8

8) DOES THE COMMISSION INTEND TO SUPERCEDE LA FIRE DEPARTMENT'S HEALTH & SAFETY STANDARDS FOR BRUSH CLEARANCE WITH THE LCP"S BRUSH CLEARANCE PROHIBITIONS?

9) L.I.P. TABLE B – PERMITTED USES ARE INCOMPATIBLE WITH THE HISTORIC USE PATTERNS OF MALIBU RESIDENTS IN INSTITUTIONAL AND COMMERCIAL ZONES. 10

10) DOES THE COMMISSION INTEND TO TRANSFER AN EVEN GREATER ADMINISTRATIVE BURDEN FROM THE CITY OF MALIBU TO THE COMMISSION STAFF? 12

COASTAL CITIZENS FOR FAIR ZONING

1) Why is the Coastal Commission recommending development be permitted in ESHA?

1. The Commission staff has made clear their intention to classify coastal scrub and chaparral as ESHA and has recommended a blanket ESHA designation for the City of Malibu with the statement in their discussion of the ESHA provisions of the Plan, "We recommend that the Commission find that the Santa Monica ecosystem is itself rare and especially valuable and that the functionally intact area of the constituent plant communities are especially valuable under the Coastal Act" . The staff's use of the "rare and especially valuable" ESHA definition language of Section 30107 of the Coastal Act suggests it is the staff's intention to prohibit development in the entire Santa Monica Mountains ecosystem The staff further recommends that "ANY HABITAT DESIGNATED AS RARE BY THE 'CALIFORNIA NATIVE PLANT SOCIETY'," of which there are listed 1,041 rare and endangered plants, be classified as ESHA. This is inappropriate as the society is a private organization with its own political and legislative agenda, including placing most of California's natives under the regulation of the FEDERAL 'ENDANGERED SPECIES ACT' .

The Commission is well aware of the 1999 Bolsa Chica court decision wherein the Court ruled that once an area is designated as ESHA, it cannot be developed for residential use and may only be developed with "resource dependent" uses. Do you recognize that the entire plan is violative of the Coastal Act by permitting residential use in ESHA zones and that the Commission does not have the legal jurisdiction to overrule the courts. Do you really believe it is the intention of the Legislature to prohibit the residential and agricultural use of vast areas of the Coast near urban centers especially when Section 30001 of the Coastal Act states "The Legislature finds tha existing developed uses and future developments that are carefully planned are essential to the economic and social well-being of the people of this state and especially working persons employed within the Coastal Zone."

If you believe that another agency has a view with a better scientific procedure, with peer review procedures for designating ESHA, there is no rush to judgement and you can adopt the City's 1986 ESHA Maps. Because many areas the staff has designated as ESHA are gated, and are private property, it is clear they could not have done site specific analyses. **Do you recognize that a neighbor can sue the City to prevent home building or remodeling in any of these areas and do you believe it is legal and moral for the owners to have to spend years in court proving their properties were incorrectly mapped? Do you believe that it is a responsible use of state funds for the state to be required to purchase thousands of fragmented parcels to prevent a taking? Is it is your intention to change the Coastal Act through local Ordinance by writing laws that defy the Coastal Act and permit development in ESHA, and if so, how can you legally do so. We would like an answer in writing. If it is your intention to comply with the Coastal Act and prohibit all development in ESHA, then write it in the LCP. In that case, we also ask that you write a plan for the state to purchase all of the properties that you have newly classified as ESHA.**

COASTAL CITIZENS FOR FAIR ZONING

2) Does the Commission recognize the negative and unintended consequences of downzoning beachhome neighborhoods?

2. THE COMMISSION HAS **DOWNZONED** BEACH UNITS ON PORTIONS OF MALIBU'S COAST FROM MULTI TO SINGLE FAMILY AND PROHIBITS THESE UNITS FROM BEING REBUILT IN THE CASE OF NATURAL DISASTER. WHILE THE LCP CITES PUBLIC RESOURCE CODE 30610 (G) (1) AS GRANTING AUTHORITY TO REQUIRE THAT DISASTER REBUILDS CONFORM TO CURRENT ZONING, WHY IS THE COMMISSION VIOLATING GOVERNMENT CODE 65852.25 (a) WHICH STATES "NO LOCAL AGENCY SHALL ENACT OR ENFORCE ANY ORDINANCE, REGULATION, OR RESOLUTION THAT WOULD PROHIBIT THE RECONSTRUCTION, RESTORATION, OR REBUILDING OF A MULTI-FAMILY DWELLING THAT IS INVOLUNTARILY DAMAGES OR DESTROYED BY FIRE, OTHER CATASTROPHIC EVEN, OR THE PUBLIC ENEMY."? FOR THOSE THAT MEET THE MIN 5000 SF LOT SIZE OF MFBF ZONING, HOW CAN YOU REQUIRE OWNERS PURCHASE A TRANSFER DEVELOPMENT CREDIT (WHICH RE QUIRES THE OWNER PURCHASE AND RETIRE A VACANT BUILDING LOT IN THE SANTA MONICA MOUNTAINS AND RETIRE ITS DEVELOPMENT RIGHTS) FOR EACH UNIT? THE AVERAGE COST OF A LOT IN THE SANTA MONICA MOUNTAINS IS OVER $300,000 ACCORDING TO A RECENT REVIEW OF THE MULTIPLE LISTING SERVICE, WITH ONLY A HANDFUL OF LOTS AVAILABLE FOR UNDER $50,000. SINCE A DISASTER REBUILD OF A MULTIFAMILY RESIDENCE DOES NOT CREATE NEW RESIDENTIAL LOTS, THE REQUIREMENT FOR TDC'S VIOLATES THE TDC PROVISIONS OF THE COASTAL ACT.

THE COURTS HAVE RULED THAT SPOT ZONING IS ILLEGAL UNDER THE PRINCIPAL THAT THE GOVERNMENT CANNOT DEVALUE PROPERTY BEFORE THEY TRY TO BUY IT. THE DOWNZONING TO SINGLE FAMILY-MEDIUM DENSITY SERVES NO LEGITIMATE GOVERNMENTAL PURPOSE. THE LOT WIDTH AND MINIMUM LOT SIZE REQUIREMENTS FOR OTHER BEACHES THAT HAVE BEEN ZONED 'MULTIFAMILY BEACHFRONT' RENDER MANY OF THE LOTS SUBSTANDARD, REDUCE THE VALUE OF THESE PROPERTIES AND BEG THE QUESTION OF WHETHER MULTIFAMILY UNITS ON THESE LOTS MAY BE RECONSTRUCTED AFTER A DISASTER DUE TO YOUR ARBITRARILY IMPOSED MINIMUM REQUIREMENT OF 1,885 SQUARE FEET OF LOT PER UNIT AND MINIMUM LOT SIZE OF 5,000 SQUARE FEET. **Do you believe the Coastal Act requires you to remove residents from the Coastline as you are doing with these policies and if so, what statute do you believe compels you to do so? We would like you to answer in writing.**

3) Does the Commission intend to frustrate the intention of the Legislature to provide affordable housing in the State?

3. THE COMMISSION HAS PROHIBITED **ALL BUT ONE STRUCTURE** ON A LOT IN TWO GLOBAL IMPLEMENTATION POLICIES:
   3.6F6b " REMOVAL OF NATIVE TREES SHALL BE PROHIBITED FOR ACCESSORY STRUCTURES. " and
   5.4C – STRUCTURES, INCLUDING ROADS OR DRIVEWAYS, SHALL BE SITED TO PREVENT ANY ENCROACHMENT INTO THE PROTECTED ZONE AND TO PROVIDE AN ADEQUATE BUFFER OUTSIDE OF THE PROTECTED ZONE EXCEPT WHERE THERE IS NO OTHER FEASIBLE ALTERNATIVE FOR THE CONSTRUCTION OF ONE PRIMARY STRUCTURE."

Is the Commission aware that staff is violating **GOVERNMENT CODE 65852.2 C** WHICH STATES "NO LOCAL AGENCY SHALL ADOPT AN ORDINANCE WHICH TOTALLY PRECLUDES SECOND UNITS WITHIN SINGLE-FAMILY OR MULTIFAMILY ZONED AREAS UNLESS THE ORDINANCE CONTAINS FINDINGS ACKNOWLEDGING THAT THE ORDINANCE MAY LIMIT HOUSING OPPORTUNITIES OF THE REGION AND FURTHER CONTAINS FINDINGS THAT SPECIFIC ADVERSE IMPACTS ON THE PUBLIC HEALTH, SAFETY, AND WELFARE THAT WOULD RESULT FROM ALLOWING SECOND UNITS WITHIN SINGLE-FAMILY AND MULTIFAMILY ZONED AREA JUSTIFY ADOPTING THE ORDINANCE." ?

Is there an adverse public impact so great from having a driveway over the root zone of any of over 30 native trees that the Commission should violate **GOVERNMENT CODE 65852.150** which states "The Legislature finds that second units are a valuable form of housing in California. It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized." Doesn't this arbitrary limit also violate **Sec. 65852.2** which states ordinances relating to 2nd units "Shall not be considered in the application of any local ordinance, policy, program to limit residential growth."

Since LCP recognizes that second units are complete living, sleeping, eating, cooking and sanitation facilities for one or more persons, why should the Commission provide substandard housing to the families living in these units by limiting their area to 750 square feet when the Legislature in GOVERNMENT CODE 65852.2F provides that these units may be rented and recognizes these families deserve 1,200 square feet? Given the large lot sizes in Malibu, the area is ideally suited to relieve housing pressures in the area and the Commission should be encouraging moderate income housing and not discouraging it. **If you intend to comply with the state statute prohibiting cities from banning 2nd units, explain how in writing and change the code.**

COASTAL CITIZENS FOR FAIR ZONING

4) How does the Coastal Commission expect to sustain legal challenges to the LCP's mitigation requirements?

4. IMPLEMENTATION ORDINANCE 4.8.1 requires homeowners to perform HABITAT MITIGATION for new development with any impact on ESHA INCLUDING RESTORATION OF DISTURBED HABITAT, PURCHASE MITIGATION PARCEL TO BE RETIRED , OR AN IN-LIEU FEE. The courts have long held that the if fee exaction power is exercised, the Commission must identify the purpose of the fee and demonstrate how the extraction required defrays the cost of public facilities related to the development project. **GOVERNMENT CODE 66001** referred to as the '**MITIGATION FEE ACT**' is unequivocal that a cause and effect relationship between the public cost of development and the fee must be demonstrated Brush clearance and landscaping do not have a negative impact on the public, but on the contrary, serve to increase the public health and safety as defined in **PUBLIC RESOURCES CODE 4291** which requires owners of all buildings in the state to remove brush and flammable vegetation as far as the Fire Department deems necessary. Furthermore, the plants on a homeowners' property were never public property and therefore their removal cannot be construed as a public loss

Aside from the fact that unwarranted extractions have been unconstitutional in the Nolan and other decisions, there is the practical matter that homeowners do not have the cash to pay for security bonds for habitat mitigation AND MONITORING BY BIOLOGISTS, purchases of development rights and recording deed restrictions. These costs are so exorbitant that most homeowners would have to give the city liens on their homes to comply with the Security Bond requirements of this LCP. And those liens could be called at any time if a biologist made a subjective determination that the restoration plants were not growing to his satisfaction. Do you think that the Legislature intended the Coastal Act to be a means of exercising eminent domain over the residents of California, under the guise of mitigation? As the court found in Nollan, although the public interest might be served by recording an easement, it cannot compel coastal residents alone to contribute to the realization of that goal. The Legislature has appropriated several hundred million dollars over the past few years specifically for the purposes of the restoration of coastal resources, and acquiring "wildlife habitat and migration routes, natural lands, riparian and coastal habitat, indicating they fully intend that these areas be paid for by the state not extorted as easement conditions on permits.

How are the City and the Coastal Commission going to sustain widespread legal challenges to these exactions which serve no legitimate public purpose? We would like an answer in writing.

COASTAL CITIZENS FOR FAIR ZONING

5) Does the Commission understand that the extraordinary costs of implementing the Plan make it unworkable?

5. HAS THE COMMISSION PERFORMED A POLICY REVIEW AND ANALYSIS OF THE ENVIRONMENTAL IMPACT OF THE HIGH COSTS OF NEW LCP REPORTING REQUIREMENTS THAT ARE SO EXORBITANT THEY ACT AS **DISINCENTIVES** TO ENVIRONMENTAL PRESERVATION AND MAY ACTUALLY BE ENVIRONMENTALLY DAMAGING. While we have been given lessons in biology by the Commission staff for the past year, the staff might consider a simple lesson in economics. Few rational homeowners will retain native trees because of the extraordinary financial liability imposed by the following requirements which will cost a homeowner with a few native trees on their lot over $50,000 to comply with:

- Preparation of tree protection plans, detailing inventory, assessment, measurements, mapping, photographs, surveys, scale drawings, mitigation measures and long-term maintenance and monitoring programs.
- Native Tree Replacement Planting Programs prepared by experts, and requiring Replacement trees of 10:1 for tree removal and In- lieu fees.
- Where development requires the removal of a native tree, EACH AFFECTED TREE SHALL BE MONITORED ANNUALLY FOR NOT LESS THAN 10 YEARS. –
- Prohibiting removal of trees for accessory structures
- Prohibiting all development within 15 feet of a single tree.
- Creating financial liability for trees that die of natural causes eg. age, wind, rain etc.
- Requiring an arborist remain on-site during the entire construction period. Arborists charge a rate of $70 - $100 per hour. Construction activity typically has a minimum 9-month duration on a single family home. Assuming a rate of $80 per hour, the cost of this unnecessary requirement will be $153,600 calculated as follows:

$80 x **8 hours** per day x **20 days** per month x **12** Months = **$153,600**

Gone are the days when homeowners purchase Sycamores and other native plants at nurseries to add to their landscapes. And you can count on widespread tree removal taking place prior to permit applications and listing homes for sale due to disclosure requirements. The same disincentive occurs in the Plan's treatment of Coastal Sage Scrub, which people are removing at an unprecedented rate in anticipation of the LCP. Few homeowners will allow their property to remain in or surrounded by the highly common scrub and chapparell if they are designated as ESHA or an ESHA buffer. They will be begging for the Fire Department for clearance orders of 300 – 400 feet as required by California FairPlan for downslopes.

The far superior public policy alternative would have been for the Coastal Commission to provide financial incentives for homeowners to plant and retain natives trees, through a direct payment plan from the City or reductions in permit fees. This was clearly the intent of the Legislature when they passed Sec. 37001 of the Public Resources Code stating "Habitat stewardship shall be assisted and rewarded, and it is in the state's interest to encourage landowners to perceive habitat as an asset rather than a liability"> **Has the Commission considered that the extreme economic burden the plan places on homeowners will have widespread unintended and negative environmental consequences? If you do not think the LCP is exhorbatantly costly, than we ask you to estimate the costs and guarantee that they will not be excessive in writing, and write a provision limiting costs in the code.**

6) Is it the intention of the Commission to prohibit multifamily housing development in Malibu?

6. WHAT IS THE PURPOSE OF SETTING **TRANSFER DEVELOPMENT CREDIT** REQUIREMENTS SO HIGH FOR MULTI-FAMILY DEVELOPMENTS THAT THEY ARE RENDERED ECONOMICALLY UNFEASIBLE THEREBY PREVENTING MALIBU FROM MEETING THE HOUSING ELEMENT OF THE LCP?. The average cost of a lot in the Santa Monica Mountains is over $300,000 according to a recent review of the Multiple Listing Service, with only a handful of lots available for under $50,000. Since an apartment building does not create new residential lots, the requirement for TDS's violates the provisions of the Coastal Act.

According to Section 3.7 of the LUP the proposed 'Residential Density Bonus Ordiance" is designed to implement the incentive program provided in the Government Codes that allows developers to build 25% more units than zoning would ordinarily provide. In exchange for this density bonus, the owners must make the units affordable for 30 years if an incentive is utilized in additon to the density bonus. Requiring a developer to pay the high costs of Transfer Development Credits is no where figured into the calculus of the Density Bonus program and frustrates the intent of the Legislature in passing Government Code 65915 which regulates this affordable housing. **Why would the Commission write an Ordinance that guarantees no affordable housing will be built in Malibu? Is it the intent of the Commission to place such a high priority on visitor serving development that the Commissioners intend to put in motion overwhelming financial obstacles to the development of multi-family housing? If the answer is no, then change the TDC requirements for multi-family housing in the LCP . We would like an answer in writing.**

7) The Scenic Resources Ordinance violates the Coastal Act

7. The "Scenic Resources' Ordinance violates the Coastal Act because the Act protects views of the ocean and coastline but not views of all the mountains, and 'habitat' the LCP in the wider area of the Coastal Zone. It also represents a radical departure from accepted Planning law by making the incorrect assumption that the public has view easement rights to all land held in private property that can be seen from a public place. This notion is absurd and refuted by the fact that even your Public Access Ordinance in the LCP requires that establishment of prescriptive easement rights show that the use was without permission of the owner, and we haven't seen too many homes lately with signs to the public saying "Stop looking at my home – you do not have permission to view" .

The Legislature has appropriated several hundred million dollars over the past few years specifically for the purposes of purchasing "view easements" , critical viewshed protection and scenic resource lands, indicating they fully intend that these areas be paid for by the state not extorted as easement conditions on permits.

The requirement to restrict to 10,000 square feet the development envelopes of homes that may be seen from public places is punitive and serves no legitimate public purpose. The Scenic Resources Ordinance is filled with subject measurements and terms such as 'visual quality', 'visually degraded' , and 'visually compatible" which render it unenforceable and invite litigation. The impracticality of the Ordinance is demonstrated by among other things, the provision that owners record a deed restriction stipulating the number of light fixtures they will use with a promise to use 60 volt wattage and the requirement that windows be of 'Non glare glass' which is a very expensive commercial grade of glass with that manufacturers specifically recommend not be utilized in residential buildings.

Can the Commission staff explain to us where in the Coastal Act it states " New development **shall not be visible** from public areas"? or that "Fences, walls, and **landscaping shall not block views** from scenic areas, scenic roads, parks, beaches, and other public view areas" or where the Coastal Act requires existing, healthy mature landscaping to be removed or cut to no higher than 18 inches or road grade? Where does the Coastal Act require that homes that are visible "shall be limited to **limited to one-story in height." ? Do the Commissioners really believe Malibu will be more beautiful by requiring homeowners to remove all existing landscaping or development that blocks any potential view of the water from anywhere? Do you think the Legislature and the people of this state want Malibu to look like the arid, treeless portions of the Baja Coast? When native trees are removed to allow the public to see the ocean, are you going to punish the landowner by then forcing him to pay to plant and monitor ten replacement trees?** We ask you to answer in writing. As public policy, the Scenic Resource Ordinance with respect to single family homes is of questionable legality, unworkable and detrimental to the coastal environment.

COASTAL CITIZENS FOR FAIR ZONING

8) Does the Commission intend to supercede la fire department's health & safety standards for brush clearance with THE LCP"S BRUSH CLEARANCE PROHIBITIONS?

The first duty of government is to protect the health and safety of the public and the brush clearance regulations in this LCP defy state and local regulations that were developed over many years by experts and have been well tested over time. As a result you are encouraging wildfires and placing the residents of the Malibu and surrounding communities in danger of experiencing unprecedented loss of life and property.

How does the Commission expect to enforce the prohibition against **BRUSH CLEARANCE** in the 100' ESHA BUFFER in violation of LA COUNTY's FIRE DEPARTMENT'S **'FUEL MODIFICATION GUIDELINES'** as published by the Department's Forestry Division? In Ordinance 4.6.1 you state "Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers" and in 4.6.2 you state "No required Fuel Modification area will extend into the ESHA and no structures will be within 100 feet of the outer edge of coastal sage scrub".

Many plants in the coastal scrub community you wish to classify as ESHA, and which you prohibit residents from removing, are on the list of target plants that pose extreme fire hazard and are required to be removed per the FUEL MODIFICATION GUIDELINES of the Forestry Division of the Los Angeles County Fire Department as a critical part of hazard reduction. Those plants listed as 'Target Species' include 'California Sagebrush', 'Chamise', 'Red shank', 'Common Buckwheat', and 'Sage'. Furthermore, Sagebrush and Chapparel are defined as 'Weeds' if growing in any Fire Protection District in California Health & Safety Code Sec 14875 and the State's Public Resources Code Sec. 4291 states that any person that owns any structure in brush or grass covered lands must maintain a firebreak up to 100 feet from each structure.

The LA County Fire Department requires a minimum brush clearance of 200 feet from most structures in Malibu, which is a high fire hazard Zone. On many lots, the 200 foot clearance extends to the border of coastal scrub, which you have defined as ESHA. Your policy will require that homeowners reduce the 200-foot 'defensible zone' by 1/2, thereby violating the Fire Department's orders and Fire Code Regulations 1117.2.2, and the State's Public Resource Code.

On downslopes, due to the potential for updraft, the California Fair Plan requires a 400 foot clearance to meet the 200 foot regulation Furthermore, failing to follows the fire department's orders are a violation of our California Fair Plan Insurance Contracts, and can be grounds for their revocation.. If the Fair Plan revokes our fire insurance policies, we will be in violation of our home mortgage contracts and our lenders have the legal right, in many cases, to call our mortgages due, or sell our homes.

The Commission's Implementation Plan repeatedly and strictly emphasizes that variances from the 100 foot ESHA buffer standards shall not be permitted. **Does the Commission intend the many prohibitions on thinning and removal of vegetation in the LCP to supercede the LA Fire Department's 200 foot setback? If the answer is yes, is the Commission willing to accept liability for damage to property in Malibu and will they put it in writing? If you intend the LA County fire regulations to supercede the LCP, then put it in writing and change the ordinances that ban brush clearance.**

9) L.I.P. TABLE B – PERMITTED USES ARE INCOMPATIBLE WITH THE HISTORIC USE PATTERNS OF MALIBU RESIDENTS IN INSTITUTIONAL AND COMMERCIAL ZONES.

1. There are a number of zoning code use provisions that demonstrate a lack of local knowledge of city conditions, will wreak havoc on existing uses and are unworkable, unenforceable.

2. Table B - PERMITTED USES bans nursery schools in Institutional zones. Religious institutions in Malibu sponsor nearly all of the nursery school programs in Malibu and are attended by hundreds of children – The Malibu Methodist Nursery School has over 200 children, the Malibu Jewish Center, St. Aiden's Episcopal and Malibu Presbyterian are attended by hundreds more, and they are not religion based schools. These are all in I zones and will become nonconforming under your plan. They will be prohibited from "enlarging or intensifying the nonconforming use" thereby preventing them from adding anymore children without violating the code. Where do you expect children to attend nursery school? Does the Commission want to close all the nursery schools that are housed at religious institutions in Malibu? What is the purpose of prohibiting Recreation Facilities such as pools, playground equipment such as swings and slides and tennis courts in Institutional zones when all the schools in this zone have such equipment and they are a logical and urgently needed use in the neighborhoods wherein the institutional zones are located.

3. **The Commercial zoning standards will result in overdevelopment of the Civic Center and increased environmental pollution into Malibu Creek from stormwater runoff.**

The Commission's LCP has a new provision allowing visitor serving uses such as hotels, theaters and restaurants by right in every commercial zone, whereas currently, they are conditionally approved uses. Visitor serving uses mandated across the 100+ acres of the Civic Center will generate far more traffic than Malibu can sustain as the 100 acres of commercial zoning was designed by Los Angeles County when they anticipated a future Malibu population of over 300,000. Given that the City has a population of only 13,000, the Commission has exacerbated the surplus of commercially zoned land by intensifying the uses in all zones. In comparison to office use, restaurants require five times the parking and theaters 10 times the parking. The LIP's Table of Permitted Uses only allows restaurants "if exceeding interior occupancy of 125 persons" in the Civic Center because the Commission does not consider smaller restaurants "visitor-serving". The economic reality is that restaurants are investments and large chain-style restaurants are incompatible with the Coastal Commission's goal of maximizing visitor-serving use. The majority of restaurants in Malibu are marginally viable because of the seasonality of the business and lack of demand. Forcing restaurants to seat more than 125 persons will only lead to a shortage of restaurants because no one will build them. **Does the Commission intend to destroy the charming, rural character of downtown Malibu?**

The LIP completely slashes commercial parking requirements thereby encouraging maximum development in the Civic Center and facilitating larger retail building footprints,. The plan reduces the area required for parking from 312 to 180 square feet per space, with an added allowance of 20% compact spaces at 124 square feet each and a whopping 25% reduction in the total parking required "when a parking lot with common access and joint use

is provided". These reductions are radical deviations from standard planning guidelines and our current laws, and will create traffic nuisances at best and an increase in accidents during peak periods. Provisions for a city-wide sewer will encourage even greater commercial development and are against the wishes of the vast majority of residents as resolved in previous referenda.

4. **What is the purpose of of prohibiting 'Charitable, Philanthropic and Educational non-profit' activities in all zones but Commercial zones, further limiting them in Commercial zones to "activities that shall be limited to permanent uses that occur within an enclosed building?"** Charity functions are often performed outdoors in Malibu and by their very nature do not have the funds for permanent indoor facilities. **Does the Commission intend to eviscerate the heart and soul of our community which has as the source of its strength our widespread non-profit charitable organizations such as the Malibu Labor Exchange which is now a prohibited use?**
5. **What is the purpose of prohibiting Residential Care Facilities for the Elderly in all but Commercial zones and only, in the case of the General Commercial zone, allowing them on the "upper floor of multi-story structures"? Does the Commission recognize the urgent demand in our community for elderly housing and why would intend to place such a barrier to its development?**
6. **What is the logic of requiring a conditional use permit for multifamily developments in the Multi-family zone and prohibiting such use from all other zones. Does the Commission intend to limit affordable housing in Malibu?**
7. **What is the logic of restricting to second story locations common retail uses such as bakeries, barber shops, beauty salons, dry cleaners, photocopy services and travel agencies. Does the Commission intend to make life much more difficult for our well-deserving seniors who will be forced to climb stairs for daily errands?**
8. **What is the logic of LIP 13.5C Ordinance on NON CONFORMING USES OR STRUCTURES requiring that if more than 50% of a home has been remodeled over its life, it cannot be remodeled unless the entire property is made to conform with the LCP.**
   This is an aberration of the standard 50% one-time project remodeling rule used by most cities and what legitimate public purpose is served by this rule. How can you walk through a 40-year old home and tell the difference between what was remodeled in 1960 when the house was built and the bathroom that was remodeled in 1965?
9. What legitimate public purpose is served by requiring that no property owner shall fly more than **one national flag,** one state flag, and one local flag. **ORD 3.13.3 L**
10. Is the Commission aware of the public health danger to children resulting from LUP 3.50 requiring 'wildlife permeable fences" when coyotes, bobcats and mountain lions are common animals in Malibu's residential neighborhoods.
11. What is the purpose of prohibiting home lighting for '***aesthetic purposes' and requiring*** required to place a ***Deed restriction*** on your home reflecting the number of light fixtures we may have and deed recording 60-watt bulb requirements?**LIP ORD 6.5 G**
12. The LIP places homeowners at risk of losing their homes by requiring Performance Bonds for plant restoration as 'mitigation' for routine land use. New development, including brush clearance, which is defined as new development under "removal of vegetation" requires the owner perform "***habitat mitigation***" which includes the requirement that the homeowner pay for a Performance Bond equal to the cost of "labor and materials for habitat restoration" and five year monitoring. If you don't have the cash to pay for the bond, the city can place a lien on your property – if they don't like the way the restoration

plants are growing – the city could call the bond and force the sale of your home if necessary. Since the restoration project must be complete prior to the issuance of a Certificate of Occupancy, the applicant could be left waiting a long time for those plants to grow before being allowed to use whatever improvement he had paid to permit and build. **ORD 4.8.1A 1-2. Does the Commission intend to impose great economic hardship on homeowners in Malibu? We ask the Commission to answer these questions in writing.**

10) Does the Commission intend to transfer an even greater administrative burden from the City of Malibu to the Commission Staff?

SINCE THE PURPOSE OF THE COMMISSION'S ENDORSEMENT OF **AB988** WAS TO REDUCE THE ADMINISTRATIVE BURDEN ON THE COMMISSION, **WHY DID YOU WRITE AN LCP THAT INCREASES THAT BURDEN BY GIVING THE COMMISSION WIDESPREAD JURISDICTION OVER ALL PERMITTING**, WHEREIN NEARLY ALL COASTAL DEVELOPMENT PERMITS ARE APPEALABLE TO THE COMMISSION, AND WHEREIN THE COMMISSION RETAINS FINAL REVIEW. THERE ARE MANY NEW ORDINANCES THAT TRANSFER REVIEW AND APPROVAL TO THE COMMISSION ?

Draft Land Use Plan Policies (LUP) or Local Implementation Plan Measures (LIP) and definitions addressing Coastal Commission retained jurisdiction, approvals/hearings or appeal purview:
LUP 5.16 All commercial development > .15 FAR must have an LCP amendment certified by the Commission.
LIP 4.3 C - exclusion of any parcel from the ESHA maps "shall be considered an LCP amendment and certified by the Commission.
LIP 10.5 E - If State Lands Commission determines there may be an encroachment on tidelands or other public trust interests, the city shall direct the applicant to file his application with the Coastal Commission.
LIP 12.7.7 A-D Each recorded public easement document must be in a form and content acceptable to the Commission who shall approve the lien placement, the receiving agency, etc. "The Executive Director of the Commission retains the authority to approved government agency or private association that seeks to accept the offer or grant of easement"
LIP 12.9.1 Upon final review of a coastal development permit or other authorization for development where the permit is conditioned upon the applicant recording a legal document which restricts the use of real property, a copy of the permit conditions, findings of approval and drafts of any legal documents proposed to implement the conditions shall be forwarded to the Commission for review and approval prior to the issuance of the permit. (Deed restrictions are required for many permits, including outdoor lighting, open space easements, trails, etc., this provision will preclude City permitting of hundreds (possibly thousands) of applications per year in all areas of the City until review and approval the Coastal Commission.)
LIP13.4.1 B 5 Commission reserves the right to declare areas as having a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, and require a coastal development permit for the construction of any major water using development not essential to residential use including but not limited to swimming pools,

or the construction or extension of any landscaping irrigation systems.
LIP 13.10.1B If the jurisdiction of the City for a permit is challenged by an interested person, the Executive Director shall make a determination and the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the area.
LIP 13.1.2 Development authorized by a Coastal Commission issued coastal development permit remains under the jurisdiction of the Commission for the purposes of condition compliance, amendment, extension, reconsideration and revocation. (-all Post '76 structures/landscaping etc?)
LIP 13.12.2 A 6 Notice of an application for a coastal development permit that is not appealable and that does not require a public hearing shall be sent. Notice by first class mail to the South Central Coast District of the Coastal Commission.
LIP 13.13.7 Administrative Permits - The Planning director shall report in writing to the Planning Commission at each meeting the permits approved under this section (Administrative Permits - Permits not subject to a Coastal Development Permit) with sufficient description of the work authorized to allow the Planning Commission to understand the development proposed to be undertaken. Copies of this report shall be mailed to the Coastal Commission.

LIP 13.14 D - Prior to the issuance of an emergency coastal development permit, when feasible, the Planning Director shall notify, and coordinate with, the South Central Coast District office of the California Coastal Commission as to the nature of the emergency and the scope of the work to be performed.
LIP 13.14.1 A - The Planning Director shall report in writing to the City Council and to the Coastal Commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved.
LIP 13.16 A Notice after final City action - .within 7 days, the City shall notify by first class mail the South Central Coast District Office of the Coastal Commission .
LIP 13.19 A The Executive Director of the Coastal Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.
LIP 13.20.2 B There shall be no requirement for exhaustion of local appeals if the City charges an appeal fee for the filing or processing of local appeals.
LIP 13.20.2 C Where a project is appealed by any two (2) members of the Coastal Commission, there shall be no requirement of exhaustion of local appeals.
LIP 13.27 Approval of the Council of a development agreement shall be by ordinance and shall not take effect until and unless certified by the Coastal Commission as an Amendment to the LCP.
LIP 16.2.13 a Every development agreement entered into by the Council shall provide for periodic review of the applicant's compliance with such agreement by the Director at a time interval no longer than 12 months.
LIP 16.2.14 a- If the Executive Director believes there is a violation of an approved Development Agreement, another public hearing before the Commission is required.
LIP 18.10 E Any proposed sewer system shall be submitted to and approved by the Coastal Commission as an LCP amendment.

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

821 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET / LOS ANGELES, CALIFORNIA 90012
PHONE (213) 974-3333 / FAX (213) 625-7360
zev@bos.co.la.ca.us / http://zev.co.la.ca.us

ZEV YAROSLAVSKY
CHAIRMAN OF THE BOARD
SUPERVISOR, THIRD DISTRICT

Received at Commission Meeting

JUL 1 0 2002

From:_____

July 10, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Chairperson Wan and Commissioners:

Thank you for the opportunity to review and comment on the revised City of Malibu Draft Local Coastal Program (LCP) Land Use Plan and Local Implementation Plan.

As County Supervisor representing the coastal zone areas of the City of Malibu and the unincorporated areas of the Santa Monica Mountains, I strongly support the Coastal Commission's mandate to protect our coastal resources. The open spaces of the Santa Monica Mountains are a treasure we must carefully watch over to ensure they remain unspoiled. In recent years, Los Angeles County has dramatically improved our development review policies, and we recently approved a new land use plan for the mountain areas outside of the coastal zone that reduced maximum allowable development densities by 30 percent. While I am extremely proud of our accomplishments, I recognize that more must be done to ensure the Santa Monica Mountains remain ecologically healthy, while still providing recreational resources for the public and community-serving uses for its residents.

I appreciate that your staff and Commission have spent a great deal of time and effort working to implement the requirements of SB 883. However, some of the LCP proposals, particularly in regards to ESHA protection, may be more restrictive than necessary. Despite the County's objections, these policies have recently been imposed on coastal permit applications in the unincorporated area of the Santa Monica Mountains (Deegan-Day #4-00-119), and are causing concern among residents in the unincorporated area. I fear the proposal may prejudice Los Angeles County's ability to implement a LCP for the Santa Monica Mountains unincorporated area. Therefore, I hope you will seriously consider my concerns as well as those voiced by the County Department of Regional Planning and consider amending the Malibu Local Coastal Plan accordingly.

<u>The 10,000 square-foot limitation for development in ESHA's, and in areas visible from scenic highways, will result in the continued proliferation of single-family homes, and will halt all development of visitor or community-serving uses</u>. This policy may therefore be detrimental rather than beneficial to the area. No use that requires a parking lot, such as a school, community center, restaurant or bed & breakfast, could possibly be constructed within the 10,000 square-foot area. Thus, the uses that would bring visitors into the Santa Monica Mountains National Recreation Area, or serve existing residents, could not be expanded, while

new residential development will continue unabated, scarring our most sensitive resources. It would be particularly problematic in an established community such as Topanga Canyon, which requires commercial uses to serve its residents, as well as public-benefit uses such as a community center.

A preferable approach that preserves coastal resources while providing flexibility might be the tiered level of protection suggested by the Los Angeles County Department of Regional Planning (see December 31, 2001 letter). Under this approach, only the most sensitive resources would be designated as ESHA, and only resource-dependent uses would be allowed in these areas. Other sensitive areas, such as significant watersheds, oak woodlands, and the like, would be subject to strict development restrictions and site-specific review by the Environmental Review Board to minimize impacts to coastal resources. This tiered approach avoids the problems with the "one-size fits all" approach that your staff has recommended for development in ESHA's, while still providing much-needed resource protection. It is critical to remember that by designating all coastal sage scrub and chaparral areas as ESHA, and by imposing ESHA-type restrictions on development visible from any scenic highway, your staff has suggested that virtually all of the Santa Monica Mountains be designated as ESHA or receive ESHA-level development restrictions.

The recent comment letters submitted by the Department of Regional Planning, including its April comments on the Deegan-Day permit application, are attached for your review. I strongly urge you to consider the more flexible approach to ESHA protection suggested by Los Angeles County. Because the Commission previously certified this approach as part of the County's 1986 Land Use Plan, it can be adopted for Malibu according to the timeline imposed by SB 883.

Thank you for your consideration of these comments.

Sincerely,

ZEV YAROSLAVSKY
Chairman of the Board
Supervisor, Third District

ZY:ls

Attachment

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

RECEIVED
JUL - 8 2002
OFFICE OF S.D. #3

July 3, 2002

To: California Coastal Commissioners
and Other Interested Persons

From: David C. Cowardin, Section Head
Community Studies II Section

SUBJECT: **COMMENTS ON PROPOSED MODIFICATIONS TO THE PROPOSED CITY OF MALIBU LOCAL COASTAL PROGRAM AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002**

Thank you for the opportunity to review and comment on the revised City of Malibu draft Local Coastal Program Land Use Plan, dated June, 2002, and the recommended modifications to the draft Local Implementation Plan dated June 11, 2002, prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The following comments, as well as those in the attached letters that were previously forwarded to the Commission and to Commission staff, are intended to convey the Department's position on policy content of the City's LCP.

LAND USE PLAN

Chapter 3 – Marine and Land Resources

Language added to various policies relating to Environmentally Sensitive Habitat Areas (ESHAs) creates inconsistencies in the intent of these development standards.

3.7 The additional language is not consistent with the original wording of the body of the policy. It would appear that the new language "If an area is not ESHA ..." is really equivalent to the existing language "... if the area in question should no longer be considered ESHA ...." Therefore, we believe that any change to the ESHA boundary requires an LCP amendment.

3.10, 3.11, 3.12, etc.

Simplifying these policies only represents minor tinkering with a flawed concept; that is, permitting non-resource dependent development in ESHA. The County sees this as a violation of the Coastal Act and cannot support these and other policies on the same subject in the LUP.

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3.26b Taken alone, the plain language of this provision and its treatment of fuel modification zones is a reasonable protection for ESHA. However, in the context of other provisions that permit non-resource dependent uses in ESHA, implementation of 3.26b would create a contradiction whereby "buffers" could become more restrictive than ESHA.

3.42 Land divisions should still be "consistent with all the policies of the LUP," language that has been omitted.

LOCAL IMPLEMENTATION PLAN

Chapter 4 – ESHA Overlay
Two areas have been added without explanation to the list of habitats considered ESHA. Concurrently, more intense development is allowed in coastal sage scrub (recognized by the state as endangered) and in chaparral (treated by the Coastal Commission as significant) ESHA. This diminishes the importance of coastal sage scrub and brings into question the extraordinary treatment given to chaparral.

4.3.B ESHA DETERMINATION - Added:

1. Designated Area of Special Biological Significance, or Marine Protected Area – These areas are not defined, and no criteria are provided to make a determination as to their location or extent.

The Department of Regional Planning requests that this letter be made a part of the official record for the City of Malibu Local Coastal Program and that the Commission consider the points that are described above. The Department's concerns regarding the draft LIP are consistent with some of the issues described in our previous [redacted] relating to the Commission's proposed draft Land [redacted] to you, dated June 26, 2002, relating to the proposed [redacted]. If you have any questions regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

DCC:GMN:SMT

Attachments

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

June 26, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: COMMENTS ON THE PROPOSED LOCAL IMPLEMENTATION PLAN FOR CITY OF MALIBU LOCAL COASTAL PROGRAM AGENDA ITEM #10(a), MEETING ON WEDNESDAY, JULY 10, 2002

Dear Chair Wan:

Thank you for the opportunity to review and comment on the City of Malibu draft Local Implementation Plan (LIP), prepared by your staff in response to the mandate imposed by the State Legislature in SB 883.

The Department recognizes the great burden that the legislative mandate has placed on your staff to prepare a comprehensive program. It is also recognized that your staff was required to prepare and present a document to Malibu that included all issue areas considered by the Coastal Act, as well as other items of concern to the Commission.

These comments are intended to convey the Department's position on specific issues discussed in the LIP chapters, and are summarized for the Commission's consideration in the following paragraphs.

Chapter 3 – Zoning Designations and Development Standards
This chapter, together with Table B, addresses permitted uses and specific development standards for each zone district. Some uses that could be found compatible and appropriate with similar permitted uses are prohibited in certain zone districts (e.g., restaurants, health clubs and hotels are not allowed in the Commercial Recreation zone district). Certain standards are unclear or questionable, while other standards are very specific and could overlap with existing municipal code standards.

Table B — The following identifies some specific uses prohibited from compatible, appropriate zone districts:

PRIVATE RECREATIONAL FACILITIES ZONE DISTRICT: Equestrian riding and training facilities and activities including boarding of horses, domestic animals, etc.; Raising of horses and other agriculture-related animals; Boarding of animals as a commercial use; Restaurants; and Camping.

COMMERCIAL RECREATION ZONE DISTRICT: Plant nurseries; Restaurants; Visitor-oriented goods, such as recreational equipment and clothing; Health clubs; and Hotels.

COMMERCIAL NEIGHBORHOOD ZONE DISTRICT: Bars; and Refreshment stands/fixed location outdoor food vending stands.

OTHER QUESTIONABLE DESIGNATIONS OF USES: Community stage theaters are *not allowed* in any commercial zone district; Bed and breakfast inns are *not allowed* in any residential zone district, although Large Family Day Care is allowed with a permit; and Educational institutions are *only allowed* in Institutional Zone District.

3.5.H — It is unclear why residential development must be "...contained within a convex-shaped enclosure that shall not exceed two acres..."

3.8.A.2.c — There is only one value given for rear yard setbacks.

3.11.2.B — Animal waste should also be included for consideration when ensuring that increased pollution does not occur from a permitted corral.

3.11.2.C — There is no discussion of how "appropriate sized parcels" for equestrian riding and training facilities and activities will be determined.

3.12 — Regulations for parking are extensive and very detailed, and would normally be addressed in the municipal code. There is also no mention or discussion of handicap-accessible parking. Consistent formatting should also be applied, and typographical errors should be corrected.

3.13 — Regulations for signs are extensive and very detailed, and would normally be addressed in the municipal code. Consistent formatting should also be applied, and typographical errors should be corrected.

Chapter 4 – Environmentally Sensitive Habitat Area Overlay

This chapter is fatally flawed because it is in direct conflict with the provisions of the Coastal Act related to ESHAs. The provisions of this chapter would allow non-resource development in an ESHA contrary to Section 30240 (a) of the Coastal Act that allows "...only uses dependent on those resources..." In contrast, the provisions are overly restrictive in regards to buffers around ESHAs by prohibiting all development, including vegetation removal. Section 30240 (b) of the Coastal Act allows development in areas adjacent to ESHAs but requires it to "... be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas..."

4.3.B.3 — The reference to the California Native Plant Society should be eliminated.

4.4.2.F — The reference to the California Native Plant Society should be eliminated.

4.6.1 — This section should contain siting and design standards in buffers to minimize impacts on ESHAs rather than prohibit all development.

4.7 — This entire section is invalid because it violates Section 30240 of the Coastal Act.

4.8.A The only new development allowed in an ESHA should be resource dependent.

4.8.1.C.2 The in-lieu fee should be broadened to allow the funds to go to other State and Federal agencies that are property owners in the Santa Monica Mountains.

Chapter 6 – Scenic, Visual, and Hillside Resource Protection Ordinance
The provisions regulating types of night lighting seem overly restrictive in their prohibiting most types of lighting in residential areas.

6.5.G Parameters should be set for the specific types of night lighting prohibited in residential areas, as it could be interpreted that all lighting for all private recreational facilities, including swimming pools, and holiday decoration lighting would be prohibited.

Chapter 8 – Grading Ordinance
This chapter discusses controlling the amount of grading and landform alteration. However, when the amount is described as a finite amount, it must be appropriate and feasible.

8.3.B Setting the maximum grading (total cut and fill) amount to 1,000 cubic yards may be too small. It would be more feasible to minimize the ground disturbance in percentage relative to the size of the lot or development.

Chapter 9 – Hazards
Incorrect chapter references are confusing and should be corrected, as well as typographical errors throughout this chapter and draft Implementation Plan.

9.4.F Chapter 21 does not exist in the Local Implementation Plan document.

Chapter 13 – Coastal Development Permits
The provisions of this chapter generally follow the procedures contained in the California Code of Regulations. A number of typographic errors relating to section numbers make the chapter somewhat difficult to follow.

13.4.1.B.4 Fences should not be designated as significant non-attached structures.

13.4.2.C The September 5, 1978 letter should be included in an appendix.

13.4.8 The September 5, 1978 letter should be included in an appendix.

13.5.A(2) The meaning of this subsection is not clear.

13.6.4.B Lots created before the effective date of the Coastal Act should be exempt from this provision.

13.19 The Coastal Commission should not be involved in the review and approval of legal documents relating to public access and conservation/open space easements.

13.24.2 It is not clear what section or subsection is referred to by "(2) above."

13.27 Development Agreements should not be required to be processed as amendments to the LCP.

Chapter 15 – Land Divisions
This chapter is deficient as it lacks a complete discussion of the subdivision process in Malibu. Either a full explanation of the subdivision process is needed, or references to the Subdivision Map Act requirements included. It is not entitled "...requirements for land division...," but instead "... required findings of consistency of any land division with the MLCP."

15.2.B The sixteen findings required by this subsection would make the subdivision of land almost impossible in Malibu. There would be virtually no properties that could meet all of the findings, including paraphrased "safe from erosion," "safe from extreme fire hazards," "not in slopes over 30%," "[creating] parcels no smaller than the average in the neighborhood," and the non-specific requirement to "purchase TDCs."

15.3 A coastal development permit should only be required when (1) the division of property occurred after December 31, 1976, and (2) the conditional certificate of compliance would be issued pursuant to Government Code Section 66499.35(b).

Chapter 17 – Water Quality Protection Ordinance
It appears that this chapter was taken from the County Standard Urban Stormwater Mitigation Plan (SUSMP) and the Municipal National Pollutant Discharge Elimination System (NPDES) program permit. It is, however, expanded to cover all development in Malibu (i.e., a storm water management plan is required for all development requiring a Coastal Development Permit (CDP)).

17.1 While the goals use "should" language, they provide a reasonable road map for application of specific standards.

17.4.3 This subsection requires a "water quality mitigation plan", a term that is not defined in the glossary and which is limited to the set of development scenarios listed in the SUSMP. There appears to be a conflict with the requirements for a "storm water management plan."

Chapter 19 – Local Coastal Program Amendments
Numerous typographic errors make this chapter somewhat confusing. References to sections of the Public Resources Code or the California Code of Regulations should be included in an appendix.

The Department of Regional Planning requests that this letter be made a part of the official record for this City of Malibu Local Coastal Program LIP and that the Commission give serious consideration to the points that are described above. The Department's concerns regarding the draft LIP are consistent with some of the issues described in our letters to Mr. Gary Timm dated October 25, 2001 and December 31, 2001 relating to the Commission's proposed draft Land Use Plan for the City of Malibu (the December letter is attached for your reference), as well our letter to you dated April 10, 2002 relating to Coastal Development Permit Application No. 4-00-119. If you have any questions

regarding this letter, please contact me at (213) 974-6422. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

David C. Cowardin
Section Head, Community Studies II Section

DCC:GMN:SMT

Attachment

cc: Laura Shell, Deputy, Third Supervisorial District

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

April 10, 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: Coastal Development Permit Application No.: 4-00-119
20668 Skyhawk Lane, Topanga (AGENDA ITEM NO. Th18b)

Dear Chair Wan:

The purpose of this letter is to express the Department of Regional Planning's strong objection to several aspects of the Staff Report for the coastal development permit being considered in the unincorporated area of the County of Los Angeles. The Staff Report not only incorrectly designates the site as an Environmentally Sensitive Habitat Area (ESHA), but also violates the Coastal Act by allowing the so-called ESHA to be developed with a use that is not dependent on the resource and that will cause significant disruption of the habitat values. These serious flaws in the Staff Report are in direct contradiction of the Coastal Act and, if the permit is approved in its present form, will prejudice the ability of the County of Los Angeles to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

The Department of Regional Planning does not object to the proposed development of the site with the conditions recommended in the Staff Report if the ESHA designation is removed. The Department believes that if the Staff Report is revised to remove the ESHA and takings discussions on page 2 and pages 17 – 22, the approval of the coastal development permit will be consistent with the Coastal Act.

ESHA Designation

The site in question should not be considered an ESHA because there is no factual, scientific basis given in the Staff Report that shows that the property meets the definition contained in Section 30107.5, including "... any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem ...." The Staff Report contains unsupported conclusions and conclusory statements that are not supported by an analysis that shows that this area meets the ESHA definition. The Staff Report contains statements about sensitive plant and animal species, but does not identify that any of these are found on the subject property. Also, the location of the site does not seem to contribute to compliance with Coastal Act provisions in Section 30231 that require maintenance of high quality coastal waters through, among other things, control of runoff. Since any such potential as a result of the development of this site is mitigated by conditions of the permit, there will not be any impacts on coastal waters, streams, etc. It appears that incursion in a true ESHA, such as a stream course,

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wetland, estuary, etc, will have immediate and recognizable impacts on coastal water resources, in contrast to alterations of upland areas where there is no potential for adverse impacts on true ESHAs or coastal water resources.

For a thorough analysis of the issue of ESHA designation, please refer to the attached Memorandum dated April 8, 2002 prepared by Dr. Daryl Koutnik, Senior Biologist for the Department of Regional Planning. Dr. Koutnik's analysis refutes the designation of the site as an ESHA by citing factual, scientific evidence. He supports the decision by the Coastal Commission in 1986 when it certified the Malibu Land Use Plan (LUP) that did not show the subject property as an ESHA. The Commission made the same determination in the early 1990's when it approved Coastal Development Permit No. 5-90-190 and specifically found that the site was not in an ESHA. Considering that the definition in Section 30107.5 has not changed between 1986 and the present, it is impossible to justify the Staff Report's conclusion that the site is now an ESHA. Either the Commission was terribly mistaken in its earlier actions or now it has a dramatically different way of interpreting Section 30107.5. In any event, there is no substantial evidence in the Staff Report on which the Commission can make findings that the subject property can be properly designated as an ESHA.

Further, the Coastal Commission's approval of this policy of designating vast areas as ESHA without supporting evidence will have unintended consequences that will eliminate the ability of property owners to develop important visitor-serving uses that are encouraged by the Coastal Act and that compliment the Santa Monica Mountains National Recreation Area. Such uses as equestrian facilities or bed and breakfast establishments would not be able to meet the severe development restrictions contemplated by the Coastal Commission in ESHAs. It would be equally difficult to site necessary public benefit facilities such as fire stations, schools and water tanks if all undeveloped areas are designated ESHA.

The Department of Regional Planning would like to emphasize that the County understands and supports the special significance of natural biological resources in the Santa Monica Mountains coastal zone. For this reason, the County proposed and the Coastal Commission certified the 1986 LUP that contains the Sensitive Environmental Resources map that identifies not only ESHAs, but also Significant Watersheds, Oak Woodlands, the Cold Creek Resource Management Area and Wildlife Corridors all of which receive site-specific review by the Environmental Review Board and which are subject to special development standards and density controls. In addition, the County provides additional resource protection techniques to protect coastal resources including the Oak Tree Permit and hillside management conditional use permit, both of which are presently in the County zoning ordinance and have been implemented for over 10 years. A new study by our consultants has recommended that the entire undeveloped area in the Santa Monica Mountains, including virtually the entire coastal zone, be designated as Significant Ecological Area (SEA). The SEA designation does not prohibit development, but requires most development projects to be subject to a conditional use permit which

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

DATE: April 8, 2002

TO: Dave Cowardin, Coastal Planning Section

FROM: Daryl Koutnik, Senior Biologist

RE: Coastal Commission Staff Report, Application No. 4-00-119 (March 21, 2002)

I have reviewed the California Coastal Commission Staff Report (Report) of March 21, 2002 for Application No. 4-00-119 and find there to be little substantial evidence and no "scientific" analysis provided to justify the claims made in C. Environmentally Sensitive Resources concerning the presence of an environmentally sensitive habitat area (ESHA) on the subject property. The Report provides the Coastal Act definition of "Environmentally Sensitive Area", including formulating the definition to three questions, yet there is essentially no evidence presented to support the claims that the project location and habitat present satisfy the definition of ESHA. Instead the Report immediately introduces an undefined term "scale" and uses circular reasoning that a coastal habitat may qualify as an ESHA depending on the quantity of the resource present in comparison to some unmeasured surrounding resources in some hypothetical setting. It is assumed that the intent of the "scale" discussion is to provide some basis of how a resource might be considered rare or valuable but the effort fails to supply any parameters upon which to conduct a scientific analysis. In the opinion of this reviewer, the "scale" analysis is backward since the logic that a small degraded habitat may become important when compared to an increasing habitat area ("landscape scale") misapplies the principles of island biogeography where an isolated and degraded habitat will likely quickly be colonized by the surrounding habitat. It is only when the natural ecological processes of the small habitat are intact and surrounded by an area where natural processes have been disrupted that the smaller habitat "patch" will maintain its importance. Similarly, the argument that the Santa Monica Mountains is a hot spot on a world wide "scale" is neither relevant since the Coastal Act applies only to California, nor true since both western Australia and southern Africa, two of the five planet's Mediterranean climate zones, greatly exceed California in endemism by at least a factor of five as well as in both endangerment and extinction rates.

The Report's argument that the Santa Monica Mountains importance as a connecting corridor to the Simi Hills and eventually to the Santa Susana and San Gabriel Mountains (it is not apparent to what mountain range the Report refers to as "Sierra Madre") is correct but not relevant to the resources of the project application. The project site is so small and peripherally located that it maintains no vital corridor for any of the large ranging species typically referenced in wildlife movement analyses. Indeed, wildlife corridors extremely important but few within the coastal boundary of the Santa Monica Mountains qualify as being distinguished as ESHA.

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The Report claims that this project site is proximate to riparian corridors connecting inland areas to the coast, which appears to be an exaggeration. Blue line drainages as depicted on the Topanga USGS topographical map are approximately 500 feet or more away although the actual riparian resources supported by these drainages are at least twice that distance away. However, these drainages do not provide any direct connection to the coast nor do they provide a logical linkage because of the steepness of the terrain, being much greater than 100% slopes. The direct corridor of inland areas to the coast in this region is Topanga Canyon Creek, about one mile away from the project site and 1000 feet or more lower in elevation.

The Report correctly identifies chaparral as the primary habitat on the project site although there is no specific identification of which subtype is actually present. There is a word processing ("cut and paste") error on page 18 but it is assumed that the Report identifies the chaparral types as described in Holland (1986) as basically conforming to the chaparral association types at the project site. The Report describes both northern mixed chaparral and Ceanothus chaparral and it is inferred that these vegetation associations are those represented on the project site although only a single plant species *Adenostoma fasciculatum* (chamise) is clearly stated to occur on-site (and this species often typifies a different chamise chaparral subtype which Holland states as the "predominant chaparral type in Ventura and Los Angeles ... counties"). Oddly, the Report later makes a statement implying that coastal sage scrub is present on the site but there is no evidence that this is factually correct. The Report alludes that "reasons" are provided to explain why chaparral should be considered an ESHA but none are provided anywhere in the Report and the three questions posed at the beginning of the "Environmentally Sensitive Resources" discussion are never directly attempted to be answered. The Report asserts that chaparral vegetation of the project site constitutes an ESHA is somewhere explained but this reader could not find anywhere in the Report an explanation that provides any scientific support or even a minimum of substantial evidence to support the allegation. In other words, the claim of chaparral qualifying as an ESHA is naked without a shred of substance. The two chaparral types identified in the Report are either described in Holland (1986) as "very common", "abundant", "dominant" or listed with a distribution of up to 700 miles or more (Klamath Mountains to southern California) and not restricted to coastal habitats. For example, the distribution of northern mixed chaparral states "generally becoming more abundant from north to south". Common sense would compel an objective observer that "very common" and "abundant" qualifiers are in direct contrast to "rare". The Report claims that the majority of the project site is considered an ESHA based solely on the presence of chaparral plant species, of which only chamise (*Adenostoma fasciculatum*) is clearly identified as on-site and which is probably the most common chaparral species in California. In fact, there are rather few chaparral species within the Santa Monica Mountains that are rare and none of these are found on the project site or in the vicinity of the site. It is also not obvious how the vegetation may be easily disturbed when the Report states it is recovering after a human induced fire and that many human activities in the Topanga Canyon area have been in operation for at least the last seventy years.

Los Angeles County
Department of Regional Planning
Director of Planning James E. Hartl, AICP

December 31, 2001

Mr. Gary Timm
California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, CA 93001

Dear Mr. Timm:

SUBJECT: DRAFT City of Malibu Land Use Plan

We would like to provide additional comments on the Draft City of Malibu Local Coastal Program Land Use Plan (LUP). This letter incorporates the concerns of Dr. Daryl Koutnik, Senior Biologist, and supplements our previous letter to you dated October 25, 2001. There are aspects of the draft plan related to environmentally sensitive habitat areas (ESHAs) that we believe should be revised; detailed comments related to this issue are attached. We will address three aspects of the ESHA policies: 1) Many of the proposed ESHAs do not meet the Coastal Act definition, 2) An alternative approach to protecting coastal resources exists that would address your staff ecologist's concerns, and 3) The Coastal Act allows only resource dependent uses in ESHAs. We are especially concerned with these policies because sections of the LUP staff report include the Santa Monica Mountains portion of the coastal zone in its analysis. The inclusion of some of these ESHA concepts in the unincorporated area would be inappropriate.

ESHA Designation

Your staff's proposal regarding ESHAs is a dramatic change from the way ESHAs are depicted on the 1986 certified LUP for Malibu and the Santa Monica Mountains. In the 1986 LUP, limited areas of wetlands, streams, riparian corridors and selected oak woodlands were designated as ESHAs on the "Sensitive Environmental Resources" map. (See attached Figures 1-4) These are the types of areas that are identified in your staff report as "clearly ESHA." (Allen, J.C. 2001. Ecological Findings for Malibu. Staff Report, Draft City of Malibu Land Use Plan. Page 1.) Other important areas that did not meet the Coastal Act definition of ESHA were identified and given additional protection in the 1986 LUP. These areas include Significant Watersheds, Wildlife Corridors, Significant Oak Woodlands and Savannas, and the Malibu/Cold Creek Resource management Area.

We agree with the inclusion of wetlands, riparian areas and dunes as ESHA in the draft LUP. However, the ESHA maps accompanying the draft LUP indicate that most of Malibu's undeveloped land, which includes a variety of plant community types such as chaparral, coastal sage scrub, and coast live oak, has been placed in the ESHA category. Preservation of habitat connectivity and wildlife corridors is cited in the staff report as a main reason for designating such large areas as ESHA. (Ibid, 8-12) Although we agree that these are important factors to consider, we do not think that the ESHA designation is warranted or required to preserve habitat connectivity.

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Indeed, the most important areas for such connectivity are not in the City of Malibu but are in the unincorporated Santa Monica Mountains and to the north in Ventura County as shown in Figures 3 and 5 of the Malibu Ecological Findings Appendix to J.C. Allen's report. We disagree with the staff report's assertion that these plant communities, including the type of coastal sage scrub found in this area, meet the strict definition of ESHAs simply because of their geographic location. The habitats that are described as "...potentially ESHA and should be evaluated on a site-specific basis" should not be designated as ESHA, but should be analyzed individually to determine if they are in a critical location or if they contain resources that need additional protection. (Ibid, 3) Such areas should be mapped as part of the LUP process; as development projects are proposed within these areas, they should be evaluated by the Environmental Review Board. The areas that are environmentally important but do not require the type of protection associated with ESHAs should be designated as "Sensitive Environmental Resource Areas" and protected as discussed below.

Alternative Approach and Buffers

Protecting coastal resources is possible without designating "all natural terrestrial habitats...as ESHA." (Ibid, 1) The staff report seems to recognize there are options to such a broad-brush policy, since it presents the "Federal view of listed species habitat...that all habitat that is required by and potentially occupied by a listed species is sensitive...and such habitat needs to be evaluated for impacts whenever developments are planned." (Ibid, 4) The 1986 certified LUP followed this approach when it recognized Significant Watersheds, Significant Oak Woodlands and Savannas, Wildlife Corridors and a special Resource Management Area as Sensitive Environmental Resource Areas that deserve additional protection. New development in these sensitive areas is not prohibited, but is subject to site-specific review by the Environmental Review Board to minimize impacts on coastal resources. Your staff ecologist recommends site-specific evaluations for development in Malibu's non-wetland habitats. (Ibid, 3) In addition, policies and development standards to preserve and protect habitat connectivity and wildlife movement can be included in the Local Coastal Program to require very low densities, reduced vegetation clearance, restricted night lighting and special fencing provisions in these sensitive areas. The 1986 certified LUP's approach to ESHAs and other sensitive resource areas was found by the Coastal Commission to be consistent with the Coastal Act. This approach, which has been the accepted practice for many years, addresses the staff's concerns about wildlife corridors and habitat connectivity in a reasonable fashion.

A related important issue is how the draft LUP addresses buffers adjacent to ESHAs. The proposed policies would prohibit all development including any vegetation removal - even that required for fire safety purposes - in these as yet undefined buffer areas. Such development restrictions are not consistent with the Coastal Act. The Act does not prohibit development but says that development adjacent to ESHAs "shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat areas." (Section 30240) In fact, your staff report states: "... if the habitats themselves are protected, the mere proximity of human development may not have as deleterious an effect on adjacent habitats as one might think." (Ibid, 8) This suggests that rather than prohibiting development outright, a review of any proposed development would be appropriate. Review is precisely what the existing certified LUP requires and what the County has implemented. Our recommendation in this matter is to retain the present procedures.

Development in ESHAs

Redefining ESHAs in a manner which so greatly expands their area is significant because, as stated in the staff report, "Development is never allowed within these habitats except for a small number of specified activities." (Ibid, 1) Section 30240 of the Coastal Act allows only resource dependent uses in ESHAs. The draft LUP also would prohibit new agricultural and confined animal uses in ESHAs. To expand ESHAs as proposed in the draft LUP would then prevent many individuals from engaging in these important, traditional aspects of the rural and recreation lifestyle of the mountains.

Associated with the extensive expansion of ESHAs proposed in the draft LUP is the issue of "takings," addressed in policies 3.9 and 3.10. These policies would allow some limited amount of development in an ESHA, which seems contrary to Coastal Act Sections 30240 and 30007.5. It also seems contrary to case law as cited in *Sierra Club v. California Coastal Commission (Mendocino County)* (12 Cal.App.4th 602), where the California Court of Appeal said: "The LUP in this case, for example, may provide significant habitat protection, but it allows non-resource-dependent (residential) development in violation of the Act." Further, the proposal to allow development in ESHAs is not addressed in the Summary of Ecological Findings prepared by your staff ecologist. It appears that in attempting to avoid future "takings" lawsuits prompted by the excessive designation of chaparral and other habitats as ESHAs, the LUP will be inconsistent with State law.

In conclusion, we believe the goal of protecting coastal resources can be achieved in a very effective fashion without designating all undeveloped land as ESHA, but instead using an approach similar to that taken when the Commission certified the County's LUP in 1986. Although you were not able to meet with us prior to the January 10, 2002 hearing, we would like the opportunity to work with your staff to resolve these and other issues in a mutually beneficial fashion so that the Local Coastal Programs for the City of M[redacted]nica Mountains will be compatible and reflect the most effe[redacted]tal Act.

Thank you for your consideration of [redacted] contact Gina M. Natoli or me at 213/974-6422 if you have any questions. Our office is open Monday through Thursday from 7:00 a.m. to 6:00 p.m.; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Ronald D. Hoffman
Supervising Regional Planner

RDH:GMN

Attachments

LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING
Additional Comments on the DRAFT City of Malibu Land Use Plan

Environmentally Sensitive Habitat Areas (ESHAs)

ESHA Map – The map is not "scientifically" based, but based chiefly on existing ground disturbance. ESHA criteria should be developed, and there should be more specific ESHA identification.

- The statement that the map will "change over time" makes the ESHA map a moving target. How would anyone know with certainty the status of a property?
- There are essentially no coastal resources identified as ESHA.

Policy 3.3 – This is too vague, too broad: what are the ESHA criteria? California Department of Fish and Game, not the California Native Plant Society (CNPS) listings of sensitive communities should be used.

Policy 3.4 – We agree with a five-year review of the ESHA map.

- Habitat restoration should not qualify as ESHA until it is successfully completed.

Policy 3.9-3.10 – These policies defeat the ESHA protections and are inconsistent with Section 30240 of the Coastal Act.

Policy 3.15 – Defining a "dune" ESHA seems to be redundant. All EHSAs are supposed to be protected along with other sensitive resources.

- Is the least tern known to nest in any locations within the City of Malibu?

Policy 3.16 – Unless sensitive habitat areas are identified, how can new vehicular uses be avoided within them? Are you using "sensitive habitat areas" interchangeably with "ESHAs?"

Policy 3.37 – What are the study criteria? Also, see comment on CNPS above (Policy 3.3)

HABITAT

Page 37 - Does the Santa Monica Mountains dudleya occur within the Malibu boundary? What are the locations of the Santa Susana tarplant (Charmlee Park)?

Page 39 - Why have significant oak woodlands and significant watersheds been eliminated?

- Although important, chaparral is not designated as a sensitive habitat by California Fish & Game; this is also true for Venturan sage scrub and coast live oak woodland. (Neither are sensitive.) Last paragraph, "...use that is not consistent... will be permitted," defeats the purpose of the policy protections. Perhaps the ESHA boundaries should be drawn more practically.

Policy 3.2 – Several listed canyons are not "exceptional undisturbed habitats," i.e. Escondido and lower Trancas.

Policy 3.11 – Good as a method to provide development guidelines in ESHA and parkland buffers.

- The development standards are similar to those of the Significant Watershed category in Table 1 of the 1986 certified LUP: why, then, remove the resource category?

DEFINITION – BUFFERS, SETBACKS

Page 40 – Width of natural vegetation buffer adjacent to ESHA is not identified. Because development and fuel modification are prohibited within the buffer, it becomes a de facto ESHA (see policies 3.22-3.29; page 44 – Section 30240(b)).

Policy 3.17 – Width of no-toxic-chemicals area adjacent to ESHA is not identified. Significant degradation of ESHAs would not occur at every quantity level or upon every application: thresholds?

Policy 3.22 – "Adjacent" has a specific legal definition in the Los Angeles County Code; it is not clear how far from ESHA adjacency extends.

Policy 3.23 – Need to define either a distance for the vegetation buffer or to provide criteria for determining its size.

Policy 3.24 – This effectively makes the buffer areas ESHAs. Section 30240(b) does not prohibit development in these areas but requires development to be sited and designed to prevent impacts that would significantly degrade recreation areas and ESHAs.

Policy 3.25 – The policy defines where a buffer might begin but not where it might end. Riparian, woodland, and coastal bluff ESHAs have not been defined. Proposed ESHA boundaries are so vast that the outer edge of actual riparian vegetation, tree canopies and woodland ESHA would be well within ESHA boundaries: why bother defining a buffer area for these habitats? Where would the buffer begin in coastal sage scrub ESHA or native grassland ESHA?

Policy 3.124 – Examples of protective setbacks should be provided or defined in the Implementation Program.

Policy 3.130 – What is an adequate setback or buffer from sensitive environmental resources for a septic system? This should be identified in the Implementation Program.

Policy 3.139 – A formula using parameters in policy should be provided in the Implementation Program to determine the "maximum number of animals."

DEFINITION: NATURAL/NATIVE/INDIGENOUS VEGETATION

Policy 3.1 – Grasslands should refer only to "native" grasslands; chaparral and coastal sage scrub should not be included.

Policy 3.20 – Not all burn areas will be capable of natural revegetation since the vegetation preceding the fire may not have been natural.

Policy 3.49 – Landscape plantings for slope stabilization and erosion control should be locally indigenous; do not use just "native" plants.

- Is the term "blended" defined?

Policy 3.113 – All re-vegetation of graded slopes should only be with locally indigenous species.

RECOMMENDED CHANGES

Policy 3.3 - Remove reference to the California Native Plant Society list, since it is not subject to public review. State and Federal lists should be used because they are subject to public review.

Policy 3.64 – An inventory of trees should be by species, not "type."

Policy 3.65 – Change "type" to species.

- The in-lieu fee should be based on International Society of Arborists value of removed tree.

Policy 3.67 – "Vacant land" implies that nothing is present, but natural vegetation and wildlife are present; "undeveloped land" is more accurate.

Policy 3.91 – A lagoon management plan should be left to State Parks and Recreation.

Policy 3.100 – The last sentence is not clear. Is a word missing?

Policy 3.104 - Washout areas should be more than fifty feet from riparian areas.

BIOLOGICAL RESOURCES

Policy 3.35 – There is no distinction between new development applications within or outside an ESHA for the biological inventory requirement. This requirement might be eliminated if more clearly defined ESHAs are provided.

Policy 3.37 – Need a more specific requirement than "a map depicting the location of biological resources" (e.g., vegetation map and constraints map or sensitive elements.)

- "Analysis of any unauthorized development" should include a time frame (i.e., post Coastal Act). New owners typically do not know a property's development history. Would this analysis include the presence of scrub habitats in non-native grassland if human-induced fire frequency were lessened to pre-European settlement of North America? Given the extensive coverage of the proposed ESHAs and their buffers, the policy will effectively be a full employment act for biologists and add a minimum of $10,000-$20,000 to the cost of a single-family residence. Are there any exemptions for additions to existing residences?

Policy 3.38 – Circular requirement: "ERB...to review...development...within or adjacent to ESHA," or if sensitive resources are identified by a biological study "pursuant to Policy 3.37," which applies within or adjacent to ESHA.

- First use of the term "Sensitive Environmental Resource Areas," but the term is not defined. Only ESHAs have been identified. "Sensitive Environmental Resource Areas: are identified and mapped in the 1986 certified LUP as Significant Watersheds, Significant Oak Woodlands, Wildlife Corridors, etc.

GENERAL DEFINITIONS

Policy 3.13 – The use of the term "significant impacts" has CEQA implications, but projects in the coastal zone that may have impacts to sensitive resources are not necessarily significant impacts under CEQA.

- "Fully mitigated" needs to be defined; is this mitigation in real terms or mitigation as determined by conditions of a development permit?

Policy 3.18 – "Use of pesticides by City employees shall be minimized" is unenforceable unless steps for achieving minimization are identified.

Policy 3.21 – Explain how interpretive signs in ESHAs shall help protection. Interpret what? Signs placed where? Some ESHAs are quite large. How many signs per ESHA? It is not clear how this policy may be implemented.

Policy 3.26 – What kind of size restriction shall be placed on the primary structure? The term "primary" structure seems redundant if it is the only structure permitted.

Policy 3.31 – Is "natural stream" defined? Does "natural stream" include all blue line streams on US Geological Survey maps or only drainages that maintain riparian vegetation?

Policy 3.93 – Identify and define "areas that provide water quality benefits." This statement is unclear.

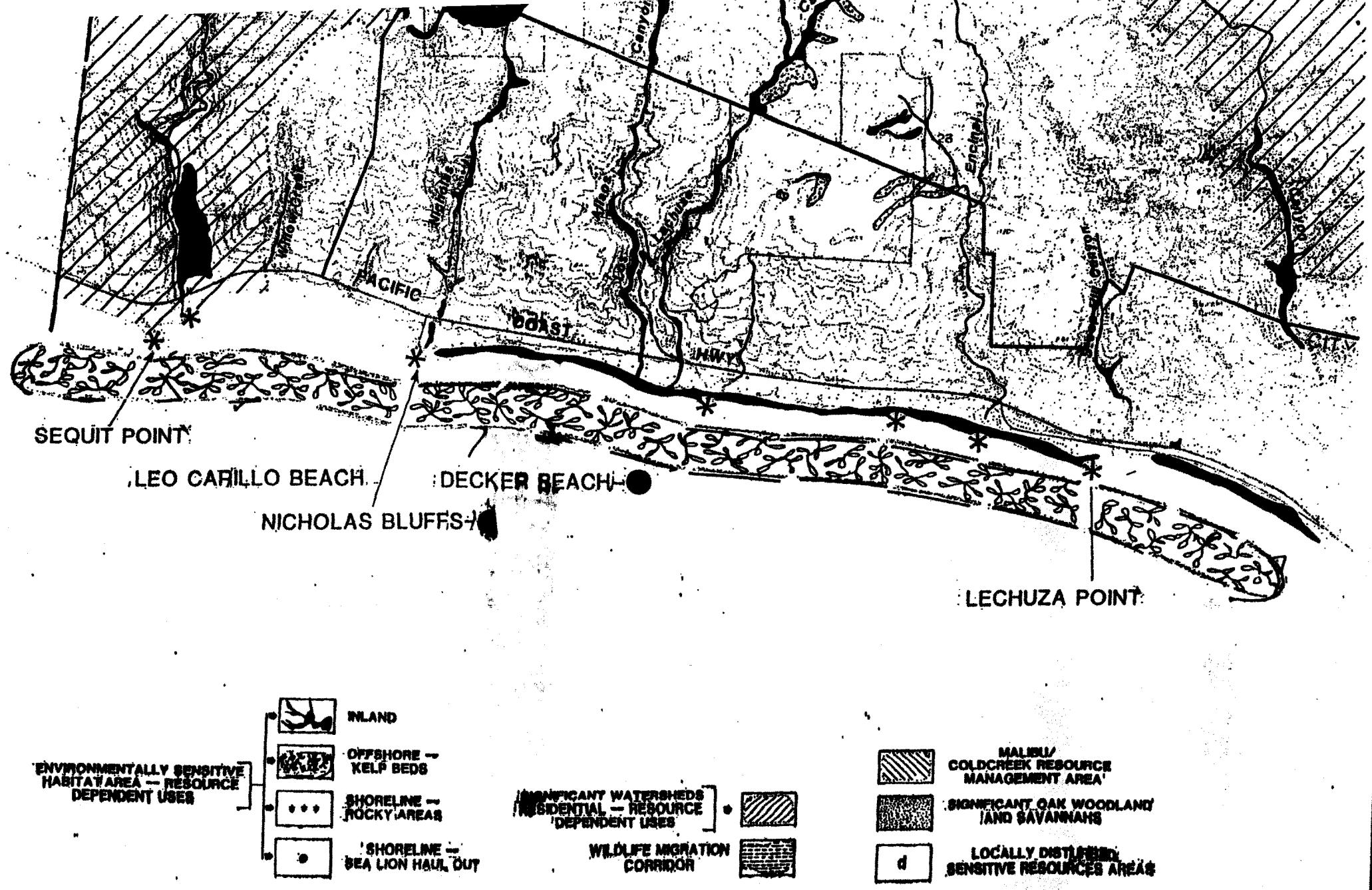
OTHER CONCERNS

Policy 3.10 – The term "investment backed" is questionable.

Policy 3.12 – Development standards:

- 3.12.b - Is a single-family residence considered "investment backed?"
- 3.12.c. - How is a minimum determined for economic viability?
- 3.12.d – What is the reference to Policy 10c?

A policy should be added to prohibit animal enclosures within or immediately adjacent to riparian areas.



ENVIRONMENTALLY SENSITIVE HABITAT AREA — RESOURCE DEPENDENT USES
- INLAND
- OFFSHORE — KELP BEDS
- SHORELINE — ROCKY AREAS
- SHORELINE — SEA LION HAUL OUT

SIGNIFICANT WATERSHEDS RESIDENTIAL — RESOURCE DEPENDENT USES

WILDLIFE MIGRATION CORRIDOR

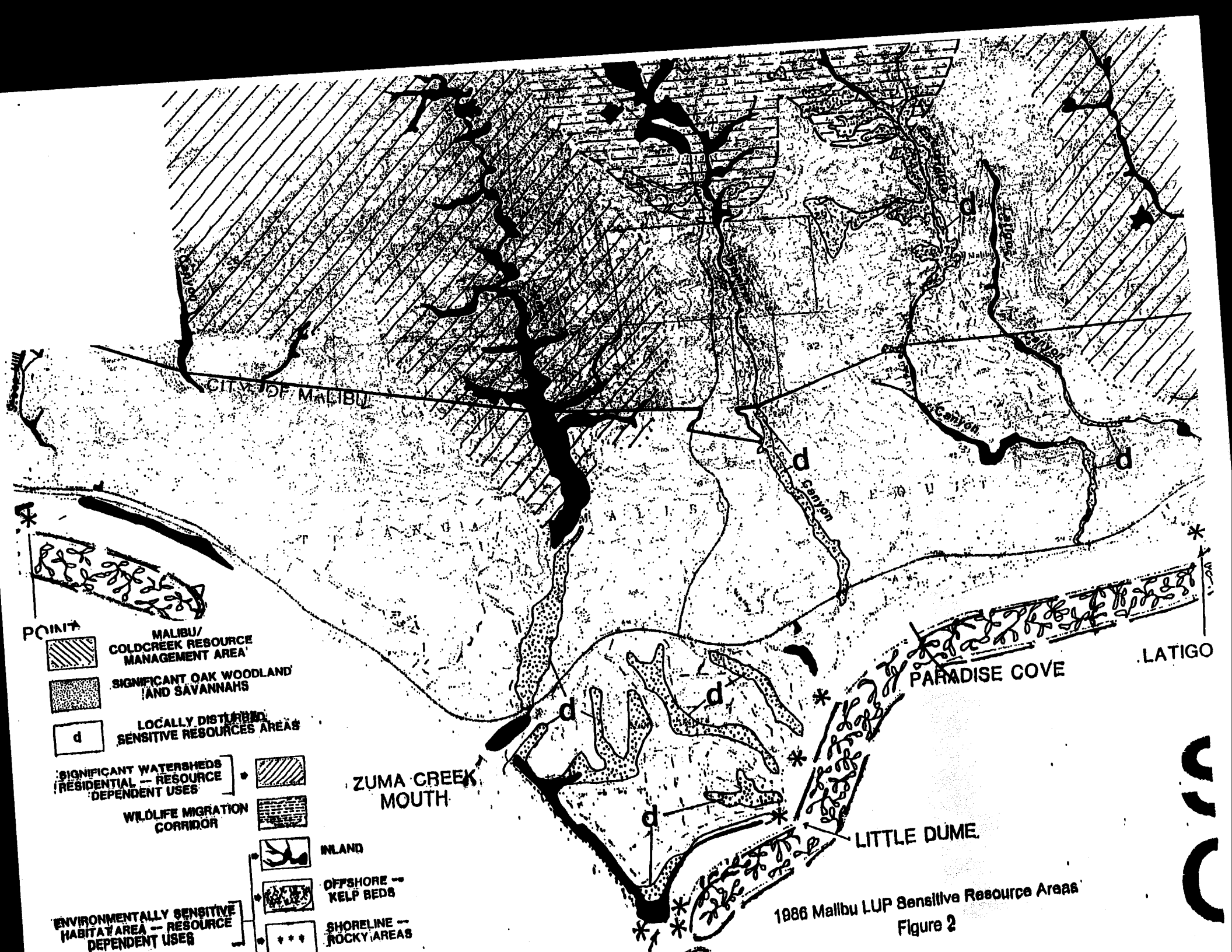
MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

SIGNIFICANT OAK WOODLAND AND SAVANNAHS

d — LOCALLY DISTURBED SENSITIVE RESOURCES AREAS

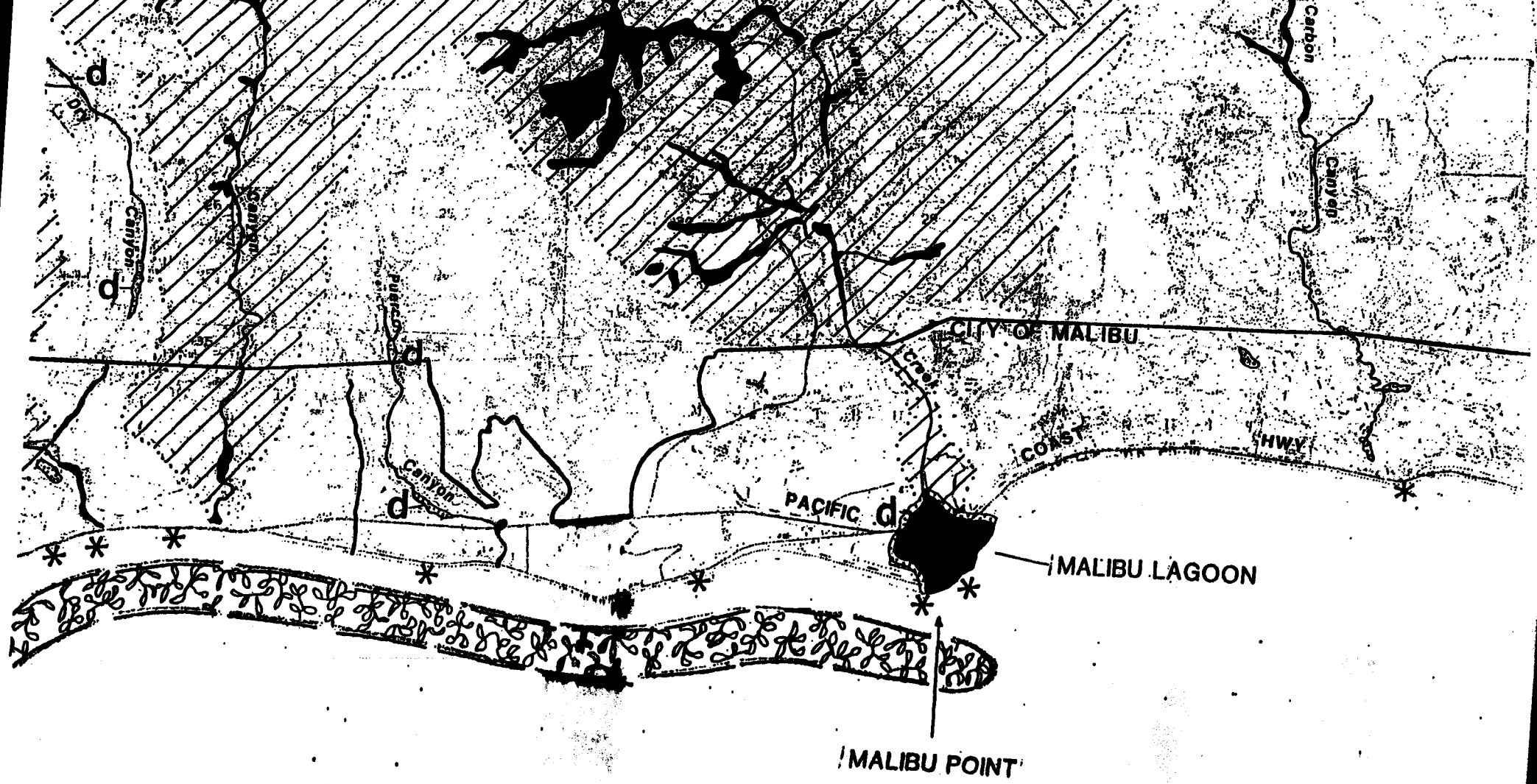
1986 Malibu LUP Sensitive Resource Areas

Figure 1



1986 Malibu LUP Sensitive Resource Areas

Figure 2



ENVIRONMENTALLY SENSITIVE HABITAT AREA — RESOURCE DEPENDENT USES
- INLAND
- OFFSHORE — KELP BEDS
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SIGNIFICANT WATERSHEDS RESIDENTIAL — RESOURCE DEPENDENT USES

WILDLIFE MIGRATION CORRIDOR

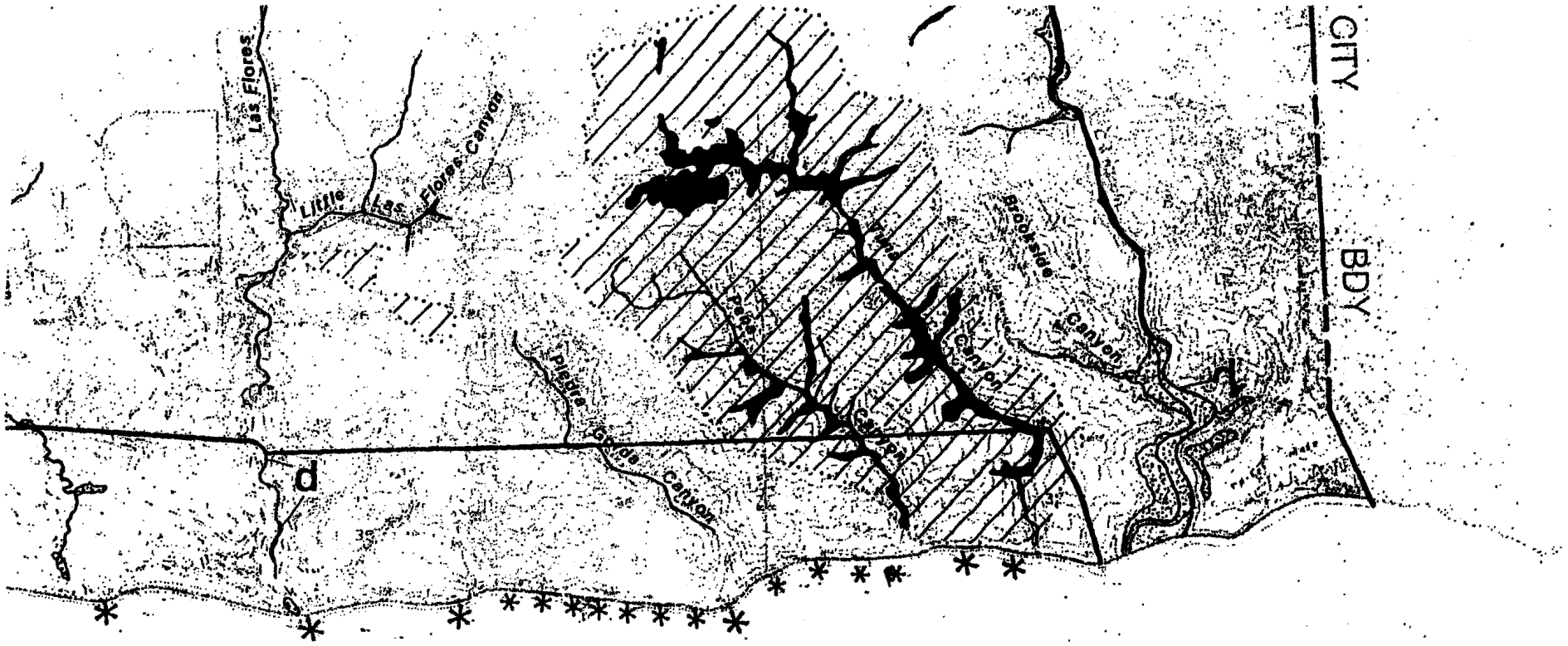
MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

SIGNIFICANT OAK WOODLAND AND SAVANNAHS

d — LOCALLY DISTINCTIVE SENSITIVE RESOURCES AREAS

1986 Malibu LUP Sensitive Resource Areas

Figure 3



ENVIRONMENTALLY SENSITIVE HABITAT AREA — RESOURCE DEPENDENT USES

- INLAND
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MALIBU/ COLDCREEK RESOURCE MANAGEMENT AREA

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d — LOCALLY DISTURBED SENSITIVE RESOURCES AREAS

1986 Malibu LUP Sensitive Resource Areas

Figure 4

Statement of Don Wallace, LAFD Captain II, Retired Concerning the Malibu LCP/LUP/LIP under consideration by the California Coastal Commission at its July 10, 2000 public hearing in Huntington Beach.

Honorable Chair Wan and Commissioners:

The Plan you are considering is a direct attack on existing fire protection principles in the Santa Monica Mountains. Including coastal sage scrub and chaparral in the definition of an ESHA, combined with restrictive brush clearance policies, sets ups a confluence of forces that will lead to the increased loss of homes and an increase in death and injury to both citizens and firefighters.

The draft Malibu LCP, by defining coastal sage scrub and chaparral as sensitive resources, assigns much of the residential land in Malibu to ESHA's. Under the proposed Malibu LCP policies, residential development is limited to 10,000 sq ft/site, including any brush clearance. On a one acre site, 25% of the lot would be developed and protected; 75% would be undeveloped and covered with highly flammable vegetation. On larger lots, the undeveloped brush covered percentages would be much higher. The Plan then prescribes fuel management policies that restrict brush clearance without regard to fuel load, topography or life safety. In effect, these policies will result in a very different and untested Fire Protection paradigm for the Santa Monica Mountain's coastal zone.

Under current practices, most homeowners on small lots, 1 to 5 acres, have zero to 20 or 30 percent of their land with native vegetation cover, depending on the size and topography of the parcel. Present practice requires the citizen to clear his property to fire department standards and then allows him to increase his protection depending upon his needs or comfort zone. Over time, as infill lots have been developed and more restrictive fire codes were enforced, wildland fire risk has been reduced and neighborhoods are more secure.

These historic brush clearance policies have led to neighborhoods where the greatest hazard is along the direct interface between the structures and the hazardous vegetation. Most structures within neighborhoods have no direct fire exposure and others have exposure on one or possibility two sides, giving the appearance of structures strung out along a beachfront. Some structures are constantly confronting the tide, while providing protection and a buffer for those inland from the brush. The result is neighborhoods that provide defensible space for home protection, numerous locations for firefighter safety zones, opportunities for citizens and livestock to shelter in place, and escape routes for both citizens and firefighters. When loss does occur it is usually due to the lack of proper clearance, preparation and/or the breakdown of fire protection.

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Received at Commission Meeting
JUL 1 0 2002
From:

Under the proposed Malibu LCP, those same structures will be like tiny islands in a sea of some of the world's most hazardous vegetation. Neighborhoods will be shot through with coves and inlets of brush. Homes will be surrounded by and intermixed with a flood tide of highly flammable coastal sage scrub and chaparral. Escape will be down driveways and streets flanked with old growth fuel and safety will only be found at the coast. Resident's risk will increase with each passing year and the only question is when, not if, there will be a brush fire disaster. Firefighters attempting to protect these structures will run a gauntlet of fleeing citizens, frightened animals and flaming brush, only to be driven back by the advancing flame front.

Take a drive along Topanga then up into the Fernwood area to see numerous examples of the long-term result of policies that allow or condone intermixing of hazardous vegetation and structures. These intermixed neighborhoods of the Santa Mountain Mountains are virtually undefendable and will eventually be burned out. This very scenario was played out in Oakland in 1991 with the lost of 25 lives, 3000 structures and 1.89 billion dollars in property loss.

Federal fire protection policies mandate the number one priority in wildland fire protection as the protection of **lives** and **property**. The vegetation management policies as described in the Malibu LCP are in direct opposition to these Federal policies; and place the protection of property and the lives of citizens and firefighters near the bottom of a long list of politically correct environmental issues. This is unacceptable. Where is the Environmental Impact Report describing the effects of this unprecedented policy shift?

Don Wallace
1710 N. Cold Canyon Road
Calabasas, CA 91302
Voice: (818) 222-2560
Fax: (818) 222-4317
donwwallace@att.net

Received at Commission
Meeting

JUL 1 0 2002

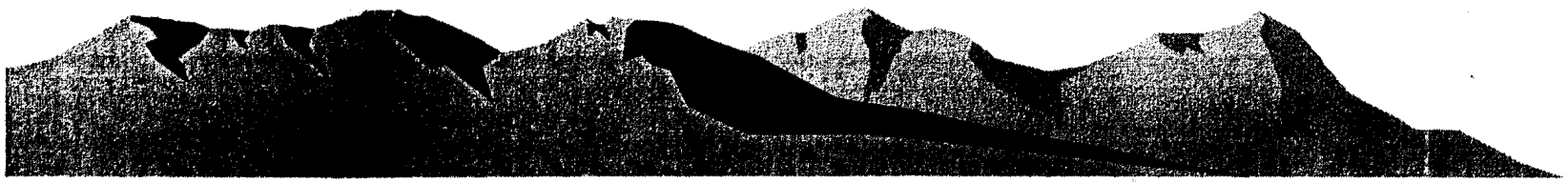
From:_____

La Costa Cove: a threatened fragile habitat

One of California's delicate coastal environments at risk

Protected by Nature: Threatened by Big Developers

- A rare landscape made possible by two wetland seasonal streams at each end
- Rock ledges protect the ends of La Costa Beach
- Low public impact has allowed a rich wetland habitat to exist—one of the last wetland beaches in the city limits.

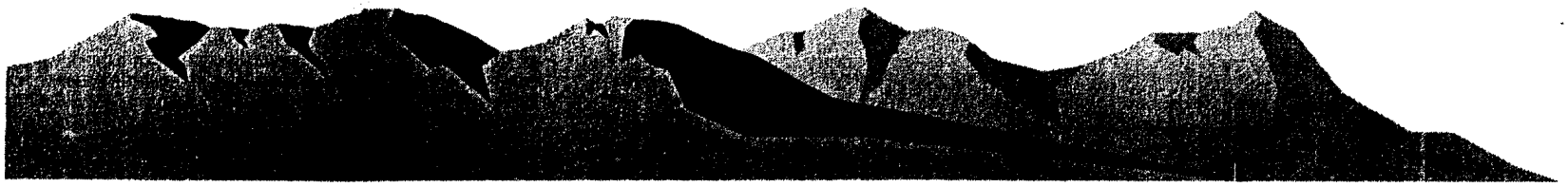


A Place for Smaller Homes

- Many residents have lived here and raised families.
- We protect the fragile cove: it is our back yard.
- We worry that an unmonitored public will abuse this fragile environment.

The Cove: A Tidal Landscape

- At low tide, the Cove teems with life
  - Delicate crabs scurry across rocks
  - Rock fish dart in tidal pools
  - Birds circle



But at High Tide

- The Cove fills nearly to the fence line with surf.
- Rocks line the cove
- The Beach is largely impassible

And seasonal shifts bring significant changes

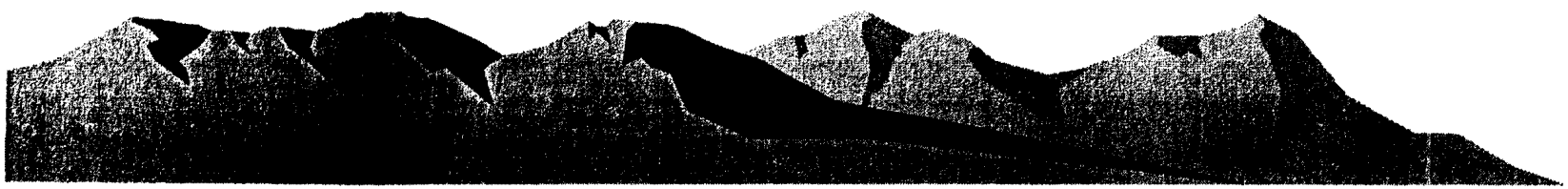
- Winter storms sweep the cove
- Summer uncovers the rock face to fully 2/3 of the area.
- Summer sand is reduced as well. The beach size is smallest during times of heaviest use.

A fragile place in all seasons

- Fish, birds, and vegetation all are delicate at the cove.
- Even tide pooling can impact on this world.
- Reduction in starfish, rock cod, and anemones has been recorded over the last decade—now at lowest levels of observation.
- Abalone extinct.

Wetland Habitat: Mountain to Sea

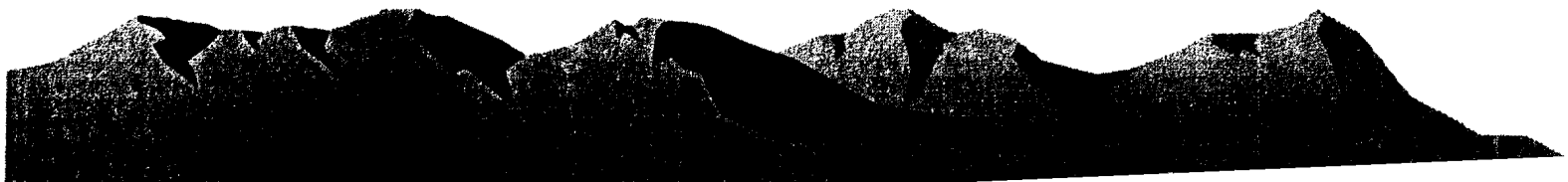
- Wetlands at the other side also shift the tidal relationships.
- Run-off from housing already threatens the Cove habitat.



THE 3rd WORST CURVE ON THE COAST

Paramedics say "We cannot guarantee prompt response to this beach in summer."

- *THE 3rd DEADLIEST CURVE ON THE PACIFIC COAST HIGHWAY*
- Crossing the highway here is perilous
- A blind curve makes stopping and leaving both very dangerous, and parking is very limited.
- Sheriff's report cautions that place holds special danger for motorists.



No Public Facilities can be safely constructed

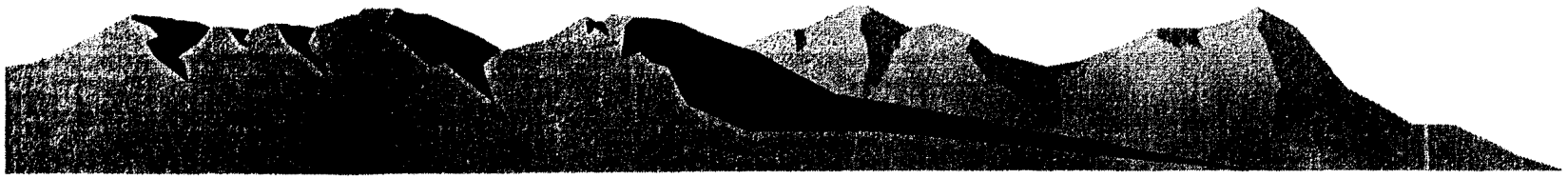
- No way to build bathrooms or changing areas with decency
- Even small private portables will be swept away at the first high tide
- Releasing serious bacterial contaminant into our immediate Ocean habitat
- Dogs and rats can and do overturn all trash

The policing of the beach would be a full time job

- Who protects from over fishing?
- Who protects from taking from tide pools?
- Who protects from trash and human waste?
- Who keeps power boats from swimmers?

The cleaning of the beach is also a problem

- Human waste: who cleans up and how often?
- Food trash
- Who is responsible to see the work is correctly done?

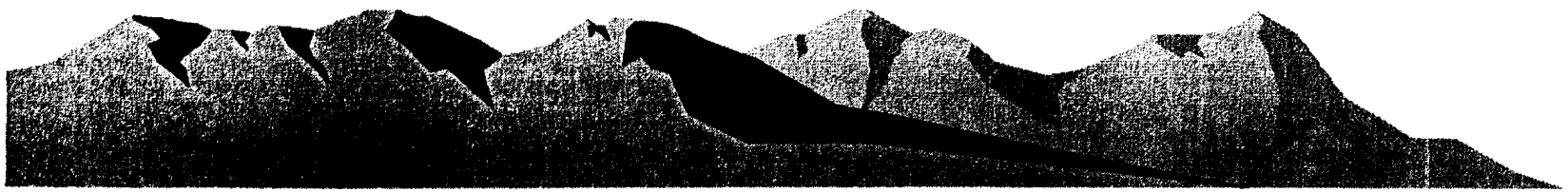


Who protects the children?

- Tidal sweeps can be extreme
- Deep Ditches and holes are just under the surf
- Shore break is extreme
- Three lifeguards needed for La Costa's mid-section: They tell us "*It's one of the hardest beaches to lifeguard in the county.*"

California's Coast cannot be bartered

- Why should the Commission allow California to be sold to the wealthy?
- Why should the wealthy be allowed to use this beach as a pawn in their "Not in my Backyard" Game?
- Is the Coastal Commission for sale for a million dollars?



Why this narrow strip of Land?

- Dangerous highway access
- Environmentally fragile: only a tidal beach
- Unsafe for heavy public use
- Not a true "trade" for anything—merely a way to shift the cost of the Coastal Commissions regulations from the wealthy to the smaller private homeowners

Notes on Scenic Issues & Scenic Maps

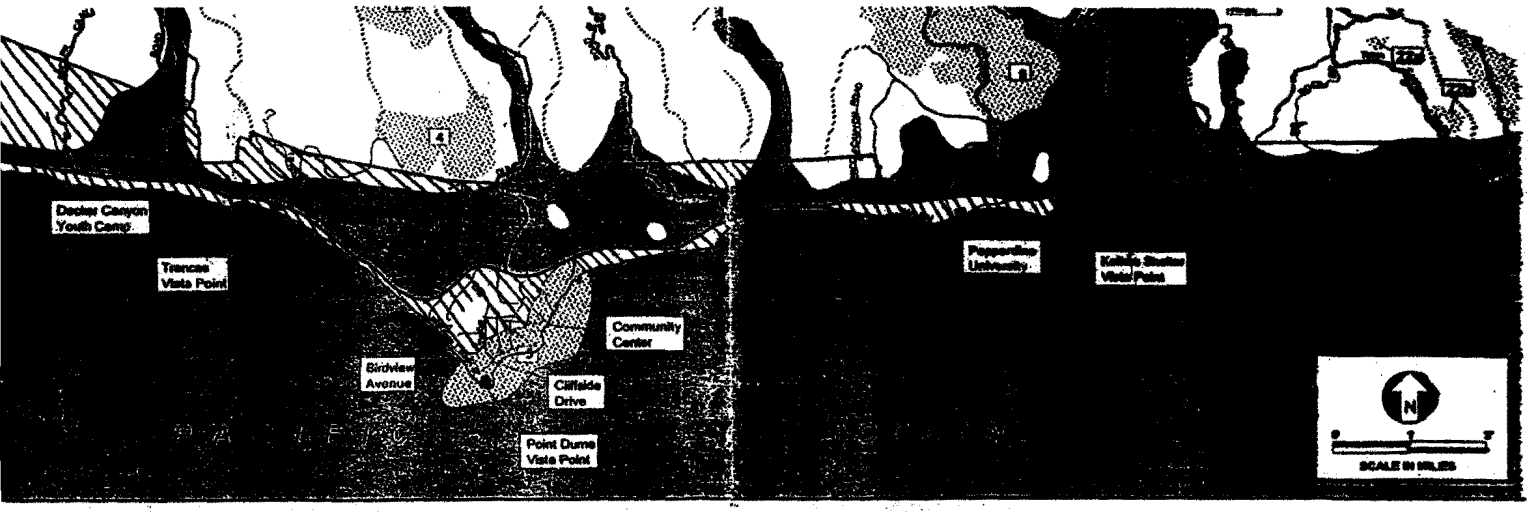
- **Public Viewing Areas** - places on and along public roads, trails, parklands, beaches, and state water that offer scenic vistas are considered public viewing areas.
- **Scenic Areas** - places on and along public roads, trails, parklands, beaches, and state water that offer scenic vistas that offer scenic vistas of the beach and ocean, coastline, mountains, canyons, and other unique natural features or areas.

Specific Scenic Roads in Malibu	**Parklands in Malibu as defined by CCC**
Pacific Coast Highway	Santa Monica National Recreation Area Parks
Decker Canyon Road	CA State Parks & Beaches
Encinal Canyon Road	Santa Monica Mountains Conservancy
Kanan Dume Road	Los Angeles County Beaches
Latigo Canyon Road	City of Malibu Parks
Corral Canyon Road	SMMUSD Schools & Surplus Parcels
Malibu Canyon Road	Public Trails
Tuna Canyon Road	All state waters in Malibu are accessible to the public.

Using the City of Malibu Scenic Resources Map from the General Plan as the basis for this discussion – more than 95% of the parcels in the City of Malibu would be affected by policies and implementation measures related to scenic constraints. Some ocean front parcels are exempted from the 10,000 square foot or 25% or less development envelop rule.
Interpretation of the LUP & LIP measures is a combination of LUP 6.2 (scenic policies and measures apply if a parcel provides views to or is visible from scenic area, scenic road, or public viewing area); LUP 6.4 New development shall not be visible from scenic roads or public viewing areas.
LIP 6.3 All permit applications are subject to an on-site investigation to determine public view impacts.
LUP/LIP6.5 (design/landscaping restrictions and10,000 square foot or 25% rule); LIP 6.5 restrictions allow for restricting the building maximum size, reducing maximum height (to 18'), clustering development, minimizing grading, as well as restrictions on landscaping, driveways, retaining walls, fences, color of your home, use of non-reflective materials, all windows must be non-glare glass, and water tank placement.
LUP 6.13 (exemptions are given for solar panels)
LUP 6.18 (special set of scenic restrictions for parcels on the ocean side and fronting on Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, and Cliffside Drive and an exemption from LUP 6.5 is provided)

Note: The LIP may be silent on the ocean side parcels on streets like Topanga Beach, Escondido Beach, Latigo Shore Drive, Malibu Cove Colony, Victoria Point, East Sea Level Drive as to their exemption from the 10,000 square foot or 25% or less rule.

There are small pockets in four neighborhood that are in the City of Malibu General Plan Scenic Resource Ocean View designations that are not subject to the restrictions for public viewing or scenic areas: Serra Retreat, Sycamore Park, Ramirez Canyon and a very limited section of Point Dume.



SCENIC ELEMENTS

1. West Mulholland Highway Sandstone
2. Saddle Rock
3. Turtle Rock
4. Lower Zuma Canyon
5. Little Dume Cove Bluffs
6. Cornell Sandstone Peaks
7. Brent's Mountain
8. Claretville Hills
9. Malibu Canyon
10. Dark Canyon
11. Piuma Road Crest
12. Upper Carbon Canyon Cliffs
13. Schuaren Road Sandstone
14. Topanga Lookout Ridge
15. Old Topanga Sandstone
16. Old Topanga Watergap
17. Fernwood Hillside
18. Lower Topanga Canyon
19. Upper Zuma Canyon
20. Newton Canyon Hillside
21. Lower Latigo Canyon
22. Tuna Canyon

LEGEND

Note: LUP 6.18 Provides for a special set of scenic restrictions for parcels on the ocean side and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, and Cliffside Drive.

- SCENIC ELEMENTS
- AREAS HAVING OCEAN VIEWS OR VISIBLE FROM OCEAN
- VISTA POINT
- SIGNIFICANT RIDGELINE
- VIEWSHED BOUNDARY
- SCENIC ROAD
- CITY BOUNDARY

IMPACTS FROM CALIFORNIA COASTAL COMMISSION SCENIC POLICIES

CITY OF MALIBU GENERAL PLAN/LCP
SCENIC RESOURCES
AND JULY 2002 VISUAL SURVEY