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

ADDENDUM

DATE: June 9, 2008

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 16a, Wednesday, June 11, 2008, Malibu LCP Amendment No. 1-07

The purpose of this addendum is to:

1) Attach the written disclosures of ex-parte communications received by the date of this addendum (Commissioners Blank, Neely and Potter).

2) Attach the following correspondence:

-Letter from Ellia Thompson of Jeffer, Mangels, Butler & Marmaro, LLP on behalf of the Ross Family Trust, dated June 6, 2008
-Letter from the Malibu Coalition for Slow Growth, dated June 4, 2008
-Supplemental Remarks from the Malibu Coalition for Slow Growth, dated June 8, 2008

Staff has the following response to several comments contained in these letters:

The 45-foot lot width standard will apply to all beachfront parcels zoned Single-Family Medium Density. While the Malibu Bay Company site (30732 PCH) is the only currently vacant site that would be affected by the proposed modification of lot width standard, there are two other sites that could be affected if existing development were to be demolished. The overlay district for 30732 PCH reflects the landowner's agreement to incorporate more strict development standards regarding view corridors, habitat restoration, and open space easements than required by the Malibu LCP.

With regard to lot width in the Broad Beach area, staff would note that the majority of parcels along this stretch of beach are between 40 and 50 feet in width, with a few lots less than 40 feet and a few parcels that are wide (50 feet to 100 feet maximum). The proposed 45 foot width will result in lots that are substantially similar to the existing pattern of development along Broad Beach.

The overlay district standards for the property at 30732 PCH require that the 20 percent view corridors for each of the four future parcels be located such that the view corridor be located all on one side of the property and that view corridors between two parcels will be contiguous. This is more restrictive than the LCP standard that allows view corridors on lots less than 50 feet in width to be split. In order to ensure that such a standard will apply to the other two beachfront lots zoned SF-M that could potentially be subdivided, staff is recommending the addition of this provision to Section 6.5 of the Malibu LIP (as discussed in Section 6 below).

With regard to ESHA and the potential environmental impacts of the project, staff would disagree that alternatives and mitigation measures have not been adequately addressed in the staff report. To the contrary, the designation, protection, and mitigation of impacts to dune ESHA is extensively discussed in the staff report and memos prepared by the Commission's staff biologist. The review of

ESHA has been conducted to a level of specificity that would normally be carried out at a coastal development permit stage, rather than an LCP approval stage.

Finally, notice of the hearing and the staff's recommendation has been provided to known interested parties more than 10 calendar days prior to the scheduled public hearing as required for Commission action on LCPs and LCP amendments.

3) Attach June 9, 2008 Memo from Commission Biologist, Dr. Jonna Engel

4) Attach Second Botanical Evaluation of Primrose/Lupine Area, prepared by Robert Hamilton, dated June 9, 2008 (Please note: Pages 4 through 17 of photographs are not included here, due to length and lack of legibility in black and white copies)

5) Staff recommends that the following changes be made to Parts 4 and 6 of Suggested Modification #1 on Pages 10-11 of the staff report. Revisions are shown in ~~strike out~~ and **bold**.

4. Dune Habitat Restoration Plan Implementation

As a condition of approval of the subdivision of the subject property, the applicant shall be required to implement the Revised Dune Habitat Restoration Plan required pursuant to Part 3 above. Restoration shall commence immediately after issuance of the coastal development permit. **If permit issuance does not correspond with the rainy season, restoration shall commence during the next rainy season following coastal development permit issuance.**

6. *Open Space Conservation Easement*

No development, as defined in Section 2.1 of the Malibu LIP, shall occur within the area of the subject property located between the landwardmost limit of ESHA and the ambulatory seawardmost limit of dune vegetation, which is generally shown on Exhibit 18, except for dune habitat restoration, the use and maintenance of a maximum of two 3-ft. wide pathways, and symbolic fencing to delineate the two pathways.

As a condition of approval of, and prior to issuance of a coastal development permit for, subdivision of the subject property, the applicant shall be required to demonstrate that the land owner has executed and recorded a document in a form and content acceptable to the Coastal Commission, **irrevocably offering to dedicate (or grant an easement)** ~~granting~~ to a public agency or private association approved by the Coastal Commission, an open space conservation easement over the area described in the prior paragraph ("open space conservation easement area"), for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on Exhibit 18. The recorded document shall reflect that no development shall occur within the open space easement area except as otherwise set forth in this permit condition. The offer shall be recorded free of prior liens and encumbrances which the Coastal Commission determines may affect the interest being conveyed.

6) Staff recommends that Suggested Modification #3 be added to the LIP Suggested Modification section of the staff report. Additions shown in **bold**.

LIP Section 6.5(E)

6. New subdivisions of beachfront residential parcels, where structures cannot be sited or designed below road grade, shall ensure that no less than 20% of the lineal frontage of each newly created parcel shall be maintained as one contiguous public view corridor (even if the resultant lots are 50 feet or less in width). The view corridors of the newly created parcels shall be contiguous to the maximum extent feasible in order to minimize impacts to public views of the ocean. This requirement shall be a condition of permit approval for subdivision of a beachfront property.

7) Staff recommends that the following addition be made to the "Visual Resource" section at the end of Page 30 of the staff report (additions shown in underline):

As mentioned previously, two other properties besides the subject parcel at 30732 Pacific Coast Highway could feasibly be subdivided to create an additional parcel each as a result of the proposed LCP amendment. The two properties are currently developed with existing single-family residences. However, it is possible in the future that the existing structures could be demolished and the properties subdivided. To maximize public views in the event of proposed demolition of the existing homes and subdivision of the beachfront properties, the Commission finds **Modification No. 3** is necessary to minimize impacts to visual resources, consistent with the policies of the Coastal Act and the Malibu LUP. As modified, the Commission finds that the proposed amendment will minimize impacts to visual resources, consistent with the policies of the Coastal Act and the Malibu LUP.

EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc..: ***Wed 16a* City of Malibu LCP Amendment 1-07 Broad Beach subdivision, Malibu Bay Company.**

Date and time of receipt of communication: ***June 9, 2008 @ 9:00-9:15 am.***

Location and type of communication: ***phone***

Person(s) initiating communication: **David Reznick and Andi Culbertson on behalf of Malibu Bay Company**

Detailed substantive description of content of communication:

The applicant discussed the one remaining issue with staff: ESHA designation for the "Primrose Lupine" area.

The applicant believes that the weight given to the CCC staff ecologist's determination on the Primrose Lupine area should be considerably less than that of the scientific team because the ecologist does not have the same education or experience. This is a scientific question, and the weight of the evidence is that the Primrose Lupine area is not ESHA.

Even if it is, it is the applicant's claim that the ESHA status does not apply to the area nearest the stringline, where resources are very limited. Finally, the applicant contends that even if it were, the entire dune area is proposed to be completely restored, and therefore it is prudent to relocate the portions of the Primrose Lupine and stable hummock area to ruderal area that is not dune habitat. This, on balance, is more protective of coastal resources and more consistent with the terms of the Coastal Act and the LPP.

6/9/2008
Date

Signature of Commissioner

RECEIVED
JUN 05 2008
CALIFORNIA
COASTAL COMMISSION

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: June 2, 2008, 10:00 a.m.
(For messages sent to a Commissioner by mail of facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication: Phone Meeting

Person (s) initiating communication: David Reznick, and Andi Culbertson on behalf of Malibu Bay Company

Person (s) receiving communication: Commissioner Bonnie Neely

Name or description of project: City of Malibu LCP Amendment 1-07 Broad Beach subdivision, Malibu Bay Company
Wednesday, June11, Item 16a

Detailed substantive description of content of communication:

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

The project is proposed by the City of Malibu on behalf of itself and the property owner, Malibu Bay Company. The proposed LIP amendment serves to correct an inadvertent error in the City's zoning code, which was imported into the LIP by the CCC. The lot width designated for Broad Beach is shown as 80 feet in the LIP – far wider than virtually any other lot in Broad Beach. There is no evidence in the record that the CCC intentionally established a wider lot width for this small property along Broad Beach, one of the last remaining vacant parcels in a virtually fully developed beachfront neighborhood.

The proposal of the City is to establish a Beachfront Single Family District zone with a lot width of 45 feet for this area of Malibu. The lot width would allow 4, instead of 2, lots, with the new lots averaging 50 feet over the frontage of this 200-foot wide property. There are only about two other places in the entire 27+ mile coastline of Malibu where this could conceivably result in a resubdivision of existing lots to provide more lots.

The remaining issue relates to ESHA designations. There is no ESHA designated on the certified LCP map for this property, or within 200-feet of this property. However, the LCP requires a site specific study to determine if there is any ESHA on the site. Moreover, the certified LCP delegates to the City biologist the task of determining whether any buffer is necessary. Finally, the infill development policies allow development up to the stringline.

The applicant has performed two specific biological studies and one geomorphological study. This team has concluded that there is no ESHA in the development area except for an approximately 415 square foot area of stable hummock in the most downcoast lot. A prominent

geomorphologist has made the determination of the actual extent of the dune complex as required by the LCP. The biologists ascertained whether there was any ESHA outside of the dune complex, and there was not. The highly qualified biological team has concluded no buffer is necessary. The briefing book shows the delineation of the scientific team's conclusions.

The staff report agrees with most of the scientific team's observations, but also considers an area called the "Primrose Lupine" area ESHA. The basis for this conclusion contradicts the applicant's team. The applicant acknowledges that disagreements between staff and applicant scientific teams are common at the CCC. However, the applicant believes that the weight given to the CCC staff ecologist's determination on the Primrose Lupine area should be considerably less than that of the scientific team because the ecologist does not have the same education or experience. This is a scientific question, and the weight of the evidence is that the Primrose Lupine area is not ESHA. The applicant contends that even if it were, the entire dune area is proposed to be completely restored, and therefore it is prudent to relocate the portions of the Primrose Lupine and stable hummock area to ruderal area that is not dune habitat. This, on balance, is more protective of coastal resources and more consistent with the terms of the Coastal Act and the LPP.

The City and the applicant also believe that the emphasis placed on buffers is misplaced. The LCP requires that the City biologist establish the buffer with respect to dune ESHA, not the CCC. The CCC ecologist contends that a 25-foot buffer is necessary; the CCC staff report requires a 5-foot buffer. In view of the fact that the entire area is going to be restored, the idea of requiring a buffer is questionable. The entire Broad Beach area is governed by the stringline in terms of the division between developed and non-developed area. The project intends to honor the stringline and nothing is proposed in terms of the LCPA to change that restriction.

The applicant believes that it is not fair to place these burdens on the last property to develop on Broad Beach. No other Broad Beach property has been prevented from developing to the stringline. There have been about 8 permits issued since the LCP was certified, and the CCC has not appealed any of them. The applicant believes that fundamental fairness dictates that this property be allowed to develop to the stringline and relocate those portions of the dune and Primrose Lupine habitat landward of the stringline to the restoration area.

June 2, 2008
Date

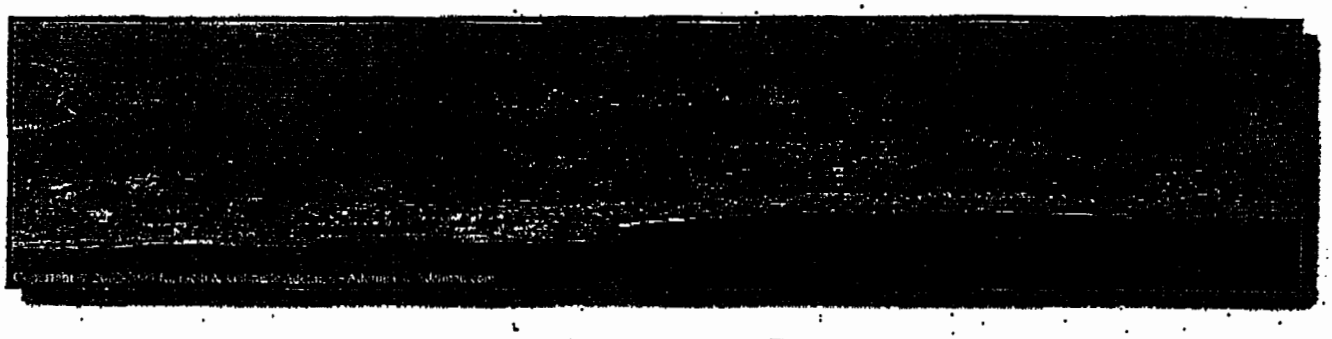
Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the Commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Briefing Book



Four Lot Subdivision
Broad Beach

Introduction

This Local Coastal Program ("LCP") Amendment ("LCPA") is limited to the Implementing Program aspect of the LCP only, and does not propose any changes to the Land Use Plan.

The LCPA is proposed for the sole purpose of correcting a beachfront lot width standard in the Broad Beach community. The effect of the amendment will allow a presently undeveloped piece of property to be subdivided to the same or slightly increased lot widths enjoyed elsewhere in Malibu.

Project Description

The project is an amendment to the Implementing Program of the certified City of Malibu Local Coastal Program, specifically the Zoning Ordinance. The amendment establishes a new beachfront lot width standard for the existing SFM "Single Facility - Medium Density" zone.

The SFM district currently requires lot widths of 80 feet. The amendment seeks to allow lot widths of 45 feet on the beachfront only. Neither the density nor the minimum lot size change with this amendment. This revised lot width standard will apply to what is virtually the only remaining undeveloped lot along Broad Beach, which is 2.08 acres in size. If the LCPA amendment is approved, the lots created as a result will be twice the minimum lot size, and will match or exceed the lot widths of existing development along Broad Beach.

EXHIBIT 1

The SFM designation was placed on the property - and all properties along the beach in this area - during the original certification of the LCP. The zoning standard came from the City's zoning code, but a review of the history of its development in the course of this project indicates that the 80-foot category was not intended to apply in a way that required infill beachfront lots to be developed differently than other existing beachfront lots in the area. The California Coastal Commission has previously approved LCPAs which make minor corrections in the LCP (LCPA 1-06).

In accordance with its policy of concurrent processing, the City approved all necessary entitlements to carry out this subdivision if this LCPA is approved, but conditioned the entitlement approvals on the approval of the LCPA. Only the LCPA is before the Coastal Commission at this point, and the LCPA applies only to a single sentence in the LIP.

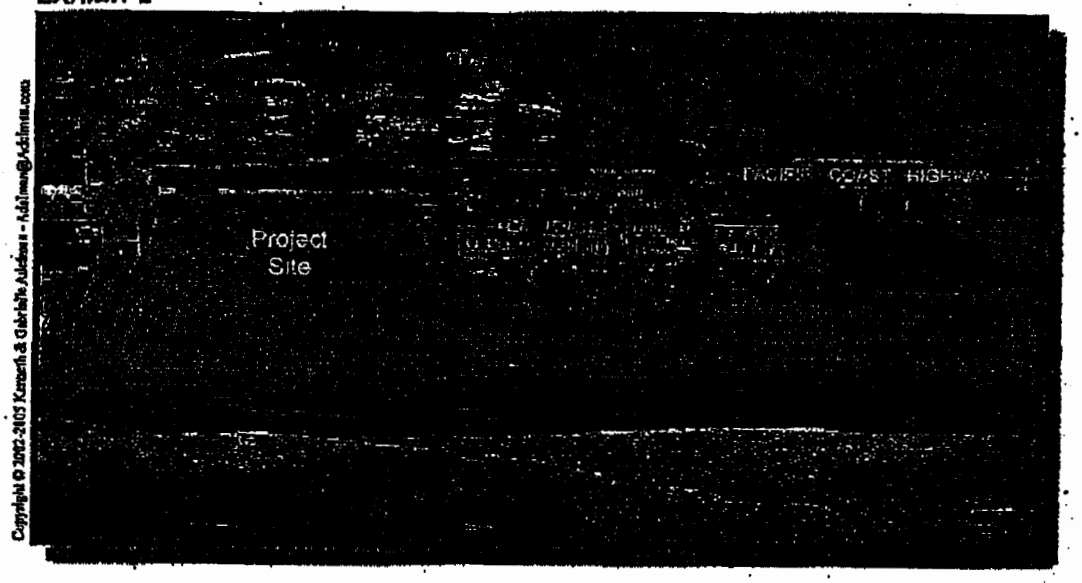
Background and History

The project proponent, Malibu Bay Company, acquired the subject property along with approximately 125 other acres in Malibu in 1989.

Prior to the current owner's acquisition of the property, it was variously used as:

- a construction yard for the completion of Coast Highway
- a recreational area for launching small boats for the Malibu Yacht Club
- a staging area for the construction of four California Coastal Commission-approved residences

EXHIBIT 2



In 1978, the Coastal Commission initiated an enforcement action against the Malibu Yacht Club for unpermitted development, including the breaching of the foredune complex to transport boats to the water. The Coastal Commission, in January 1978 by a unanimous vote of members present, approved a CDP for the operation of the Yacht Club, legitimizing its prior, unauthorized, improvements.

In 1995, the CCC issued Coastal Development Permits for 4 homes on Broad Beach which flank this property, and re-issued the CDPs in 2000. The lot widths for these adjacent homes are 30, 50, 50 and 57 feet respectively. Each of these permits carefully examined setbacks from the coastal dune features and all of the permits had restoration plans. The instant subdivision is essentially an "in-fill" one that matches the development character of the surrounding area and matches the stringlines and setbacks previously authorized by the Commission. Importantly, however, the proposed subdivision proposes a considerably improved restoration plan for the dunes in connection with the Coastal Development Permit, and also proposes a Conservation Easement to further protect resources.

Since each dune is different, and since very little if any land in Malibu is available for subdivision like this property, there is no precedent-setting aspect to this decision. Each dune is individually studied by the Commission for the appropriate treatment.

Progress with Coastal Commission Staff

Since March of 2007, the applicant and the City have worked constructively with Coastal Commission staff to clarify the geomorphology and biology of the site. Original issues regarding subdivision potential and view corridors, suitability of use have been resolved with staff report to the satisfaction of Coastal Commission staff, the City and the applicant.

Only one issue remains.

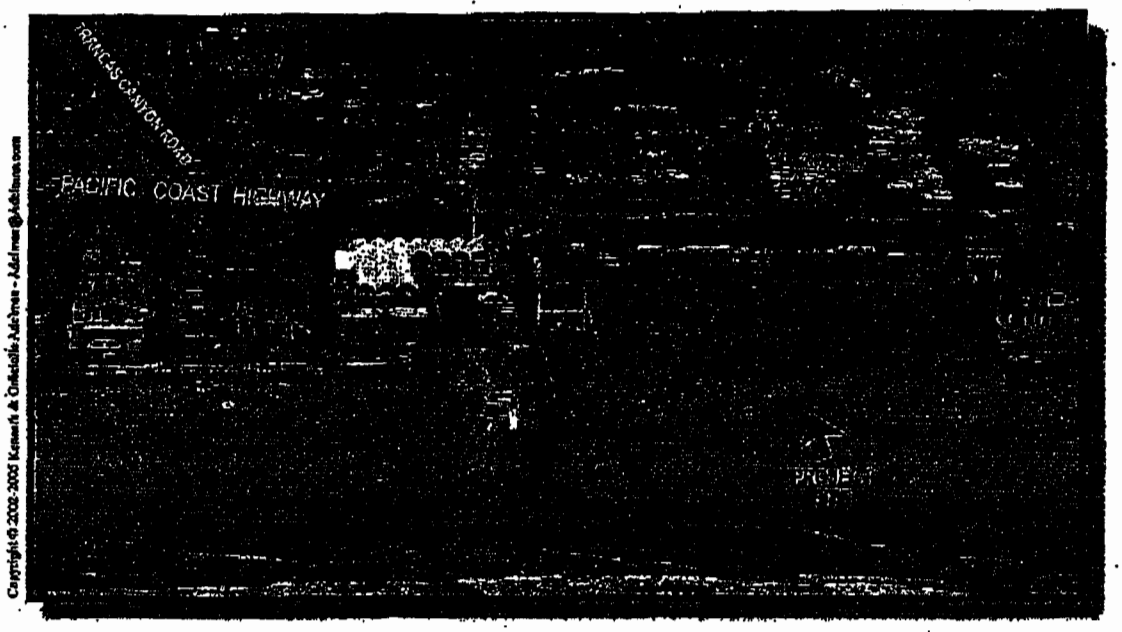
Is the Primrose/Lupine Area ESHA?

In order to conform to the LCP, a key question is what, if any, portion of the property qualifies for an ESHA designation? Once that question has been answered, it is the role of the City Biologist to determine if any buffer is required.

It is well know that the dunes at Broad Beach are not in a pristine state. Decades of development - including Pacific Coast Highway - have contributed to a decline in the areal extent of the dunes and have significantly reduced or eliminated dune processes.

The LCP did not map Broad Beach dunes, but requires that dunes be designated ESHA. While the dunes still exhibit ecological value it must be recognized that the dunes - unlike some others on the coast - have been disconnected from their sediment source and are pretty much going to stay the way they are now (Exhibit 3).

EXHIBIT 3



To insure that this project did no harm to the dunes, and to ascertain where the dune complex was actually located, we retained a team of experts in both geomorphology and biology. What we learned was very interesting.

First, Dr. Norbert Psuty, a world renowned expert, studied the dunes and determined where the dunes were located. This is critical, because the LCP requires that the dunes be designated ESHA, and it is therefore critical to correctly characterize where the dune complex is.

Exhibit 4 is Dr. Psuty's delineation. Note that a portion of the dune complex comes into the stringline of the most downcoast lot. Note that Dr. Psuty made no delineation of dune complex in the area generally called the "Primrose/Lupine" area (Exhibit 5).

The applicant also engaged a team of highly qualified biologists, including an entomologist, to characterize the resources on the property.

All these experts agree that the Primrose/Lupine area is not dune, and not ESHA.

EXHIBIT 4

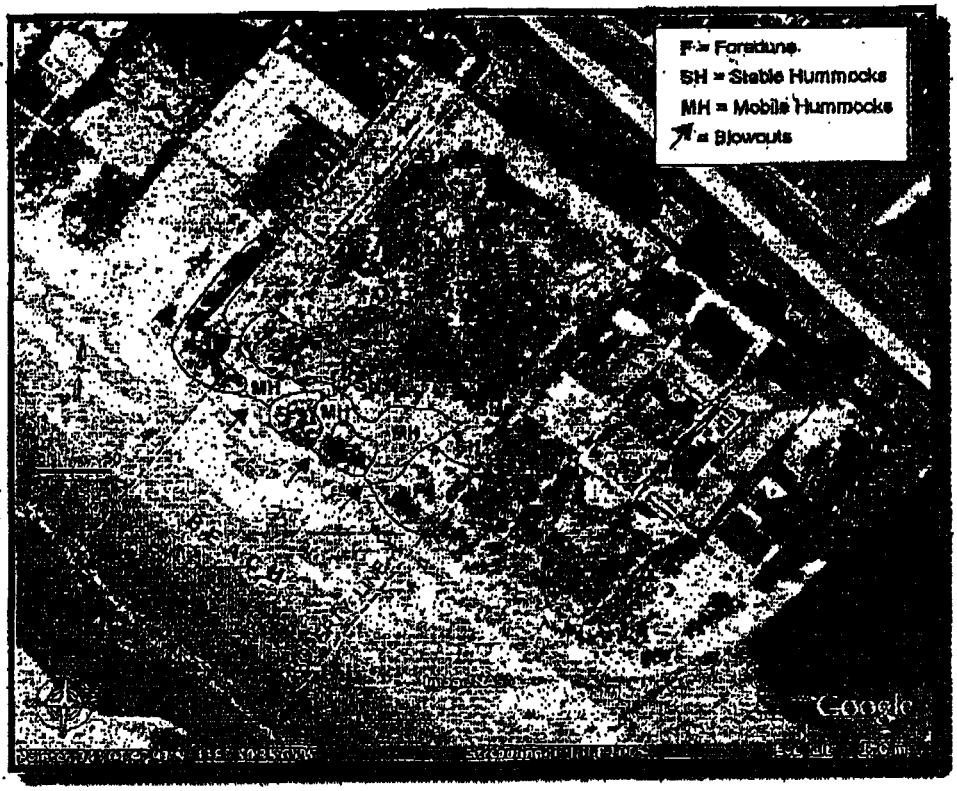


EXHIBIT 5

Exhibit 5 is a map of their determinations. They are in agreement with Dr. Psuty regarding the scope and location of the dune complex.

Dr. Jonna Engel, California Coastal Commission Ecologist, has taken exception to only one portion of this extensive and unprecedented study. In spite of this evidence, Dr. Engel makes an argument that the Primrose/Lupine area is ESHA on the basis that it is part of the dune complex. The area in dispute is 0.1 acre (Exhibit 5).

Dr. Engel chooses to disagree with an expert who is an internationally recognized expert. There are no resources in this area which are not going to be enhanced by the dune restoration program. Whatever the value of the Primrose/Lupine area – and we do not believe it to be ESHA – it is not on the basis of it being part of the dune complex.

Both the applicant's biologists and CCC staff make the observation that the question of whether the Primrose/Lupine area is ESHA is a "close call". The only plant of any significance – red sand verbena – is situated 31 feet seaward from the development stringline, as shown in Exhibit 6.

Since the only area of dispute is whether the Primrose/Lupine area is ESHA, and since ESHA in this case is based on whether the area is part of a dune complex, <u>we believe that the Commission should honor the Psuty delineation</u>.

Is a Buffer Necessary?

The LCP requires that where ESHA is designated for dunes (characterized as "Other ESHA" in the LCP), the City Biologist establishes the buffer.

Here, the City Biologist determined that no additional buffer was necessary beyond the stringline after restoration (the restoration itself provides a buffer).

The CCC policy staff propose a 5 foot setback from the dune stable hummocks and the development stringline where it intersects with the Primrose/Lupine area (Exhibit 7).

However, CCC ecological staff demand a <u>25 foot setback</u> <u>inside</u> the stringline from this "ESHA" – here is what that looks like (Exhibit 8).

The applicant would propose a 5 foot buffer on the seaward side of the stringline for the rest of the property (Exhibit 9). The 417 square feet of stable hummock in the downcoast lot, and the 81 square feet of Primrose/Lupine area landward of the stringline (together with the 5 foot buffer policy staff suggests) would be relocated to the ruderal area on the

EXHIBIT 6

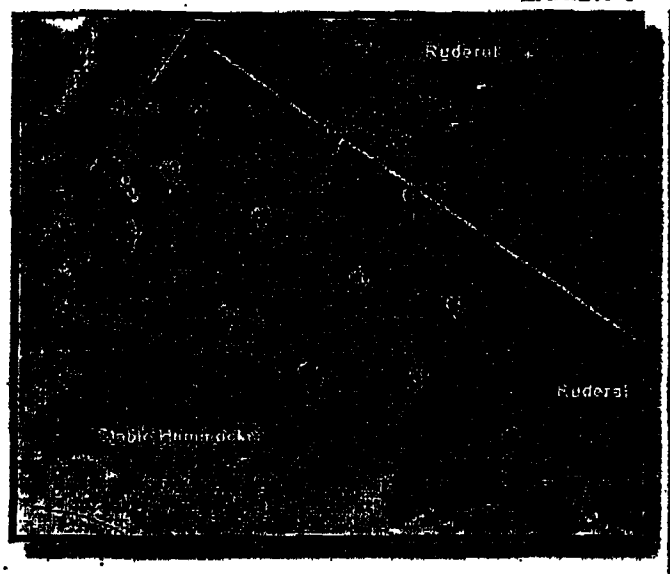
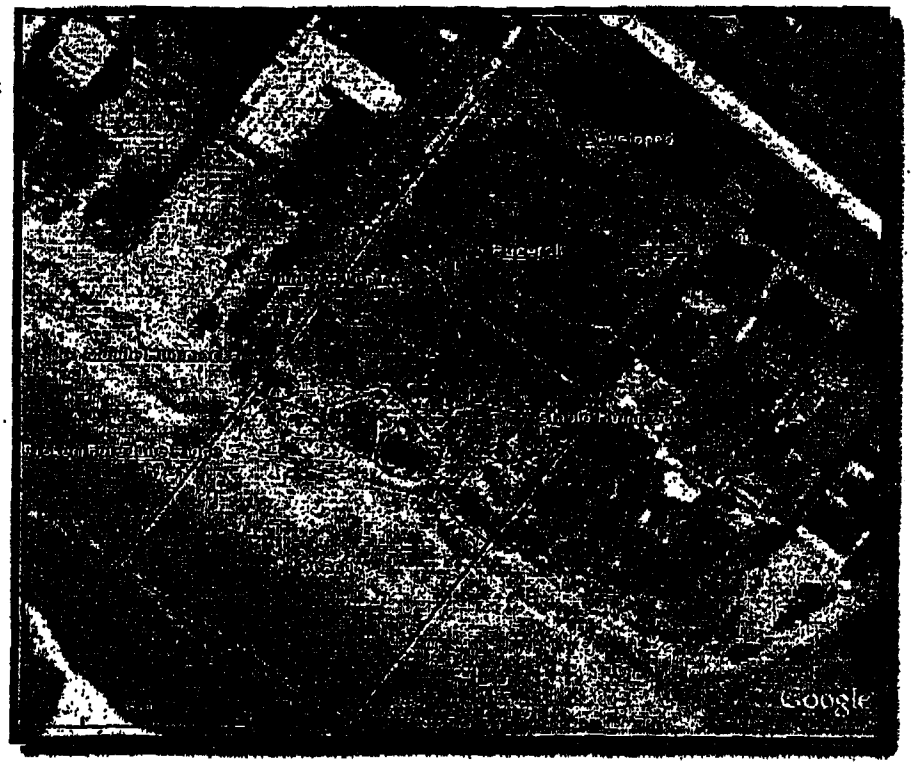


EXHIBIT 7

EXHIBIT 8



seaward side of the stringline. On balance, the team biologists believe that this would make a more sensible and better from a resource standpoint.

What is Fair?

Fundamental fairness calls for the CCC to allow this property to develop to the stringline. The applicant has been respectful of the LCP by conducting an unprecedented level of scientific study, and providing a state of the art restoration program.

It is undisputed that the Broad Beach dunes are highly disturbed. The restoration plan – with the conservation easement – provides a real improvement to the dune habitat. In fact, the biological team emphasized that it is the most important aspect of the project. Why, then, is there an effort to avoid this restoration? There is certainly no basis to require it if 5000 square feet of the property is sterilized to protect the dunes in place.

Policy staff seems to agree that the 25-foot setback is unreasonable and unnecessary. They propose a 5-foot setback (Exhibit 9). But even this is unreasonable. Why should this last developable area of Broad Beach be treated any differently than the rest of Broad Beach?

EXHIBIT 9

A lower value for any lot with a setback inside the development stringline will certainly occur. There are 150+ homes along Broad Beach – all built to the stringline. There have been 8 permits issued by the City since the LCP was certified which have all built to the stringline.

AND NOT A SINGLE PERMIT HAS BEEN APPEALED BY THE CCC!

The Primrose/Lupine area is .1 acre. The applicant is being asked to give up more than 498 square feet of his lot. A buffer of 5 feet landward of the stringline causes a depreciation of value in at least two of the lots. Nothing significant is accomplished here.

The last property to develop should not be treated in a way different than other properties which have been allowed to proceed. Here the staff proposes something that is not necessary (Primrose/Lupine area is not ESHA) but also is not fair.

Given the close call, is it fair to "stretch the science" to reach such a severe result on the last undeveloped lot on Broad Beach?

Conclusion

The proposed project:

- Harmonizes the development pattern for this property with surrounding land uses as demanded by the LCP
- Increases view corridor opportunities beyond what would result under the existing LCP
- Provides for the appropriate buffer to dunes and incorporates protective measures
- Provides for a state-of-the-art restoration plan and conservation easement

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

Date and time of communication: May 30, 2008
(For messages sent to a Commissioner
by mail of facsimile or received as a
telephone or other message, date
time of receipt should be indicated.)

Location of communication: County offices.

Person (s) initiating communication: David Reznick and Andi Culbertson on behalf of Malibu Bay Company

Person (s) receiving communication: Commissioner Dave Potter

Name or description of project: City of Malibu LCP Amendment 1-07 Broad Beach subdivision, Malibu Bay Company
Wednesday, June11, Item 16a

Detailed substantive description of content of communication:

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5/30/08
Date

Dave Potter
Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

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JMBM | Jeffer Mangels Butler & Marmaro LLP

Ellia Thompson
Direct: (310) 712-6833
Fax: (310) 712-8564
ethompson@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

June 6, 2008

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA E-MAIL AND OVERNIGHT MAIL

Patrick Kruer, Chair
and Members of the California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: AGENDA ITEM NO. 16(a) (June 11, 2008)
City of Malibu Local Coastal Plan Amendment 1-07; City of Malibu Local Implementation Plan Amendment MAL-MAJ-1-07

Chairman Kruer and Members of the California Coastal Commission:

This firm represents the Ross Family Trust, whose property abuts the property located at 30732 Pacific Coast Highway ("Subject Property") on the east side. On behalf of our client, we would like to submit the following comments on the proposed Local Coastal Program Amendment 1-07 (the "Proposed Action"). These comments are based on our review of the staff report to the California Coastal Commission ("Commission") dated March 29, 2008 (the "Staff Report") and documents referenced therein, public records contained in the City of Malibu's ("City") files, and the Local Coastal Program for the City of Malibu ("LCP") and other applicable land use policies and regulations, as well as our own investigation, knowledge, experience and observations in this matter.

As discussed below, the Proposed Action is unwarranted and should be rejected because it is inconsistent with numerous policies of the LCP, which was certified by the Commission in 2002. The Proposed Action also constitutes impermissible "spot zoning" and "spot planning," and would reverse the zoning and land use policies established over ten years ago in the Malibu Zoning Code and reflected in the City's LCP Local Implementation Plan ("LIP"). These policies were adopted for the express purpose of moderating development on beachfront property, and serve to advance the goals of the LCP. Further, a majority of Malibu residents rejected the notion of allowing similarly narrow beachfront lots by overwhelmingly voting to reject City Measure M in 2003.

Furthermore, the Staff Report fails to meet the procedural and substantive requirements of the California Environmental Quality Act ("CEQA"), even as an equivalent document

prepared as part of a certified regulatory program.[1] The potential adverse environmental effects of the Proposed Action--particularly marine and land resources--are neither adequately considered nor mitigated, nor has adequate opportunity for public comment been provided. The Commission's certified regulatory program, though statutorily exempt from certain portions of CEQA,[2] must still consider, for example, cumulative impacts, all feasible mitigation measures, and alternatives to the proposed project. Further, the Commission is required to make certain findings for each significant environmental effect identified.[3] The Staff Report for the Proposed Action does not fulfill these substantive and procedural requirements. For these reasons, the Commission should deny the Proposed Action.

THE PROPOSED ACTION CONFLICTS WITH ESTABLISHED ZONING PRACTICE

According to Malibu Municipal Code Section 17.10.010, the Single Family Density Residential District was established with the intent "to enhance the rural characteristics of the community by maintaining low density residential development in a manner which respects surrounding property owners and the natural environment" (Ord. 86 § 3 (part), 1993: prior code § 9220). The restrictions within this zone, which include the minimum lot width of 80 feet, were adopted to limit density and protect the environment, in response to accelerated erosion and other secondary effects of human activity associated with urban development under the previous scheme. The Commission subsequently incorporated the 80-foot lot width requirement into the City's LCP Local Implementation Plan in 2002.[4] Granting the Proposed Action with Modifications 1 and 2 would result in a nearly 100 percent increase in density on this lot, as well as numerous other lots along the City's coastline, that would contradict established zoning laws and practices.[5]

The Commission staff's proposed Modifications 1 and 2 (the Malibu Bay Company Overlay District) do not reflect proper land use planning principles and should be rejected. Among other things, if the proposed new 45-foot lot width standard could only be utilized within the proposed overlay district (as asserted by Commission staff), the Proposed Action would clearly constitute "spot" planning and zoning. The Proposed Action, if approved, would grant a special privilege to the Malibu Bay Company ("Applicant") that has not been granted to other property owners within the City since adoption of the current zoning ordinance in 1993, and would be in direct conflict with the stated goals of Malibu's General Plan and LCP, which include protecting the natural environment and requiring that development preserve view corridors to the greatest extent feasible.[6]

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[1] See Cal. Pub. Res. Code § 21080.5.
[2] Specifically, Chapters 3 and 4 of CEQA and Section 21167 of the Public Resources Code. See Cal. Pub. Res. Code § 21080.5(c).
[3] Cal. Pub. Res. Code § 21081(a).
[4] City of Malibu LCP Local Implementation Plan (adopted by the California Coastal Commission Sept. 13, 2002), pg. 36.
[5] Staff Report, p. 9–12.
[6] LU Policy 1.1.1. and corresponding LU Implementation Measure 9, Malibu General Plan, pg. 1-26, 27.

The lot size allowed under the proposed Modifications also conflicts with the average lot size requirement of Malibu's LCP. Specifically, LUP Policy 5.35 requires that "[t]he minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels." According to the Staff Report, the average lot width in the City is 50 feet and, "[a]t Broad Beach in particular, . . . 48 feet." The Proposed Action permits lot widths of 45 feet, less than either the citywide or SF-M zone average, violating average lot size requirement for the sole benefit of the Applicant.

THE PROPOSED ACTION INCLUDES AN ADMITTEDLY INADEQUATE BUFFER FOR ENVIRONMENTALLY SENSITIVE HABITAT AREA

Malibu's LCP Land Use Plan requires that "Protection of ESHA ... shall take priority over other development standards and where there is any conflict between general development standards and ESHA... the standards that are most protective of ESHA .. shall have precedence."[7] Approving four single-family residences to be built on a lot that, under current land use standards would allow two residences, will intensify construction activities, cause greater foot traffic, and degrade the fragile dunes. This will not protect ESHA as mandated.

The Commission's biologist concluded that the subject parcel includes coastal dune habitat that meets the definition of ESHA: "The subject beachfront parcel consists of a coastal dune environment that is part of a larger coastal dune ecosystem at Broad Beach . . . the coastal dune community fronting homes along Broad Beach is southern foredunes, a habitat type identified as rare by the California Natural Diversity Data Base . . . and the California Native Plant Society . . . , and considered environmentally sensitive habitat areas (ESHA) in the Malibu City LCP."[8] In fact, the Commission's biologist noted that "***the dunes on the subject property are some of the most pristine dunes along this stretch of coast and . . . the documented correlation between land use history and decline of dune habitat is clear evidence of biological impacts warranting a buffer***. "[9] The Commission's biologist further concluded "that a buffer is necessary to protect the functioning of the southern foredune ESHA at the subject site," and recommended a 25-foot minimum buffer.[10]

Nonetheless, without any contrary findings to support its position, the Staff Report simply states a "buffer of at least five feet would serve as adequate."[11] Citing a need to provide equitable relief to the applicant, the Staff Report, without providing any evidence showing that a five foot buffer would provide any protection to the pristine dunes, determines the Applicant's desires must govern. However, neither the Coastal Act nor Malibu LCP Land Use Plan policy allows for such a presumption. In fact, the LCP clearly states that development adjacent to

[7] LCP Policy 5.6.
[8] Staff Report, pp. 27–28.
[9] Id., pg. 17
[10] These findings contradict the Applicant's position that no ESHA exists on the site or even within 200 feet of this property. See Staff Report, Exhibit 14.
[11] Id., pg. 28.

ESHA shall minimize impacts to habitat values and sensitive species "to the maximum extent feasible," and specifically requires a buffer with a minimum width of 100 feet.[12]

The Staff Report attempts to sidestep the LCP's requirement of a 100-foot-wide buffer based on a strained interpretation of the City's Local Implementation Program ("LIP") that directly conflicts with the LCP's clear mandate that "[a]ll buffers shall be a minimum of 100 feet in width."[13] Furthermore, the Staff Report provides nothing to support the apparent assumptions that (1) a five-foot buffer is as effective as a 25-foot buffer, or (2) a 25-foot buffer is somehow infeasible. Indeed, the available facts compel the opposite conclusion. Among other things, the Staff Report admits that "given the proximity of dune ESHA on the property and assuming a 25 foot buffer is applied, it is possible to site future development for four separate parcels without building in the [ESHA or 25-foot ESHA buffer]."[14] The Staff Report includes nothing in its analysis or findings to support the infeasibility of a 25-foot buffer as a mitigation measure or project alternative.[15]

THE PROPOSED ACTION WOULD PROMOTE SUBDIVISION OF OTHER SF-M PARCELS, THWARTING THE PURPOSES OF THE EXISTING, LONG-ESTABLISHED LOT WIDTH REQUIREMENT

Although the Staff Report suggests that Subject Property is the only property that would be "impacted" by the proposed reduction in the minimum lot width requirement from 80 feet to 45feet, the Proposed Action would in fact allow (and establish a precedent for) the subdivision of other SF-M parcels throughout the City. The City's survey of SF-M parcels that could be affected revealed four parcels in addition to the Subject Property that could be subdivided under the proposed minimum width requirement.[16] According to the City and the Staff Report, all of the parcels other than the Subject Property are developed with single-family homes; however, two of the parcels are sufficiently wide for subdivision into two lots each, and the remaining two parcels resulted from lot ties or mergers of three and four lots, each about 50 feet wide.[17] Therefore, contrary to the Staff Report, which states that the only two of these parcels could feasibly be subdivided for a total of two new parcels,[18] the City's Mitigated Negative Declaration demonstrates that a total of five parcels (including the Subject Property) could be subdivided into

[12] LCP Policy 3.23.
[13] See Staff Report, p. 27. Furthermore, even if the staff's interpretation of the LIP is correct, there is no indication that the City biologist consulted with the Department of Fish & Game ("DFG") as required by LIP Section 4.6.1.G, or that the DFG concurred with the conclusion that a 5-foot buffer would be adequate in this case.
[14] Id., pg. 25.
[15] Id., pg. 31.
[16] Staff Report, pg. 21.
[17] City of Malibu Revised Initial Study and Mitigated Negative Declaration No. 06-002 (adopted December 11, 2006), pg. 28–29.
[18] Staff Report, p. 21.

as many as fifteen parcels, for a threefold increase in development potential in larger SF-M parcels.[19]

The Proposed Action would also encourage the combination of smaller lots and their subsequent re-division to yield a greater number of lots than would have separately been possible on the pre-existing lots. An examination of the City's maps of lots in the SF-M zone shows that at least five parcels could be combined with at least seven neighboring parcels and then re-subdivided under a 45-foot minimum width requirement to yield at least ten more parcels than would otherwise be permitted under an 80-foot minimum lot width requirement.

The pattern of development in the SF-M zone since 1993 actually demonstrates that the existing 80-foot lot width requirement has fulfilled its intended purpose of reducing beachfront development intensity, reducing erosion and preserving bluewater views. Further, the lot ties and mergers, and development of single-family structures on wider parcels that might otherwise be subdivided, have demonstrated the feasibility of the zoning scheme, as it currently exists, for every beachfront SF-M parcel owner except, purportedly, the Applicant. However, the Applicant has owned the Subject Property since 1989 and had at least two opportunities to "correct" what Applicant asserts was the City's "inadvertent error" in reducing the minimum lot width requirement: (1) during and after adoption of the 1993 zoning code and (2) during adoption of the LCP. But, as described above, the change was deliberate and responded to specific, identified problems associated with development, and other SF-M parcel owners have managed to assemble and develop their property according to the current zoning requirements.

The success of the existing SF-M zoning in moderating waterfront development and the associated impacts would be jeopardized by the Proposed Action. According to the Staff Report, prior to adoption of the 80-foot width requirement, the "[e]xisting residential development on narrow lots on many sections of the Malibu shoreline [had] created a solid wall of development,"[20] and noted that narrow lot widths are "a continuation of [a] development pattern that has resulted in significant adverse impacts to scenic views of the ocean and beach along the Malibu shoreline," and "would essentially increase the number of smaller-sized lots and each would be associated with a smaller view corridor."[21] Adoption of the Proposed Action establishes a clear precedent and acceptable language for subdivision of these additional parcels, as well as other large parcels that might be created from the joining of additional lots and then further subdivision. The ultimate effect of this precedent could be a three-fold increase in development intensity and human activity in several large parcels in the beachfront area, which will accelerate erosion, reduce bluewater views, and threaten the integrity of ESHAs.

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[19] City of Malibu Revised Initial Study and Mitigated Negative Declaration No. 06-002 (adopted December 11, 2006), pg. 28–29.
[20] Staff Report, p. 29.
[21] Id.

THE PROPOSED ACTION CONFLICTS WITH SCENIC AND VISUAL RESOURCE POLICIES OF THE LUP

LUP Section 6.18 specifically states that for parcels on the ocean side of Pacific Coast Highway and Broad Beach Road, among other parallel streets, "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." Under the current zoning requirements for the SF-M lots, the Subject Property could be divided into two lots each with roughly 100 feet of street frontage - 20 feet of which would be required to be maintained as one contiguous view corridor. Under LUP Section 6.24, "[l]and divisions, including lot line adjustments, shall be designed to minimize impacts to visual resources by [c]lustering the building sites to minimize site disturbance and maximize open space.". Further, LUP Section 6.5 states that new developments "shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent."

Under the current regulations, any new development on the Subject Property would likely be required to combine the view corridors in a manner that would minimize impacts on views to the "maximum feasible extent," resulting in a lot split and the development of two structures with a single 40-foot contiguous view corridor. This is a much more significant and effective view corridor than the two proposed 20 foot view corridors required under the Proposed Action. The loss of the larger view corridor was neither considered nor analyzed in the Staff Report. Furthermore, the loss of additional view corridors could result throughout the City's coastline given the reduction of lot width for SF-M beachfront zones. If the new allowable lot width for SF-M beachfront lots is 50 feet or less, then the view corridor does not have to remain contiguous and can be split into two smaller view corridors, thus causing even smaller fragments of view corridor along Malibu's coastline.[22]

THE PROPOSED ACTION REVERSES THE RESULT OF A CITYWIDE VOTE

Adoption of the proposed overlay zone also would occur at the expense of the wishes of a majority of Malibu voters. In 2003, Malibu City Council approved a Development Agreement ("DA") that, among other things, effected the subdivision of the subject parcel into five parcels. As required by the Zoning Code,[23] the approval was submitted to the voters as Measure M, and was defeated by an overwhelming majority of the City's residents. The Proposed Action would, in effect, give to the Malibu Bay Company what it could not obtain through the ballot box.

ADDITIONAL ENVIRONMENTAL REVIEW IS REQUIRED

The exemption from CEQA provided to certified regulatory programs is limited, rather than absolute, and the Commission must comply with the requirements of CEQA from which it

[22] LUP Section 6.5.E.2(b).
[23] City of Malibu Zoning Code, Section 17.64.080.

is not exempt.[24] However, the process by which Commission has considered the Proposed Action does not meet these requirements, the analysis is insufficient, and no specific, legally adequate findings have been made with respect to project impacts and mitigation.

To the extent the March 29, 2008 Staff Report represents a "short form" environmental analysis prepared pursuant to the Commission's certified regulatory program, the document may be considered "functionally equivalent" to a negative declaration.[25] Public Resources Code Section 21091(b), which applies to certified regulatory programs, requires a 20-day public comment period for negative declarations (30 days for environmental impact reports); however, despite the March 29,2008 date on the Staff Report, the report itself was made available for public review on Friday, May 30, 2008, only 12 calendar days prior to the scheduled public meeting at which it would be considered. This time is insufficient to satisfy CEQA and denies the public an opportunity for meaningful review and comment.

Further, as a functional equivalent of a negative declaration, the Staff Report is governed by the "fair argument" standard; that is, if substantial evidence in the record supports a fair argument that the Proposed Action may have a significant effect on the environment, additional analysis functionally equivalent to an environmental impact report would be required.[26] The information above and in our letters to the City of Malibu, dated September 5, 2006[27] and December 6, 2006,[28] provides substantial evidence that supports a fair argument that the Proposed Action could result in significant direct, indirect, and cumulative effects on the environment in the areas of land use, ESHA, view corridors, and parking. Accordingly, the functional equivalent of an EIR must be prepared for the Proposed Action.

However, even assuming that a negative declaration would suffice, the Commission must still consider all feasible mitigation measures and alternatives to avoid or substantially reduce significant environmental effects.[29] The Staff Report concludes, among other things, that a buffer zone one fifth the size of that recommended by the Commission biologist is adequate to protect on-site ESHA, without any discussion of why a smaller buffer would suffice or why the larger buffer is infeasible. Thus, the report fails to provide adequate mitigation for an acknowledged significant impact, and fails to consider alternatives to reduce or avoid that significant impact.

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[24] Sierra Club v. State Board of Forestry, 7 Cal. 4th 1215 (1997).
[25] Friends of the Old Trees v. Department of Forestry and Fire Protection, 52 Cal. App. 4th 1383 (Ct. App. 1997).
[26] Id.
[27] Letter from Ellia Thompson (Jeffer, Mangels, Butler and Marmaro) to Carol Randall (City of Malibu), dated Sept. 5, 2006.
[28] Letter from Julie Broughton et al. (Rincon Associates) to John F. Bowman (Jeffer, Mangels, Butler and Marmaro), dated December 6, 2006. Forwarded to the City of Malibu in response to Revised MND 06-004.
[29] See Sierra Club v. State Board of Forestry, supra; Friends of the Old Trees, supra.

CONCLUSION

As stated above, the Proposed Action is unwarranted and would violate accepted planning principles, undermine numerous policies of the City's General Plan and LCP, and result in significant environmental impacts to ESHA, Citywide view corridors, zoning and planning policy, and increased density along the City's fragile coastline. In addition, the Staff Report does not consider all feasible mitigation measures or alternatives to avoid or reduce the significant effects, and it lacks the findings of fact required by CEQA. Also, the process has not provided the minimum opportunity for public review and comment required by CEQA. The analysis is therefore procedurally and substantively inadequate as a CEQA equivalent document, cannot support approval of the Proposed Action, and should be rejected.

Very truly yours,

ELLIA THOMPSON for
Jeffer, Mangels, Butler & Marmaro LLP

Malibu Coalition for Slow Growth
403 San Vicente Blvd
Santa Monica, CA 90402
310 393 1818

RECEIVED
JUN - 9 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To Honorable Members of the Coastal Commissioner
From: Malibu Coalition for Slow Growth by Patt Healy
Re: Item W 16a Wednesday June 11, 2008
Date: June 4, 2008

The city is seeking a discretionary LCP amendment for change of land use designation on 2 different parcels in the form of one LCP amendment.

I. 5920 Paseo Canyon
We have no objection to and support the amendment regarding the implementing the suggested land use change in designation of 5920 Paseo Canyon Drive from open space to single family low density(SF-L) since it was a mistake in existing zoning by zoning it open space in the first place . If this Amendment can be separated out of city amendment it should be allowed since it meets the necessary standards of review set forth in II 1a below.

II. 30732 Pacific Coast Highway.

A. Summary
Amendment Prohibited
The City of Malibu has requested a discretionary Land Use Designation (zoning) amendment for 30732 Pacific Coast Highway. It should be denied because it doesn't meet the standards required for approval for the amendment under Chapter 3 of the Coastal Act and/or the Land Use Plan (LUP).

This amendment to the LUP should be denied because it will result in the illegal subdivision of land in violation of the certified LUP.

The city wants to change the zoning of all the beach front lots throughout the entire city (i.e. 27 miles of beach front) to accommodate this one parcel and this one developer.

The coastal staff didn't like changing the width of all beach front lots throughout the city for one parcel and one developer, so they came up with a different solution. Staff decided to just change the zoning to accommodate this one parcel and one developer by allowing this one parcel to be zoned (through an overlay district) to achieve what the developer and city wanted done. This would result in unallowable spot zoning.

Both the city and staff solution are not allowed under the law.(LUP 5.35)
The result of both the city proposal and the staff proposal would allow a change in

zoning that is not allowed under the certified LUP. It would allow the subdivision of one parcel of land into four new single beach front lots. LUP 5.35 clearly does not allow four new lots on this parcel. Under LUP 5.35 you cannot do a subdivision of land if the new lots being created are smaller than the average size of the surrounding lots. The proposed newly created four lots would be smaller than the average size of the surrounding lots. Each of the four new lots would only be 45-ft. wide where the average size of the surrounding lots is 48.57-ft wide. This may seem like a small difference but the precedent is a dangerous one because 1) it is prohibited by law, 2) it is a dangerous precedent and 3) the beginning of the erosion of the LUP standards.

Developer argues that it was a mistake in the original zoning of this parcel. This is not the case. All beach front lots were zoned by city the same throughout out the city. The LUP just adopted the city zoning. Developer is not harmed by denial because he can still subdivide his property into less than 4lots without violating the law and realize a substantial return in his investment.

ESHA Protection Lost

This parcel contains coastal dunes. All (city , coastal and applicant) agree that these coastal dunes are ESHA. According to the Coastal Commission biologist, some of the best coastal dune habitat is on this parcel. Found in these dunes is a rare beetle that is a threatened species. The Commission biologist said a 25-ft set back was needed from the proposed homes to protect coastal dunes and dune habitat.

To protect coastal dunes both LUP3.23 and Chapter 3 Section 30240 of Coastal Act require a buffer The developer argues under the Local Implementation Plan (LIP 4.6.1 G) the buffer is to be set by the city biologist. However, by applying the stringline rule as the setback the city biologist failed to require any buffer from the dunes and the proposed residences . He allows the developer to build the residences to the edge of the dunes. As coastal staff correctly pointed out the lack of a buffer is in violation of the LUP and Coastal Act. Although the commission staff recognized that a buffer was needed under the law, they disregarded the recommendation of the commission biologist who said a 25ft buffer was needed to protect dunes but staff recommends creating only a 5-ft. buffer between the dunes and the proposed residences. This is not adequate to protect the destruction of the dunes and its habitat, including the threatened dune beetle. Besides the commission biologist said that a 25-ft. setback is required for adequate dune protection. Experience and common sense tells us that to build a residence you need more that 5-ft. surrounding the residence. Without more than 5-ft. buffer heavy equipment, materials and construction workers will destroy the dunes, the native dune plants and the threatened beetle.

In addition under 4.6.4C Protection of ESHA will take priority over other development standards and where there is any conflict between general development standards and ESHA the standards that are most protective of ESHA and public access shall take precedence. The stringline is a development setback standard as is the staff setback requirement which is superceded by the requirement for ESHA protection.

The developer argues that under the LIP 4.6.1G the city biologist is the person designated with setting the buffer size. This only makes sense if there is no appeal since the city is charged with carrying out the Local Coastal Program. This makes no sense in an appeal because it would tie the hands of the Commission. If this were the case the Coastal Commission would have no ability to hear expert testimony that differs from that of the city biologist and would have to accept the city biologist misinterpretation of the LUP as final. If appealed to the Commission the coastal biologist steps into the shoes of the city biologist, or at the very least is in the position to give the expert guidance on what buffer is actually needed.

B. Expanded Explanation

This discretionary land use designation change is not permissible.
Please deny the LUP and LIP amendment proposed for 30732 Pacific Coast Highway for the following reasons.

1.a Required Standard of Review Not Met hence both City and Staff amendment must be denied.

There are 2 different amendments being considered for approval. One is the city amendment , the other is the staff amendment. Reason for required rejection of both city amendment and staff proposed amendment is that it doesn't meet the required standard of review for approval.
The reason for the rejection of the city and the coastal staff proposed amendment is two fold 1. It doesn't conform to the requirements of chapter 3 of the Coastal Act and/or 2. that the proposed action doesn't conform with or is inadequate to carry out the provisions of the certified LCP Land Use Plan (LUP) (see Staff Report page 1)

1. b. Not a Mistake in the Land Use Designation.

This was not a mistake as the developer suggests in the certified Local Coastal Program (LCP) land designation for 30732 Pacific Coast Highway. The adopted LCP simply adopted the city zoning of Single Family Residential of SF-M. Since 1996, this was the designation for the smallest allowable residential lot. Therefore, for the subdivision of a new lot in the SF-M zone the proposed new lot had to have the minimum dimensions of 80 ft wide and 100 ft deep. (See Section 17.06.050 Malibu Municipal Code.)

1.c. Designation of 4 lots not Allowed under LUP

Under the LCP this change in Land Use designation is not allowed since it doesn't conform with or carry out the provisions of the LUP. Therefore, both city and staff version of amendment is prohibited. LUP *section 5.35 states as follows: The minimum lot sizes in all land use designations shall not allow land divisions , except lot mergers and lot line adjustments where the parcels created would be smaller than the average size of the surrounding parcels.* (page 19 staff report)

According to the city and coastal staff the average width of a lot in the Trancas area where the lot is located is 48.57 feet. The Applicant is seeking an unallowable change in designation that would allow 4 lots of 45 feet in width. This size lot is not allowed under any circumstances because it would allow a division of a lot size smaller than the allowable lot size lot required for an amendment. Hence both the city and coastal staff proposed amendments do not meet the standard of review required for approval.
If you allow this violation of the LUP it will set a dangerous precedent that would open a pandora's box that could gradually eat away at the Commission approved LUP Land Use Designations. This can not be allowed to satisfy the desires of one developer on one parcel especially since the change would obtain an unallowable result.

1.d. City Amendment Also Creates a Zone Change City Wide for this One Developer.
The city is seeking a change in designation allowing 4 lots of 45 feet in width when the current land use designation for all beach front properties is a width of 80 ft. The Commission should not change the zoning for all the beach front lots city wide to satisfy the desires of this one developer on this one parcel. It opens the door for abuse.
In any event it can't be allowed since this proposed change clearly violates LUP Policy 5.35 *The minimum lot sizes in all land use designations shall not allow land divisions , except lot mergers and lot line adjustments where the parcels created would be smaller than the average size of the surrounding parcels.* (page 19 staff report)

1.e. Spot Zoning
The staff proposed amendment will result in spot zoning . In essence, the staff is proposing changing the Land Use Designation on this one parcel to an impermissible use to help just one developer create a potential lot division that is not allowable under the law.

1.f. Parcel is still Dividable.
The developer can still obtain a division of this parcel that meets legal requirements and the required standard of review.
Under LUP 5.35 the developer can reapply for a division of this parcel into less than 4 lots.

2 a ESHA Regulations Violated
Chapter 3 Section 30240 of the Coastal Act and LUP ESHA provisions are being violated by this failing to protect ESHA. The law once again is clear on this matter and is not open for interpreting.

2 b. Coastal Dunes are ESHA
Coastal Dunes are designated as ESHA in *LUP section 3.1. The ESHA's in the City of Malibu are riparian areas, streams, native woodlands, native grasslands / savannas, chaparral, coastal sage scrub,* ***dunes****...* (page 18 staff report)

The LUP doesn't say that the native dune habitat must be undisturbed to qualify as ESHA. The dune phenomena in and of itself is ESHA ESHA status is further confirmed in section *LUP section 3.16 which states that Dune ESHA shall be protected and where feasible enhanced...* (page 18 staff report).

The applicants, city and coastal staff biologists all confirm that these dunes are ESHA.

2c Dune ESHA Buffer Required

Under *LUP section 3.23 a 100 foot setback is required from all ESHA except for the case addressed in Policy 3.27* (page 18 staff report) *LUP policy 3.27 states that the only exception to the 100 ft setback rule is coastal sage scrub and chaparral ESHA set forth clearly in Policy 3.27. Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B or C , If required) will extend into ESHA and that no structures will be 100 feet of the outer edge of the plants that comprise the habitat.*

But under *LIP 4.6.1G* it states for ESHA where there is no specific buffer area is defined ... *the buffer recommended by the Environmental review Board or City Biologist, in consultation with the California Fish and Game as necessary ,to avoid adverse impacts to ESHA will be required .*

Developer inaccurately states that it is up to the city biologist to determine the dune buffer setback under LIP since none is specified in the LIP However, this is not completely accurate and makes no sense . If this were the case the Coastal Commission on an appeal would have no ability to hear expert testimony that differs from that of the city biologist. On appeal the Coastal biologist steps in to the shoes of the city biologist or at the very least can offer an expert opinion for the Commissions consideration.

In addition, a letter from the city biologist to the Commission states that the city biologist and the Environment Review Board have established a standard policy that the standard setback for dune habitat that supports ESHA is the stringline rules.(exhibit 13) As coastal staff correctly points out this policy clearly violates the LUP and Chapter 3 policies since it provides for no buffer at all when a buffer is required for ESHA protection. The city biologist recommendation also results in the destruction of the Dune ESHA. in violation of Chapter 3. Section 30420.

Coastal staff recommends in their amendment only a 5 ft. buffer to be equitable to the developerat ehe expense of destroying ESHA. This Coastal staff's recommendation completely ignores the coastal biologist recommendation of a needed 25 ft buffer to protect the dune ESHA.

Neither the no buffer stringline as the city and developer suggest or the 5 ft setback in front of the stringline as Coastal staff suggests is adequate to protect the dune ESHA.

With only the stringline setback or the 5 foot setback from the stringline experience and common sense tells one among other reasons that during construction heavy equipment ,materials and construction workers will intrude into the dunes and the dunes buffer destroying them in violation fo Chapter 3 and the LUP

In addition, there is no evidence in the record that the city biologist did anything to determine if there were any species of concern in the dune habitat. The developers biological study indicates that there is a threatened globose dune beetle lives in the dune habitat that meets this requirement.

It should be noted that the city biologist admits in exhibit 12 that the previous city biologist was opposed to the 4 lot division.

2d. ESHA and ESHA buffer Protection Trumps All Other Development Standards
ESHA and ESHA setback Trumps all other development standards. for Section LIP 4.6.4 C states: *Protection of ESHA and public access will take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall take precedence.*

The city provides no ESHA buffer which is not allowed since a buffer is required.
The city stringline standard and staff setback are development standards which determines the required setback for beach development. A development standard is superceded by the requirement to protect ESHA by creating a protective buffer.
The Coastal staff provides a mere setback 5ft in front of the stringline when the Coastal Commission biologist recommends an 25 ft. buffer to protect ESHA.

The Staff 5 ft setback will not protect the ESHA according to the Coastal Biologist which is the expert in this matter and on appeal steps into the shoes of the city biologist.. Hence, staff is setting a standard that will not adequately protect the dune ESHA.

In addition, the applicant can set back the required 25 ft from the dunes and still have a reasonable developable area for its residence(s)

2e. Not a Takings
Denying this change in land use designation is not a takings since the Applicant has the right to reasonable use of his land by building on the existing parcel or splitting it into less than 4 lots.

3. Visual Resource Protection
The city amendment denies all visual resource protection from Pacific Coast Highway, a scenic highway which violates LUP polices and must be denied The coastal staff

amendment offers adequate visual resource protection but fails to meet the other requirements set forth above.
The developer says that they are now offering a good corridor under the staff proposal. But protection of ESHA trumps view protection.

Malibu Coalition for Slow Growth
403 San Vicente Blvd
Santa Monica, CA 90402
310 393 1818

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To Honorable Members of the Coastal Commissioner

From: Malibu Coalition for Slow Growth by Patt Healy

Re: Item W 16a Wednesday June 11, 2008

Date: June 8 , 2008 Supplemental Remarks

As mentioned in our remarks of June 4. this LCP Amendment allowing for a change in Land Use designation to divide this one parcel into 4 lots is not permissible under LUP 5.35 .

The original zoning for this parcel was not a mistake as the developer suggests since all beachfront lots were zoned SFM by the city with a minimum lot size 80 by 100 ft. to simply reduce the allowable number of beach front residences in order to maintain the rural characteristics of the community. Zoning was changed citywide to a lower density than allowed prior to cityhood for this purpose. The LCP simply adopted the city zoning in their land use designations

Under the expert advice of the Commission biologist any residence that would be constructed on this parcel would be required to have a 25 ft setback from the ESHA. to protect it. The only purpose for your biologist"s opinion is to preserve ESHA. as required by the Coastal Act and the Malibu LUP

We are perplexed as to why ths developer is trying so hard to achieve what is clearly not an allowable result i.e. 4 lots when he can have less that four lots without violating the LUP 5.35.

In addition, any residence (s) built on the newly created lot(s) would have fantastic ocean view(s) with the Commission biologist"s recommended 25 foot setback and could be quite huge. A residence can be 2 stories and the depth/ length of the buildable portion of any lot would be according to our calculations about 70 ft. in length. (**) with the appropriate 25 ft setback from the dunes .This is hardly a hardship to the developer. Hence the unallowable results being sought under this amendment should not be permitted.

**Parcel Depth is between 469 and 500 ft deep. The stringline set back to property line is about 1/4 of the lot depth ie 117 to 125 ft. To protect the dune ESHA commission biologist recommends a 25 ft. set back from ESHA. With the 25 ft setback (back yard setback) and the required front yard set back it would easily allow a 2 story residence with a depth of about 70 ft deep.

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

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

MEMORANDUM

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Deanna Christensen
Coastal Analyst

SUBJECT: Clarifications regarding my May 15, 2008 "Southern Foredune Community at 30732 Pacific Coast Highway" memorandum

DATE: June 9, 2008

Documents reviewed:

Hamilton, R.A. May 27, 2008. Letter to David Reznick, Malibu Bay Company; Subject: Botanical Evaluation of Primrose/Lupine Area 30732 Pacific Coast Highway, Malibu, California

Hamilton, R.A., D.S. Cooper, & W.R. Ferrin. May 27, 2008. Letter to David Reznick, Malibu Bay Company; Subject: Review of Memorandum Dated 15 May 2008 from Jonna D. Engel to Deanna Christensen Regarding Dune and ESHA Issues, 30732 Pacific Coast Highway, Malibu, California

Sandoval, C. P. May 23, 2008. Response to memo by Dr. Engel. Prepared for Malibu Bay Company

Psuty, Norbert P. May 16, 2008. Review of Memorandum from Jonna D. Engel to Deanna Christensen concerning southern foredune community at 30732 PCH Dated May 15, 2008. Prepared for: Robert A. Hamilton, Consulting Biologist.

Glen Lukos Associates. February 15, 2008. Letter to David Reznick, Malibu Bay Company. SUBJECT: Results of Focused Surveys for the Silvery Legless Lizard (*Anniella pulchrapulchra*) for the 2.08-Acre Broad Beach Property, Malibu, Los Angeles County, California.

Malibu Bay Company has commissioned an excellent series of studies describing the the natural resources on their property at 30732 Pacific Coast Highway. The quantitative data appear to have been collected with rigor and accuracy and effectively document on the ground conditions. The two areas where I disagree with the conclusions of MBC's consultants are the ESHA status of the primrose/lupine area and the need for an ESHA buffer.

The reasons for this memorandum are to clarify:

1. My use of dune landscape terminology
2. The definition of ESHA in the Coastal Act
3. My reasons for including the "primrose/lupine" area as a component of the overall dune ESHA and,
4. The factors contributing to my buffer determination.

Dune Terminology

In an effort to communicate as clearly as possible, I will briefly discuss dune landscape terminology, a topic where I have found little consensus among scientists. In my May 15th memorandum I summarized the components of California dune ecosystems as follows: "Dunes are a component of beach ecosystems and are typically described as having a number of zones: nearshore dunes, moving dunes, and backdunes[1]." I went on to say that the dunes on Broad Beach exhibit only the nearshore dune complex. I did not go deeper into this description but will do so now. I consider "nearshore dune complex" and the term "foredune system", which Psuty uses, to be synonymous. The nearshore dune complex or foredune system itself consists of several distinct zones, each with a number of common names. The first zone beyond the sandy beach is known as the coastal strand or embryo dune zone. This zone did not exist at Broad Beach when I visited in May 2007 but may be ephemerally present during certain seasons or years. The next zone is the dune ridge, dune crest, or foredune area. Behind this area is the dune swale, dune deflation plain, backdunes, dune hummock and mound zone, or secondary dunes. Psuty uses broken foredune ridge and secondary coastal dunes comprised of mobile and stable hummocks to geomorphologically describe the Broad Beach system whereas I referred to his secondary coastal dunes as backdunes or a deflation plain. Here I revise my terminology to align with Psuty's and describe the southern foredune system on the MBC property as a broken foredune ridge seaward of a zone of secondary dunes consisting of mobile and stable hummocks.

Definition of ESHA

Another area that warrants clarification is the environmentally sensitive habitat or ESHA definition I have applied compared to the approach to defining the dune ESHA that MBC has pursued. This is crucial to understanding where we part ways. The approach I have applied is that the southern foredune system is a rare habitat type in and of itself, as defined by the California Natural Diversity Data Base (CNDDB) and the California Native Plant Society (CNPS). CNDDB and CNPS identify southern foredunes as a rare habitat type defined by geographic location, substrate, and specific native plants and animals. The Malibu Local Coastal Plan more broadly identifies "dunes" as ESHA. The Commission recognizes as ESHA, habitats identified as rare by CNDDB and CNPS. The Commission includes rare habitats that have been disturbed and degraded in ESHA determinations. The Commission views the overall habitat or community, including abiotic and biotic features, as rare and ESHA, rather than focusing on the presence of active physical processes or individual rare component species. MBC, on the other hand, have based their dune delineation and ESHA determination on

[1] Barbour, M.G. T.Keeler-Wolf and A.A. Schoenherr. 2007. Terrestrial Vegetation of California. University of California Press, Berkeley, CA. 712 pp.

geomorphological features, as identified by Psuty, who stated in his May 16, 2008 letter: "I am attempting to describe the coastal foredune conditions in geomorphological terms as they relate to the interaction of coastal dune processes and the coastal landforms that are created".

In Hamilton's May 27, 2008 letter to David Reznick, he states;

> "Hamilton et al. (2008) explicitly followed the lead of Psuty (2007) in delineating the "primrose/lupine" area as lying outside of the dune complex in the existing condition." In the same letter -responding to my statement where I disagree with the primrose/lupine area being excluded from the overall ESHA - Hamilton states; "In our opinion, the existing dune ecosystem does not include the primrose/lupine area because this area lacks identifiable dune geomorphology and evidence of ongoing dune creating processes (e.g., build-ups of wind-blown sand) in the existing condition."

So, whereas Psuty and Hamilton et al. define the primrose/lupine area principally based on abiotic factors or geomorphologically, I assessed both the abiotic (substrate) and biotic (plants and animals) components of the area and applied an ecological approach in concluding that the primrose/lupine area should be included in the overall dune ESHA.

Much like a wetland delineation, the Commission considers the weight of all the evidence in making an ESHA determination: Is the geographic location right? Is the substrate right? Does the area support the plants or animals that are characteristic of the rare community type?

Primrose/Lupine Area
I based my inclusion of the primrose/lupine area with the overall dune ESHA for the following reasons:

1. The area is characterized by sandy substrate.

2. The area is inhabited by several native southern foredune species including beach evening primrose, *Chamissonia cheiranthifolia,* red sand verbena, *Ambronia maritima*, (CNPS List 4.2) and succulent lupine, *Lupinus succulentus.* It also supports sea rocket, *Cakile maritima,* a non-native species restricted to nearshore dunes.

3. The area is not isolated - it is connected and adjacent to the secondary dunes and broken foredune ridge recognized as ESHA by Hamilton et al., Psuty, and myself.

4. In spite of a long disturbance history that includes clearing, development, artificial soil deposition and introduction of invasive species, the area is characterized by sandy substrate and supports southern foredune vegetation. Recognizing the degraded nature of this area, I describe the primrose/lupine area as disturbed and degraded southern foredune ESHA.

Hamilton (May 27, 2008) states that "Page 6 of Dr. Engel's memorandum states, 'In spite of the intensive disturbance history of the site, dune hummocks and mounds,

dominated by native foredune plant species, continue to persist in this area.' The photographic evidence in this report does not support this statement with respect to the persistence of hummocks and mounds. The photos show an area with sandy soils, but also the presence of an obvious soil crust and no accumulations of wind-blown sand." However, Psuty (Nov. 22, 2007) himself describes the primrose/lupine area as "an area of small stable sand hummocks near the western margin of the property within the topography described as "disturbed" on Figure 1." And Hamilton et al. (March 6, 2008) state that "Psuty incorporated these stabilized hummocks into the generalized area [primrose/lupine] that he mapped as "disturbed," but we have called it out separately based on differences in soils and vegetation between this area and the ruderal zone to the north." More to the point, however, is the fact that whether or not the primrose/lupine area supports dune morphology, the area consists of sandy substrate inhabited by southern foredune associated plants and is biologically connected to the broken foredune ridge and secondary dune system with no barriers to species movement, seed exchange, and sharing of root systems and rhizomes between the primrose/lupine area and the secondary dunes. My recommended ESHA determination for the area rests on these points.

Southern Foredune ESHA Buffer

As I stated in my May 15, 2008 memorandum:

> "Habitat buffers provide many functions, including keeping disturbance (noise, night lighting, domestic animals) at a distance, reducing the hazards of herbicides, pesticides and other pollutants, preventing or reducing shading, and reducing the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development."

In my memorandum, I was wrong to include generic "development" as a factor determining the location of globose dune beetles. The factors that do correlate are irrigation and the invasive highway iceplant, both of which can be managed. However, buffers are designed to protect the whole community, not just special status species.

The Commission generally protects environmentally sensitive habitat, such as southern foredunes, with buffers or set-backs. MBC proposes to restore the disturbed southern foredune ESHA and has incorporated a number of best management practices into their design. Although these are important measures that will help maintain the ecological functions of the southern foredune community, they do not vitiate the need to set back development from the very edge of the ESHA and I believe that a 25-foot setback is appropriate at this site.

ROBERT A. HAMILTON

June 9, 2008

Mr. David Reznick
Malibu Bay Company
23705 West Malibu Road, Suite D-2
Malibu, CA 90265

SUBJECT: SECOND BOTANICAL EVALUATION OF PRIMROSE/LUPINE AREA
30732 PACIFIC COAST HIGHWAY, MALIBU, CALIFORNIA

Dear Mr. Reznick:

It has come to our attention that the California Coastal Commission (Commission) may benefit from a detailed evaluation of the distribution of native and non-native plant species in the "primrose/lupine" portion of a property at 30743 Pacific Coast Highway in Malibu (hereafter the "project site" or "site"). Figure 1 shows the project site, including the primrose/lupine area. Mr. Hamilton provided an earlier botanical evaluation of this area, dated 27 May 2008. This evaluation provides more detailed botanical information and analyzes the data to determine whether native vegetation is especially dense or sparse in any portions of the primrose/lupine area. This report describes the study methods, provides its results, and analyzes the data collected.

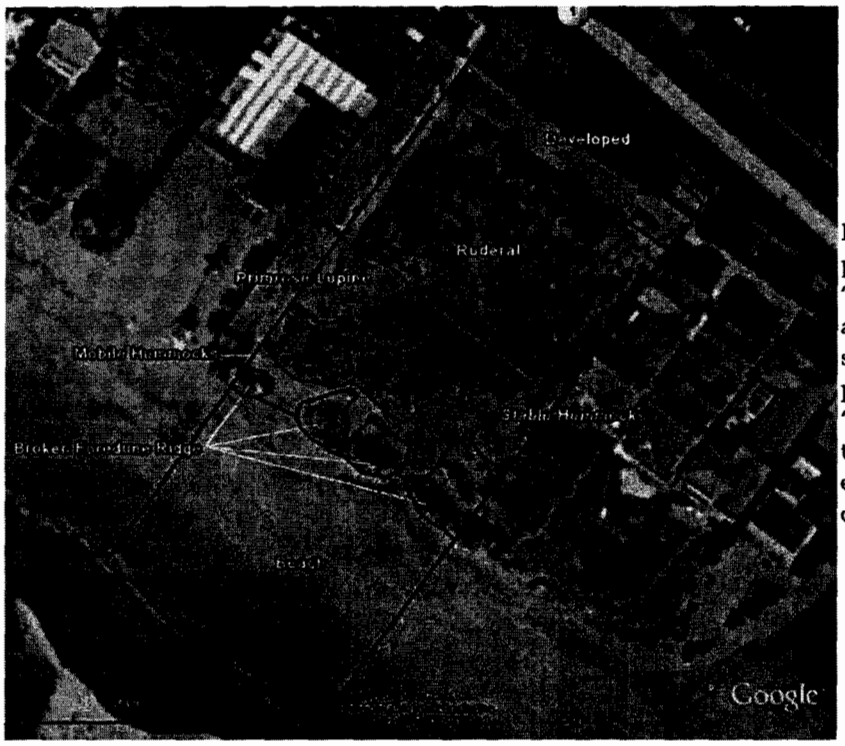

Figure 1. Project site showing all plant communities, including the "primrose/lupine" area. This area is located on the western side of the site, just south of and partially including the green "stringline" that corresponds to the southern boundary of the existing residences on either side of the site.

7203 STEARNS STREET LONG BEACH, CA 90815 562-477-2181 FAX 562-342-6640

METHODS

Mr. Hamilton visited the site on 7 June 2008 from 10:45 to 10:40 a.m. Weather was hazy with a light breeze and temperatures around 70°F. A copy of Mr. Hamilton's field notes is reproduced below as Figure 2.

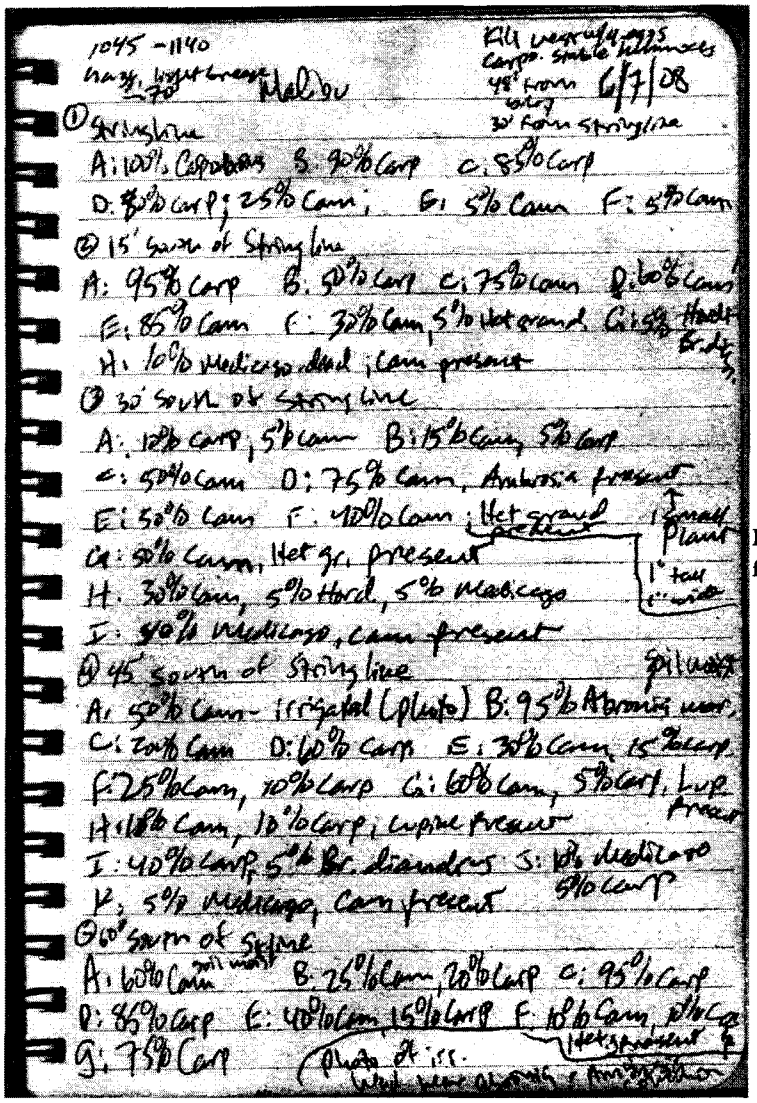

Figure 2. Scanned copy of Mr. Hamilton's field notes for 7 June 2008.

Mr. Hamilton used a meter-square quadrat made of PVC pipes to determine the approximate distribution of native plants, non-native plants, and bare soil along five linear transects. Each transect started at the western edge of the property (which corresponds to the western edge of the primrose/lupine area) and proceeded eastward to the downcoast edge of the primrose/lupine area. The first transect was situated along the stringline and each subsequent transect was 15 feet farther south than the preceding one (see Figure 3). At each sampling point, Mr. Hamilton tossed the quadrat down at his feet, visually estimated the percent cover provided by each plant species to the nearest 5%. If any native species was included within the quadrat but provided less than 5% estimated cover, Mr. Hamilton simply noted its presence. Mr. Hamilton took a photograph of each quadrat.

These photos are included in this report, and in some cases minor modifications to Mr. Hamilton's field evaluation have been made based on what is shown in the site photos. Each photo also shows the area surrounding the quadrat to help show that the quadrat was not placed at spots that would favor a certain outcome. Upon finishing at one sampling point, Mr. Hamilton picked up the quadrat, walked two paces, and tossed it down again at his feet. This methodology approximated a type of stratified randomized sampling, employing a great number of sampling points (41) relative to the size of the area being sampled (approximately 0.10 acre).

Mr. Hamilton also refined his previous mapping, on 27 May 2008, of four plants of Red Sand Verbena (*Abronia maritima*) within the primrose/lupine area.

RESULTS

Figure 3 shows the sampling locations and revised mapping of the locations of the four Red Sand Verbena plants within the primrose/lupine area. As reported in Mr. Hamilton's report dated 27 May 2008, the northernmost sand verbena plant (yellow dots with black centers) is located approximately 31 feet south of the stringline, but the arrangement of the plants is portrayed more accurately here than in the previous report.

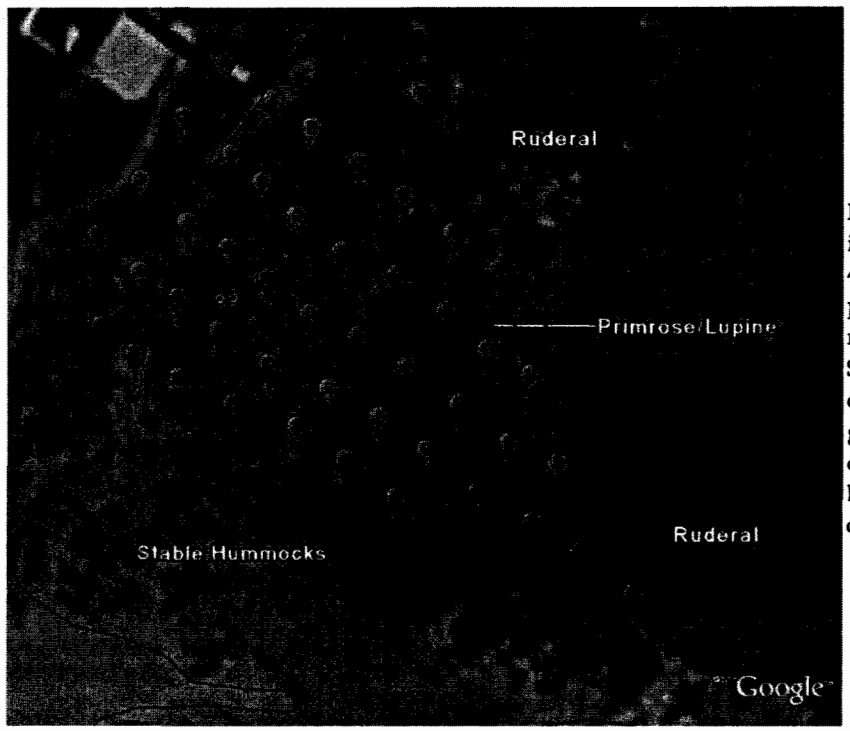

Figure 3. Aerial image at approximate scale 1" ≈ 30' showing the 41 sampling locations within the primrose/lupine area and the revised mapping of the four Red Sand Verbena plants (yellow circles with black centers). The green line is the "stringline" that corresponds to the southern boundary of the existing residences on either side of the site.

Figures 4 to 44 on the following pages show the conditions observed at each of the 41 sampling sites. As noted in Mr. Hamilton's previous botanical report on this area, Succulent Lupine (*Lupinus succulentus*) accounts for little areal coverage in the primrose/lupine area (much less than the Highway Iceplant does, for example). This showy annual species forms a conspicuous presence in the primrose/lupine area only during its late winter/early spring blooming period; even then, it may cover relatively little area.

Tables A, B, C—Estimates of Percent Cover at Each Sampling Site
Native Plants, Non-Native Plants, Bare Soil

Estimated Percent Native Cover at Sampling Site

Transect	A	B	C	D	E	F	G	H	I	J	K	Mean
1	0%	0%	0%	25%	5%	5%	–	–	–	–	–	6%
2	0%	0%	75%	60%	60%	45%	5%	0%	–	–	–	31%
3	5%	15%	50%	75%	50%	40%	50%	30%	0%	–	–	35%
4	60%	95%	20%	0%	30%	30%	60%	10%	0%	0%	0%	28%
5	60%	25%	0%	0%	40%	10%	0%	–	–	–	–	19%
Mean	**25%**	**27%**	**29%**	**32%**	**37%**	**26%**	**29%**	**13%**	**0%**	**0%**	**0%**	

Estimated Percent Non-Native Cover at Sampling Site

Transect	A	B	C	D	E	F	G	H	I	J	K	Mean
1	100%	90%	85%	40%	0%	0%	–	–	–	–	–	53%
2	95%	50%	0%	0%	0%	0%	0%	10%	–	–	–	19%
3	5%	5%	0%	0%	0%	0%	0%	10%	40%	–	–	7%
4	0%	0%	0%	60%	15%	10%	5%	10%	55%	15%	5%	16%
5	0%	20%	95%	85%	15%	10%	75%	–	–	–	–	43%
Mean	**40%**	**33%**	**36%**	**37%**	**6%**	**4%**	**20%**	**10%**	**48%**	**15%**	**5%**	

Estimated Percent Bare Soil at Sampling Site

Transect	A	B	C	D	E	F	G	H	I	J	K	Mean
1	0%	10%	15%	35%	95%	95%	–	–	–	–	–	42%
2	5%	50%	25%	40%	40%	55%	95%	90%	–	–	–	50%
3	90%	80%	50%	25%	50%	60%	50%	60%	60%	–	–	58%
4	40%	5%	80%	40%	55%	60%	35%	80%	45%	85%	95%	56%
5	40%	55%	5%	15%	45%	80%	20%	–	–	–	–	37%
Mean	**35%**	**40%**	**35%**	**33%**	**77%**	**70%**	**50%**	**77%**	**53%**	**85%**	**95%**	

ANALYSIS AND DISCUSSION

The following bullet points relate back to data from Tables A–C:

- Much of the primrose/lupine area consists of bare soil (mean values of 37–58% along the five transects).
- The greatest level of native cover (mean 35%) was identified along Transect 3 (roughly 30 feet south of the stringline, through the center of the primrose/lupine area). The lowest level of non-native cover (mean 7%) was also found along Transect 3.
- Transect 1 (the stringline) supported the lowest level of native cover (mean 6%) and greatest level of non-native cover (mean 53%), due to heavy infestation of Highway Iceplant.
- Non-native cover, again mainly Highway Iceplant, was also relatively high along Transect 5 (mean 43%).
- Native cover was greater in the western half of the primrose/lupine area than in the eastern half; in fact, several of the most easterly sampling points (2H, 3I, 4I, 4J, 4K) had no native cover.
- There appeared to be some spill-over of Beach Evening-Primrose (*Camissonia cheiranthifolia*) from the dune restoration area immediately west of the primrose/lupine area (4A, 5A). The four *Abronia maritima* plants near the western property boundary may have blown into the project site from this adjacent restoration area.
- Vegetation along the site's western boundary was relatively lush, probably because of irrigation water blowing onto the site; wet sand at three of the sampling sites suggested that irrigation of the neighboring area had probably taken place early that morning or the night before.

Beach Bursage (*Ambrosia chamissonis*) is a characteristic foredune species found commonly on the project site's foredune ridge and mobile hummocks, and also within the restored dunes on the adjacent property to the west. Mr. Hamilton searched for Beach Bursage throughout the entire primrose/lupine area but found only one very small plant measuring approximately 1 inch tall and 1 inch across. By chance, this plant was recorded in quadrat 3D (see Figure 21 on Page 9). The near-absence of this plant from the primrose/lupine area represents another floristic difference between the primrose/lupine area and the site's foredunes.

POTENTIAL IMPLICATIONS FOR ESHA DESIGNATION

We have closely studied the primrose/lupine area and found no reason to doubt the conclusion of Dr. Norbert Psuty that this area lacks dune geomorphology under the existing conditions. We recognize, however, that any area may be found to meet ESHA criteria as defined in Section 30107.5 of the California Coastal Act:

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

Historical photos and the existing mix of fill and sandy soils in the primrose/lupine area show that this area already has been "disturbed or degraded by human activities and developments," specifically by the "Malibu Yacht Club," which operated on the project site for many years before the property was purchased by the Malibu Bay Company in the early 1990s. Beach Evening-Primrose and limited numbers of native Red Sand Verbena are persisting in this area, but the plants generally are not thriving. This may be because the area lacks accumulations of wind-blown sand that would provide a more suitable substrate for these and other foredune-adapted plant species. We continue to believe that ecological conditions in this area could be improved by preserving, restoring, and placing it under a conservation easement along with the dunes that comprise ESHA on the project site.

We recognize that the Commission staff and Commissioners will reach their own decisions about whether some or all of the primrose/lupine area meets ESHA criteria. Given that the this area does not represent a true native plant community but rather an artificial assemblage of native and non-native plants growing under disturbed conditions, there is opportunity to acknowledge the fact that some portions of the primrose/lupine area support much greater densities of native plants than do others. Figure 45 shows a possible habitat designation that would include all sampling sites where native plants were found at moderate to high densities as well as the four Red Sand Verbena plants.

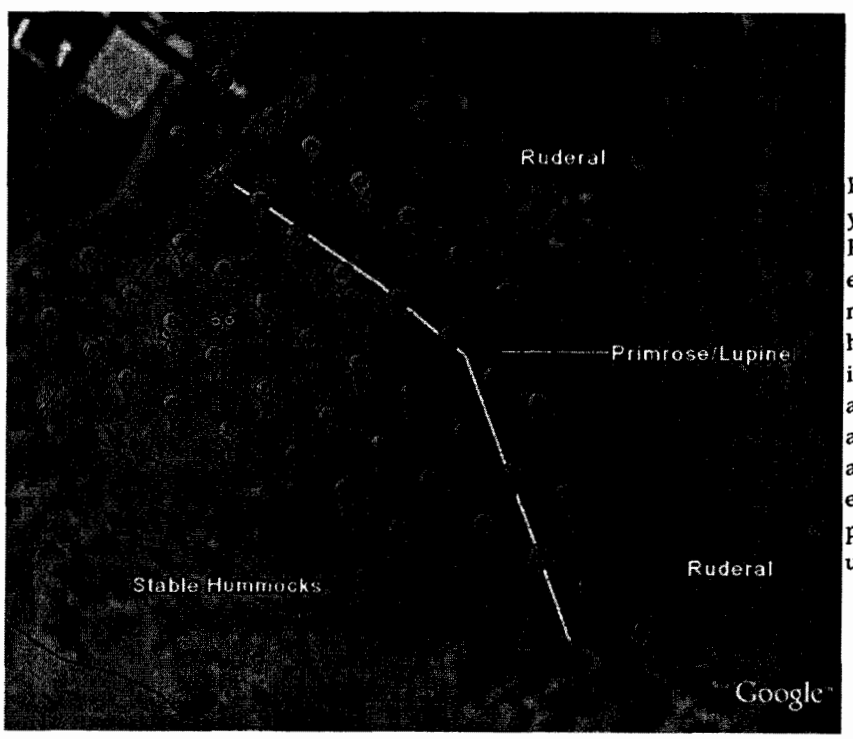

Figure 45. The area shown in yellow includes the four plants of Red Sand Verbena and has an estimated mean percent cover of native plants roughly ten times higher than does the area shown in blue. This disparity represents a basis for designating the yellow area as different than the blue area. Regardless of ESHA considerations, both areas would be preserved, restored, and placed under a conservation easement.

The 11 sampling sites in the blue area (~0.03 acre) had 4% mean estimated native plant coverage. The 30 sampling sites in the yellow area (~0.07 acre) had 37% estimated mean native plant coverage. We believe that this disparity provides a basis for designating the

more seaward portion of the primrose/lupine area as potentially different than the landward margin.

Thank you for this opportunity to conduct these additional investigations on this interesting site.

Sincerely,

Robert A. Hamilton

Wayne R. Ferren

Robert A. Hamilton
Consulting Biologist

Wayne R. Ferren
Botanist, Maser Consulting