

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Th 20a

DATE: September 27, 2006

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director
Gary Timm, District Manager
Barbara Carey, Supervisor, Planning and Regulation

SUBJECT: City of Malibu Local Coastal Program Amendment 1-06 for Public Hearing and Commission Action at the October 12, 2006 Commission Meeting in Long Beach.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment to the adopted Local Coastal Program consists of various changes to the policies and provisions of the Land Use Plan and Local Implementation Plan, including those regarding view corridors, basements, beach stringlines, wireless communication facilities, seasonal grading restrictions, bluff setbacks, shoreline protective structures, public access, and onsite wastewater treatment systems. Finally, the proposed amendment includes changes to the LUP Land Use Map and the LIP Zoning Map.

SUMMARY OF STAFF RECOMMENDATION

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

Staff recommends that in order to take this action, the Commission, after public hearing, **deny** the amendment to the certified LCP as submitted; then **approve, only if modified**, the amendment to the LCP. The motions to accomplish this recommendation are found on **pages 5-8**. The suggested modifications are found starting on **page 8**.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance No. 288 approving Local Coastal Program Amendment 05-001; Local Coastal Program Amendment No. 05-001 Text, dated April 2006; City of Malibu Local Coastal Program, adopted September 2002

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

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LIST OF EXHIBITS

- Exhibit 1. City of Malibu City Council Ordinance No. 288 approving Local Coastal Program Amendment 05-001
- Exhibit 2. Coastal Commission Staff Comment Letter, dated December 8, 2005
- Exhibit 3. Map showing Modification No. 69B
- Exhibit 4. Local Coastal Program Amendment No. 05-001 Text, dated April 2006
- Exhibit 5. City of Malibu City Council Resolution No. 06-61 withdrawing all language related to parks from LCPA 05-001

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30513(c))

The Coastal Act further provides:

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

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30514)

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

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings (Planning Commission Hearing on November 30, 2005 and City Council Hearings on December 12, 2005, February 27, 2006, and March 13, 2006) and received written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public by publishing the notice in the local newspaper and by mailing notice to interested parties, consistent with Sections 13552 and 13551 of the

California Code of Regulations. Notice of the Coastal Commission hearing for LCP Amendment 1-06 has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolution for this amendment states that the amendment will take effect after Commission certification. However, in this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (California Code of Regulations Section 13544.5; Section 13537 by reference). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

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

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

A. DENIAL AS SUBMITTED

MOTION I: *I move that the Commission CERTIFY Amendment MAL-MAJ-1-06 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

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

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

The Commission hereby denies certification of Amendment MAL-MAJ-1-06 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan as submitted.

B. CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission CERTIFY MAL-MAJ-1-06 to the City of Malibu Land Use Plan, if modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:

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

RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Amendment MAL-MAJ-1-06 to the City of Malibu Land Use Plan if modified as suggested and adopts the findings set forth below on grounds that the land use plan with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan if modified.

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

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

A. DENIAL AS SUBMITTED

MOTION III: *I move that the Commission reject the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-06 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

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

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

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-06 and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is

inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

B. CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION IV: *I move that the Commission certify City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-06 if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

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

RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-06 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, if modified as suggested herein. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Local Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

IV. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN

Following are the modifications suggested by the Commission to the City of Malibu for incorporation into the LUP portion of LCPA 1-06. The suggested modifications are numbered consecutively. The City Amendment number references the numbering in the City of Malibu LCPA No. 05-001, dated April 2006 (Exhibit 4). The LCP number

indicates the existing LUP Policy in the Adopted City of Malibu LCP, dated September 2002.

The existing language in the certified LUP is shown in straight type. The language proposed by the City of Malibu in this amendment to be deleted is shown in ~~line-out~~. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined. The language suggested by Commission staff to be modified is shown in ~~double line-out~~ and double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

MOD. # 1	CITY AMEND. # 1.4	LCP # Policy 5.29
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Make the following modifications to the proposed LUP Policy 5.29:

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

MOD. # 2	CITY AMEND. # 2.1	LCP # Land Use Map
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Make the following changes to the proposed LUP Land Use Map [Change Nos. reference the chart on Pages 59-60 of Amendment 05-001, dated April 2006 (Exhibit 4 to this staff report)]:

- A. *Delete proposed Changes Nos. 28 through 51, and Changes Nos. 53 through 63 to the LUP Land Use Map*
- B. *Modify Change No. 69 such that APN 4460-002-904 is redesignated Public Open Space (POS)*

V. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN

Following are the modifications suggested by the Commission to the City of Malibu for incorporation into the LIP portion of LCPA 1-06. The suggested modifications are numbered consecutively. The City Amendment number references the numbering in the City of Malibu LCPA No. 05-001, dated April 2006 (Exhibit 4). The LCP number

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indicates the existing LIP Section in the Adopted City of Malibu LCP, dated September 2002.

The existing language in the certified LUP is shown in straight type. The language proposed by the City of Malibu in this amendment to be deleted is shown in line-out. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined. The language suggested by Commission staff to be modified is shown in ~~double line-out~~ and double underline. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

MOD. # 3	CITY AMEND. # 3.2	LCP # Sec. 2.1
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The following modifications affect Chapter 2 (Definitions) of the Local Implementation Program.

Make the following modifications to the definition of basement:

BASEMENT - that portion of a building or an area enclosed by walls located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than three (3) vertical feet at all points around the perimeter of all exterior walls. A basement does not constitute a story.

~~Basements for buildings that are constructed on beachfront lots that slope down toward the Pacific Ocean from the abutting road shall be defined as follows: Any portion of a building enclosed by walls that is 1) located no farther than half of the total length (front to rear) of the structure as measured from the center line of the abutting road; 2) located entirely below the centerline elevation of the abutting road; 3) located directly below the first floor footprint above; and 4) where only the walls facing the side property lines are daylighting.~~

Retain the existing definition of “grade (ground level)” and add “grade (finished)” as a separate definition:

GRADE - (Finished) - the finished ground level around the perimeter at all exterior walls of a building.

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

MOD. # 4	CITY AMEND. # 3.7	LCP # Sec. 3.6 G3 and 4
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Delete the changes proposed by the City of Malibu in Change No. 3.7 of Amendment 05-001 (Exhibit 4). Modify the existing language of LIP Section 3.6 G3 and G4 as follows:

3.6 RESIDENTIAL DEVELOPMENT STANDARDS

...

G. Beachfront Yards/Setbacks. Notwithstanding the above requirements, the following yard requirements apply to beachfront lots:

...

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. The location of the mean high tide shall be determined in consultation with the State Lands Commission.

4. ~~Variance-Stringline Modification.~~ Where the application of the stringline rule results in a stringline substantially inconsistent with adjacent development, the applicant may apply for a minor modification pursuant to LIP Section 13.27.1(B)(3). Alternatively, the applicant may apply for a variance pursuant to LIP Section 13.26 of the Malibu LIP.

MOD. # 5	CITY AMEND. # 3.9	LCP # Sec. 3.6 K 3
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Make the following modifications to the proposed LIP Section 3.6 K 3:

3.6 RESIDENTIAL DEVELOPMENT STANDARDS

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K. Residential Structure Size. Except as specifically provided herein and where otherwise restricted by provisions of the ESHA Overlay Ordinance (Chapter 4), of the Malibu LIP, and as indicated on the Total Development Square Footage Structure Size Chart, the total 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 total development square footage provisions of this paragraph.

...

3. Basements. The square footage of a basement shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: The initial one-thousand (1,000) square feet of a basement shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at the rate of one (1) square foot of TDSF for every two (2) square feet of proposed basement square footage. A basement shall be located beneath or partially beneath the first floor footprint of the structure above. Any portion of a basement wall extending beyond the first floor footprint above shall be non-daylighting. All basements shall be limited to one floor level, not to exceed twelve (12) feet in height. Any grading required for that portion of a basement not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP. Those areas of a basement that extend beyond the first floor footprint above shall be subject to the impermeable coverage development standards contained in LIP Section 3.6 I. Basements shall not be constructed on beachfront parcels. However, subterranean equipment vaults not containing habitable space may occupy a landward area of a beachfront parcel that is not required for the construction of the OWTS and as long as the vault does not require a shoreline protection structure. Beachfront basements shall be kept as far landward as feasible, and designed so as not to force septic systems seaward.

4. Subterranean Garage. The square footage of a subterranean garage shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: the initial one-thousand (1,000) square feet of a subterranean garage shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed. All subterranean garages shall be limited to one floor level not to exceed twelve (12) feet in height. A subterranean garage shall be located beneath or partially beneath the first floor footprint above. Any portion of a subterranean garage wall extending beyond the first floor footprint above shall be non-daylighting. A subterranean garage shall be allowed only one opening for vehicular ingress and egress with a maximum continuous width of thirty-six (36) feet, not including up to two support columns not exceeding eighteen (18) inches in width each. Except for lots with a subterranean garage having an entry not facing and not visible from an abutting street frontage, only one story shall be located above the opening for vehicular ingress and egress for a width equal to the width of said opening. Any grading required for that portion of a subterranean garage not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP. Those areas of a subterranean garage that extend beyond the first floor

footprint above shall be subject to the impermeable coverage development standards contained in LIP Section 3.6.I. Subterranean garages shall not be constructed on beachfront parcels.

5. Cellar. The square footage of a cellar shall be included the calculation of total development square footage (TDSF), consistent with the following formula: the initial one-thousand (1,000) square feet of the cellar area shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed. All cellars shall be subject to the provisions of LIP Section 3.6.I, Impermeable coverage. Any grading required for the development of a cellar shall be subject to the provisions of Chapter 8 of the LIP. All cellars shall be limited to one floor level not to exceed twelve (12) feet in height. Cellars shall not be constructed on beachfront parcels.

6. Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward total development square footage (TDSF). Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.

MOD. # 6	CITY AMEND. # 3.13	LCP # Sec. 4.4.4 E
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Make the following changes to the proposed LIP Section 4.4.4 E:

4.4 SUPPLEMENTAL APPLICATION REQUIREMENTS

...

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, and shall not be subject to review by the Environmental Review Board:

...

- E. New structures within existing, developed neighborhoods where the new structures will be located over 200 feet from ~~parcel is not contiguous to~~ an ESHA, as shown on the ESHA overlay map.

MOD. # 7	CITY AMEND. # 3.22	LCP # Sec. 7.2 A1
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Modify the proposed LIP Section 7.2 A1 as follows:

7.2 APPLICABILITY

A. The regulations requiring TDCs apply to:

1. any action to authorize a coastal development permit for a parcel map, ~~or~~ tract map, or ~~for~~ ~~a~~ certificate of compliance approved under LIP Section 15.3C or 15.3D ~~that would increase the number of lots for development in the City of Malibu; and~~

...

MOD. # 8	CITY AMEND. # 3.25	LCP # Sec. 8.4
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Modify the proposed language of LIP Section 8.4 as follows:

8.4 SEASONAL RESTRICTIONS ON GRADING

- A. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that is included in one or both of the following categories, unless permitted pursuant to the provisions of Paragraphs ~~B~~ C or ~~D~~, below.
1. The project site is within an Environmentally Sensitive Habitat Area or an ESHA buffer that drains into 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 season. ~~If there is not sufficient time to complete grading before the rainy season, grading may be approved in one of these categories if the City finds that Best Management Practices (BMPs), both structural and non-structural, designed to minimize or prevent erosion, sedimentation and polluted runoff will be implemented to a degree that would prevent significant water quality impacts or any significant disruption of habitat values within an Environmentally Sensitive Habitat Area.~~
- C. If grading operations are not completed before the rainy season begins due to unforeseen circumstances or delays, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1.
1. Where grading operations have not been completed before the rainy season begins, the Planning ~~Director~~ Manager may permit grading to continue if he determines that
 - a. completion of grading would be more protective of resources, and
 - b. that Best Management Practices (BMPs), both structural and non-structural, designed to minimize or prevent erosion, sedimentation and polluted runoff are being implemented to a degree that would prevent significant water quality impacts or any significant disruption of habitat values within an Environmentally Sensitive Habitat Area. ~~or~~

~~b. that completion of grading would be more protective of resources.~~

- D. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.

MOD. # 9	CITY AMEND. # 3.28	LCP # Sec. 10.4 D
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Delete the following change from the first paragraph of LIP Section 10.4 D, and retain the proposed change at the end of this section (the remainder of this long section not quoted here).

10.4 DEVELOPMENT STANDARDS

...

- 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. In no case shall development be set back less than ~~100~~ ~~50~~ 100 feet. This distance may be reduced to ~~50~~ ~~25~~ 50 feet if the City geotechnical staff determines that either of the conditions below can be met with a 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 and/or Geotechnical Engineer, or a Registered Civil Engineer with experience in soil engineering. Generally, one of two conditions will exist:

...

MOD. # 10	CITY AMEND. # 3.31	LCP # Sec. 10.6
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Delete the revisions proposed by the City of Malibu in Change No. 3.31 of LCPA 05-001 (Exhibit 4). Modify the existing LIP Section 10.6 as follows:

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 new shoreline protection structure, or repairs or additions to an existing 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 shoreline protection structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235.

1. The restrictions also shall acknowledge that the intended purpose of the subject structure is solely to protect structures currently existing at the site, in their present condition and location, including the ~~septic disposal system~~ OWTS 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~~ OWTS, 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. Public works projects completed pursuant to the document entitled Repair, Maintenance, and Utility Hookups, adopted by the Coastal Commission on September 5, 1978 are exempt from the above stated requirement.

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.

MOD. # 11	CITY AMEND. # 3.32	LCP # Sec. 11.3
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Make the following modifications to the proposed LIP Section 11.3 A (the existing introductory paragraph that is not numbered). Renumber the subsections that follow the new LIP Section 11.3 A accordingly (new subsections B through K).

11.3 CULTURAL RESOURCE REVIEW

- A. ~~Subsequent to the Preliminary Review required by Section 11.3BA, the Planning Manager shall provide the opportunity for review of potential impacts on cultural resources during~~ In each phase of the Cultural Resource Review required under Sections 11.3 (B), (C), (D), (E), (F), (G), and (H) to the Planning Manager-Director shall provide the opportunity for review of potential impacts to cultural resources by providing written notice (including the location, detailed description and alternatives of the proposed development) and requesting comments from ~~consult verbally and in writing with~~ the Native American Heritage Commission (NAHC), State Historic Preservation Officer (SHPO), the City Native American Cultural Resources Advisory Committee (NACRAC), and the Most Likely Descendent (MLD). In addition: (a) in each phase that requires the selection of an archaeologist, the archaeologist shall be selected from a list ~~acceptable to~~ provided by the NAHC, NACRAC, or ~~NACRM, and~~ MLD, if a list is available; (b) in each phase that requires the selection of a monitor, the selection of that monitor shall be made ~~from a list provided by~~ in written and verbal consultation with the NACRAC, ~~NACRM, MLD, and NAHC~~. Comments received shall be considered in the review of coastal development permits for new development.

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MOD. # 12	CITY AMEND. # 3.37	LCP # Sec. 12.7.1
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Modify the proposed language of LIP Section 12.7.1 as follows:

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 an offer ~~of to dedication~~ on an easement or a grant of easement for 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) ~~where such access and passive recreational use can be provided in a manner that does not endanger public safety~~; 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.

~~1. Lateral public access easements shall not be required in locations where:~~

- ~~a. slopes, rocky outcrops, or other natural hazards to access and passive recreation would preclude safe access for the public; or~~
- ~~b. areas containing sensitive resources where feasible restrictions on the time, place, and manner of uses and access can not adequately prevent significant impacts to such resources; or~~
- ~~c. locations where feasible time, place, and manner restrictions can not adequately protect the privacy of residential development.~~

2. To protect marine mammal haul out areas and seabird nesting and roosting sites at Point Dume, 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 by the City 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 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.

MOD. # 13	CITY AMEND. # 3.41	LCP # Sec. 13.6.4 E
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Make the following changes to the proposed LIP Section 13.6.4 E:

13.6.4 Application Form and Information Requirements

The coastal development permit application form shall require submittal of at least the following items:

...

- E. Except on parcels within existing, developed neighborhoods where any new structures will be located over 200 feet from the parcel is not contiguous to ESHA as mapped on the ESHA overlay map, ~~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 assessment study of the site is required, consistent with the provisions of Chapter 4 of the Malibu LIP.

MOD. # 14	CITY AMEND. # 3.47	LCP # Sec. 13.13.1
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Make the following changes to the proposed LIP Section 13.13.1:

13.13 ADMINISTRATIVE PERMITS

13.13.1 Applicability

- A. The Planning ~~Director~~ Manager 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. Lot mergers;
 - d. ~~Lot line adjustments that are exempt from the provisions of the Subdivision Map Act;~~

- ⊖ 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.

- B. Notwithstanding any other provisions of the LCP, attached or detached second dwelling units shall be processed as administrative permits, except that the approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone.

MOD. # 15	CITY AMEND. # 3.54	LCP # Sec. 13.27.1 A 2
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Make the following changes to the proposed LIP Section 13.27.1 A2:

13.27 SITE PLAN REVIEW AND MINOR MODIFICATIONS

The purpose of this section is to provide a mechanism for the Planning ~~Director~~ Manager, 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~~ Manager 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~~ Manager may consider only the following applications for site plan review:

...

- ⊖2. Remedial Grading, which is grading necessary to mitigate an environmental hazard as recommended by a geotechnical or soils report and approved by the City Geotechnical staff.

MOD. # 16	CITY AMEND. # 3.55	LCP # Sec. 13.27.1 B 3
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Modify the proposed new LIP Section 13.27.1 B3, as follows:

13.27 SITE PLAN REVIEW AND MINOR MODIFICATIONS

The purpose of this section is to provide a mechanism for the Planning ~~Director~~ Manager, 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~~ Manager 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

...

B. The Planning ~~Director~~ Manager may grant minor modification permits authorizing the following:

...

3. Approve a stringline modification request authorizing the use of an alternative stringline where the application of the stringline rule results in a stringline substantially inconsistent with adjacent development. The modification can result in ~~by~~ selecting a different stringline end point than the nearest adjacent corner on the closest upcoast or downcoast property, or selecting the stringline end point on the next upcoast or downcoast property, which the Planning Manager has determined appropriate.

MOD. # 17	CITY AMEND. # 3.56	LCP # Sec. 13.27.5 B 4
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Modify the proposed new LIP Section 13.27.5 B4, as follows:

13.27 SITE PLAN REVIEW AND MINOR MODIFICATIONS

13.27.5 Findings

...

(B). The Planning ~~Director~~ Manager may approve a minor modification application only if the Planning Director Manager 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.
4. If the request involves a stringline modification, that the proposal conforms to the following:
 1. The development will not be closer to the ocean than a structure of the same type on either adjacent property or a structure used in the stringline determination;
 2. The development will not result in conferring a privilege not enjoyed by an adjacent structure; ~~and~~
 3. Strict compliance with the requirements of Section 3.6.G (3) of the LIP would deprive the property owner of reasonable use of the structure or a use which is enjoyed by one or more adjacent structures; ~~and~~

4. The project provides maximum feasible protection to public access, as required by Chapter 12 of the LIP.

MOD. # 18	CITY AMEND. # 3.57	LCP # Sec. 13.29
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This new proposed section should be modified as follows:

13.29 ONSITE WASTE WATER TREATMENT SYSTEM COASTAL DEVELOPMENT PERMITS

13.29.1 Applicability.

These regulations shall apply to all applications for Onsite Wastewater Treatment Systems (OWTS) for failed systems or to comply with Regional Water Quality Control Board requirements to upgrade existing systems for existing single family residential uses that does not include other development as defined in Chapter 2 of the Malibu LIP (Definitions). An application for an OWTS Coastal Development Permit (OWTS CDP) shall be made to the Planning Manager.

- A. Applications for OWTS CDPs shall be to the Planning Manager on forms provided by the Planning Division.
- B. The Planning Manager shall refer the application to the City's Environmental Health Specialist, Building Division Manager and City Biologist for verification of the facts and design of the proposed system.
- C. Public notice for an OWTS CDP within the Appeal Zone shall be provided in the same manner as for an administrative coastal development permit. ~~No~~ Public notice shall be required provided for an OWTS CDP outside of the Appeal Zone by posting notice on the project site, at a conspicuous place easily read by the public which is also as close as possible to the site of the proposed development. Such notice shall contain a general description of the nature of the proposed development.

13.29.2 Findings and Permit Issuance.

The Planning Manager may approve an application for an OWTS CDP if the following findings can be made:

- A. The proposed OWTS is consistent with the LCP and all applicable LCP provisions, local laws and regulations regarding OWTSs; and,
- B. The proposed OWTS does not require a new or upgraded shoreline protective device; and,
- C. The proposed OWTS is necessary to protect public health and/or improve water quality; and,
- D. The proposed OWTS CDP has been conditioned in accordance with the LCP.

Upon approving an OWTS CDP, the Planning Manager shall issue a written document that at a minimum includes the following information:

- A. Location of the project;
- B. The date of issuance;
- C. An expiration date;
- D. The scope of work to be performed;
- E. Terms and conditions of the permit; and
- F. Findings.

13.29.3 Reporting of OWTS CDPs

- A. The Planning Manager shall report in writing to the Planning Commission at each meeting the permits approved under this section in the same manner as for an administrative permit, consistent with LIP Section 13.13.6, up until the time of the mailing of the staff reports or recommendations for the meeting. ~~Copies of this report shall be available at the meeting and shall have been delivered 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.~~
- B. Appeals. Local appeals shall be processed consistent with LIP Section 13.20.1; notice of all local appeals shall be provided in the same manner as for an administrative permit. If the project is located in the appealable zone, Coastal Commission appeals shall be processed consistent with LIP Section 13.20.2

MOD. # 19	CITY AMEND. # N/A	LCP # LIP Zoning Map
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Make the following changes to the proposed LIP Zoning Map designations [Change Nos. reference the chart on Pages 59-60 of Amendment 05-001, dated April 2006 (Exhibit 4 to this staff report)]:

- A. *Delete proposed Changes Nos. 28 through 51, and Changes Nos. 53 through 63 to the LIP Zoning Map*
- B. *Modify Change No. 69 such that APN 4460-002-904 is redesignated Public Open Space (POS)*

VI. FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL OF THE LOCAL COASTAL PROGRAM IF MODIFIED AS SUGGESTED

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

A. AMENDMENT DESCRIPTION

Amendment 1-06 to the City of Malibu Local Coastal Program includes various changes to the policies and provisions of the Land Use Plan and Local Implementation Plan, including those regarding view corridors, basements, beach stringlines, wireless communication facilities, seasonal grading restrictions, bluff setbacks, shoreline protective structures, public access, and onsite wastewater treatment systems. Additionally, the proposed amendment includes changes to the LUP Land Use Map and the LIP Zoning Map. The proposed language is shown in Exhibit 4, the document prepared by City staff. The various proposed changes are numbered for ease of reference. The proposed changes to the Land Use and Zoning Maps are also numbered, listed in a chart on Pages 59-60 of Exhibit 4, and they are shown on the maps that follow page 60 of Exhibit 4.

1. Land Use Plan Amendment

There are several proposed revisions to the policies of the LUP which are minor in nature. These include replacing the title "Planning Director" with "Planning Manager" in the various places it appears through the document to reflect an organizational change at the City. Another minor change is that the amendment proposes to modify several LUP policies to replace bullets that identify subsections with numbers or letters for ease of reference.

Other aspects of the LUP amendment are more substantive. For instance, the amendment includes revisions to LUP Policy 5.29, which details when a transfer of development credit is required as a condition of approval. The amendment further proposes to modify Policy 6.18 to allow the required view corridor to be split on parcels that are less than 50 feet in width. Finally, the City proposes to re-designate 70 parcels on the LUP Land Use Map.

2. Local Implementation Plan Amendment

There are several proposed revisions to the policies of the LIP which are minor in nature. These include replacing the title "Planning Director" with "Planning Manager" in the various places it appears through the document to reflect an organizational change at the City, as well as changing references to portions of the LIP from "ordinance" to "chapters".

There are other more significant LIP changes proposed in LCPA 1-06. Several relate to the processing of coastal development permits, as set forth in Chapter 13 of the LIP (Coastal Development Permits). The amendment also includes a modification to LIP Section 8.4, which pertains to restrictions on grading during the rainy season. The amendment includes revisions to LIP Section 7.2 A 1 which details when a transfer of development credit is required as a condition of approval. Further, the amendment proposes to modify the shoreline development standards of the LIP, including the bluff setback requirements of LIP Section 10.4 D in order to reduce the minimum setback, as well as revisions to LIP Section 10.6 which requires applicants to record a deed restriction limiting future development of shoreline protection structures. The amendment includes the addition of a definition for "basement" and modifications to the development standards for basements, cellars, and subterranean garages. The proposed LCPA additionally includes revisions to the stringline standards for beachfront development in LIP Section 3.6 G3. The amendment includes the addition of criteria to Section 12.7.1 (Standards for Application of Access Conditions) regarding public safety and privacy. The amendment also proposes to replace the wireless telecommunications provisions of the LIP with a new LIP Section 3.14 to incorporate changes that the City has approved since the LCP was adopted. Finally, the City proposes to re-designate 70 parcels on the Zoning Maps.

Staff notes that the LCPA originally proposed to add definitions for several different types of public parks (pocket park, neighborhood park, and community park), and proposed to add these uses to Table B (Permitted Uses). Commission staff previously recommended adding a definition for a fourth park type that is found within the City (Regional/State Park). The Malibu City Council has recently acted to withdraw these portions of the LCPA that relate to the definition of parks and the addition of these uses to Table B. The resolution (attached as Exhibit 5) indicates that the City needs more time to consider these changes.

B. AMENDMENT BACKGROUND

Commission staff met several times with City staff to review and discuss potential elements to be included in the subject amendment. Additionally, Commission staff provided written comments regarding the amendment prior to action by the City Council (Exhibit 2).

The City held a series of public hearings on the Local Coastal Program Amendment (LCPA), including a Planning Commission Hearing on November 30, 2005 and City Council Hearings on December 12, 2005, February 27, 2006, and March 13, 2006. The

LCPA was approved by the Malibu City Council on March 13, 2006. The ordinance approving LCPA No. 05-001 is attached as Exhibit 1. The LCP amendment was submitted on April 18, 2006. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on May 2, 2006. At the July 12-14, 2006 hearing, the Commission extended the deadline to act on LCPA 1-06 for a period not to exceed one year.

The LCPA was originally scheduled for hearing at the August 2006 Commission meeting. The City requested a postponement of that hearing in order to respond to the staff recommendation. The Malibu City Council acted on September 11, 2006 to withdraw portions of the LCPA that relate to the definition of parks and the addition of these uses to Table B (Exhibit 5). Staff has also met with City Planning staff to discuss the suggested modifications.

C. PAST COMMISSION ACTION

Prior to the City of Malibu's incorporation in 1991, the area was under the jurisdiction of the County of Los Angeles. LCP planning efforts were undertaken for many years after the effective date of the Coastal Act by the County. In 1986, the Malibu/Santa Monica Mountains Land Use Plan was certified by the Commission. However, a Local Implementation Plan has never been certified. Since certification, the policies of the certified Land Use Plan were used for guidance by the Coastal Commission in its permit decisions in Malibu (and the remainder of the unincorporated Santa Monica Mountains).

On August 31, 2000, the State Legislature passed Assembly Bill 988, which added Section 30166.5 to the Coastal Act. Section 30166.5(a) required 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. Section 30166.5(b) required 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 required 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 reflected the City's existing General Plan land uses although the designation of some properties were changed to reflect their acquisition by local, state, or federal park agencies for public open space purposes. Additionally, there were 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 were designated for reduced density designations due to steep slopes, the presence of environmentally sensitive habitat areas, or geological restraints.

The Commission adopted the City of Malibu LCP (Land Use Plan and Local Implementation Plan) on September 13, 2002 and the LCP was transmitted to the City on September 16, 2002. The first coastal development permits were approved by the Malibu Planning Commission in February 2005.

In June 2004, the City submitted the first proposed amendment to the LCP (LCPA 1-04). LCPA 1-04 included substantial revisions to a majority of the adopted LUP policies and LIP provisions. In September 2004, the Commission approved a one-year time extension for action on LCPA 1-04. After detailed review of the LCPA, in April 2005, Commission staff met with City staff to discuss the proposed changes. Commission staff determined that LCPA 1-04 would be a nearly complete rewrite of the LCP and that many of the changes would substantially lessen the intent of the policies and provisions of the LCP. Commission staff notified City staff of their intention to recommend denial of the amendment as submitted with no suggested modifications. At the same time, Commission staff and City staff discussed more focused changes to the LCP that could be recommended for approval, either as submitted or with suggested modifications.

Commission staff met several more times with City staff to review and discuss potential elements to be included in a more focused LCPA, which became the subject amendment (LCPA 1-06). Subsequently, the City staff agreed to withdraw LCPA 1-04 and submit the more focused amendment including the changes discussed with Commission staff as well as up to three additional revisions determined by the Malibu City Council. Commission staff agreed that if the City withdrew Amendment LCPA 1-04, staff would schedule the focused amendment for a Commission hearing within 180 days of the filing of a complete LCPA application and that staff would recommend approval as submitted or approval with suggested modifications. In July 2005, Amendment 1-04 to the Malibu LCP was withdrawn. Amendment 1-06 to the Malibu LCP was filed on May 2, 2006.

D. GENERAL LCP ADMINISTRATION AND CDP PERMITTING

There are several proposed revisions which relate to the administration of the LCP or the processing of coastal development permits. Many are minor in nature. These include replacing the title "Planning Director" with "Planning Manager" in the various places it appears through the LUP and LIP to reflect an organizational change at the City. Additionally, the amendment proposes to modify several LUP policies to bullets

that identify subsections with numbers or letters for ease of reference. Further, throughout the LIP, where there are references to sections of the LIP as “Ordinance”, the City proposes to change the reference to “Chapter” or to a specific section of the LIP. In several areas of the LIP, the amendment includes changes to the titles of professionals who are required to prepare certain reports or plans (for instance, substituting the title “Environmental Health Specialist” for “sanitarian”). Finally, throughout the LIP, the amendment changes all references to “septic system” or “OSTS” (on-site wastewater treatment system) to “OWTS” (on-site wastewater treatment system). These proposed changes are minor in nature and do not affect the LIP’s conformity with the policies of the LUP or the consistency of the LUP with the policies of the Coastal Act.

There are additional changes that relate specifically to the processing of coastal development permits, as set forth in Chapter 13 of the LIP (Coastal Development Permits), including appeals, administrative permits, and onsite wastewater treatment system permits, discussed below.

Appeal Clarification

One proposed change to Section 13.20.2 B and C would clarify appeal procedures. This section states that exhaustion of local appeals is not required under certain circumstances (for instance if the City charges a fee to file a local appeal). The proposed language would clarify that in cases where an appellant is not required to exhaust local appeals, they may not appeal a CDP to the Coastal Commission until the Commission starts the ten-day appeal period. As provided in LIP Section 13.15, a City decision on a CDP is not final until all local rights of appeal have been exhausted (either because the CDP has been appealed to the City Council and the appeal has been decided, or no local appeal was filed and all local appeal periods have run). Once the decision is final, the City is required to notify the Commission within seven days. Upon receipt of an adequate Notice of Final Action, the Commission’s ten-day appeal period will begin and an appeal to the Coastal Commission may be submitted.

The proposed change will eliminate any potential confusion that could result if an appellant is not required to exhaust local appeals and submits an appeal to the Commission before the local process has been completed. The Coastal Commission cannot consider an appeal of a City CDP until the City’s action is final, as defined by the provisions of the LIP. Until all local appeal periods have run and any local appeals have been heard, it is possible that aspects of the project approved in a CDP could be altered. As such, the Coastal Commission cannot determine if an appeal raises a substantial issue with consistency to the LCP without knowing the ultimate project approved by the City. Further, this amendment will ensure that two appellants could not file appeals of the same project, one to the City Council and one to the Coastal Commission, at the same time. As proposed, this change is consistent with the policies and provisions of the LCP.

Administrative Permits

The amendment proposes to add several categories of development to the list of coastal development permits that can be processed as an Administrative Permit (LIP Section 13.13.1). The existing categories are:

- 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.

The City proposes to add the following three categories: 1) lot mergers; 2) lot line adjustments that are exempt from the provisions of the Subdivision Map Act; and 3) attached or detached second dwelling units. The requirements for the approval of voluntary lot mergers is provided by LIP Section 15.4.1. This section provides for the approval of an administrative permit for a voluntary (initiated by the property owner) lot merger. As such, adding lot merger to the categories found in Section 13.13.1 is consistent with other provisions of the LIP.

The approval of lot line adjustments are provided for by the requirements of LIP Section 15.5. There is no provision for the processing of lot line adjustments as administrative permits. Furthermore, consistent with the terms of LIP Section 13.13.1 (and Section 30624 of the Coastal Act), divisions of land are not to be approved through an administrative permit. Lot line adjustments, while not resulting in an increase in the number of parcels, are land divisions that do result in the reconfiguration of parcels. As such, lot line adjustments cannot be approved as an administrative permit.

Modification No. 14 deletes the proposed category of lot line adjustment. Only as modified will Section 13.13.1 be consistent with other provisions of the LIP.

Finally, the amendment proposes to process the approval of a CDP for an attached or detached second dwelling unit as an administrative permit, except that such permits that are located geographically in an appeals zone shall be appealable to the Commission. This change is intended to provide an expedited process for the approval of second units that is required pursuant to AB 1866. AB 1866 added provisions to the Government Code that impact the review of proposed second units in residential zones. The law requires local governments that adopt second unit ordinances to consider such second unit applications ministerially without discretionary review or a hearing. Additionally, AB 1866 specifies that nothing in the law shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, except that the local government may not hold public hearings for coastal development permit applications for second units in residential zones. The Commission has interpreted this law to be a procedural change within the coastal zone, i.e., the elimination of local public hearings for residential second units in residential zone districts. AB 1866 has not been interpreted to change the substantive standards that apply to coastal development permits for second units. The Commission has approved

similar LCP amendments for other local jurisdictions that provided expedited processing for second unit permits. In this case, all of the policies and provisions of the LCP will still be applied to second unit development, only the permit process will be altered. Further, any CDP for a residential second unit that is located within the Commission's appeal jurisdiction will remain appealable. As such, impacts to coastal resources will still be minimized in accordance with the policies of the Malibu LUP. The Commission therefore finds that as modified to delete lot line adjustments, the proposed LIP Section 13.13.1 will be in conformance with and adequate to carry out the policies of the LUP.

Onsite Wastewater Treatment System Permits

The amendment includes the addition of a separate permit process for projects that consist only of upgrading an existing onsite wastewater treatment system (OWTS) because the system has failed or improvements are needed to comply with the requirements of the Regional Water Quality Control Board. The proposed process would mirror the administrative permit process, and is intended to expedite the approval of OWTS upgrades in order to protect public health and improve water quality.

Two revisions are suggested for the OWTS process, as detailed in **Modification No. 18**. One is to require that public notice is provided for those OWTS permits that are not appealable to the Commission by posting a notice on the project site. The other change is to require the same process for the Planning Manager to report the issuance of the permit to the Planning Commission as is required for administrative CDPs. As modified, the OWTS permit process will allow for expedited approvals while ensuring that adequate notice is provided, commensurate with the administrative permit process.

E. SCENIC AND VISUAL RESOURCES

1. Coastal Act Policies

Section 30251 of the Coastal Act states:

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

2. Existing LUP Policies

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.

3. Discussion

The City of Malibu LCP contains provisions for protection of views to the ocean that apply to beachfront development along several public roads. The LCP policies and LIP standards require that new development provide for ocean views over the top of structures, where the topography of the site descends from the road. Where the topography of the site does not allow for views to be maintained over the top of structures, the LCP requires that new development provide a view corridor from the road to the ocean, along one side of the structure. The LCPA proposes to modify LUP Policy 6.18 and LIP Sections 6.5 E 2b and e to 1) allow for the required view corridor to be split for parcels that are 50 feet or less in width and 2) to reduce the percentage of lineal frontage that must be provided in a view corridor for projects on two or more parcels from 30 percent to 20 percent.

The City has found, in practice, that it is very difficult for applicants to meet the 20 percent view corridor all on one side of the structure requirement on beachfront parcels that are 50 feet or less in width. The view corridor requirement, coupled with the off-street parking requirement for residential development (2 covered and 2 uncovered parking spaces per residence), side yard setbacks, and stringline or mean high tide line setbacks from the ocean side significantly constrain the area available for development on narrow beachfront lots. Given the constraints due to the various setback and parking requirements on these narrow lots, applicants have found that, in many cases, it is extremely difficult to design a residence of a reasonable size with a functional floor plan.

The intent of the view corridor provision is to break up the “solid wall” of development along the beach front in portions of Malibu which prevents any view of the ocean as

seen from public roads and highways. The LCP provisions that require the view corridor to be provided all on one side of a new residence was designed to maximize the break provided between structures, thereby maximizing the view of the ocean that would be available from the public road. The proposed change to allow the 20 percent view corridor to be split into two 10% view corridors on either side of the residence on lots of 50 feet or less in width will continue to provide some view, albeit not as significant as that provided by the full 20 percent view corridor, and over time break up the solid wall of development that exists in several areas of Malibu. Although two 10 percent view corridors is not as protective of visual resources as one 20 percent view corridor, it is a reasonable compromise on parcels that are 50 feet wide or less in light of the difficulty of obtaining both a 20 percent view corridor and a residence of a reasonable size with a functional floor plan that complies with all of the required setbacks.

There have been two Commission appeals of beachfront residences that did not comply with the existing view corridor requirements. In one case, the view corridor was provided on one side of the parcel, but the two required open parking spaces were located within the corridor. In the other case, the 20 percent view corridor area was split. In the de novo approval in the first case [A-4-MAL-05-085 (Gould)], the Commission approved a variance from the requirement to provide two open parking spaces. The de novo review for the other case [A-4-MAL-05-084 (Greene)] has not yet been heard by the Commission.

Further, the City staff has stated that the 30 percent view corridor requirement for multiple parcels acts as a disincentive to the merger of beachfront parcels. The merging of beachfront residential parcels reduces potential adverse cumulative impacts associated with the high-density residential development on Pacific Coast Highway and other beachfront roads in Malibu. Merging of the beach front lots, especially narrow parcels, reduces the number of onsite wastewater treatment systems (OWTS) on the beach; thereby reducing the width of shoreline protective works necessary to protect OWTSs on the beach; reduces the number of vehicle trips on PCH and other beachfront roads, and reduces the number of private vehicles associated with residential development parked on public beachfront roadways. In addition, the merging of parcels, especially narrow lots, results in the clustering of development and larger view corridors. Many of the lot mergers that have been considered by property owners in Malibu were to allow for accessory type development for yards, guest units swimming pools, etc. The current policy requiring a 30 percent view corridor for merged parcels has had the unintended consequence of providing a disincentive to merging beachfront parcels. Therefore, the proposed change to require a 20 percent view corridor would provide for adequate public view corridors and not be a disincentive to merging beachfront parcels, especially for narrow beachfront parcels.

The City is proposing to modify both LUP Policy 6.18 and LIP Sections 6.5 E 2 b and e, which pertain to the view corridor requirement. This revision is shown as Changes Nos. 1.5, 3.20, and 3.21 in Exhibit 4. As submitted, these changes will allow for view corridors and adequate off-street parking to be provided on beachfront parcels 50 feet

or less in width. As such, the Commission finds that the LCPA will minimize impacts to visual resources, consistent with the policies of the Coastal Act and the Malibu LUP.

F. ENVIRONMENTALLY SENSITIVE HABITAT AND WATER QUALITY

1. Coastal Act Policies

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, minimizing alteration of natural streams.

Section 30230 requires the protection, enhancement, and restoration of marine resources. Section 30230 states:

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 **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.

2. Existing LUP Policies

- 3.36** 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.

- 3.37** New development within or adjacent to ESHA shall include a detailed biological study of the site.
- 3.47** Earthmoving during the rainy season (extending from November 1 to March 1) 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 1, unless the City determines that completion of grading would be more protective of resources.

3. Discussion

Point Dume Canyons

Each chapter (including public access and recreation, marine and land resources, hazards and shoreline development, new development, scenic and visual resources, and public works) of the Malibu LUP contains introductory discussion regarding the resources present within the City, the pertinent Coastal Act policies, and the applicable Land Use Policies. Following is the first paragraph of the Chapter 3 (Marine and Land Resources) discussion about the ESHA protection provisions of the LUP:

The LUP contains policies that protect the environmentally sensitive habitat areas 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 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 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. (Emphasis added)

The proposed amendment includes the deletion of the underlined sentence regarding the streams and riparian corridors in the Point Dume area. This is shown as the City's Change No. 1.3 (Exhibit 4).

The change is proposed to reflect the Commission's action adopting the LCP. The Commission found that given the existing pattern of development in Point Dume, the canyons, including the streams and riparian areas within the canyons (with the exception of the canyon adjacent to Birdview Drive) were not designated ESHA on the LUP or LIP ESHA Maps. This was approved as a change to the staff recommendation

during the LCP adoption hearing. The LUP policies and LIP provisions regarding ESHA on Point Dume were modified, but this sentence was not. The proposed deletion will only reflect the action taken by the Commission. This sentence in the same paragraph: "Within developed areas, riparian corridors are designated as ESHA" would apply to the one riparian canyon (adjacent to Birdview Drive) that is designated ESHA in the Point Dume area. The proposed deletion of this sentence from the introductory language will not change the ESHA protection provisions of the LUP, nor will it alter any interpretation of LUP policies. As such, the Commission finds that, as proposed, this aspect of LCPA 1-06 is consistent with the applicable policies of the Coastal Act.

Grading Seasonal Restrictions

The LCP contains policies and provisions to protect ESHA from significant degradation of habitat values, and to protect water quality in streams and coastal waters. These provisions include minimizing erosion and sedimentation by limiting the amount of grading and landform alteration, restricting grading on steep slopes, incorporating Best Management Practices (BMPs) both during construction and permanently on project sites, and prohibiting grading during the rainy season within ESHA or ESHA buffers. The LUP, specifically Policy 3.47, 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.

The amendment includes a modification to LIP Section 8.4, which pertains to restrictions on grading during the rainy season. The existing language of this section requires that grading may not be carried out during the rainy season (November 1 to March 1) if the project site is within or adjacent to ESHA, or on slopes greater than 4:1. The existing LIP requires that grading projects not be undertaken unless there is sufficient time to complete the grading before the rainy season begins. Further, if grading has not been completed before the rainy season begins, grading is to be halted and temporary erosion control measures put in place until after the rainy season ends, unless the City determines that the completion of grading would be more protective of resources. The existing language of LIP Section 8.4 conforms with and carries out LUP Policy 3.47.

The City proposes to modify these requirements in several ways (the proposed revision is shown as Item No. 3.28 in Exhibit 4). The changes that are proposed would allow grading to be commenced, even if there is not sufficient time to complete it before the rainy season begins, if the City finds that the project includes Best Management Practices (BMPs) that will minimize erosion, sedimentation, and polluted runoff. Further, the proposed LIP Section 8.4 would provide that where grading has not been completed before the rainy season begins, the City may permit grading to continue if BMPs are provided to minimize impacts, or if the completion of grading would be more protective of resources.

The proposed changes to LIP Section 8.4, which would allow grading during the rainy season, would not be consistent with LUP Policy 3.47, which explicitly prohibits grading during the rainy season. Conformity with and adequacy to carry out the policies and provisions of the adopted Land Use Plan is the standard of review for Local Implementation Plan amendments. For that reason alone, the proposed changes to LIP Section 8.4 cannot be approved. But it is important to note that in adopting the LCP, the Commission found it necessary to require LUP Policy 3.47 in order to ensure impacts to ESHA and water quality from erosion and sedimentation are minimized during the construction phase of grading, as required by the policies of Chapter 3 of the Coastal Act. While there are BMPs that can and should be incorporated into construction projects, the Commission has found that one large storm can easily overwhelm such measures and that one construction site can contribute a large amount of sediment to the watershed where the project site is located. As such, the Commission has found in past actions, both approving CDPs in Malibu and the Santa Monica Mountains, as well as in adopting the LCP, that the best BMP that can be employed for construction within ESHA, ESHA buffer, or on steep slopes is to prohibit grading during the rainy season. This restriction applies only in these areas where the risk of impacts is the greatest. The proposed changes to LIP Section 8.4 would not conform with or be adequate to carry out LUP Policy 3.47. For that reason, this portion of the amendment cannot be approved. Therefore, **Modification No. 8** is required to bring LIP Section 8.4 into conformance with the LUP. The Commission finds that only as so modified will the LIP be in conformance with and adequate to carry out the policies of the LUP.

G. NEW DEVELOPMENT AND CUMULATIVE IMPACTS

1. Coastal Act Policies

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

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

2. Existing LUP Policies

2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development.

New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.

- 5.27** The Transfer of Development Credit (TDC) Program shall be implemented in order to ensure that the individual and cumulative impacts of creating new lots or developing multi-family residential units are minimized and mitigated through the retirement of an equivalent number of development credits from existing lots that meet the qualification criteria of the program. Lots that contain ESHA, are located in small-lot subdivisions, or are located adjacent to parklands can be retired for transfer of development credits.
- 5.28** One TDC Program shall be implemented on a region-wide basis for the Santa Monica Mountains Coastal Zone, including the City of Malibu and the County of Los Angeles. Credits to mitigate development approved in the City may be generated from qualifying lots anywhere within this region.
- 5.29** Any coastal development permit for a 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.

3. Discussion

Land Divisions

Land divisions and the development of multi-family residential projects increase the number of parcels and/or the number of residential units that can 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 existing undeveloped parcels, the limited availability of urban services, and the significance of the coastal resources present. 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 was formalized as the Transfer of Development Credit (TDC) Program. The TDC program was 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. The TDC program is incorporated into the Malibu LCP through the new development policies and provisions.

The amendment includes revisions to LUP Policy 5.29 and LIP Section 7.2 A 1 which detail when a transfer of development credit is required as a condition of approval. The existing language of the LCP requires that a CDP be conditioned upon the provision of a TDC where a land division results in the creation of an additional lot (or where multi-family use is approved). The amendment proposes to revise this language to specify which types of land divisions will require a TDC as mitigation. **Modification No. 1** is suggested for LUP Policy 5.29 and **Modification No. 7** is suggested for LIP Section 7.2 A 1 to clarify which types of land divisions, including certificates of compliance are subject to the requirement to provide mitigation by retiring TDCs. As modified, this policy and provision of the LCP will ensure that the impacts to coastal resources that result from creating new parcels is mitigated by retiring the same number of parcels through the TDC requirements.

Land Use and Zone Designation Changes

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.

As part of the proposed LCPA, the City proposes to change the land use designation and zoning of several parcels located throughout the City. The maps at the end of Exhibit 4 show the parcels that are proposed to be changed, with each parcel identified by number. Additionally, there is a chart on Pages 59-60 of Exhibit 4 that lists the address, assessor's parcel number, current designation, and proposed designation for each parcel.

The City has stated that the LUP/Zoning Map changes are to correct errors in the maps and to bring the LCP maps into conformance with the City's General and Zone Maps. The City has indicated that the General Plan and Zoning Maps provided to Commission staff during preparation of the LCP were not the most up to date maps that were adopted at the time (2000) and did not reflect certain zone changes that had already been approved prior to the adoption of the LCP.

The land use categories in the LUP are based on those in the City of Malibu General Plan, with modifications made by the Commission when the LCP was adopted. The designation of some properties were changed to reflect their acquisition by local, state, or federal park agencies for public open space purposes. The land use designation for these properties was 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 added 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. The LIP Zoning Maps are consistent with the LUP Land Use Maps.

Several of the designation changes proposed as part of LCPA 1-06 raise issue with regard to consistency with the policies of the Coastal Act. **Modification No. 2** (LUP) and **Modification No. 19** (LIP) suggest that several of the proposed designation changes are modified or deleted from the amendment. The suggested modifications are discussed below with regard to the following issues.

Public Open Space

One proposed change to the land use/zoning maps (Change No. 69) proposed for three properties on Winding Way from Rural Residential—20-acre minimum to Rural Residential—5-acre minimum. Two of the parcels are privately owned and approximately 5-acres in size, so the proposed designation would be appropriate. However, the third parcel (APN 4460-002-904) is now owned by the Santa Monica Mountains Conservancy. This parcel is adjacent to two other parcels that are designated Public Open Space (POS) and are part of Escondido Park. As this parcel is in public ownership and part of a public park, it would be more appropriate to designate the property as POS. This change is suggested in **Modification No. 2B** and **Modification No. 19B** for the LUP Land Use Maps and the LIP Zoning Maps, respectively. Additionally, the map change is shown on Exhibit 3. As modified, the Land Use and Zoning Maps will reflect the public park ownership of this parcel and park and recreation uses will be allowed consistent with the LCP policies and provisions.

Shoreline Residential Development

Included in the proposed land use and zoning changes are 29 beachfront parcels (Changes Nos. 32-49 and 53-62) that are proposed to be redesignated from Single Family Medium (SFM) to Multi-Family (MF). Additionally, the LCPA proposes to redesignate 3 beachfront parcels (Changes Nos. 29-31) from SFM to Neighborhood Commercial (CN), and one parcel from SFM to Community Commercial (Change No. 50). All of these 33 parcels are located on Carbon Beach. While five of the parcels are vacant (according to information from the Los Angeles County Assessor), the majority of these parcels are developed with existing single family residences. In adopting the LCP, the Commission designated the subject parcels as Single Family Medium density, in part in recognition of the existing pattern of development. Increasing the density of residential development on beachfront parcels from single family to multi-family raises issue with regard to adverse impacts related to visual and scenic resources, traffic and parking/public access, storm wave hazards, sea level rise, and onsite wastewater treatment.

Given that the proposed re-designation of these parcels to Multi-Family (MF) would allow for an increase of density allowed on beachfront parcels, the Commission finds it necessary to suggest that these changes be deleted. This is required as part of **Modification No. 2A** and **Modification No. 19A**. As modified, the LUP and LIP maps will assure consistency with the policies of the Coastal Act and the Land Use Plan.

Visitor Serving Recreation

The LCPA includes a change (Change No. 28) in Land Use and Zoning designation from Commercial Visitor Serving (CV-1) to Multi-Family Beachfront (MFBF) for a beachfront parcel adjacent to Las Flores Creek. This site was designated for visitor serving use in the certified 1987 Los Angeles County Malibu/Santa Monica Mountains LUP. This site was the subject of a Coastal Commission permit action [CDP 4-00-259 (Herzig)]. The Commission denied this CDP for the redivision of two adjacent beachfront lots (one lot comprised almost entirely of the flood channel of Las Flores Creek) and the construction of eight, two-story, 27 ft. high above existing grade residential condominium units. [Staff notes that while this CDP action included two parcels that are adjacent and owned by the same entity, only one of the two parcels is proposed to be redesignated in LCPA 1-06] Subsequent to that action, the Commission designated the parcel as CV-1 in the adopted Malibu LCP, based on the previous LUP designation of the site, and in recognition of the higher priority accorded to visitor serving commercial uses by the policies of the Coastal Act. Both Coastal Act Section 30222 and LUP Policy 2.33 require that 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 use. The parcel in question is beachfronting, and adjacent to other existing visitor serving commercial uses. Further, just inland of Pacific Coast Highway, near the subject site, the City is planning a public park along Las Flores Creek. Visitor serving commercial use, in support of the park uses could be provided on the subject site. In approving LCPA 05-001, the City did not cite any evidence that this parcel is not appropriate for visitor serving use. As such, this proposed change to the LUP Land Use Map cannot be found consistent with the policies of the Coastal Act and the change to the LIP Zoning Map does not conform with the policies of the LUP. **Modification No. 2** and **Modification No. 19** require that Change No. 28 be deleted.

Residential Development

Change No. 51 for an approximately 21.26-acre property on Las Flores Canyon (APN 4451-019-030) would redesignate the parcel from Rural Residential—10-acre minimum (RR-10) to Single Family Medium (SFM). The proposed designation would allow up to 4 units per acre. In adopting the Malibu LCP, the Commission designated the Land Use and Zoning of the subject site as RR-10 because the parcel is very steep and contains habitat that is designated as environmentally sensitive habitat area on the LUP ESHA Map. The proposed increase in density to SFM (4 units per acre) will not avoid impacts to ESHA, as required by Section 30240 of the Coastal Act and the policies of Chapter 3

of the LUP. Therefore, this change is not consistent with the policies of the Coastal Act or the Malibu LUP. **Modification No. 2** and **Modification No. 19** require the proposed Land Use and Zoning Map Change No. 51 to be deleted.

H. SHORELINE DEVELOPMENT

1. Existing LUP Policies

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

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

New development shall:

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

Section 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.

- 4.27** 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.

- 4.30** 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.
- 4.37** 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 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, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.
- 4.43** 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.

- 4.44** 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.

2. Discussion

Bluff Setbacks

The LCPA provides for blufftop development to provide adequate setbacks to minimize the risks to life and property from the geologic hazard of bluff failure, as well as to ensure that shoreline protection devices are not required in the future to protect bluff slopes (where bluffs are subject to wave action).

LUP Policy 4.27 and LIP Section 10.4 D 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. These policies and standards require that new development on a bluff top provide a setback from the bluff edge that is sufficient to provide stability for a projected 100-year economic life of the structure plus an added geologic stability factor of 1.5. The required minimum setback is 100 feet. However, if the applicant can demonstrate, to the satisfaction of City geotechnical staff, that the location of the 1.5 factor of safety line on the property, plus the estimated bluff erosion over 100 years can be provided in less than 100 feet, then the setback may be reduced to a minimum 50 feet. 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 amendment proposes to modify the bluff setback requirements of LIP Section 10.4 D in order to reduce the minimum setback from 100 to 50 feet. The LCPA further proposes to reduce the minimum bluff setback resulting from the location of the 1.5 factor of safety line plus the bluff retreat expected over a period of 100 years. The proposed reduction in this minimum would be from 50 to 25 feet.

The proposed changes to LIP Section 10.4 D would not be consistent with LUP Policy 4.27, which is quoted above. Policy 4.27 contains the minimum bluff setback standard of 100 feet. This policy further contains the provision to allow a minimum bluff setback of 50 feet where the 1.5 factor of safety line and the bluff retreat over a 100-year life of the structure would allow for a setback of less than 100 feet. Conformity with and adequacy

to carry out the policies and provisions of the adopted Land Use Plan is the standard of review for Local Implementation Plan amendments. For that reason alone, the proposed LIP changes cannot be approved, as they will not conform to the LUP policies.

But it is also important to note that in adopting the LCP, the Commission found it necessary to require LUP Policy 4.27 in order to ensure that new blufftop development would minimize risks to life and property from hazards and that it would assure stability and structural integrity, as required by Section 30253 of the Coastal Act. Further, the required bluff setbacks are intended to avoid the need in the future for shoreline protection structures to protect bluffs subject to wave action. The Commission found, in adopting the LCP, that Policy 4.27 was required to ensure consistency with these policies of the Coastal Act.

The City has not provided technical information regarding the proposed reduction in the minimum bluff setback or how the City determined that the proposed minimum setbacks were adequate. No information was provided about how the reduced setback would assure the stability of the development or minimize risks to life and property. Further, the City did not provide any examples of cases where the minimum setback of 50 feet (with certain conditions being met, as described above) would be in excess of the setback calculated by determining the 1.5 factor of safety line and adding the setback for 100 years of bluff erosion. In other words, the City has not identified any case and staff is not aware of any where the setback required under the terms of LIP Section 10.4 D would have been less than 50 feet. Further, it is important to note that the bluff retreat rate is an estimate only. The 50-foot minimum was found to be appropriate as a conservative figure to address the uncertainty of estimating bluff stability for the future.

Several Malibu CDPs for bluff development have been appealed to the Commission [A-4-MAL-05-164 (Lechuza); A-4-MAL-05-160 (Toews); A-4-MAL-05-199 (Skloff)]. Staff would note that in these CDPs for blufftop development, most projects have required a bluff setback in the range of 50 feet based on the analysis of the 1.5 factor of safety line and the bluff retreat rate over the 100-year life of the project. In one case [A-4-MAL-05-169 (Toews)], the project site was configured such that the 50-foot minimum bluff setback could not be provided. In that case, the City approved a variance, on the basis that given the configuration of the existing legal lot, no new development could be constructed on the site that could meet the 50-foot setback (the project was appealed to the Commission by a neighbor and the appeal was later withdrawn).

The chart provided by the City regarding each element of the proposed LCPA (this chart is part of Exhibit 4) states that the reason for this change is that: "The proposed revision utilizes setback standards consistent with long-time City practice and retains all of the safety features of the existing LCP text. This chart states the following with regard to Coastal Act consistency: "The proposed revision is reflective of Section 30004(a) of the Coastal Act, which states that "to achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement". The minutes from the Planning Commission hearing on the LCPA include discussion regarding the

bluff setbacks (Although the Planning Commission recommended deleting the bluff setback element from the LCPA, the City Council approved the LCPA with the inclusion of the bluff setback change). There was discussion that the reduction in bluff setback from 50 to 25 feet would be appropriate given the Coastal Commission's recent action approving 25-foot bluff setbacks in the City of Newport Beach Land Use Plan Amendment. Staff would note that the Newport Beach LUP does include a minimum bluff setback of 25 feet. However, standards such as bluff setbacks cannot be applied statewide. Some areas of the state are more geologically stable than others. The Commission's geologist Mark Johnsson has confirmed that the bluffs in Newport Beach are more geologically stable than those found in Malibu. For instance, in bluffs in Newport Beach, it is common for the 1.5 factor of safety line to be located at or near the bluff edge, the bluff retreat rate is low, and landsliding happens rarely. For these reasons, 25 feet minimum was found to be an appropriate bluff setback for the Newport Beach area.

Modification No. 9 is suggested to delete the proposed reduction in the minimum bluff setback standards in order to ensure that LIP Section 10.4 D conforms with and is adequate to carry out LUP Policy 4.27 and the other shoreline development and hazards policies of the LUP.

Seawall Extensions

The LCPA proposes revisions to LIP Section 10.6 which requires applicants to record a deed restriction limiting future shoreline development in one of two cases: 1) where new development is approved with a shoreline protective device designed to protect the onsite wastewater treatment system (OWTS) only, because it is not feasible to construct the OWTS otherwise; and 2) where new development is approved with no shoreline protective device and geologic or engineering evaluations conclude that the development will not require a shoreline protective device during the design life of the development. In the first case, LIP Section 10.6 requires that the project be conditioned to record a deed restriction that states that no future repair or maintenance of the shoreline protective structure may be undertaken if it would extend its seaward footprint and the applicant waives any rights to such a seaward extension that might exist under Coastal Act Section 30253. In the second case, LIP Section 10.6 requires the project be conditioned to record a deed restriction that no shoreline protection structure may be approved in the future and the applicant waives any rights to construct such a structure that might exist under Coastal Act Section 30253. The LCPA proposes to revise LIP Section 10.6 to add language to the deed restriction to state that the restrictions on seaward extension of approved shoreline protective structures, and the restriction on development of a future shoreline protective device would only apply if there is a feasible alternative to protect development. Additionally, the LCPA proposes to add language stating that the applicant retain rights to repair and maintain shoreline protection structures in the first case, and to construct shoreline protection structures, in the second case, provided under Coastal Act Section 30253.

The proposed changes to LIP Section 10.6 would not be consistent with LUP Policies 4.37, 4.43, or 4.44, which are quoted above, and which explicitly require the restrictions that the proposed LIP Section 10.6 would eliminate under certain circumstances. As previously discussed, conformity with and adequacy to carry out the policies and provisions of the adopted Land Use Plan is the standard of review for Local Implementation Plan amendments. For that reason alone, the proposed LIP changes cannot be approved.

But it is important to note that in adopting the LCP, the Commission found it necessary to require LUP Policies 4.37, 4.43, and 4.44 in order to ensure that new shoreline development would be built without the need for shoreline protection structures because such structures are inconsistent with numerous Coastal Act policies.

In cases where new development could not be approved on “infill” beachfront parcels without a shoreline protection structure to protect the OWTS from damage (for instance where the most landward feasible area to located the OWTS on the site would still be subject to wave uprush), the LCP does allow for such a protective structure. This would avoid a possible taking in beachfront areas where there is other existing development. However, in order to be approved, the OWTS and shoreline protection structure must be located as far landward as feasible in order to minimize adverse impacts to shoreline processes and public access. To approve repairs, etc. to the shoreline protective device that extend further its footprint further seaward in the future would not ensure that it is located as far landward as possible. LUP Policies 4.37 and 4.43 require that such seaward encroachment be prohibited for the future in order to provide consistency with Coastal Action Section 30235 and 30253.

In cases where shoreline development is sited and designed to not require a shoreline protection device, the Commission has found that such development will minimize impacts to shoreline processes and public access. However, future construction of a protective device on the proposed project site would result in potential adverse effects to coastal processes, shoreline sand supply, the public’s beach ownership interests, public access, and scenic resources, inconsistent with the policies of the Coastal Act. Shoreline protective devices alter and fix the shoreline slope profile, which in turn alters beach width and the usable area under public ownership. 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 mean high water lines. This reduces the actual area of public property available for public use. In addition, such protective devices fix the shoreline and reduce the amount of natural shoreline retreat causing a progressive loss of sand and beach area, as shore material is not available to nourish adjacent beaches and the offshore sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore, where they are no longer available to nourish the beach. This affects public access by resulting in a loss of area between the mean high water line and the actual water. Shoreline protective devices, such as revetments and bulkheads, also cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed

individually along a shoreline, eventually affecting the profile of a public beach. Furthermore, if not sited landward in a location that insures that the shoreline protective device is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

The construction of a shoreline protective device to protect a new residential development would also conflict with Section 30253 of the Coastal Act which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Construction of a shoreline protection structure to protect new residential development would also conflict with Section 30251 of the Coastal Act, which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a structure. Additionally, shoreline protective structures are typically inconsistent with the Coastal Act Section 30251 provision that the scenic quality of coastal areas should be protected. Section 30235 of the Coastal Act allows for the construction of a shoreline protection device when necessary to protect existing development or to protect a coastal dependent use. Given the numerous adverse impacts of shoreline protection structures on coastal resources, and that such structures can be approved when necessary to protect existing development, new development must be designed to avoid the need for shoreline protection structures. LUP Policy 4.44 requires that new shoreline development that is sited and designed to not require a shoreline protection structure during its design life (as determined by the project's consulting geologist and geotechnical engineer) be conditioned to prohibit such construction in the future, consistent with the applicable sections of the Coastal Act.

Modification No. 10 is suggested to delete the proposed changes in Section 10.6 (with the exception of several minor wording changes that do not affect the meaning of this section) in order to ensure that LIP Section 10.6 conforms with and is adequate to carry out LUP Policies 4.37, 4.43. and 4.44 and the other shoreline development and hazards policies of the LUP. The Commission finds that only as modified will the LCPA be in conformity with and adequate to carry out the policies of the adopted Land Use Plan.

Basements

The amendment includes the addition of a definition for "basement" and modifications to the development standards for basements, cellars, and subterranean garages. The change will result in requiring the square footage of basements, subterranean garages, and cellars (with the exception of the first 1,000 sq. ft.) to count toward the total development square footage that is allowed on each site.

This proposed change does raise issue with regard to basements on beachfront parcels. The proposed Section 3.6 K would allow for basements, cellars, and

subterranean garages to be provided as part of beachfront residences with the following limitation:

Beachfront basements shall be kept as far landward as feasible, and designed so as not to force septic systems seaward.

The policies and provisions of the LCP require that structures constructed on the beachfront utilize a foundation system adequate to protect it from wave and erosion hazard without requiring a seawall, and that shoreline protection structures shall not be permitted to protect new development, except where necessary to protect the onsite wastewater treatment system (OWTS) and there is no other feasible alternative. In that case, the OWTS and shoreline protection device must be located as far landward on the property as feasible.

The construction of basements, cellars or subterranean garages as part of beachfront structures raises two issues. One is that if the walls of such structures extend seaward from the street and into the wave uprush zone, they will have the potential to be acted upon by waves, in the same way as shoreline protection structures, increasing erosion and impacting the beach profile. The other is that a beachfront basement, cellar or subterranean garage will occupy the most landward portion of the site, potentially in the same area where the OWTS for the structure should be located. **Modification No. 3** and **Modification No. 5** are suggested to prohibit basements, subterranean garages, and cellars on beachfront parcels in order to ensure that beachfront structures minimize erosion and impacts to the beach profile, consistent with the shoreline development policies and provisions of the LCP. A minor exception is provided to allow for the construction of a small subterranean equipment vault on a beachfront parcel. Vaults are typically provided to contain heating, ventilation, air conditioning, and other similar equipment required for a single-family residence. **Modification No. 5** would allow such a vault on a beachfront parcel so long as it does not contain habitable space, does not occupy any area of the site that would be required for the construction of the OWTS, and it does not require a shoreline protection structure. The Commission finds that as modified, the basement, cellar, and subterranean garage provisions of the LIP will be consistent with the policies of the LUP.

Stringline for Beachfront Development

As a means of controlling seaward encroachment of residential structures on a beach both to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, the Commission consistently applied a stringline in past permit actions to determine the appropriate rear yard setback. As applied to beachfront development, the stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. The Commission included Policy 4.30 in the Malibu LUP which requires that new "infill" development on sandy beaches be setback according to

a structure and deck stringline, be setback 10 feet landward of the most landward mean high tide line on the parcel, whichever is most restrictive.

The stringline requirement is detailed in LIP Section 3.6 G 3 (Residential Development Standards) and LIP Section 10.4 G (Shoreline Development). Both sections include provisions for the rear yard setback on beachfront parcels to be determined using a stringline connecting the nearest adjacent corners of existing development. The proposed LCPA includes revisions to the stringline standards (Change No. 3.8) in LIP Section 3.6 G 3, but not those in Section 10.4 G. In the amended version, the stringline would not be drawn to the nearest adjacent corner, but rather from the corner of the “predominant seaward projection”, which is defined as that portion of the structure closest to the ocean which has a width that is at least 30 percent of the maximum width of the structure. Additionally, Section 3.6 G 3 is proposed to be revised to allow for the processing of a minor modification when the application of the stringline provisions results in a stringline that is substantially inconsistent with adjacent development. Finally, the amendment proposes to allow accessory structures (such as a gazebo, pool, cabana) to be located seaward of the structure stringline.

The proposed changes to LIP Section 3.6 G3 would allow for development to occur in a manner that is inconsistent with the explicit setback requirements of LUP Policy 4.30. Conformity with and adequacy to carry out the policies and provisions of the adopted Land Use Plan is the standard of review for Local Implementation Plan amendments. For that reason alone, the proposed LIP changes cannot be approved. But it is also important to note that in adopting the LCP, the Commission found it necessary to require LUP Policy 4.30 in order to ensure that new beachfront development would not result in seaward encroachment, thereby minimizing risks to life and property from hazards, and assuring stability and structural integrity, as required by Section 30253 of the Coastal Act. Additionally, LUP Policy 4.30 is required to minimize impacts to public access, as required by the coastal access policies of Chapter 3 of the Coastal Act.

Modification No. 4 suggests that the City’s proposed LIP Section 3.6 G 3 be deleted and that a change be made to Section LIP 3.6 G 4 that will allow the approval of a minor modification. **Modification No. 17** suggests a modification to the proposed LIP Section 13.27.1 B 3 to allow for the selection of a different stringline end point. **Modification No. 18** is suggested to add to the required minor modification findings that the project provides maximum feasible protection to public access.

With these modifications, the LIP will provide for the approval of a minor modification of the stringline requirements where the application of these requirements results in a stringline that is substantially inconsistent with adjacent development. There are cases where existing development that would be utilized as an endpoint in drawing a stringline is anomalous. This may be either that the whole structure is much smaller or located much further landward than the general trend of the rest of development on the same beach, or that the nearest adjacent corner is significantly further landward than the remainder of the structure. LIP Sections 3.6 G 3, 13.27.1 B 3, and 13.27.5 B 4, as modified will allow for the approval of a modified stringline, through the minor

modification process, as long as findings can be made that the project will provide maximum feasible protection to public access. The existing LIP provisions do allow for the City to approve a different stringline through the approval of a variance. However, the City has found in practice that it is difficult to make the findings required to approve a variance of the stringline standards. This is because a variance must be based on the project site having unique characteristics, such as size or configuration, that create a hardship when the development standards are applied. However, in most situations where a modification to the stringline standards would be appropriate, it isn't the project site that is anomalous, but rather existing development adjacent to or near the project site. As such, consideration of a minor modification, approved in conjunction with a coastal development permit application for beachfront development, would allow for the approval of a modified stringline so long as it would protect public access. As modified, the LIP provisions for stringline standards will conform with and be adequate to carry out LUP Policy 4.30 and the LUP public access policies.

I. PUBLIC ACCESS AND RECREATION

1. Existing LUP Policies

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

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 10 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.

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.

2.63 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 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. Discussion

Lateral Access

The City of Malibu LCP contains policies and provisions that require that new development provide maximum public access opportunities and that it protect existing public access. LIP Section 12.5 provides the circumstances under which an offer to dedicate an easement or a grant of easement shall be required as a condition of approval of a CDP. LIP Section 12.6 provides the exceptions whereby the requirements of LIP Section 12.5 would not apply. This section details that where written findings establish that public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources or that adequate public access exists nearby, the requirements of LIP Section 12.5 will not apply. LIP Section 12.8.3 set forth the findings that must be made in order to determine that an exception to the access requirements is warranted. This requires the City to make written findings of fact,

analysis, and conclusions regarding the type of access and its location in relation to the specific fragile coastal resource, or public safety concern, as well as the unavailability of any mitigating measures to manage the type, character, intensity, hours, season, or location of the access that would protect public safety.

The amendment proposes to add criteria to Section 12.7.1 (Standards for Application of Access Conditions) regarding public safety and privacy that states the following:

1. Lateral public access easements shall not be required in locations where:
 - a. slopes, rocky outcrops, or other natural hazards to access and passive recreation would preclude safe access for the public; or
 - b. areas containing sensitive resources where feasible restrictions on the time, place, and manner of uses and access can not adequately prevent significant impacts to such resources; or
 - c. locations where feasible time, place, and manner restrictions can not adequately protect the privacy of residential development.

The proposed language is not necessary as the issue of public safety and sensitive resources are already addressed in LIP Sections 12.5, 12.6, and 12.8.3.

Furthermore, the requirement for public access applies when new development occurs, yet new development can only occur as “infill” in existing developed areas. It is hard to imagine instances where new infill development could be found to minimize risks to life and property for residents, yet be so hazardous that public access in the area would not be safe for the public. The Commission finds that such instances would be very rare. The proposed language could be easily interpreted to provide a basis or rationale to not require a lateral access easement for hazards that are typically associated with many beaches in Malibu. Yet these are hazards that residents and the public have safely navigated for decades and that are not so dangerous as to justify precluding all public access. For example, under certain high tide conditions in Malibu there are times when many areas are not passable because natural or man-made features extend into the water. However, at low tide these areas are easily accessible and it is perfectly safe to pass. For example, in approving CDP 04-071 (Kinsella) for improvements to an existing residence, the City staff report included findings that the provision of lateral access was not appropriate because of safety concerns present on the subject property. However, while access along the beach in front of this property may be restricted when sand levels are low and/or when tides are particularly high, safe access can clearly be provided at other times. Airphotos of this site clearly demonstrated that a wide beach is present at certain tide and sand level conditions. In response to Commission staff comments regarding lateral access on this property, the applicant offered to dedicate lateral public access across the site.

Modification No. 12 requires that the substantive changes proposed to LIP Section 12.7.1 are deleted. Two minor clarifying changes remain. The Commission finds that

only as modified, will the LIP maximize public access. Only as so modified will the LIP conform with and be adequate to carry out the policies of the adopted Land Use Plan.

VII.CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to Section 21080.9 of the California Environmental Quality Act (“CEQA”), the Coastal Commission is the lead agency responsible for reviewing Local Coastal Programs for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission’s program of reviewing and certifying LCPs qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the LCP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(2)(A) of CEQA and Section 13540(f) of the California Code of Regulations require that the Commission not approve or adopt a LCP, “...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.”

The proposed amendment is to the City of Malibu certified Local Coastal Program Land Use Plan and Local Implementation Plan. The Commission originally adopted the City of Malibu certified Local Coastal Program Land Use Plan and Local Implementation Plan in 2002. For the reasons discussed in this report, the LCP amendment, as submitted is inconsistent with the intent of the applicable policies of the Coastal Act and the certified Land Use Plan and feasible alternatives are available which would lessen any significant adverse effect which the approval would have on the environment. The Commission has, therefore, modified the proposed LCP amendment to include such feasible measures adequate to ensure that such environmental impacts of new development are minimized. As discussed in the preceding section, the Commission’s suggested modifications bring the proposed amendment to the Land Use Plan and Implementation Plan components of the LCP into conformity with the Coastal Act and certified Land Use Plan. Therefore, the Commission finds that the LCP amendment, as modified, is consistent with CEQA and the Land Use Plan.

ORDINANCE NO. 288

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING AMENDMENTS TO THE LOCAL IMPLEMENTATION PLAN FOR MALIBU ADOPTED BY THE CALIFORNIA COASTAL COMMISSION ON SEPTEMBER 13, 2002

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

Section 1. Recitals.

A. On September 12, 2005, the City Council initiated an amendment to the Local Coastal Program (LCP).

B. On October 20, 2005, the City published a Notice of Availability for Local Coastal Program Amendment (LCPA) No. 05-001 and made copies of the plan available to the general public, local agencies adjacent to Malibu, Resource Agencies, State and Federal Agencies and the California Coastal Commission. The draft document has been available at City Hall, the local library, on the City's website and at the local office of the California Coastal Commission.

C. On November 10, 2005, a one-quarter page public hearing notice for a Planning Commission meeting to be held on November 30, 2005 was published in a newspaper of general circulation within the City pursuant to Local Implementation Plan (LIP) Section 19.3.

D. On November 17, 2005, a one-quarter page public hearing notice for a City Council meeting to be held on December 12, 2005 was published in a newspaper of general circulation within the City pursuant to LIP Section 19.3.

E. On November 30, 2005, the Planning Commission held a public hearing to consider LCP Amendment No. 05-001, considered all testimony regarding the LCPA, and recommended that the City Council approve the LCP Amendment, as amended.

F. On December 12, 2005, the City Council held a duly noticed public hearing at which time it referred LCPA No. 05-001 to the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES).

G. On January 10, 2006, the ZORACES reviewed LCPA No. 05-001 and provided comments.

H. On February 2, 2006, a one-quarter page public hearing notice for a City Council meeting to be held on February 27, 2006 was published in a newspaper of general circulation within the City pursuant to LIP Section 19.3.

I. On February 27, 2006, the City Council held a duly noticed public hearing at which time it considered LCPA No. 05-001.

EXHIBIT 1
Malibu LCPA 1-06
Malibu Ordinance approving LCPA

Section 6. Certification.

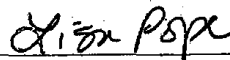
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 13th day of March, 2006.



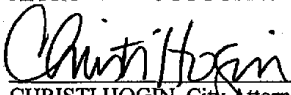
ANDY STERN, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

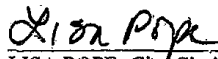
APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 288 was passed and adopted at the regular City Council meeting of March 13, 2006, by the following vote:

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



LISA POPE, City Clerk
(seal)

CALIFORNIA COASTAL COMMISSION

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



December 8, 2005

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

Subject: Malibu Local Coastal Program Amendment

Dear Mr. Amstrup:

As you know, Commission staff met several times with City staff to discuss potential modifications to the Malibu LCP. We have reviewed the proposed amendment that is now recommended for approval by the Malibu City Council. We have several comments to offer regarding the proposed amendments. I would note that these are preliminary comments only. We will, of course, carry out a more detailed review of the final proposed LCP amendment after it has been acted upon by the City Council and transmitted to us. Each comment references the item number and page number based on the Proposed Malibu Local Coastal Program Amendment LCPA 05-001, dated October 20, 2005.

Item 3.1 (Page 5) and Item 3.9 (Page 9)—Basements, cellars, etc. It is unclear how a beachfront home with a basement, as provided by these proposed changes, can be found to conform to the provisions of LUP Policies 4.36 and 4.37, and LIP Section 10.4. It seems that in most cases, the area that would be occupied by a basement would also be the most landward feasible location for the placement of a onsite wastewater treatment system for the residence.

Item 3.1 (Page 6) and Item 3.3 (Page 7)—Park definitions. In addition to definitions for Community, Neighborhood, and Pocket Parks, consideration should be given to adding Regional Park and allowing Regional Parks as a permitted use in all zones.

Item 3.7 (Page 8) and Item 3.56 (Page 35)—Stringline Provisions for beachfront parcels. The proposed modifications to the stringline requirements (found in LIP Section 3.6 G3) would lessen the intended effect of this standard to limit the seaward encroachment of beachfront development, to protect structures from wave and erosion damage, as well as to minimize impacts from development on public access. The proposed changes to the LIP would not conform to LUP Policy 4.30.

Item 3.22 (Page 23)—Transfer of Development Credits. This section details those land divisions that create additional parcels and are therefore subject to the provisions

EXHIBIT 2

Malibu LCPA 1-06

CCC Staff Comments

of LIP Chapter 7. The proposed language should be modified to be more specific in the following way:

Section 7.2 A1

1. any action to authorize a coastal development permit for a parcel map, tract map, or certificate of compliance approved under Section 15.3C or 15.3D of the Malibu LIP in the City of Malibu; and

Item 3.25 (Pages 23-24)—Seasonal Restrictions on Grading. The proposed modifications to the seasonal restrictions on grading (found in LIP Section 8.4) would lessen the intended effect of this standard to limit the impacts of erosion and sedimentation on ESHA. The Commission found in adopting the LCP that restricting grading during the rainy season is the appropriate BMP to implement in order to prevent impacts to ESHA. The proposed changes would not be consistent with LUP Policies 3.42 or 3.47.

Item 3.28 (Pages 24-27)—Bluff Setbacks. The proposed modifications to the bluff setbacks (found in LIP Section 10.4) would lessen the intended effect of this standard to provide adequate setbacks from the edge of bluffs in order to minimize the effects of geologic hazards on structures, as well as to prevent the future necessity of shoreline protection structures. The proposed changes would not be consistent with LUP Policy 4.27.

Item 3.31 (Pages 27-28)—Future Shoreline Protection Devices. The proposed modifications to the requirements of LIP Section 10.6 would lessen the intended effect of this standard to ensure that future repairs of approved shoreline protective devices do not extend further seaward and that development designed not to require shoreline protection structures during the life of the structure will be conditioned to waive the right to construct such structures in the future. The proposed changes would not be consistent with LUP Policies 4.43 or 4.44.

Item 3.37 (Pages 29-30)—Lateral Public Access. The proposed modifications to the lateral public access easement requirements (found in LIP Section 12.7.1) would lessen the intended effect of this standard to require maximum public access and would not be consistent with LUP Policies 2.63, 2.64, or 2.65.

Item 3.47 (Page 33)—Administrative Permits. The proposed amendment to allow: "lot line adjustments that are exempt from the provisions of the Subdivision Map Act" to be approved as part of an administrative permit is not consistent with Section 30264 of the Coastal Act. Lot line adjustments (which are exempt from the provisions of the Subdivision Map Act) are considered a form of land division under the provisions of the Coastal Act. Section 30264 of the Coastal Act does not provide for the Coastal Commission or a local government to approve land divisions as part of an administrative permit.

*Mr. C.J. Amstrup
December 8, 2005
Page 3*

Land Use Plan Maps and Zoning Maps—Modification of land use designation and zone designation of 75 separate parcels. The proposed amendment related to Parcel No. 28 from CV-1 to MFBF is not appropriate as visitor-serving uses are a higher priority than residential uses under the provisions of the Coastal Act and LCP. The Commission has previously found this property to be suitable for visitor serving commercial use. The proposed amendment related to Parcel No. 51 would increase the density permitted on this parcel from one dwelling unit per 10 acres (RR10) to four units per acre (SFM), which does not seem appropriate given the designation of ESHA across the parcel. The proposed amendment related to Parcels No. 72 and 73 would increase the density permitted on these parcels from one dwelling unit per 20 acres to one dwelling unit per 5 acres, which does not seem appropriate given the steep slopes on these parcels and the designation of ESHA across both parcels.

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

Very Truly Yours,



Barbara J. Carey
Supervisor, Planning and Regulation

**CITY OF MALIBU
LOCAL COASTAL PROGRAM
AMENDMENT NO. 05-001**

APRIL 2006

EXHIBIT 4
Malibu LCPA 1-06
Malibu Proposed LCPA Document, Environmental Effects Chart, and Coastal Act Consistency Chart

PROPOSED
MALIBU LOCAL COASTAL PROGRAM AMENDMENT

LCPA 05-001

February 27, 2006

1. LAND USE PLAN

- 1.1 Replace the title "Planning Director" with "Planning Manager" throughout the document.

Page 44, Policy 3.7, to read as follows:

3.7 ... The ERB shall provide recommendations to the applicable decision-making body (Planning ~~Director~~ Manager, Planning Commission, or City Council) as to the ESHA status of the area in question....

Page 50, Policy 3.39 to read as follows:

3.40 The ERB shall make recommendations on all projects reviewed under Policy 3.38 to the applicable decision making body (Planning ~~Director~~ Manager, Planning Commission, or City Council).... The decision making body (Planning ~~Director~~ Manager, Planning Commission, or City Council) shall make findings relative to the project's conformance to the recommendations of the ERB.

Page 91, Policy 5.1 to read as follows:

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~~ Manager, 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.

Page 91, Policy 5.5 to read as follows:

5.5 ... The decision-making body (Planning ~~Director~~ Manager, Planning Commission, or City Council) shall make written findings relative to the project's conformance with the recommendations of the Environmental Review Board.

-
- 1.2 Replace bullets with numbers/letters throughout LUP policies.

Page 22, Policy 2.45 to read as follows:

2.45 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 LUP Park Lands Map. A safe trail system shall be provided throughout the mountains and along the shoreline that achieves the following:

- ⊖a. Connects parks and major recreational facilities;
- ⊖b. Links with trail systems of adjacent jurisdictions;
- ⊖c. Provides recreational corridors between the mountains and the coast;
- ⊖d. 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;
- ⊖e. Provides connections with populated areas;
- ⊖f. 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;
- ⊖g. Reserves certain trails for hiking only;
- ⊖h. Facilitates linkages to community trail systems;
- ⊖i. Provides diverse recreational and aesthetic experiences;
- ⊖j. Prohibits public use of motorized vehicles on any trail;
- ⊖k. Provides public parking at trail head areas;
- ⊖l. Ensures that trails are used for their intended purpose and that trail use does not violate private property rights;

Page 24, Policy 2.56 to read as follows:

2.56 The CCT shall be designed and implemented to achieve the following objectives:

- ⊖a. Provide a continuous walking and hiking trail as close to the ocean as possible;
- ⊖b. Provide maximum access for a variety of non-motorized uses by utilizing alternative trail segments where feasible;
- ⊖c. Maximize connections to existing and proposed local trail systems;
- ⊖d. Ensure that all segments of the trail have vertical access connections at reasonable intervals;
- ⊖e. Maximize ocean views and scenic coastal vistas;
- ⊖f. Provide an educational experience where feasible through interpretive facilities.

Page 25, Policy 2.57 to read as follows:

2.57 CCT Siting and Design Standards:

- ⊖a. The trail should be sited and designed to be located along or as close to the shoreline where physically and aesthetically feasible....
- ⊖b. Where gaps are identified in the trail, interim segments should be identified to ensure a continuous coastal trail....
- ⊖c. The CCT should be designed and located to minimize impacts to environmentally sensitive habitat areas to the maximum extent feasible....
- ⊖d. 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.
- ⊖e. 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.
- ⊖f. The CCT should be designed to avoid being located on roads with motorized vehicle traffic where feasible....

Page 26, Policy 2.58 to read as follows:

2.58 CCT Acquisition and Management:

- ⊖a. 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.
- ⊖b. The CCT plan should identify the appropriate management agency(s) to take responsibility for trail maintenance.

Page 26, Policy 2.59 to read as follows:

2.59 CCT Signage Program Standards:

- ⊖a. 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).
- ⊖b. The trail should provide adequate safety signage, including but not limited to, road crossing signs and yield/warning signs on multi-use trail segments....
- ⊖c. Signs shall be posted in Spanish and in English.

Page 26, Policy 2.60 to read as follows:

2.60 CCT Support Facilities:

☞To maximize access to the CCT, adequate parking and trailhead facilities should be provided.

Page 26, Policy 2.61 to read as follows:

2.61 CCT Mapping:

- ☞a. 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.
- ☞b. The CCT shall be identified on all applicable City Trail Maps contained in the LCP Access Component.

Page 26, Policy 2.62 to read as follows:

2.62 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.

Page 30, Policy 2.86 to read as follows:

2.86 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.

a. Nicholas Canyon

☞No new dedications required – public beach.

b. 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.

c. Lechuza

☞Public acquisition of or requirements for two vertical access (OTDs).

d. Trancas / Broad Beach

☞Public acquisition of and/or requirements for vertical access every 1,000 feet of shoreline.

e. Zuma

☞No new dedications required – public beach.

f. Point Dume State Beach / Westward Beach

⇨ No new dedications required – public beach.

g. Dume Cove / Point Dume State Reserve

- ⇨ 1. Vertical access to the beach from the blufftop headlands parking lot.
- ⇨ 2. 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.
- ⇨ 3. 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.

h. Paradise Cove

⇨ Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with no fewer than two).

i. Escondido Beach – Malibu Cove Colony

- ⇨ 1. 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 Seacliff).
- ⇨ 2. Maintain and operate 2 existing vertical accessways.
- ⇨ 3. Improve and open 3 existing vertical access easements.

j. Latigo Beach

- ⇨ 1. 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.
- ⇨ 2. Requirement for or acquisition of public viewpoint on the blufftop at Pacific Coast Highway (PCH) or public street seaward of PCH.
- ⇨ 3. Improve and open existing vertical accessway and OTD.

k. Dan Blocker Beach

⇨ Improvement of existing vertical accessway, public parking and restroom facilities on portion of shoreline owned by Los Angeles County.

l. Malibu Beach Road (Amarillo and Puerco Beach)

- ⇨ 1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.
- ⇨ 2. Improve and 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.
- ⇨ 3. Maintain and operate existing accessway (5 are open).
- ⇨ 4. Enhance trail connections to Malibu Bluffs State Park.

m. 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.

n. Malibu Lagoon State Beach / Surfrider Beach

☐ No dedications required – public beach.

o. Carbon Beach

☐1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

☐2. Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.

☐3. Maintain and operate existing “Zonker Harris” vertical accessway.

p. La Costa / Las Flores Beaches

☐1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

☐2. Improve and open vertical access easement at Las Flores Creek.

☐3. Improve and open parcel at 21704 PCH at western end.

q. Big Rock Beach

☐1. Dedication of one vertical accessway every 1,000 feet of shoreline.

☐2. Maintain and operate 2 existing accessways.

r. Las Tunas Beach

☐1. Dedication of one vertical accessway every 1,000 feet of shoreline.

☐2. Improve and open existing vertical access OTD and Deed Restriction.

Page 43, Policy 3.4 to read as follows:

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:

☐a. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.

☐b. Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

☐c. Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.

☐d. Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, 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.

Page 47, Policy 3.26 to read as follows:

3.26 Required buffer areas shall extend from the following points:

- ⇨a. The outer edge of the canopy of riparian vegetation for riparian ESHA.
- ⇨b. The outer edge of the tree canopy for oak or other native woodland ESHA.
- ⇨c. The top of bluff for coastal bluff ESHA.

Page 50, Policy 3.42 to read as follows:

3.42 New development shall be sited and designed to minimize impacts to ESHA by:

- ⇨a. Minimizing grading and landform alteration, consistent with Policy 6.8.
- ⇨b. Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.
- ⇨c. 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.
- ⇨d. 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.
- ⇨e. Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less....
- ⇨f. Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.
- ⇨g. Minimizing impacts to water quality, consistent with Policies 3.94-3.155

Page 52, Policy 3.50 to read as follows:

3.50 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:

- ⇨a. Plantings shall be native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.
- ⇨b. Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.
- ⇨c. 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.
- ⇨d. 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....

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- ⇨e. 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....

Page 58, Policy 3.89 to read as follows:

3.89 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:

- ⇨a. 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.
- ⇨b. Restoration purposes.
- ⇨c. 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.

Page 59, Policy 3.93 to read as follows:

3.93 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:

- ⇨a. Biological study of the lagoon habitat, including identification of all rare, threatened, and endangered species.
- ⇨b. Lagoon hydrology.
- ⇨c. Water quality sampling study.
- ⇨d. Identification of the water levels appropriate and necessary for protection of the various species.
- ⇨e. Measures to protect endangered species.
- ⇨f. Water quality protection and enhancement measures.
- ⇨g. Identification of potential impacts from breaching or water level management, including reduction of certain kinds or areas of habitat.
- ⇨h. Identification of project alternatives to the proposed breaching or water level management designed to avoid and minimize impacts to sensitive resources.
- ⇨i. Mitigation measures necessary to offset unavoidable impacts from the proposed breaching or water level management.
- ⇨j. 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.

Page 59, Policy 3.94 to read as follows:

3.94 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:

- a. Pursue funding to support the development of watershed plans;
- b. Identify priority watersheds where there are known water quality problems or where development pressures are greatest;
- c. Assess land uses in the priority areas that degrade coastal water quality;
- d. Ensure full public participation in the plan's development.

Page 59, Policy 3.95 to read as follows:

3.95 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:

- a. 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.
- b. Limiting increases of impervious surfaces.
- c. Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
- d. Limiting disturbance of natural drainage features and vegetation.

Page 72, Policy 4.1 to read as follows:

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:

- a. Low Slope Stability & Landslide/Rockfall Potential: hillside areas that have the potential to slide, fail, or collapse.
- b. Fault Rupture: the Malibu Coast-Santa Monica Fault Zone.
- c. Seismic Ground Shaking: shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault.
- d. Floodprone areas most likely to flood during major storms.
- e. 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.
- f. Liquefaction/Floodprone areas where saturated sediments lie in flood plains.
- g. Tsunami: shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.
- h. Wave Action: shoreline areas subject to damage from wave activity during storms.

-
- ⇨i. Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.

Page 75, Policy 4.16 to read as follows:

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:

- ⇨a. The profile of the beach;
- ⇨b. Surveyed locations of mean high tide lines acceptable to the State Lands Commission;
- ⇨c. The availability of public access to the beach;
- ⇨d. The area of the project site subject to design wave uprush;
- ⇨e. Foundation design requirements;
- ⇨f. The need for a shoreline protection structure over the life of the project;
- ⇨g. Alternatives for protection of the septic system;
- ⇨h. The long term effects of proposed development on sand supply;
- ⇨i. Future projections in sea level rise; and,
- ⇨j. Project alternatives designed to avoid or minimize impacts to public access.

Page 75, Policy 4.18 to read as follows:

4.18 City-wide or beach specific Shoreline Management Plans should be developed for shoreline areas subject to wave hazards and erosion which include:

- ⇨a. An examination of local and regional annual erosion rates in order to reflect current shoreline changes;
- ⇨b. 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.
- ⇨c. 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....
- ⇨d. 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.
- ⇨e. 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.

-
- ☒f. 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.

Page 78, Policy 4.26 to read as follows:

4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:

- ☒a. No stockpiling of dirt or construction materials shall occur on the beach;
- ☒b. All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;
- ☒c. Measures to control erosion shall be implemented at the end of each day's work;
- ☒d. No machinery shall be allowed in the intertidal zone at any time to the extent feasible;
- ☒e. All construction debris shall be removed from the beach.

Page 82, Policy 4.45 to read as follows:

4.45 New development shall minimize risks to life and property from fire hazard through:

- ☒a. Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;
- ☒b. Siting and designing development to avoid hazardous locations;
- ☒c. 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 habitat to the maximum feasible extent;
- ☒d. Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;
- ☒e. Use of fire-retardant, native plant species in landscaping.

Page 93, Policy 5.17 to read as follows:

5.17 The components of a specific plan or other comprehensive plan for the Civic Center area shall include, but not be limited to:

- ☒a. Land use designations and permitted uses.
- ☒b. Provision for visitor serving commercial uses, including overnight accommodations, throughout the area.
- ☒c. 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.
- ☒d. Development standards, including heights, lot coverage, setbacks, and open space requirements.

-
- ⇨e. Measures to protect wetland habitat identified through a wetland delineation prepared for the Civic Center area pursuant to LUP Policy 3.81a.
 - ⇨f. Provisions for shared or consolidated parking areas.
 - ⇨g. Provisions for public open space areas, and restoration or enhancement of habitat.
 - ⇨h. Design guidelines, including architectural design, lighting, signs, and landscaping.
 - ⇨i. Provisions for mixed use development.

Page 103, Policy 6.3 to read as follows

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 within the City are considered Scenic Roads:

- ⇨a. Pacific Coast Highway
- ⇨b. Decker Canyon Road
- ⇨c. Encinal Canyon Road
- ⇨d. Kanan Dume Road
- ⇨e. Latigo Canyon Road
- ⇨f. Corral Canyon Road
- ⇨g. Malibu Canyon Road
- ⇨h. Tuna Canyon Road

Page 104, Policy 6.9 to read as follows:

6.9 All new development shall be sited and designed to minimize alteration of natural landforms by:

- ⇨a. Conforming to the natural topography.
- ⇨b. Preventing substantial grading or reconfiguration of the project site.
- ⇨c. Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.
- ⇨d. Requiring that man-made contours mimic the natural contours.
- ⇨e. Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.
- ⇨f. Minimizing grading permitted outside of the building footprint.
- ⇨g. Clustering structures to minimize site disturbance and to minimize development area.
- ⇨h. Minimizing height and length of cut and fill slopes.
- ⇨i. Minimizing the height and length of retaining walls.

-
- ⇨j. 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.

Page 105, Policy 6.12 to read as follows:

6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:

- ⇨a. Ensuring visual compatibility with the character of surrounding areas.
- ⇨b. Avoiding large cantilevers or understories.
- ⇨c. Setting back higher elements of the structure toward the center or uphill portion of the building.

Page 106, Policy 6.17 to read as follows:

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:

- ⇨a. Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.
- ⇨b. Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.
- ⇨c. 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.
- ⇨d. Using native vegetation types with a maximum growth height and located such that landscaping will not extend above road grade.

Page 107, Policy 6.24 to read as follows:

6.24 Land divisions, including lot line adjustments, shall be designed to minimize impacts to visual resources by:

- ⇨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, where feasible.
- ⇨e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas.
- ⇨f. Minimizing grading and alteration of natural landforms, consistent with Policy 6.9.
- ⇨g. Landscaping or revegetating all cut and fill slopes, and other disturbed areas at the completion of grading, consistent with Policy 6.29.

-
- ⇨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.

Page 108, Policy 6.29 to read as follows:

6.29 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:

- ⇨a. Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.
- ⇨b. Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.
- ⇨c. 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.
- ⇨d. Lawn shall not be located on any geologically sensitive area such as coastal blufftop.
- ⇨e. Landscaping or revegetation shall provide 90 percent coverage within five years....

Page 112, Policy 7.6 to read as follows:

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:

- ⇨a. Increased transit service;
- ⇨b. Improved transfer opportunities between regional transit routes and routes serving the Coastal Zone;
- ⇨c. Provision of parking facilities for bicycles, motorcycles and transit vehicles at recreation areas;
- ⇨d. 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;
- ⇨e. Implementation of beach and other recreation shuttles;
- ⇨f. Construction of road improvements necessary to facilitate bus travel.

1.3 Page 36, First Paragraph to read as follows.

2. Land Use Plan Provisions

The LUP contains policies that protect the environmentally sensitive habitat areas 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 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 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.

1.4 Modify Policy 5.29 to read as follows.

~~5.29 Any coastal development permit for a land division parcel or tract map or for a certificate of compliance that would result~~ing 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.

1.5 Modify Policy 6.18 to read as follows.

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:

~~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, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20 % of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.

~~c.~~ No portion of any above ground 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 ~~780~~ percent maximum of the total lineal frontage of the overall project site and that the remaining ~~320~~ percent is maintained as one contiguous view corridor.

1.6 Modify Policy 6.36 to read as follows.

6.36 Any telecommunications facilities approved along Pacific Coast Highway shall place support facilities underground, where feasible, except as permitted by the Local

Implementation Plan. 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.

2. LAND USE/ZONING MAP

- 2.1 Change Land Use designations and Zoning per the attached maps and spreadsheet.**
- 2.2 Add maps of overlay zones (see attached).**

3. LOCAL IMPLEMENTATION PLAN

- 3.1 Replace the title "Planning Director" with "Planning Manager" throughout.

Section 3.6 G9 to read as follows:

9. Shoreline protective devices. A shoreline protective device shall be permitted only if the Planning ~~Director-Manager~~ 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.

Section 3.6 M7 to read as follows:

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-Manager~~.

Section 3.6 O2b to read as follows:

- 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-Manager~~, provided that there be no more than six (6) non-resident persons whether employees or clients, present at any one time.

Section 3.6 O3 to read as follows:

3. Uses That Require ~~Aa~~ Permit. The Planning ~~Director-Manager~~ (~~Director-Manager~~) may allow any reasonable use as determined by the ~~Director-Manager~~ 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...
 - 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-Manager~~ for a complete understanding of the application....
 - c. When the ~~Director-Manager~~ determines that the application is complete, the ~~Director-Manager~~ 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-Manager~~ 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-Manager~~ will conduct a meeting to consider the application and all written and oral comments.

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- d. The Planning ~~Director-Manager~~ shall grant, deny, or conditionally grant the home occupation permit and issue a written decision.
 - e. The ~~Director-Manager~~ 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-Manager~~ within the ten (10) calendar days after the ~~Director-Manager~~ approved or denied the application. Any aggrieved person may appeal the ~~Director-Manager~~'s decision. The ~~Director-Manager~~ 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.

Section 3.6 P to read as follows:

- 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-Manager~~.

Section 3.8 B to read as follows:

- 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-Manager~~.

Section 3.12.5 D4 to read as follows:

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-Manager~~.

Section 3.12.5 D8 to read as follows:

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.

Section 3.12.5 E5 to read as follows:

5. Planting areas should be distributed throughout the lot as evenly as possible, but variations from this pattern may be granted by the ~~director-Manager~~ when a different pattern would result in the overall aesthetic improvement of the project. Innovation in design and materials is encouraged.

Section 3.13.3 K2 to read as follows:

2. Grand opening and special event displays approved by the ~~director-Manager~~ in the manner hereinafter provided.

Section 3.13.4 B to read as follows:

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-Manager~~. The ~~Director-Manager~~ shall approve the application if the ~~Director-Manager~~ finds that such application satisfies the criteria set forth in subsection C

of this Chapter. Any decision made by the ~~Director~~Manager may be appealed in accordance with the provisions of the Malibu Zoning Ordinance.

Section 3.13.4 D1i to read as follows:

- 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~~Manager 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~~Manager.

Section 3.13.4 D3c to read as follows:

- c. Signs – Condominiums... In addition, interior directional signs which are visible from any public right-of-way, may be approved by the ~~director~~Manager to identify special elements of such complexes such as...

Section 3.13.4 D3e to read as follows:

- 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~~Manager....

Section 3.13.4 E to read as follows:

- E. Special permits. ...The ~~Director~~Manager 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....

Section 3.13.5 G to read as follows:

- G. Illumination of signs. Unless otherwise prohibited by this Chapter, signs may be illuminated subject to the approval of the ~~Director~~Manager 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~~Manager 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~~Manager....

Section 3.13.6 A3a to read as follows:

- a. ... The maximum height of the sign shall be determined by the ~~Director~~Manager.

Section 3.13.6 A3b to read as follows:

- b. ... The maximum height of the sign shall be determined by the ~~Director~~Manager.

Section 3.13.6 A13c to read as follows:

- a. 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~~Manager....

Section 3.13.6 B2 to read as follows:

2. "No trespassing" signs.... Such signs shall be designed and located on such parcel in a manner approved by the ~~Director~~Manager.

Section 3.13.6 B7 to read as follows:

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~~Manager.... The location and design of such signs shall be approved by the ~~Director~~Manager....

Section 3.13.6 B8 to read as follows:

8. Grand opening signs. During an authorized grand opening event, temporary signs, not exceeding twenty (20) square feet in area may be approved by the ~~Director~~Manager....

Section 3.13.7, A to read as follows:

- A. Duty to enforce. The ~~Director~~ Manager shall have the duty to enforce the provisions of this Chapter.

Section 3.13.7 F to read as follows:

- F. Removal of illegal signs on public property. The ~~Director~~ Manager shall remove or cause to be removed any temporary sign unlawfully place or located on public property. The ~~Director~~ Manager 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~~ Manager may destroy or otherwise dispose of such sign.

Section 4.6.2 1 to read as follows:

1. ,,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~~Manager.

Section 4.8.1 B1 to read as follows:

1. Implementation of Conservation Measures

The Planning ~~Director~~Manager'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):

Section 5.4 E3 to read as follows:

3. The applicants shall retain the services of a qualified independent biological consultant or arborist, approved by the Planning ~~Director~~ Manager to monitor native trees that are within or adjacent to the construction area....

Section 6.3 to read as follows:

...These Rrequirements may be waived by the Planning ~~Director~~ Manager 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.

Section 6.5 G1 to read as follows:

1. ... 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~~ Manager.

Section 7.8.2 to read as follows:

Donor Credits Calculated

The Planning ~~Director~~ Manager, 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:

Section 7.8.3 A to read as follows:

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

Section 7.10 to read as follows:

The Planning ~~Director~~ Manager 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....

Section 8.3 G to read as follows:

Notwithstanding the limitations of this subsection, the ~~Director~~ Manager 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~~ Manager 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.

Section 8.4 C to read as follows:

- A. 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 1, unless the Planning ~~Director~~ Manager determines that completion of grading would be more protective of resources.

Section 19.2.2 to read as follows:

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~~ Manager to be in proper order and legally adequate to comply with Section 19.2.1 of the Malibu LIP. The Planning ~~Director~~ Manager 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.

3.2 Section 2.1, Modify definitions as follows.

~~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 or an area enclosed by walls located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than three (3) vertical feet at all points around the perimeter of all exterior walls. A basement does not constitute a story.~~

Basements for buildings that are constructed on beachfront lots that slope down toward the Pacific Ocean from the abutting road shall be defined as follows: Any portion of a building enclosed by walls that is 1) located no farther than half of the total length (front to rear) of the structure as measured from the center line of the abutting road; 2) located entirely below the centerline elevation of the abutting road; 3) located directly below the first floor footprint above; and 4) where only the walls facing the side property lines are daylighting.

~~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 any structure located entirely outside of the first floor footprint of a building, and located entirely below grade, except for an opening for pedestrian ingress and egress that shall have a minimum clear width of at least thirty (30) inches and a maximum clear width of forty-eight (48) inches.~~

~~Director - refers to the Planning Director of the City of Malibu or his/her designated appointee.~~

~~GARAGE, SUBTERRANEAN - a structure used for parking and storage of vehicles which is wholly below grade except for opening for ingress and egress that portion of a building or an area enclosed by walls, used for parking and storage of vehicles, which is located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than three (3) vertical feet at all points around the perimeter of all exterior walls, except for that portion of the wall with the opening for vehicular ingress and egress. A subterranean garage does not constitute a story.~~

~~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 (Finished) - the finished ground level around the perimeter at all exterior walls of a building.~~

~~MANAGER - refers to the Planning Manager of the City of Malibu or his/her designated appointee.~~

NURSING HOME - a facility licensed to provide full-time ~~convalescent~~ convalescence or care for persons with ~~or~~ chronic illness or infirmity, or who are unable to care for themselves.

PARK, COMMUNITY - These parks are intended to be 15-20 gross acres in size and are intended to serve the entire community. These parks serve a broader purpose than neighborhood parks. Their focus is on meeting the recreation needs of several neighborhoods or large sections of the community, as well as preserving unique landscape and open spaces. They allow for group activities and offer other recreational opportunities not feasible or perhaps desirable, at the neighborhood level. As with neighborhood parks, they can be developed for both active and passive recreation activities and could also include uses located within neighborhood parks, but could also include unlighted sports fields, community buildings and unique or specialized activity areas.

PARK, NEIGHBORHOOD - These parks are intended to be used primarily by the people who live nearby and are generally less than 15 gross acres in size. In addition to landscaping, improvements might include a tot lot, adventure areas, unlighted practice fields or courts, parking, buildings in support of on site uses, pathways, interpretive facilities, and restroom facilities. These parks can be developed for both active and passive recreation activities geared specifically for those living within the service area and could accommodate a wide variety of age and user groups, including children, adults, the elderly, and special populations.

PARK, POCKET - This is the smallest park classification and is used to address limited or isolated recreational needs. These parks are typically less than 5 gross acres in size. Activities are typically passive in nature, but can include tot lots, and adventure play areas, picnic shelters, restroom facilities, parking, buildings in support of on site uses, interpretive facilities and pathways.

REMEDIAL GRADING - grading recommended by a geotechnical consultant-California Licensed Geologist that is necessary to mitigate a geotechnical hazard on a site (including access driveways), 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).

3.2 Section 2.2, modify wireless communications definitions as follows.

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). A device used to transmit and/or receive radio or electromagnetic waves between terrestrial and/or orbital based systems, including but not limited to directional, omni-directional and parabolic antennas. This excludes non-commercial antennae, radio and television signals, and non-commercial satellite dishes.

WIRELESS TELECOMMUNICATION 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. An installation that sends and/or receives radio frequency signals, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment and other structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas

3.3 Modify Table B - Permitted Uses as follows.

- a. In the MFBF zone district add Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments) as requiring a Conditional Use Permit.
- b. Identify Pocket Parks as a permitted use in all zones (P).
- c. Identify Community and Neighborhood Parks as permitted in all zones subject to a Conditional Use Permit (CUP).

3.4 Add Patriot Homes Overlay Zone to Section 3.4.1, Overlay Districts Specific to Existing Developments.

G. Patriot Homes Overlay District

1. Permitted Uses. Multiple-family residential uses.
2. Height.
 - a. Maximum height: Maximum of twenty-eight (28) feet as measured from the finished grade of first finished floor at elevation thirty-five and one half (35.5) feet.
 - b. Maximum number of stories: Two, excluding subterranean garages.
3. Setbacks.
 - a. Front yard setback: a minimum of thirty-two (32) feet from the property line and a maximum of sixty-five (65) feet.
 - b. Side yard setback: cumulatively, a minimum of one hundred ten (110) feet with a minimum of eight feet from either side.
4. Structure Size. The total development square footage shall not exceed twenty-six thousand (26,000) square feet.
5. Section 3.6 K2 shall not apply.

3.5 Section 3.5.3 B4 to read as follows.

4. Balconies, decks, terraces which are at least ~~six (6)~~ six (6) eight (8) feet above grade, may ~~not~~ project more than six (6) feet into a required yard, ~~and shall 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.

3.6 Section 3.6 A to read as follows.

- A. Every residence shall have a roof constructed with roofing material in compliance with a rating as specified by Title 15 of the Malibu Municipal Code;

3.7 Section 3.6 G3 to read as follows.

3. Rear. Setbacks are determined by the stringline rule. Separate setback standards apply to dwellings, decks, accessory structures, and shoreline protective devices, as indicated below:

A. Dwellings and Decks. For a dwelling or deck, new construction shall not extend seaward of a stringline drawn by the following procedure:

1. General Rule. The stringline shall be drawn from a point on the closest upcoast and downcoast property with the same type of structure (dwelling or deck). The stringline point shall be located as follows: first, the predominant seaward projection of the structure on the upcoast and downcoast property shall be identified; second, the corner of the predominant seaward projection which is closest to the subject property shall be located, and shall constitute the stringline point. Predominant seaward projection shall be calculated using the formula in subsection (2), below.

2. Predominant Seaward Projection. The "predominant seaward projection" shall be that portion of a structure closest to the ocean, which has a width (i.e., the dimension which is on a plane parallel to the ocean front) at least thirty percent (30%) of the maximum width of the structure.

B. Stringline Modification. Where the application of the general rule results in a stringline substantially inconsistent with adjacent development, the applicant may apply for a minor modification pursuant to LIP Section 13.27.1(B)(3). Alternatively, the applicant may apply for a variance pursuant to LIP Section 13.26.

C. Accessory Structures. No accessory structure (including, without limitation, a gazebo, pool, cabana) may project seaward of the deck stringline. Accessory structures may be permitted seaward of the dwelling stringline, provided that ocean views from adjacent developed properties are maintained to the maximum reasonable extent, as determined by the Planning Manager.

3.8 Section 3.6 H to read as follows.

- 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 ~~Chapter Ordinance~~ (Chapter 4), Scenic and Visual Resources ~~Chapter Ordinance~~ (Chapter 6), or Grading ~~Ordinance Chapter~~ (Chapter 8) of the Malibu LIP.

3.9 Section 3.6 K to read as follows.

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. The square footage of a basement shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: The initial one-thousand (1,000) square feet of a basement shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at the rate of one (1) square foot of TDSF for every two (2) square feet of proposed basement square footage. A basement shall be located beneath or partially beneath the first floor footprint of the structure above. Any portion of a basement wall extending beyond the first floor footprint above shall be non-daylighting. All basements shall be limited to one floor level, not to exceed twelve (12) feet in height. Any grading required for that portion of a basement not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP. Those areas of a basement that extend beyond the first floor footprint above shall be subject to the impermeable coverage development standards contained in LIP Section 3.6 I. Beachfront basements shall be kept as far landward as feasible, and designed so as not to force septic systems seaward.

Subterranean Garage. The square footage of a subterranean garage shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: the initial one-thousand (1,000) square feet of a subterranean garage shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed. All subterranean garages shall be limited to one floor level not to exceed twelve (12) feet in height. A subterranean garage shall be located beneath or partially beneath the first floor footprint above. Any portion of a subterranean garage wall extending beyond the first floor footprint above shall be non-daylighting. A subterranean garage shall be allowed only one opening for vehicular ingress and egress with a maximum continuous width of thirty-six (36) feet, not including up to two support columns not exceeding eighteen (18) inches in width each. Except for lots with a subterranean garage having an entry not facing and not visible from an abutting street frontage, only one story shall be located above the opening for vehicular ingress and egress for a width equal to the width of said opening. Any grading required for that portion of a subterranean garage not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP. Those areas of a subterranean garage that extend beyond the first floor footprint above shall be subject to the impermeable coverage development standards contained in LIP Section 3.6.I.

Cellar. The square footage of a cellar shall be included the calculation of total development square footage (TDSF), consistent with the following formula: the initial one-thousand (1,000) square feet of the cellar area shall not count toward TDSF; additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed. All cellars shall be subject to the provisions of LIP Section 3.6.I, Impermeable coverage. Any grading required for the development of a cellar shall be subject to the provisions of Chapter 8 of the LIP. All cellars shall be limited to one floor level not to exceed twelve (12) feet in height.

Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward total development square footage (TDSF). Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.

3.10 Section 3.9.1 H to read as follows.

H. Drainage. All service stations shall comply with the requirements of Chapter 17 of the Malibu LIP (Water Quality Protection ~~Ordinance~~).

3.11 Delete Section 3.14, Wireless Telecommunications Antennae and Facilities (Page 115) and replace with the following.

3.14. WIRELESS TELECOMMUNICATIONS ANTENNAE AND FACILITIES

3.14.1 Purpose and Objectives

A. Purpose. The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas. The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality of the City as set forth within the goals, objectives and policies of the General Plan and Local Coastal Program, while at the same time providing for managed development of wireless communications infrastructure in accordance with the guidelines and intent of the Telecommunications Act of 1996.

B. Objectives. Recognizing the City's roles as regulator, service provider, facilitator and user, it is intended that the City shall apply these regulations in furtherance of the following goals and policy objectives, including but not limited to:

1. To retain control of private and public property within the confines of state and federal legislation to regulate wireless telecommunications services.
2. To facilitate the creation of an advanced wireless telecommunications infrastructure for citizens, businesses, industries and schools.
3. To protect the City from potential adverse effects of wireless telecommunications facility development.
4. Ensure that the wireless telecommunications infrastructure is designed to enhance and not interfere with the City's emergency response network.

3.14.2 Site Plan Review.

A site plan review permit, pursuant to 13.27 of the LCP, 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) or in any public right-of-way regardless of zoning district, if such wireless telecommunications antenna and/or facility complies with the General Requirements set forth in Section 3.14.5 and the Most Restrictive Design Standards set forth in Section 3.14.6. In addition to the site plan review permit, an encroachment permit shall be obtained for all wireless telecommunication antennas and facilities to be located in any public right-of-way.

3.14.3 Conditional Use Permit.

A conditional use permit, pursuant to Chapter 17.66 of the Municipal Code, shall be obtained prior to erecting wireless telecommunication antennas and/or facilities within any rural residential, public open space, or recreational vehicle park zoning districts (unless the antenna and/or facility is to be erected in a public right-of-way and it complies with the General Requirements set forth in Section 3.14.5 and the Most Restrictive Design Standards set forth in Section 3.14.6, 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 3.14.6. Any wireless telecommunication antennas and/or facilities conditionally approved pursuant to this Section shall comply with the General Requirements set forth in Section 3.14.5. The conditional use permit shall be reviewed by the City based solely upon the location, design and other criteria of this Chapter, as well as for consistency with the General Plan and the health, safety and welfare of the public.

3.14.4 Health & Safety Standards/Radio Frequency Emission Exposure.

- A. No wireless telecommunications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters.
- B. Failure to remain in continued compliance with the MPE limits shall be grounds for revocation of the discretionary permit.

3.14.5 General Requirements.

The following general requirements apply at all times to all wireless telecommunications facilities located in all zoning districts:

- A. Each facility must comply with any and all applicable provisions of the Malibu LCP and Municipal Code, including but not limited to provisions of the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, and any conditions of approval imposed as part of the approval process.
- B. Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission and the Federal Aviation Administration.

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- C. The facility must at all times comply with all applicable health requirements and standards pertaining to Radio Frequency emissions.
- D. Interference with City communications systems is prohibited. All proposed facility applications shall include reports, as required by the Los Angeles County Fire Department, to evaluate potential interference. The applicant shall be responsible for any costs incurred by the City, including the costs of retaining consultants, to review and analyze the reports.
- E. Freestanding wireless telecommunication facilities, including towers, lattice towers, and monopoles, shall not exceed 28 feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.
- F. Building-mounted wireless telecommunication facilities shall not exceed 28 feet in height. However, antenna elements, mounted flush on the facade of an existing structure that exceeds 28 feet, may have a height equal to the height of the building. Roof-mounted antennas may extend no more than 3 feet above the roof from which they are attached. Associated roof-mounted equipment cabinets shall not extend more than 5 feet above the roof from which it is attached and shall be setback a minimum of 10 feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.
- G. Not more than one (1) ground-mounted antenna site, excluding licensed amateur radio station antennas, shall be permitted on each site.
- H. Wireless telecommunication facilities and antennas shall be co-located on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to co-locate by the City, and if possible to do so.
- I. All electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view. Roof-mounted electrical support equipment shall be discouraged. Ground-mounted electrical support equipment shall be encouraged. In addition, under grounding of support equipment is required wherever practicable.
- J. When possible, wireless telecommunication facilities will be located on existing utility poles provided the antennas do not exceed the height of the utility poles and provided a less intrusive alternative is not available.
- K. All antennas 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.

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- L. All antennas shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface.
- M. 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) and except for manually operated emergency lights for use when official operating personnel are on site.
- N. No wireless telecommunication facility shall be located within five hundred (500) feet of any school ground, playground or park unless a finding is made, based on technical evidence acceptable to the Planning Manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists.
- O. Except for facilities co-located on the same pole or tower, wireless telecommunication facilities located within any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway, shall not be located within six hundred (600) feet of any other wireless telecommunications facility, unless a finding is made, based on technical evidence acceptable to the Planning Manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision shall not apply to wireless telecommunication facilities located within any commercial zone district.

3.14.6 Most Restrictive Design Criteria.

In addition to all other requirements set forth in this Title, all wireless telecommunications facilities shall meet the following design requirements:

- A. Facade-mounted antennas and equipment shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than 18 inches out from the building face.
- B. Ground-mounted wireless telecommunication facilities shall be located near existing structures or trees at similar heights for screening purposes where feasible.
- C. All wireless telecommunication facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the coverage objectives.
- D. All antennas 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 antennas and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility to the greatest extent feasible.

- E. All wireless telecommunication facilities shall be designed to prevent unauthorized climbing.
- F. Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations.
- G. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- H. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening.
- I. All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation. Freestanding monopoles in highly visible locations shall incorporate stealth techniques to minimize their prominence.
- J. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts to the extent deemed necessary by the Planning Manager. Landscaping screening should also be provided if irrigation water is available.
- K. No freestanding facility such as a monopole, lattice tower, or similar structure including ancillary support equipment may be located between the face of a building and a public street, bikeway or park.
- L. No wireless telecommunications facility shall emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.

3.14.7 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:

- A. The wireless telecommunications antenna and/or facility shall be erected, operated, and maintained in compliance with the General Requirements of Section 3.14.5 and, if applicable, with the Most Restrictive Design Standards set forth in Section 3.14.6.
- B. 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 Manager 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.

- C. 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.
- D. Any substantial change in the type of antenna and/or facility installed in a particular location shall require the prior approval of the Planning Manager.
- E. The applicant shall pay to the City a Permit Compliance Fee in an amount to be established by resolution of the City Council.
- F. Co-location of wireless telecommunications antennas and facilities pursuant to Section 3.14.8 shall be required whenever it is feasible to do so.

3.14.7 Locating Antennas at Existing Sites.

An effort should be made to locate new wireless telecommunications antennas and facilities on existing grandfathered or conforming facilities when feasible.

3.14.8 Minimum application requirements.

In addition to meeting standard application submittal requirements for discretionary permits, detailed in other Chapters in this Title, all wireless telecommunication facility carriers or providers shall provide the information listed below. As used herein, "Wireless telecommunication facility", "wireless facility", "telecommunication facility", or simply "facility", means an installation that sends and/or receives radio frequency signals, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment and other structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas. The Planning Manager may waive certain submittal requirements or require additional information based on specific project factors.

- A. Visual impact demonstration. A visual impact analysis shall be provided showing the maximum silhouette and proposed or required screening. The visual impact analysis shall include photo simulations and any required photo overlays, scaled models or architectural renderings necessary to determine visual impact. A map depicting where the photos were taken shall be included.
- B. Narrative. The applicant shall submit a narrative that addresses each of the following paragraphs and subparagraphs. The narrative shall be organized according to subject headings that match those in the paragraphs and subparagraphs listed below.
 - 1. Antennas/Equipment. List the number of proposed antennas and base transceiver stations and/or equipment cabinets and any existing facilities on the site. As used herein, "Antenna" means a device used to transmit

and/or receive radio or electromagnetic waves between terrestrial and/or orbital based systems.

2. Location. Describe the location and type of antenna installations (stand-alone rooftop, rooftop attached to a mechanical penthouse, building façade, or existing utility towers and poles) and location of the base transceiver station(s), equipment cabinets and/or buildings.
3. Height. List the height of the antenna installation. Carriers must provide documentation that establishes that the proposed facilities have been designed to the minimum height required from a technological standpoint for the proposed site.
4. Radio frequency. List the radio frequency range in megahertz and list the wattage output of the equipment.
5. Radio frequency emissions. Provide a report listing the effective radiated power generated by the proposed facility. The report shall identify exposure levels for both controlled and uncontrolled areas where the levels are projected to be highest.
6. FCC compliance. Provide documentation certifying all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed have been obtained.
7. Maintenance. Describe the anticipated maintenance and monitoring program for the facility.
8. Noise/acoustical information. Provide noise and acoustical information for equipment such as air conditioning units and back-up generators.
9. Site selection process. Provide a map and narrative description explaining the site selection process including information about other sites considered and reason for their rejection. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.
10. Geographic service area. Identify the geographic service area for the subject installation, including a map showing the site and the associated "next" cell sites within the network. Describe the distance between cell sites. Describe how this service area fits into and is necessary for the company's service network. Illustrate the geographic area in which the facility could be located showing all other sites that could be used for antenna location. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.
11. Preferred location sites. Each application shall identify the location preference, listed in Section 3.14.9 that the proposed facility is meeting. If the proposed location is not a preferred location, the applicant shall

provide a list (by address and Assessor's Parcel Number) and a map at 1:200 scale of all preferred location sites within the service area; what good faith efforts and measures were taken to secure each other of these preferred location sites; describe why each such site was not technologically, legally or economically feasible and why such efforts were unsuccessful; how and why the proposed site is essential to meet service demands for the geographic service area and the Citywide network. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.

12. Preferred mounting technique. Each applicant shall identify the antenna mounting preference, listed in Section 3.14.9 the proposed facility is meeting. If the proposed mounting technique is not a preferred technique, the applicant shall provide a list (by address and Assessor's Parcel Number) and a map at 1:200 scale of all such buildings/sites within the service area; what good faith efforts and measures were taken to secure each of these preferred mounting location/sites; describe why each such site was not technologically or legally feasible and why such efforts were unsuccessful; and how and why the proposed site is essential to meet service demands for the geographic service area and the Citywide network.

13. Cumulative effects. Identify the location of all the applicant's antennas and backup facilities and location of other wireless telecommunications facilities on and near the property; include the following:

a. Height. The height of all existing and proposed wireless telecommunications facilities on the property, shown in relation to the height limit for the zoning district;

b. Antennas. The dimension of each existing and proposed antenna, base transceiver station, equipment cabinet and associated building and backup equipment on the property;

c. Power rating. The power rating for all existing and proposed backup equipment;

d. Total watts. The total number of watts per installation and the total number of watts for all installations on the building (roof or side);

e. Facilities within five hundred (500) feet. The number and types of wireless telecommunication facilities within five hundred (500) feet of the proposed site and provide estimates of the cumulative electromagnetic radiation emissions at the proposed site.

C. Co-location agreement. All wireless telecommunications carriers shall provide a letter stating their willingness to allow other carriers to co-locate on their facilities wherever technically feasible. When determined to be technically

feasible and appropriate, the Planning Manager may require unutilized space to be made available for co-location of other wireless telecommunications facilities, including space for entities providing similar, competing services. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it becomes necessary for the host to go off-line for a significant period of time. As used herein, "Co-location" means an arrangement whereby multiple wireless communication devices share the same structure or site.

- D. Planned facilities. The applicant shall provide a list of planned or anticipated facilities within the City, and their anticipated construction schedules. The Planning Manager may require concurrent processing of planned facilities.
- E. Independent Consultant. At the discretion of the Planning Manager and as reasonably required, the applicant may be required to provide an authorization waiver to permit the City to hire an independent, qualified consultant to evaluate any technical aspect of the proposed telecommunications facility, including, but not limited to, compliance with applicable federal emission standards, potential for interference with existing or planned public safety emergency response telecommunications facilities, or analysis of feasibility of alternate sites, screening methods or devices. Any authorization for this purpose shall include an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation. Any proprietary information disclosed to the City or the consultant is hereby deemed not be a public record, shall remain confidential, and not be disclosed to any third party without the express consent of the applicant.
- F. Other information. Any other relevant information as required by the Planning Manager.

3.14.9 Preferred antenna siting and mounting techniques.

The following antenna and equipment siting and mounting techniques are preferred:

- A. Facade mounted antennas that meet the visual requirements specified in this Title.
- B. Roof mounted antennas that are not visible to the public.
- C. Existing monopoles or freestanding towers, utilizing stealthing techniques.
- D. Existing utility poles located within the public right-of-way.
- E. Monopoles or freestanding towers that utilize stealthing techniques.

3.14.10 Location.

Location preference for wireless communications facilities should be given to:

- A. Co-location sites. Co-located and multiple-user wireless telecommunications facilities will be required when, in the determination of the Planning Manager, it

is technically feasible and appropriate and will minimize overall visual impact to the community.

- B. Property designated non-residential (except for public open space and recreational vehicle park zoning districts), unless otherwise prohibited pursuant to this Title.
- C. Facilities attached or sited adjacent to existing structures. Whenever possible, facilities shall be located on and/or inside existing structures. Appropriate types of existing structures may include, but are not limited to: buildings, water tanks, telephone poles and utility towers and poles, sign standards, traffic signals, light standards and roadway overpasses.
- D. Sites that are not highly visible from adjacent roadways.
- E. Sites with minimum separation. When co-location is determined to be infeasible by the Planning Manager, sites that are more than five hundred (500) feet from school grounds, playgrounds or parks and which are more than four hundred fifty (450) feet from any other existing wireless facility within any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway.
- F. Unless otherwise indicated in this Title, no telecommunication facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.

3.14.11 Indemnity and liability for damages.

- A. The wireless telecommunications facility provider shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the provider(s) of any such claim, action or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.
- B. Wireless telecommunications facility operators shall be strictly liable for interference caused by their facilities with City communications systems. The operator shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the City attributable to the interference.

3.14.12 Cessation of Use or Abandonment.

All improvements, including foundations and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation condition within ninety (90) days of cessation of operation or abandonment of the facility.

3.14.13 Permit, review, renewal and revocation procedure.

A. The City finds that the technology associated with telecommunications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipate that telecommunications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. The City further finds that it is in the interest of the public health, safety, and welfare that telecommunications providers be required to replace older facilities with newer equipment of equal or greater capabilities and reduced visual impacts as technological improvements become available. Therefore, any modifications requested to an existing facility for which a permit issued pursuant to this Title authorizing establishment of a wireless telecommunications facility shall permit the Planning Manager to review the carrier's existing facility to determine whether requiring newer equipment or applying new screening techniques that reduce visual impacts is appropriate if technically feasible.

B. At any time, the Planning Manager may initiate proceedings to revoke a permit issued pursuant to this Title. Grounds for revocation shall be limited to a finding that the owner or operator has abandoned the facility, the facility is no longer in compliance with either the general requirements or design standards of this Title, the conditions of approval and the owner or operator has failed to bring the facility into compliance within ninety (90) days after a notice has been sent by the Planning Manager requiring the facility to be brought into compliance, the facility is no longer in compliance with applicable FCC or FAA regulations, the facility has not been upgraded to reduce or minimize its impact to the extent reasonably permitted by the technology available at the time of any requested modifications, or if the Planning Manager determines that revocation would be in the best interest of the public health, safety, or welfare.

3.14.14 Exempt telecommunications facilities.

A. Installation of the following antennas and/or appurtenant equipment which complies with all applicable health requirements and standards pertaining to RF emissions is exempt from the provisions of this Title subject to any conditions included below:

1. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:

a. The antenna is accessory to an existing use and measures 39 inches (one meter) or less in diameter.

b. The antenna is installed in a location where it is not readily visible from the public right-of-way.

c. The antenna shall not be located within a required setback area, driveway or parking space.

2. Amateur radio antenna (including ham and short wave) provided the antenna does not exceed the maximum building height for the zoning district in which it is located by more than 15 feet.

3. Telecommunications facilities exempt from the provisions of this Title by operation of state or federal law.

B. The determination of whether or not a proposed facility meets the requirements for an exemption is at the discretion of the Planning Manager. The Planning Manager may require that the application be processed as a Site Development Permit or Conditional Use Permit if the requirements of this section cannot be met.

3.12 **Section 4.4.2, replace the term “study” with “assessment.”**

3.13 **Section 4.4.4 E to read as follows.**

E. New structures within existing, developed neighborhoods where the parcel is not contiguous to within 200 feet of an ESHA, as shown on the ESHA overlay map.

3.14 **Section 4.7.6, Supplemental Findings, to read as follows.**

A coastal development permit for a use other than those conditionally permitted in the ESHA overlay ~~chapter 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 ~~Chapter ordinance~~ would not allow construction of a residence on an undeveloped parcel.

B. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ~~ordinance~~ and it complies with the provisions of Section 4.7 of the Malibu LIP.

3.15 **Section 5.1 to read as follows.**

5.1. PURPOSE

The purpose of the Native Tree Protection ~~Chapter 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, 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.

3.16 Section 5.2 to read as follows.

The provisions of this ~~Chapter 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.

3.17 Section 5.3 to read as follows.

Coastal development permit applications for development on sites containing oak, walnut, sycamore, alder, or toyon trees subject to this ~~chapter ordinance~~ shall include a tree protection plan, prepared by a qualified biologist or resource expert that provides:

3.18 Section 5.4 B to read as follows.

B. Removal of native trees subject to this ~~chapter ordinance~~ shall be prohibited except where no other feasible alternative exists. Mitigation shall be required for the removal of trees as described in section 5.5 of the Malibu LIP below.

3.19 Section 6.1 to read as follows.

The purpose of the Scenic, Visual, and Hillside Resource Protection ~~Chapter 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.

3.20 Section 6.5 E.2.b, Ocean Views, to read as follows:

- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.
- c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.

3.21 Section 6.5 E.2.e, Ocean Views, to read as follows:

- 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 780 percent maximum of the total lineal frontage of the overall project site and that the remaining 320 percent is maintained as one contiguous view corridor.

3.22 Section 7.2 A.1 to read as follows.

1. any action to authorize a coastal development permit for a parcel or tract map for for a certificate of compliance that would increase the number of lots for development and division in the City of Malibu; and

3.23 Section 8.1 to read as follows.

The purpose of the Grading Chapter Ordinance is to ensure that new development minimizes the visual and resource impacts of grading and landform alteration.

3.24 Section 8.3, Remedial Grading, to read as follows:

Notwithstanding the limitations of this subsection, the Director-Manager 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 necessary to mitigate an environmental hazard as recommended by a full-site geotechnical report approved by the Director and City Geotechnical logist staff, -except that a 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.

3.25 Section 8.4, Seasonal Restrictions on Grading, to read as follows:

- A. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that is included in one or both of the following categories, unless permitted pursuant to the provisions of Paragraphs B or C, below.
 1. The project site is within or adjacent to an Environmentally Sensitive Habitat Area or an ESHA buffer that drains into 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 season. If there is not sufficient time to complete grading before the rainy season, grading may be approved in one of these categories if the City finds that Best Management Practices (BMPs), both structural and non-structural, designed to minimize or prevent erosion,

sedimentation and polluted runoff will be implemented to a degree that would prevent significant water quality impacts or any significant disruption of habitat values within an Environmentally Sensitive Habitat Area.

- C. 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 1₇.
1. Where grading operations have not been completed before the rainy season begins, unless the Planning Director-Manager may permit grading to continue if he determines that
- a. that Best Management Practices (BMPs), both structural and non-structural, designed to minimize or prevent erosion, sedimentation and polluted runoff are being implemented to a degree that would prevent significant water quality impacts or any significant disruption of habitat values within an Environmentally Sensitive Habitat Area or
- b. that completion of grading would be more protective of resources.
- D. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.

3.26 Section 9.4 F to read as follows.

- 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~~.

3.27 Section 9.4 V to read as follows.

- 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 ~~Chapter 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.

3.28 Section 10.4 D to read as follows:

- 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. In no case shall development be set back less than ~~400~~ 50 feet. This distance may be reduced to ~~50~~ 25 feet if the City geotechnical staff determines

that either of the conditions below can be met with a 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 and/or Geotechnical Engineer, or a Registered 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 or surficial landsliding, 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 Engineer Geologist, Registered Civil Engineer, or Geotechnical 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 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 Engineer Geologist, Registered Civil Engineer or Geotechnical 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.

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3. The effects of earthquakes on slope stability (seismic stability) may be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.20g, and 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 shear 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, 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 evaluation of slope stability. Reference should be made to the City of Malibu's current "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.