

**CALIFORNIA COASTAL COMMISSION**

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

**Th 9c**



**DATE:** June 19, 2008

**TO:** Commissioners and Interested Persons

**FROM:** John Ainsworth, Deputy Director  
Barbara Carey, Supervisor, Planning and Regulation  
Deanna Christensen, Coastal Program Analyst

**SUBJECT:** City of Malibu Local Coastal Program Amendment 2-07 for Public Hearing and Commission Action at the July 10, 2008 Commission Meeting in San Luis Obispo.

**DESCRIPTION OF THE SUBMITTAL**

The City of Malibu's proposed amendment to the adopted Local Coastal Program consists of changing the land use and zoning designation of a property known as 22706 Pacific Coast Highway (comprised of three parcels: APN 4452-004-038, 4452-004-040, and 4452-004-042) from Multi-Family Beachfront Residential (MF-BF) to Commercial Visitor-Serving 1 (CV-1).

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission **approve** the proposed LUP/LIP amendment as submitted. As discussed in the findings set forth in this report, the proposed amendment conforms with, and is adequate to carry out, the requirements of Chapter Three of the Coastal Act and relevant provisions of the City's certified Land Use Plan. **The motions and resolutions for Commission action begin on page 4.**

**SUBSTANTIVE FILE DOCUMENTS**

City of Malibu City Council Ordinance No. 307 and Resolution No. 07-15 approving Local Coastal Program Amendment 06-004; Local Coastal Program Amendment No. 06-004 Text, dated December 28, 2007; City of Malibu Local Coastal Program, adopted September 2002; CDP No. P-73-1526/2192 (Cyrano); CDP 5-83-276 (Nantucket); CDP Waiver No. 4-96-204-W (Windsail).

**Additional Information:** Please contact Deanna Christensen, California Coastal Commission, South Central Coast Area, 89 So. California St., Second Floor, Ventura, CA. (805) 585-1800.

**STAFF NOTE:**  
**THE COMMISSION MUST ACT ON THIS LCP AMENDMENT AT THE JULY 2008 COMMISSION HEARING.**

## TABLE OF CONTENTS

I. PROCEDURAL ISSUES.....	3
A. STANDARD OF REVIEW .....	3
B. PUBLIC PARTICIPATION .....	3
C. PROCEDURAL REQUIREMENTS .....	4
II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION ON THE LAND USE PLAN AMENDMENT .....	4
APPROVAL AS SUBMITTED .....	4
III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT .....	5
APPROVAL AS SUBMITTED .....	5
IV. FINDINGS FOR APPROVAL OF THE LOCAL COASTAL PROGRAM AMENDMENT AS SUBMITTED .....	5
A. AMENDMENT DESCRIPTION.....	5
B. NEW DEVELOPMENT AND CUMULATIVE IMPACTS.....	6
1. Coastal Act Policies.....	6
2. Existing LUP Policies .....	6
3. Discussion.....	7
V. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	8

## I. PROCEDURAL ISSUES

### A. STANDARD OF REVIEW

The Coastal Act provides:

*The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30512(c))*

The Coastal Act further provides:

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

*...The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30513)*

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

### B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings (Planning Commission Hearing on January 16, 2007, and City Council Hearing on February 26, 2007) and received written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public by publishing the notice in the local newspaper and by mailing notice to interested parties, consistent with Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal

Commission hearing for LCP Amendment 2-07 has been distributed to all known interested parties.

## **C. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolution for this amendment states that the amendment will take effect automatically after Commission certification.

## **II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION ON THE LAND USE PLAN AMENDMENT**

Following public hearing, staff recommends the Commission adopt the following resolution and findings in order to **approve** the proposed amendment to the Malibu Land Use Plan **as submitted**.

### **APPROVAL AS SUBMITTED**

**MOTION:**        *I move that the Commission **CERTIFY** Land Use Plan Amendment No. 2-07 as submitted by the City of Malibu.*

### **STAFF RECOMMENDATION TO CERTIFY:**

Staff recommends a **YES** vote. Passage of the motion will result in certification of the land use plan as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

### **RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT:**

The Commission hereby certifies the Land Use Plan Amendment No. 2-07 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the amendment conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

### **III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT**

Following public hearing, staff recommends the Commission adopt the following resolution and findings in order to **approve** the proposed amendment to the Malibu Local Implementation Plan **as submitted**.

#### **APPROVAL AS SUBMITTED**

**MOTION** :        *I move that the Commission **REJECT** Local Implementation Plan Amendment No. 2-07 as submitted by the City of Malibu.*

#### **STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Plan Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN AMENDMENT:**

The Commission hereby certifies the City of Malibu Implementation Plan Amendment as submitted and adopts the findings set forth below on grounds that the Implementation Plan Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, and certification of the Implementation Plan Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment.

### **IV. FINDINGS FOR APPROVAL OF THE LOCAL COASTAL PROGRAM AMENDMENT AS SUBMITTED**

The following findings support the Commission's approval of the Local Coastal Program amendment as submitted. The Commission hereby finds and declares as follows:

#### **A. AMENDMENT DESCRIPTION**

The City of Malibu's proposed Local Coastal Program Amendment No. 06-004 (Amendment No. 2-07) consists of changing the land use and zoning designation of a beachfront property known as 22706 Pacific Coast Highway (comprised of three

adjoining parcels: APN 4452-004-038, -040, and -042) from Multi-Family Beachfront Residential (MF-BF) to Commercial Visitor-Serving 1 (CV-1) on the LUP Land Use Map and LIP Zoning Map. The proposed amendment and property location map is attached as **Exhibit 1**.

The City held public hearings on the subject LCP Amendment (LCPA), including a Planning Commission Hearing on January 16, 2007, and a City Council Hearing on February 26, 2007. The amendment was approved by the Malibu City Council on February 26, 2007. The resolution and ordinance approving City LCPA No. 06-004 is attached as **Exhibit 3**. The LCP amendment was submitted to the Commission on December 28, 2007. After the submittal was reviewed by Commission staff, the amendment was determined to be complete on April 07, 2008. Pursuant to Section 30513 of the Coastal Act, an amendment to the certified LCP must be scheduled for a public hearing and the Commission must take action within 90 days of a complete submittal. The 90<sup>th</sup> day after filing the complete submittal is July 16, 2008. Therefore, the Commission must act on this LCP amendment at the July 2008 Commission hearing.

## **B. NEW DEVELOPMENT AND CUMULATIVE IMPACTS**

### **1. Coastal Act Policies**

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

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

Section 30222 of the Coastal Act states that:

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

### **2. Existing LUP Policies**

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

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

- 2.36** Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities; shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

### **3. Discussion**

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

The land use designations of the Malibu LCP were based on the existing City of Malibu General Plan designations, as well as the policies of the Coastal Act. The City asserts that the current land use designation of Multi-Family Beachfront Residential (MF-BF) had been assigned to the subject property at 22706 Pacific Coast Highway (three adjoining parcels) in error when the LCP was adopted in 2002. Staff would note that this designation was based on the City's General Plan designation at the time. The subject property has contained restaurant uses since 1973, which continue through the present. In 2003, the City of Malibu changed the General Plan zoning designation for the subject three parcels from MF-BF to Commercial Visitor-Serving 1 (CV-1) to reflect the existing use. The City now wishes to change the LUP/Zoning Maps of the LCP to correct the discrepancy and to bring the LCP maps into conformance with the City's General Plan Zoning Maps.

The subject property is located in the Carbon Beach area of Malibu, downcoast from Malibu Pier (**Exhibit 2**). Beachfront residential development is situated to the east (downcoast) of the property, and commercial development is located to the west (upcoast) of the property. While the subject parcels are currently designated Multi-Family Beachfront Residential in the LCP, they have never been used in the past for residential development. Since 1973 restaurant uses have been sited on the parcels. In 1973, the Coastal Commission approved Coastal Development Permit No. P-73-1526/2192 (Cyrano) for remodel of an existing structure on the property for use as a restaurant. In 1983, the Commission approved a 900 sq. ft. addition to the restaurant (CDP No. 5-83-276 (Nantucket)). And in 1996 the Commission approved a remodel of the restaurant pursuant to CDP Waiver No. 4-96-204-W (Windsail).

The adjoining three parcels that is the subject of the proposed LCP amendment, known as 22706 Pacific Coast Highway, has contained restaurant uses since 1973. The site is located between Pacific Coast Highway and the beach. As such, the site is appropriate

for such visitor-serving commercial use. Visitor-serving commercial uses provide greater public benefit than private residential uses because a larger segment of the population is able to take advantage of and enjoy the use of the property, and such uses support visitors to the coast. The Commission therefore finds that the proposed LCP amendment, as submitted, is consistent with and adequate to carry out the requirements of Section 30250 of the Coastal Act as well as the relevant policies of the City's certified LUP.

## **V. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Malibu LCP Amendment 2-07 consists of an amendment to both the Land Use Plan (LUP) and the Local Implementation Plan (IP) portions of the certified LCP.

As outlined in this staff report, the LCP amendment is consistent with the Chapter 3 policies of the Coastal Act and the certified Land Use Plan, as submitted. Therefore, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment request 2-07 as submitted.



**PROPOSED**

**MALIBU LOCAL COASTAL PROGRAM AMENDMENT**

**December 28, 2007**

The existing language in the certified LCP is shown in straight type. The language proposed by the City of Malibu in this amendment to be deleted is shown in strikethrough. The language proposed by the City of Malibu in this amendment to be inserted is shown underlined.

**1. Land Use Plan / Local Implementation Plan**

**1.1 LUP Land Use Map / LIP Zoning Map**

Address	Current Land Use / Zoning	Proposed Land Use / Zoning
22706 Pacific Coast Highway	Multi-Family Residential	Commercial Visitor Serving-1

EXHIBIT NO.
APPLICATION NO.
City of Malibu LCPA 2-07
Amendment Text / map



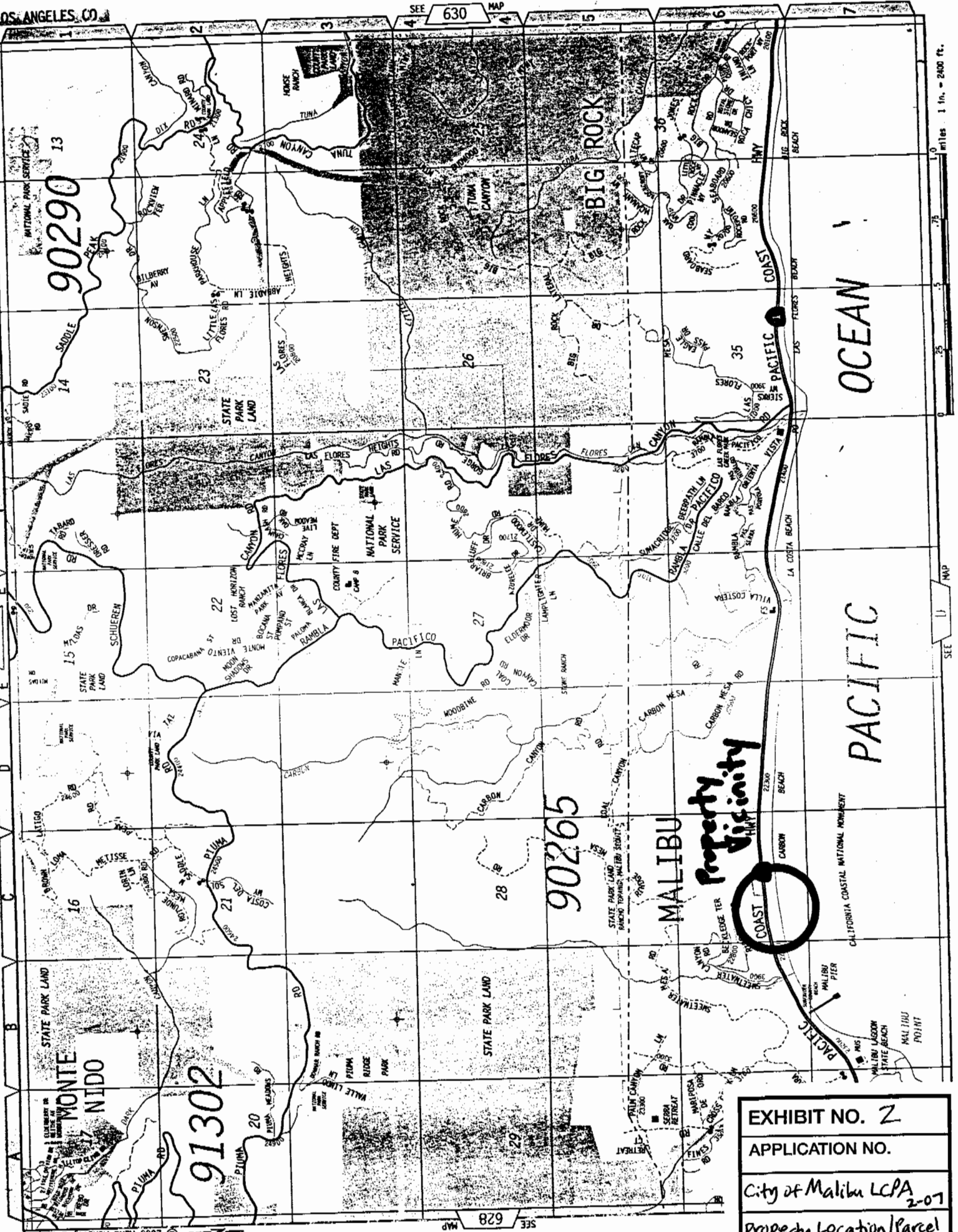


EXHIBIT NO. 2  
 APPLICATION NO.  
 City of Malibu LCPA  
 2-07  
 Property Location/Parcel  
 Maps

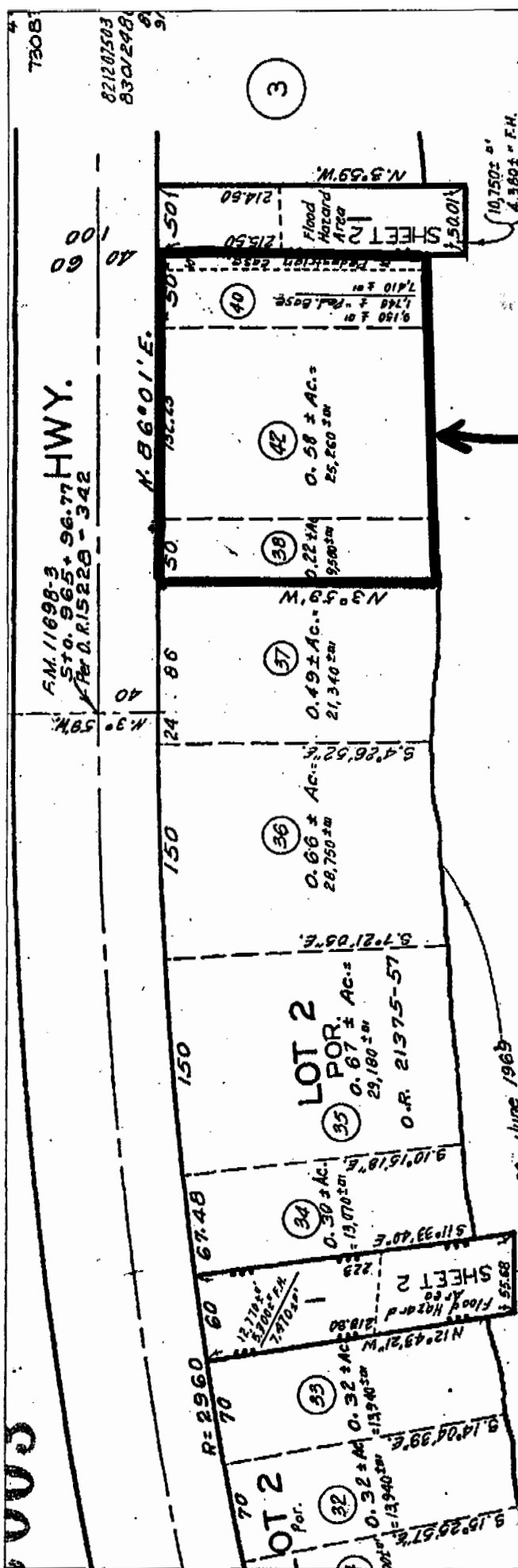
PACIFIC OCEAN

MALIBU

Property Location/Parcel  
 Maps

1/4 miles 1 in. = 2400 ft.

SEE 11 MAP



Subject  
Parcels

OCEAN

# LAND OF MATTHEW KELLER IN THE RANCHO TOPANGA MALIBU SEQUIT

R. F. 534

CONDOMINIUM

CONDOMINIUM

ex. 2

RESOLUTION NO. 07-15

DEC 28 2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT (LCPA) NO. 06-004 AMENDING THE MALIBU LOCAL COASTAL PROGRAM LAND USE MAP DESIGNATION FOR THE PROPERTY KNOWN AS 22706 PACIFIC COAST HIGHWAY (FORMERLY KNOWN AS WINDSAIL RESTAURANT ALSO KNOWN AS ASSESSOR PARCEL NUMBERS 4452-004-038, 040 AND 042) FROM MULTI-FAMILY RESIDENTIAL TO COMMERCIAL VISITOR SERVING-1 (WAVEBREAK, LLC)

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

Section 1. Recitals.

A. On September 11, 2003, the City Council took the following actions with regard to the subject property:

- i. Adopted Resolution No. 03-40, adopting Mitigated Negative Declaration No. 02-002 for a development agreement to construct a 9,555 square foot restaurant/bar at 22706 Pacific Coast Highway.
- ii. Adopted Resolution No. 03-38, approving General Plan Amendment No. 02-001 to change the General Plan Land Use Map land use designation from Multi-family Residential (MF) to Commercial Visitor Serving (CV-1) on the 1.1 acre property known as Assessor Parcel Numbers 4452-004-038, 040 and 042.
- iii. Adopted Resolution No. 03-39, approving Conditional Use Permit No. 02-006, Variance Nos. 02-014 and 0215, and Demolition Permit No. 02-005 for a new 9,555 square foot restaurant/bar and day spa facility at 22706 Pacific Coast Highway.

B. On September 22, 2003, the City Council took the following actions with regard to the subject property:

- i. Adopted Ordinance No. 255, adopting Zoning Map Amendment No. 02-001 amending the zoning map from Multi-Family Residential (MF) to Commercial Visitor Serving (CV-1).
- ii. Adopted Ordinance No. 256, adopting a development agreement between the City of Malibu and Weintraub Financial Services, Inc. The development agreement allowed, pursuant to Malibu Municipal Code (M.M.C.) 17.64.050, a floor area ratio (FAR) of .20 versus the standard .15 F.A.R. provision of certain public benefits. Notably these public benefits in use of a 500 square foot enclosed private meeting room within the restaurant during the following hours: 10 a.m. to 10 p.m. Monday and Tuesday to 4 p.m. Wednesday through Friday and 2) the contribution of \$

EXHIBIT NO. 3
APPLICATION NO.
City of Malibu LCPA 2-07
City Resolution + Ordinance

paid over a six-year period commencing with the approval of a coastal development permit. The funds were to be used to directly benefit the Santa Monica-Malibu Unified School District.

C. The property was subsequently sold and the development agreement was transferred to Wavebreak, LLC.

D. On November 30, 2005, a new project with a FAR of .14 (Coastal Development Permit No. 05-193) and no development agreement was submitted to the Planning Division for processing by Scott Mitchell Studios on behalf of Wavebreak, LLC. The application was approved by the City of Malibu Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist, and the Los Angeles County Fire Department. The submitted project was to replace a 7,732 square foot restaurant with a new, 5,904 square-foot restaurant.

E. On August 23, 2006, the project was heard before the Environmental Review Board.

F. On December 6, 2006, the application was deemed complete by the Planning Division for processing.

G. On December 13, 2006, a Notice of Intent to adopt MND No. 06-008 was published in a newspaper of general circulation within the City of Malibu. In addition, on November 13, 2006, IS No. 06-007 and MND No. 06-008 were routed to applicable agencies and interested parties.

H. On December 21, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on December 21, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

I. On December 28, 2006, a Notice of Application for Coastal Development Permit No. 05-193 was posted on the subject property.

J. On January 4, 2007, as required by LIP Section 19.3.1., a Notice of Availability for Local Coastal Program Documents and Public Hearing was published in a newspaper of general circulation and mailed to interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.

K. On January 16, 2007, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record and conditionally approved Coastal Development Permit No. 05-193 and associated application for the replacement of a restaurant and recommended the City Council approve LCPA No. 06-004.

L. On January 31, 2007, pursuant to Local Coastal Program (LCP) Section 19.3.2, a quarter page Notice of Public Hearing was published in a newspaper of general

circulation within the City of Malibu indicating that the City Council would hold a public hearing on February 26, 2007 to consider an amendment of the certified Local Coastal Program. In addition, on January 31, 2007, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property, and to interested parties.

M. On February 26, 2007, the City Council held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, approval of a LCP amendment by a local agency is exempt from CEQA's EIR requirements.

Section 3. Local Coastal Program Amendment Findings.

Pursuant to LCP Local Implementation Section 19.6, the City Council hereby finds as follows:

A. The map amendment to the Land Use Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas. Rezoning the subject parcels will not adversely impact public access to the beach as the subject parcels currently provide both a vertical (Zonker Harris Way) and lateral public easements.

The proposed change to Commercial Visitor Serving (CV-1) recognizes the longstanding use of the subject property and rectifies the existing zoning discrepancy between that reflected in the City's General Plan and Zoning Map and that reflected in the certified Local Coastal Program.

Section 4. Approval of Local Coastal Program Land Use Plan Map Amendment.

The City Council hereby approves amendments to the Land Use Plan of the Local Coastal Program as follows: The LCP Land Use Map shall be amended to change the land use designation for the parcels known as APN 4452-004-038, 040 and 042, addressed as 22706 Pacific Coast Highway, from Multi-Family Residential to Commercial Visitor Serving (CV-1).

Section 5. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 06-004 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5, Chapter

8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et seq.

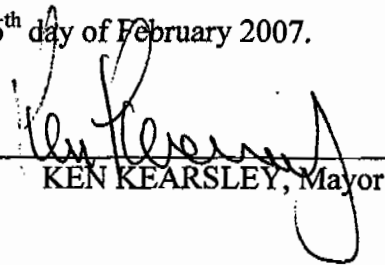
Section 6. Effectiveness.

The LCP Amendments approved in this resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

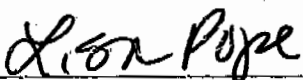
Section 7. Certification.

The City Clerk shall certify the adoption of this Resolution.

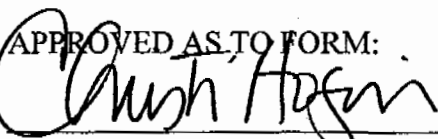
PASSED, APPROVED AND ADOPTED this 26<sup>th</sup> day of February 2007.

  
KEN KEARSLEY, Mayor

ATTEST:

  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

  
CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 07-15 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 26<sup>th</sup> day of February, 2007, by the following vote:

AYES:	3	Councilmembers:	Barovsky, Stern, Jennings
NOES:	2	Councilmembers:	Conley Ulich, Kearsley
ABSTAIN:	0		
ABSENT:	0		

  
LISA POPE, City Clerk  
(seal)

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Municipal Code and Code of Civil Procedure Section 1094.6.



ORDINANCE NO. 307

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT (LCPA) NO. 06-004 AMENDING THE MALIBU LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN ZONING MAP DESIGNATION FOR THE PROPERTY KNOWN AS 22706 PACIFIC COAST HIGHWAY (FORMERLY KNOWN AS WINDSAIL RESTAURANT ALSO KNOWN AS ASSESSOR PARCEL NUMBERS 4452-004-038, 040 AND 042) FROM MULTI-FAMILY RESIDENTIAL TO COMMERCIAL VISITOR SERVING-1 (WAVEBREAK, LLC)

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

Section 1. Recitals.

A. On September 11, 2003, the City Council took the following actions with regard to the subject property:

- i. Adopted Resolution No. 03-40, adopting Mitigated Negative Declaration No. 02-002 for a development agreement to construct a 9,555 square foot restaurant/bar at 22706 Pacific Coast Highway.
- ii. Adopted Resolution No. 03-38, approving General Plan Amendment No. 02-001 to change the General Plan Land Use Map land use designation from Multi-family Residential (MF) to Commercial Visitor Serving (CV-1) on the 1.1 acre property known as Assessor Parcel Numbers 4452-004-038, 040 and 042.
- iii. Adopted Resolution No. 03-39, approving Conditional Use Permit No. 02-006, Variance Nos. 02-014 and 0215, and Demolition Permit No. 02-005 for a new 9,555 square foot restaurant/bar and day spa facility at 22706 Pacific Coast Highway.

B. On September 22, 2003, the City Council took the following actions with regard to the subject property:

- i. Adopted Ordinance No. 255, adopting Zoning Map Amendment No. 02-001 amending the zoning map from Multi-Family Residential (MF) to Commercial Visitor Serving (CV-1).
- ii. Adopted Ordinance No. 256, adopting a development agreement between the City of Malibu and Weintraub Financial Services, Inc. The development agreement allowed, pursuant to Malibu Municipal Code (M.M.C.) Section 17.64.050, a floor area ratio (FAR) of .20 versus the standard .15 FAR subject to provision of certain public benefits. Notably these public benefits included: 1) the use of a 500 square foot enclosed private meeting room within the restaurant during the following hours: 10 a.m. to 10 p.m. Monday and Tuesday; and 10 a.m. to 4 p.m. Wednesday through Friday and 2) the contribution of \$400,000 to be paid over a six-year period commencing with the approval of a coastal development permit. The funds were to be used to directly benefit the Santa Monica-Malibu Unified School District.

- C. The property was subsequently sold and the development agreement was transferred to Wavebreak, LLC.
- D. On November 30, 2005, a new project with a FAR of .14 (Coastal Development Permit No. 05-193) and no development agreement was submitted to the Planning Division for processing by Scott Mitchell Studios on behalf of Wavebreak, LLC. The application was approved by the City of Malibu Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist, and the Los Angeles County Fire Department. The submitted project was to replace a 7,732 square foot restaurant with a new, 5,904 square-foot restaurant.
- E. On August 23, 2006, the project was heard before the Environmental Review Board.
- F. On December 6, 2006, the application was deemed complete by the Planning Division for processing.
- G. On December 13, 2006, a Notice of Intent to adopt MND No. 06-008 was published in a newspaper of general circulation within the City of Malibu. In addition, on November 13, 2006, IS No. 06-007 and MND No. 06-008 were routed to applicable agencies and interested parties.
- H. On December 21, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on December 21, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- I. On December 28, 2006, a Notice of Application for Coastal Development Permit No. 05-193 was posted on the subject property.
- J. On January 4, 2007, as required by LIP Section 19.3.1., a Notice of Availability for Local Coastal Program Documents and Public Hearing was published in a newspaper of general circulation and mailed to interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.
- K. On January 16, 2007, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record and conditionally approved Coastal Development Permit No. 05-193 and associated application for the replacement of a restaurant and recommended the City Council approve LCPA No. 06-004.
- L. On January 31, 2007, pursuant to Local Coastal Program (LCP) Section 19.3.2, a quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on February 26, 2007 to consider an amendment of the certified Local Coastal Program. In addition, on January 31, 2007, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property, and to interested parties.

M. On February 26, 2007, the City Council held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, approval of a LCP amendment by a local agency is exempt from CEQA's EIR requirements.

Section 3. Local Coastal Program Amendment Findings.

Pursuant to LCP Local Implementation Section 19.6, the City Council hereby finds as follows:

A. The zoning map amendment to the Local Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas. Rezoning the subject parcels will not adversely impact public access to the beach as the subject parcels currently provide both a vertical (Zonker Harris Way) and lateral public easements.

The proposed change to Commercial Visitor Serving (CV-1) recognizes the longstanding use of the subject property and rectifies the existing zoning discrepancy between the land use regulating documents.

Section 4. Approval of Local Coastal Program Local Implementation Plan Zoning Map Amendment.

The City Council hereby approves amendments to the Local Implementation Plan of the Local Coastal Program as follows: The LCP Zoning Map shall be amended to change the zoning designation for the parcels known as APN 4452-004-038, 040 and 042, addressed as 22706 Pacific Coast Highway, from Multi-Family Residential to Commercial Visitor Serving (CV-1).

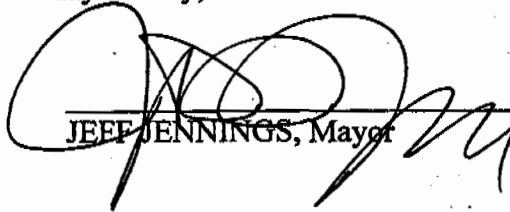
Section 5. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 06-004 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et seq.


Section 8. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
JEFF JENNINGS, Mayor

ATTEST:

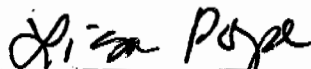
  
\_\_\_\_\_  
LISA POPE, City clerk  
(seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 307 was passed and adopted at the regular City Council meeting of May 14, 2007, by the following vote:

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

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)