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

W 7a

ADDENDUM

DATE: October 12, 2010

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 7a, Wednesday, October 13, 2010
Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority PUBLIC WORKS PLAN

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1. On October 11, 2010, staff received a letter from the Corral Canyon Fire Safety Alliance expressing concern regarding fire safety and the overnight camping element of the proposed PWP, and requesting that the Commission incorporate the following conditions of plan approval:

    1) SMMC should conduct weather study of the canyon area
    2) SMMC should meet with the Alliance to discuss methods for mitigating fire risk
    3) All plans obtain final approval by CALFIRE and LACFD.

    This letter is attached as Exhibit 1 of this addendum. In response, Commission staff proposes that the following language be added to the Commission's findings in the staff report:

    Fire risk throughout the plan area was extensively studied as part of the August 2010 Fire Protection Plan by Dudek and the EIR. Analysis of fire hazards and associated mitigation/implementation measures to minimize fire hazards are discussed in the Commission's September 29, 2010 staff report. As such, the concerns raised have been addressed.

2. On October 11, 2010, staff received a letter from Una Glass, Executive Director of Coastwalk California, in support of the proposed PWP and the staff recommendation. This letter is attached as Exhibit 2 of this addendum.

3. On October 11, 2010, staff received correspondence from Steve Amerikaner of Brownstein Hyatt Farber Schreck and Diane Matsinger, Esq. who are representing the residents of Ramirez Canyon (Ramirez Canyon Preservation Fund). On October 12, 2010, staff received errata to the letter that corrects several

misidentified references in the letter. The correspondence and errata is attached as Exhibit 3 of this addendum. The letter expresses opposition to the proposed PWP and the staff recommendation and asserts that it is inconsistent with the Coastal Act and Malibu LCP. In response, Commission staff proposes that the following language be added to the Commission's findings in the staff report:

The Ramirez Canyon Preservation Fund correspondence states that an adequate and timely comment period was not provided to the public on this item. This comment is addressed in staff's October 11, 2010 addendum in response to City of Malibu comments.

The Ramirez Canyon Preservation Fund correspondence states that proposed administrative and event uses at Ramirez Canyon Park are unlawful for inclusion in a public works plan because the uses are not directly related to recreation and the plan's recreational facilities. The Commission disagrees. The proposed administrative and event uses at Ramirez Canyon Park support the SMMC public access and recreation programs throughout the plan area and are appropriate for inclusion in the plan. The Ramirez Canyon Preservation Fund correspondence also states that proposed uses at Ramirez Canyon Park are incompatible with the surrounding private residential uses in the area. The uses at Ramirez Canyon Park were analyzed in the September 29 ,2010 staff report and found consistent with the applicable policies of the Coastal Act and Malibu LCP.

The Ramirez Canyon Preservation Fund correspondence states that the PWP submittal is inconsistent with the information requirements of PRC Section 13353 as it did not include specific enough information about the type of activities proposed related to Ramirez Canyon Park and that there have been unpermitted improvements to structures within the park that were not analyzed. The proposed PWP submittal included specific information regarding the proposed facilities and activities that met the information requirements of PRC Section 13353 and allowed sufficient analysis of all environmental impacts. In addition, the commenter did not provide any evidence to support the assertion that unpermitted structural improvements had occurred at Ramirez Canyon Park. Staff is not aware of any evidence of any unpermitted development at Ramirez that was not addressed in the Commission's September 29, 2010 staff report.

The Ramirez Canyon Preservation Fund correspondence states that for portions of the proposed trail network, the SMMC/MRCA does not presently possess development rights and that these trail segments cannot properly be included in the plan. Staff would note that the proposed PWP defines the proposed trail alignments and at the time a specific trail project included in the plan is proposed for implementation as part of a Notice of Impending Development, the SMMC/MRCA would have to demonstrate their legal ability to undertake the project. The Ramirez Canyon Preservation Fund correspondence also states that the proposed PWP Trails Map is not consistent with the Malibu Parks Public Access Enhancement Plan Overlay Trails Map of the Malibu LCP. Staff would note that although there are some minor differences in trail alignment

between the two maps, the PWP trails map is a refinement of the Overlay Trails Map general depiction of the trail alignments and the differences between them are insignificant.

The Ramirez Canyon Preservation Fund correspondence states that the proposed widening of Ramirez Canyon Road would result in adverse impacts to visual resources and ESHA that had not been adequately analyzed. Staff would note that the proposed road widening along Ramirez Canyon Road and associated impacts to native and non-native trees would not result in degradation of visual resources because the area is not visible from any public viewing areas and the development would not significantly alter the character of the area. In addition, Ramirez Canyon Road is a substantially developed residential corridor and the proposed road widening would not impact areas that are considered ESHA. Analysis of impacts to ESHA as a result of the Ramirez Canyon Road widening is discussed in the September 29, 2010 staff report.

The Ramirez Canyon Preservation Fund correspondence states that areas mapped as ESHA in the Malibu LCP cannot be undesignated by the Commission without going through a map change process that is approved by the City and the Commission. Commission staff would note that the Malibu LCP (LIP Section 4.3) states that the physical extent of habitat on a project site that meets the definition of ESHA must be determined by a site-specific biological assessment. If an area is not determined to be ESHA then the ESHA protection policies of the LCP would not apply. An official ESHA map change is not required to be made prior to permitting development.

The Ramirez Canyon Preservation Fund correspondence states that access to Ramirez Canyon Park should be accomplished by a direct connection to a public road and that the Lauber site analyzed as an alternative in the EIR is a feasible and environmentally preferred alternative for providing park access. However, Ramirez Canyon Road is currently the only means for accessing the park and is specifically contemplated in the Malibu LCP. The proposed Via Acero roadway is only a means for secondary emergency access, and as discussed in the staff report, proposed improvements to Via Acero Road would involve less grading and impacts to ESHA than the Lauber road would. As such, the Via Acero Road is the environmentally less damaging alternative to provide for secondary emergency access.

4. On October 12, 2010, staff received a letter from the Santa Monica Mountains Conservancy that responds to the October 11, 2010 letter by Steve Amerikaner of Brownstein Hyatt Farber Schreck and Diane Matsinger, Esq. discussed above. This letter is attached as Exhibit 4 of this addendum.

CORRAL CANYON
FIRE SAFETY ALLIANCE

P.O. Box 84, Malibu, California 90265

RECEIVED
OCT 11 2010
BR
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

October 5, 2010

Mr. John Ainsworth
Deputy Director, South Central District Office
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: Overnight Camping in Corral Canyon, Malibu Agenda Item #7A

Dear Mr. Ainsworth & members of the California Coastal Commission:

The Corral Canyon Fire Safety Alliance ("CCFSA") is a nonprofit organization created in the wake of the November, 2007, Corral Canyon fire, which destroyed 55 homes and was ignited by human activity in a California State Park. We are committed to minimizing fire risk and are deeply concerned about the SMMC's plan, to establish overnight camping in a designated Very High Fire Hazard Severity Zone.

While the SMMC attempted to address some fire safety issues in their most recent version of the proposed plan, the Los Angeles County Fire Department and the California Department of Forestry & Fire Protection both oppose the proposed plan for Corral Canyon. In fact, CAL FIRE supports the Los Angeles County Fire Department's recommendations regarding overnight camping in that ***"human behavior in high risk areas cannot be controlled "*** (see attached exhibits A & B).

Adding to our fear is the fact that our canyon has one way in and one way out. Should a fire originating from the proposed overnight camping site race up the hill towards our homes, as it did in the 1996 Corral fire, such a fire would block our ONLY evacuation route, effectively amounting to a death sentence for residents, park visitors and first responders.

We have attempted to reach out to the Santa Monica Mountains Conservancy regarding these fears, but have been unsuccessful in arranging a meeting to date. We emphasize that our opposition to overnight camping is not rooted in NIMBY-ism but rather deep concern for potential loss of human life. We, however, remain supportive of the trail expansion and continue to welcome thousands of visitors each year to the existing trails throughout our canyon.

Exhibit 1
smmc/mRCA PWP
addendum
Fire Alliance Letter

Knowing the SMMC's plan is extremely controversial and that fire safety is a justified concern for Malibu and the surrounding communities, especially when budget cuts effect the ability to properly monitor state owned properties, we find it disgraceful that the Commission would choose to hold this vote in Oceanside, CA, where most of us are not able to attend.

As representatives with a mission to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean, we hope your decision does not come at the expense of human life. We expect that each of you will respect and give strong consideration to the concerns raised by fire professionals at the county and state level.

However, should the Commission approve the proposed Malibu Parks Public Access Enhancement Public Works Plan, we respectfully request that the Commission include the following conditions:

1) The SMMC is to conduct a weather study of the canyon area.

2) The SMMC is to meet with the CCFSA to discuss methods of mitigating fire risk.

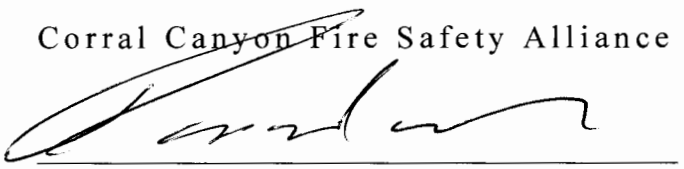
3) All plans require final approval by the Los Angeles County Fire Department and the California Department of Forestry and Fire Protection.

Agreeing to include these conditions sends a very strong message to the people of California that while the Commission is in support of increased accessibility for visitors, it won't come at the risk of human life.

We thank you for your time.

Cordially,

Corral Canyon Fire Safety Alliance



Paul J. Morra, President

CCFSA Board of Directors
Paul J. Morra, President
Jennifer Grossman, Vice President
John Shafai, esq, Treasurer
Brian Weiss, Secretary
David Levy
Steve Poswillo
Will Jacobus
Matthew Haines

Cc: Zev Yaroslavsky, Supervisor LACO 3rd District, Susan Nissman, Senior Field Deputy LACO 3rd District, Cynthia Scott, Field Deputy LACO 3rd District, Chief P. Michael Freeman, LACOFD, Captain Joseph Stephen, LACO Sheriff/Lost Hills, Del Waters, Director, CALFire

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
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LOS ANGELES, CALIFORNIA 90063-3294
(323) 890-4330

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

CORRAL CANYON
EXHIBIT A

April 21, 2010

Ms. Judi Tamasi
Santa Monica Mountains Conservancy
Mountains Recreation & Conservation Authority
5750 Ramirez Canyon Road
Malibu, CA 90265

Dear Ms. Tamasi:

DRAFT EIR MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN - PUBLIC WORKS PLAN, MALIBU (FFER #201000043)

The Draft Environmental Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

PLANNING DIVISION:

5.13 PUBLIC SERVICES - 5.13.1 Setting - Fire Protection

1. Paragraph 1 – The City of Malibu does not contract with the Los Angeles County Fire Department. The City of Malibu is annexed as part of the Consolidated Fire Protection District of Los Angeles County, which is also commonly referred to as the Los Angeles County Fire Department. Therefore, sentence one should be revised to state, "The Los Angeles County Fire Department (LACFD) is responsible for fire prevention/suppression and emergency services within the City of Malibu and the surrounding unincorporated areas of the Los Angeles County."

2. Paragraph 1 – The second sentence should be corrected to state that there are "22" battalions and "170" Fire Stations.

3. Paragraph 1 – The third sentence should be corrected to state that there are "12" Fire Stations in Battalion 5, not 13.

4. Paragraph 1 – The fourth sentence should be corrected to state that there are "4" stations located within the City of Malibu, not 5.

Table 5.13.1 –LACFD Fire Station Staffing Levels

5. Fire Station 69's equipment should be corrected to state that the station is equipped with a "4-person assessment engine company".

5.13.2 Impact Analysis - Impact PS-1

6. Paragraph 7 should be corrected as follows, "According to Kien Chin of the LACFD Planning Division, current staff levels and facilities at stations within Battalion 5 are sufficient to support the incremental increase in recreational demands associated with the proposed Plan (Chin, 2009).

5.13.3 Cumulative Impacts - Fire Protection

7. Area of Influence – Sentence one should be corrected to state that there are "12" Fire Stations in Battalion 5, not 13.

Impact PS-5:

8. The third sentence is incorrect. The wording *government funding* should be replaced with "special tax revenues". The LACFD does not receive any government funding to provide fire services in the project area.

9. The fourth sentence should be deleted as it is inaccurate to imply that the City of Malibu and the County of Los Angeles "allocate" funds to the LACFD. As stated in the third sentence, cumulative demands for fire protection services in the Malibu area are funded through property and special tax revenue and development impact fees. Therefore, sentence four (4) is not necessary.

LAND DEVELOPMENT UNIT:

1. The statutory responsibilities of the County of Los Angeles Fire Department, Land Development Unit, are the review of, and comment on, all projects within the unincorporated areas of the County of Los Angeles. Our emphasis is on the availability of sufficient water supplies for Fire Fighting operations and local/regional access issues. However, we review all projects for issues that may have a significant impact on the County of Los Angeles Fire Department. The County of Los Angeles Fire Department, Land Development Unit, may also comment on conditions, which may be imposed on a project by the Fire Prevention Division, and may create a potentially significant impact to the environment.

2. This property in reference is located within the area described by the Forester and Fire Warden as a Very High Fire Hazard Severity Zone (VHFHSZ). All applicable fire code and ordinance requirements for construction, access, water mains, fire hydrants, fire flows, brush clearance and fuel modification plans must be met.

3. The proposed uses within the Malibu Parks Public Access Plan – Public Works Plan and in the Conservancy properties are located within the Very High Fire Hazard Severity Zone which may jeopardize public safety by unnecessarily increasing the risk of fire and requiring rapid evacuation of narrow box canyons served by limited access routes. The extended use of non-residential, large public events, and overnight camping, and extended trail development increase the potential to fire related incidents.

4. The intensification in use can only be considered when it is demonstrated that the proposed properties are in strict compliance with applicable Building and Fire Codes.

5. The Fire Department has reviewed the proposed fire protection plans for the specific park facilities and remains opposed to any new campgrounds, hike-in camps, and trail camps that allow overnight camping activities. We appreciate the proposed mitigation measures intended to reduce the potential risk of fire caused by camp visitors. However, human behavior in a very high fire risk area can not be fully mitigated. The use of drop box registration does not ensure that the proper camping equipment for "cold camping" is carried into the campsites or that the visitors are properly informed and trained on the hazards of the environment or the use of the fire proof cooking stations, wildland fire hydrants, emergency fire shelters or fire evacuation procedures.

6. It is the recommendation of the Los Angeles County Fire Department to prohibit public use of all park facilities and recreational areas during times that the National Weather Service declares Red Flag Warnings.

7. It is the recommendation of the Los Angeles County Fire Department to prohibit all open flame usage within the camp and trail areas in order to provide adequate life safety to the visiting public and surrounding communities.

8. All appropriate permits shall be obtained for the extended stay of the camp host locations within the proposed project boundaries.

9. Emergency fire shelters shall be located as approved by the Fire Department.

10. Detailed drawings and design specifications for the proposed emergency fire shelters shall be provided for review and approval of the construction materials, roofing material, installation, ventilation, and fire rating classification.

11. Water improvement plans for each camp location shall be submitted for review and approval by Los Angeles County Fire Department, Fire Prevention Engineering Section, prior to commencement of construction.

12. Submit three sets of private on-site water system improvement plans to the County of Los Angeles Fire Department, Fire Prevention Engineering Section for review and approval. The plans must show water tank size, tank construction, tank elevations, piping plans and appurtenances designed in accordance with the appropriate NFPA Standard. Plans for improvements to the public water system shall be submitted through the local water purveyor.

13. In order to achieve an effective hose stream, the wildland fire hydrants should be designed to flow 100 gallons per minute at 65 pounds per square inch residual pressure.

14. Proposed water system improvements for each park facility shall be completed as a part of each phase of development and shall receive approval prior to occupancy.

15. Access to all existing fire roads shall be properly maintained and gated in accordance to Los Angeles County Fire Department standards.

16. The existing structures at the Ramirez Canyon Park facility shall be in compliance with the current ignition resistant building standards in Chapter 7A of the Building Code and Los Angeles County Regulation #8 regarding water supply for the proposed change in use.

17. Interior fire sprinkler systems may be required.

18. The Los Angeles County Fire Department will require the widening of Ramirez Canyon Road to a minimum of 20 feet in width for its entire length to Delaplane Road and continue to Pacific Coast Highway.

19. The second alternate code compliant access road Via Acero into Ramirez Canyon shall be a precondition to any expansion of the current Park uses as outlined in Section 2.3.2.1 of the Project Objectives.

20. Fire Department vehicular access shall provide a minimum unobstructed width of 20 feet, clear-to-sky or provide a minimum vertical clearance of 13'6" under protected tree species and be within 150 feet of all portions of structures and public assembly areas.

21. The maximum allowable grade shall not exceed 15% except where topography makes it impractical to keep within such grade; in such cases, an absolute maximum of 20% will be allowed for up to 150 feet in distance. The average maximum allowed grade, including topographical difficulties, shall be no more than 17%. Grade breaks shall not exceed 10% in 10 feet. It was noted in Appendix D-1 that portions of Via Acero exceeded 20% grade.

22. Improvement plans for grading purposes shall be submitted to Los Angeles County Fire Department, Land Development Unit for review and approval of the proposed access improvement for acceptable grades, width and surface for vehicular access.

23. Fire Department vehicle access roads shall provide minimum turning radii of 32 feet measured at the centerline to maintain adequate maneuverability of emergency equipment.

24. Vehicular access that is adjacent to fire hydrants shall provide a minimum width of 26 feet for a distance of not less than 50 feet, to maintain adequate room for operations during an emergency incident.

25. Turnouts shall be necessary to provide adequate opportunity to let vehicles pass within rural areas. Turnouts shall be provided at one quarter mile intervals and shall provide 26 feet of minimum width and 50 feet in length to accommodate vehicular traffic.

26. Turnarounds shall be provided dead-ending access roads in excess of 150 feet in length. Turnarounds shall provide 64 foot diameter bulb design or comply with intermediate turnaround or hammerhead design as approved by the Fire Department

27. Cross slopes on vehicular access roads for the Fire Department use shall not exceed 2% at any point and shall be provided for drainage purposes only.

28. All vehicular access that has a grade of 10% or more shall be paved to the specifications of Los Angeles County Fire Department.

29. Access roads shall be maintained with a minimum of 10 feet of brush clearance on each side or as determined by the Forestry Division of the Fire Department.

30. When a bridge is required to be used as part of the emergency response vehicular access road, it shall be constructed and maintained in accordance with AASHTO HB-17 (Fire Code Section 503.2.6) and designed for a live load sufficient to carry a minimum of 75,000 pounds.

31. Appropriate permits shall be obtained from the Fire Prevention Division for all public assembly uses, temporary tent structures, etc.

32. Disruptions to the public or private water service provided to the project shall be coordinated with the County of Los Angeles Fire Department and alternate water sources shall be identified for fire protection during such disruptions.

33. The proposed permanent tent structures at Malibu Bluffs Park shall comply with the ignition resistant construction standards as outlined in Chapter 7A of the Los Angeles County Building Code.

34. Equipment that is operated within the Very High Fire Hazard Severity Zone as noted in the E.I.R for trail preparation, included but not limited to, e.g. masticator, bobcat loader, mini excavator, Sweco dozer, 4 x 4 all terrain vehicle, shall be equipped with spark arresters and obtain all appropriate permits in accordance with the Los Angeles County Fire Code Section 318 prior to commencement of their use.

35. The County of Los Angeles Fire Department, Land Development Unit's comments are general to fire and life safety requirements. Additional specific requirements may be applicable during grading plan review, fire hydrant and water tank plan review, building permit review and special permit request.

36. Should any questions arise regarding this review, please contact the County of Los Angeles Fire Department, Land Development Unit's EIR specialist at (323) 890-4243.

37. The County of Los Angeles Fire Department, Land Development Unit appreciates the opportunity to comment on this project and we look forward to any questions you may have as pertains to our requirements for your proposed development plan.

FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:

1. The statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division include erosion control, watershed management, rare and endangered species, vegetation, fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance. Potential impacts in these areas should be addressed.

2. All structures subject to fuel modification requirements, per Los Angeles County Fire Code Section 317 shall be reviewed and approved by the County of Los Angeles Fire Department Fuel Modification Unit.

3. All proposed emergency fire shelters shall have a minimum of 200' of fuel modification by establishing a "Setback" Zone A of 50' and an additional "Thinning" Zone C of 200' from the shelters.

4. As per Los Angeles County Fire Code Section 317.2.2, all adjacent landowners shall be responsible for maintenance of any vegetation management zone that extends beyond the parcel boundaries of the Malibu Parks Public Access Enhancement Plan.

HEALTH HAZARDOUS MATERIALS DIVISION:

1. Health Hazardous Materials Division has no objection with the proposed project.

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,

Frank Vidales

for JOHN R. TODD, CHIEF, FORESTRY DIVISION
PREVENTION SERVICES BUREAU

JRT:lj

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
P.O. Box 944246
SACRAMENTO, CA 94244-2460
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Website: www.fire.ca.gov

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 26, 2010

CORRAL CANYON
EXHIBIT B

Paul J. Morra
President
Corral Canyon Fire Safety Alliance
P.O. Box 84
Malibu, CA 90265

Re: Corral Canyon Fire Safety Alliance letter

Dear Mr. Morra,

This letter is in response to Corral Canyon Fire Safety Alliance regarding the Santa Monica Mountains Conservancy (SMMC) in proposing to establish overnight camping in your community. CAL FIRE has reviewed the Draft Environmental Impact Report (EIR), the Malibu Parks -Public Access Enhancement Plan, the Public Works Plan and the recommendations provided by Los Angeles County Fire Department. After review, CAL FIRE has decided to support the recommendation. CAL FIRE also recognizes that the area proposed is identified as a Very High Fire Hazard Severity Zone.

In the EIR under the Land Development Unit Section number 5 (five), CAL FIRE supports the Los Angeles County Fire Department recommendations regarding the concerns to overnight camping as human behavior in high fire risk areas that cannot be controlled, that "cold camping" is not guaranteed with the use of proper equipment. In addition, the information is not provided to the visitors.

In the EIR number 6 (six), CAL FIRE supports the recommendation to prohibit public use to park facilities and recreational areas when Red Flag Warnings are declared.

In the EIR number 7 (seven), CAL FIRE supports the recommendation to prohibit all open flame usage within the camp and trail areas.

Please contact San Bernardino Unit Chief, Doug McKain at (909) 881-6900 for any further questions regarding this matter.

Sincerely,

DEL WALTERS
Director



Board of Directors

Gregory Fearon
President
Sonoma County

Stan Bluhm
Vice-President
Marin County

Linda Hanes
Secretary
Sonoma County

Mike Reilly
Treasurer
Sonoma County

Nancy Graves
San Luis Obispo County

Sarah Gurney
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Patrick Ward
Nevada County

Richard Nichols
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Amy Purvis
Yolo County

John Woolley
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Una J. M. Glass,
Executive Director

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(800) 550 6854

www.coastwalk.org
californiacoastaltrail.info

October 11, 2010

W7a

Chairperson Bonnie Neely and Commissioners
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001-2801

RE: California Coastal Commission - October 13, 2010 - Agenda Item W7a
- Public Works Plan - Malibu Parks Public Access Enhancement Public Works Plan

Dear Chairperson Neely and Commissioners:

Coastwalk California is in support of the Public Works Plan proposed by the Santa Monica Mountains Conservancy (SMMC) and the Mountains Recreation and Conservation Authority (MRCA) including the modifications stipulated in the Coastal Commission staff report regarding the project.

When the Plan is implemented it will provide increased access to our coastal areas for members of the public who may not reside in Malibu, as is required by the Coastal Act. It provides low cost visitor opportunities while also addressing the need to protect and preserve this fragile area. The Coastal Slope Trail, included in the plan, can serve as another thread in the California Coastal Trail (CCT) braided trail system when it is completed. The CCT is intended to be a "through" trail that gives hikers the opportunity to move northbound or southbound along the California coastline rather than consisting of unconnected loop trails which can only deliver hikers to a single beach. The Coastal Slope Trail will help to provide these through hiking opportunities in an area where such opportunities are lacking due to the topography of the area.

This plan represents a tremendous opportunity for youth in the Los Angeles area to access nature and our coastal commons. There are thousands of young people in LA region who have never been to the beach or had a nature based outdoor experience. This Plan will provide the venue for so many more opportunities for these young people. As this Plan is implemented, Coastwalk and other non-profit organizations will work hard to make sure this wonderful venue is utilized for programs that benefit youth and others who have not had the opportunity to experience coastal wildlands in the past!

Thank you

Sincerely,

Una J. M. Glass
Executive Director

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CALIFORNIA COASTAL COMMISSION

Exhibit 2
SMMC/MRCA PWP
Addendum
Coastwalk letter

Steven A. Amerikaner
805.882.1407 tel
805.965.4333 fax
SAmerikaner@bhfs.com

October 11, 2010 (by Hand Delivery)

Honorable Chair Bonnie Neely and Members of the Coastal Commission
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

RE: Agenda Item W7a, October 13, 2010

Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority
Malibu Parks Public Access Enhancement Public Works Plan

Dear Chair Neely and Members of the Coastal Commission:

Brownstein Hyatt Farber Schreck and Diane M. Matsinger, Esq. represent the residents of Ramirez Canyon, as the Ramirez Canyon Preservation Fund ("Fund"). The Fund objects to the Public Works Plan ("PWP") as proposed by the Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority (collectively "Conservancy") because it is not consistent with either the Coastal Act or the Malibu LCP, and because it violates other provisions of California law. The modifications to the PWP proposed by Commission staff do not resolve the deficiencies. The FEIR is also fatally flawed as a result of significant errors and omissions and cannot stand as a Coastal Commission "functional equivalent" of environmental review.

Given the extremely short amount of time afforded for public review of the FEIR, the modified version of the PWP, and the lengthy Staff Report issued by the Commission, it is not possible to comprehensively address all of the issues in one letter. Therefore, we submit with this letter and request that you also consider the comments, objections and evidence contained in Exhibits A through M.

I

PROCEDURAL OBJECTIONS AND INCORPORATION OF PREVIOUS SUBMITTALS.

The manner in which the Conservancy conducted its August 23, 2010 proceedings on the PWP and FEIR, including but not limited to the last-minute release of thousands of pages of text and figures which included substantial revisions to the project, did not comply with either the Commission's regulations for local hearings on proposed public works plans or with CEQA (14 Cal. Code Regs., sec.

Exhibit 3
SMMC/MRCA PWP
Addendum
Ramirez Canyon Preservation Fund
Letter and Errata

13353.5; Pub. Res. Code, secs. 21091, 21092, 21092.1 and 30503). (See Exh. M, Fund Letter to Conservancy, dated August 23, 2010, Sec. I.)

Although the Commission appears to have technically complied with its own notice and hearing requirements for public works plans, the setting of a hearing within two weeks of the issuance of a 250-page Staff Report, which refers the public to thousands of pages of material posted on other websites, violates the Coastal Act mandate for maximum public participation (Pub. Res. Code, sec. 30006).

The PWP was designed to be consistent with the LCP Override which the Commission adopted in June of 2009. The LCP Override has been challenged by the City of Malibu and the Fund; the challenge is presently pending in consolidated Los Angeles Superior Court Case No. BS121650. The decision by the Conservancy, and now the Commission, to conduct administrative proceedings under the auspices of the Override while litigation is pending is unduly time-consuming and expensive for the taxpayers, the City, and the residents of Malibu.

The Commission's proceedings on the Override also violated the Coastal Act requirements for public notice and participation. (See, Exh. E, June 5, 2009 Letter from Fund to Commission re, *inter alia*, late release of information before the Commission hearing on the Override.)

The manner in which the Commission is conducting the scheduled October 13, 2010 hearing on the PWP does not comply with CEQA, for the reasons set forth in Section IX, A, below.

II

THE PWP INCLUDES ELEMENTS THAT ARE NEITHER PUBLIC WORKS NOR RECREATIONAL FACILITIES.

Public Resources Code section 30605 provides for public works, and section 30114 states that those works may include publicly financed recreational facilities. At least three elements of the PWP do not constitute either public works or recreational facilities. The Commission has no jurisdiction to approve these elements as part of a PWP, and they should be stricken.

A. Regional Administrative Offices. The Staff Report erroneously suggests that the proposed office use of the structures on the Conservancy's Ramirez Property is limited to the administration of the plan. The PWP proposes use of the structures for "administrative responsibilities associated with open space acquisitions, planning, research, the management of conservation and recreation activities at Conservancy and MRCA holdings" (PWP, p. 2-2, emphasis added). That proposed use is unlawful on its face, because a public works plan may include only indispensable facilities, *directly and immediately related to the provision of the primary service;* any other facilities require authorization by local authorities. (*City of Lafayette v. East Bay Municipal Utility District* (1993) 16 Cal.App.4th 1005.) In addition, only areas actually used for recreation are properly included within the scope of "recreational purpose." (See, e.g., *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 232.)

The Staff Report adopts the Conservancy's claim that other public properties house offices similar to those proposed by the Conservancy. The evidence demonstrates that office use on the other public sites is limited to the administration of the specific site (See Exh. M, December 23, 2009 Letter from Fund to Commission re Override, Attachment E). In any event, office use on the other sites was not authorized by a public works plan for a recreational facility.

For these reasons, regardless of the outcome of the legal challenge to the Override, the proposed regional office use cannot lawfully be included in the PWP. The proposed office use requires authorization from the City of Malibu.

The PWP claims that certain amendments to Public Resources Code section 33208 and 33211.5, subdivision (d)(1)(2)) "overruled" the appellate court decision that held that the Conservancy is subject to Malibu's land use regulations (*City of Malibu vs. Santa Monica Mountains Conservancy* (2002) 98 Cal.App.4th 1379). The legislative history of the statutes cited in the PWP (AB 1812) does not demonstrate any legislative intent to overrule the appellate decision. Everyone in the State of California – including the State itself – is subject to the Coastal Act (Pub. Res. Code, secs. 21066, 30111, 30600; see also, 65 Ops. A.G. 88). The section of the PWP that claims immunity for the Conservancy should be stricken from the PWP.

The Commission's original jurisdiction over public works plans is limited to those elements which may lawfully be included in a public works plan. The proposed regional office use may not lawfully be included, and therefore the Commission has no jurisdiction to approve it as part of the PWP.

B. <u>Leasing the Ramirez Property for Private Commercial Events.</u> The PWP proposes to lease the Ramirez Property to private persons for "revenue-raising" large events and, apparently, for revenue-raising small "meetings" as well (see discussion below). These undefined events and meetings do not constitute either public works or recreational facilities and may not lawfully be included in the PWP. Any proposed revenue raising events or meetings will require authorization from the City of Malibu.

The PWP states that the "more developed nature" of the Ramirez Property "lends itself well to function as a place for special, pre-arranged activities, events, and functions typically permitted by the State Parks system for the benefit of the community and visitors." The Staff Report adopts this assertion. The applicable legal principles demonstrate that the statement is erroneous. While the Coastal Act does not define the terms "recreation" or "recreation facility," those terms are defined in analogous provisions of the California Recreation and Park District Act (Pub. Res. Code, sec. 5780.1, subds. (G) and (H)). Under Section 5780.1, regional, administrative offices and leasing of property for private events does not qualify as either "recreation" or as a "recreational facility."

In addition, Section 33211.5, subdivision (d)(1) of the Conservancy's enabling act provides, in part, that the "types of uses and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system." Section 5019.53 defines the permissible uses of state park lands. Section 5019.53 does not include regional, administrative offices or leasing for commercial events. (See, also, sec. 5080.03, subd. (b), which provides: "[c]oncessions shall not be entered into solely for their revenue producing potential.") The PWP admits that the purpose of leasing the property for private events is to raise revenue.

The Commission's original jurisdiction over public works plans is limited to those elements which may lawfully be included in a public works plan. Therefore, regardless of the outcome of the challenge to the Override, the proposed leasing for event use may not lawfully be included in the PWP.
Leasing for private events requires authorization from the City of Malibu

C. <u>A PWP Cannot Include a Hypothetical and Speculative Trail System.</u> The PWP acknowledges that the Conservancy does not have land use regulatory power and does not presently hold the easements and/or other property interests required to develop the proposed trail network. The PWP also acknowledges that there are not sufficient offers to dedicate to allow for the development of the trail network (see, e.g., PWP, OTD Map, Fig. 9). The Staff Report repeats these facts.

There is no authority for the adoption of a public works plan for a hypothetical, speculative project and there is no manner by which to comply with CEQA unless the project can be defined. Those portions of the proposed trail network for which the Conservancy does not presently own the development rights should be stricken from the PWP. If and when the Conservancy acquires the property rights required to construct those portions of the proposed network, the Conservancy may apply for an amendment to the PWP.

III

THE CONSERVANCY IS NOT AUTHORIZED BY ITS ENABLING ACT TO DEVELOP OR OPERATE RECREATIONAL FACILITIES.

The Fund incorporates the objections set forth in Exhibit B (November 24, 2008 Letter from Fund to Commission Chief Counsel Schmeltzer, Sec. II) and Exhibit C (December 23, 2008 Letter from Fund to Commission re Override).

IV

THE PWP DOES NOT INCLUDE THE INFORMATION REQUIRED BY TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 13353.

Section 13353 sets forth the mandatory information requirements for a PWP. The PWP does not meet the requirements of Section 13353 for numerous reasons including, but not limited to, the following:

A. **Section 13353, Subparagraph (1): "the specific type of activity or activities proposed to be undertaken."** The PWP fails to comply with subparagraph (1) in multiple ways including, but not limited to, the following:

1. **The Proposed Trail Network.** As noted above, the proposed trail network and many of the alignments are entirely speculative and hypothetical. Therefore, the trail network does not meet the specificity requirement of Section 13353, subparagraph (1).

2. **Existing Uses vs. Phase 1 Uses.** Suggested Modifications No. 37 and 45 do not resolve the disparity between existing uses and Phase 1 program uses at the Conservancy's Ramirez Property. (See Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. V, C, 2.)

The FEIR was based on the assumption that Phase 1 would be limited to the continuation of "existing" uses. The Staff Report uses a similar phrase (i.e., Phase 1 "continues existing baseline uses"). With respect to programs, Phase 1 constitutes a significant departure from existing uses.

The existing baseline use is "two special programs a week *for disabled youth or seniors*" (see Exh. N, Standstill Agreement). Suggested Modifications No. 37 and No. 45 do not limit Phase 1 to the existing baseline. No. 37 describes Phase 1 in several different ways (e.g., "public outreach, events, gatherings, tours," "events, tours, or other special functions," "small group gatherings and tours"). No. 45 describes Phase 1 as "existing small events (e.g., public outreach, meetings, etc)." The suggested modifications also include conditions that do not apply to the existing baseline uses, e.g., amplified music and an event monitoring program that includes, among other things, reporting of revenue generating events.

The Phase 1 use not only exceeds the existing baseline, it also lacks the specificity required by Section 13353 because there is no description of the types of "events," "meetings," or "functions." Without the required specificity, there is no manner by which to determine whether the programs lawfully constitute a public work for a recreational facility, or whether they are consistent with the Coastal Act, the Malibu LCP, CEQA, and/or other provisions of California law.

3. **Unpermitted Improvements at the Ramirez Property.** The PWP and the Staff Report consistently cite the "developed" nature of the Ramirez Property. Neither document acknowledges the unpermitted development of the structures. (See, Exh. J, History of Unpermitted Development on the Conservancy's Ramirez Property; see, also, Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. V, C, 5.)

When the Conservancy submitted its PWP in 2006, the Commission specifically requested "detailed site and facility plans, drawn to scale with dimensions shown, of existing and proposed structures and facilities, including existing, unauthorized development." (See Exh. B, June 30, 2006 Letter from Commission to Conservancy.) More than four years and numerous administrative proceedings later, the Conservancy has yet to produce site plans of the existing structures or any specification of the existing unpermitted development. There is no question that unpermitted development exists on the site. The Conservancy did not acquire permits to convert the residential structures to office and ADA use, as authorized by CDP 4-98-334, and that CDP was set aside in any event.

The Staff Report includes a requirement for a NOID for "unpermitted Phase 1 Ramirez Park uses" (Staff Report, p. 29). However, the phrase is not defined, the discussion in the text that follows that heading focuses on the unpermitted streambed improvements, and Suggested Modification 46 creates additional confusion (see discussion below).

The unpermitted streambed improvements and the specific remedial measures are detailed in the PWP and the suggested modifications expressly require that the remedial measures to be conducted. The same should apply to the unpermitted improvements to the structures. Without the information about the structures, the PWP does meet the information requirements of Section 13353, subparagraph (1).

4. **Use of Ramirez Property as a Maintenance Center for the Plan Area and as a Emergency Fire Response Center.** The PWP proposes to use the Ramirez Property as the maintenance center for the plan area and as the emergency response center. There is no description of the specific activities associated with those uses, even though the significant expansion of recreational facilities throughout the plan area will increase heavy maintenance equipment traffic on Ramirez Canyon Road. Not only does the lack of specificity violate the requirements of Section 13353, subparagraph (1), it also renders impossible any analysis of the primary or cumulative impacts from traffic and noise on the Ramirez Property, on Ramirez Canyon Road, Delaplane, and Via Acero, on the Ramirez Creek ESHA, and on the Canyon residents.

5. **Transporting Visitors to the Ramirez Property.** The PWP proposes to transport visitors to the Conservancy's Ramirez Property by "vans," "mini-coaches," "buses"" and "shuttles." In response to the Commission's request for further information about those vehicles, the Conservancy provided information about the length of the vehicles. Much more information is required by Section 13353, subparagraph (1) (e.g., whether the vehicles are powered by gasoline, diesel, electricity, the nature of the suspension and the noise impacts). Without the required specificity, it is impossible to evaluate the impacts on the Canyon residents, on Ramirez Canyon Road or Delaplane, or on the Ramirez Creek ESHA.

B. Section 13353, Subparagraph (2): "the maximum and minimum intensity of activity or activities proposed to be undertaken . . . and the proposed timetable for precise definition of all projects included in the plan and any phasing of development activity contemplated." The PWP describes two phases of development for the Conservancy's Ramirez Canyon Property, but there is no specific timetable for either phase. There are also no general provisions for tying inception of Phase 1 uses to compliance with building and other codes for the unpermitted structures. The Commission's suggested modifications establish the timing for restoration of the unpermitted alterations to Ramirez Creek, but does not address timing for any of the other components of the Plan.

The PWP proposes to use the Conservancy's Ramirez Property as the maintenance center for the plan area and as the emergency response center. Neither the PWP nor the FEIR indicates whether these uses will occur in Phase 1 or Phase 2.

C. Section 13353, Subparagraph (3): "maximum size of facilities proposed to be constructed." As noted above, the PWP does not include site plans for the existing structures on the Ramirez Property, although the PWP contemplates that structural and other improvements will be required. Without specific site plans, there is no manner by which to determine the maximum size of the facilities proposed to be constructed.

The PWP includes inadequate and conflicting information about the nature and extent of the proposed road improvements and attendant grading, fuel modification and brush clearance. (See further discussion below, sec. IX; see, also, Exh. A, October 11, 2010 Letter from R. Thompson to Commission, and see Exh. M, Fund Letter to Conservancy re PWP and FEIR.)

D. "Section 13353, Subparagraph (5): "the proposed method of financing the activity or activities . . . over the useful life of the proposed development. The PWP states that the "project would be implemented using Proposition 84 [Conservancy] funding, a coastal watersheds of the Santa Monica Bay component," and from MRCA's "annual maintenance budget" (PWP, pp. 4-5-to 4-6). If these sources include grants from the Conservancy to MRCA, those grants would violate the common powers provision of the Joint Exercise of Powers Act (Gov't. Code, sec. 6502). (See, Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. V, F.) [1]

In any event, even if the proposal to use grants from the Conservancy to MRCA were lawful, the PWP does not include specific information concerning the method of financing over the useful life of the proposed development. The PWP does not include any information by which to (a) calculate the useful life of the proposed development, and/or (b) conclude, with any certainty, that funds will be available to cover the annual costs of maintaining the facilities for the duration. In fact, the PWP contemplates that funding will not be available (see, e.g., the Conservancy's discussion of "unmaintained" and "unsupervised" campgrounds, sec. VII, A, 4, below).

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[1] In late September, 2010, the California Court of Appeals, Second Appellate District, held that the Conservancy's grants to MRCA did not violate the common powers rule (Case No. B216702, on appeal from L.A. S.Ct. Case No. LC077488). The opinion is not final and the Fund will petition the California Supreme Court for review.

V

THE PWP PROPOSES TO DEVELOP PRIVATE PROPERTY WHICH THE CONSERVANCY DOES NOT OWN AND HAS NOT MADE PLANS TO ACQUIRE.

The PWP does not include any proposal for primary, secondary or emergency vehicular access directly from the Conservancy's Ramirez Property to a public road. The only proposed vehicular access to the Conservancy's Ramirez Canyon Property is over private roads. The PWP does not provide for any vehicular access in the event the Conservancy is unable to acquire the property rights required to use and/or improve the private roads. The PWP includes numerous incorrect statements about the extent of the Conservancy's right to use and/or improve the private roads, and the Staff Report erroneously adopts those incorrect statements.

The PWP states that the Conservancy owns a "40-foot easement" on Ramirez Canyon Road. The statement is not correct. The Conservancy owns an easement for ingress and egress within a 40-foot strip of land. (Exh. L, Conservancy Grant Deeds.) The easement was created for residential use; it cannot be lawfully used for other than residential use. The extent and scope of the Conservancy's right of ingress and egress is defined by the presently paved portion of the Road. There are no encroachments and the Conservancy has no right to widen the road or to remove any improvements without either (a) the consent of all of the owners of the easement or (b) the acquisition of the property rights necessary to do so. (See Exh. M, August 23, 2010 Letter from Fund to Conservancy; see, also, Exh. K, July 20, 2009 Letter from Rick Mullen to the Conservancy.) The Commission has no power to authorize either the Conservancy's use of the private roads or the Conservancy's proposal to widen the private roads.

The PWP also proposes to remove and replace an automated entry gate on Delaplane. The gate is the private property of the owners of the easement, and the Conservancy has no right to remove it without the consent of all of the owners. The Commission has no power to authorize the removal and/or replacement of this private property.

The Staff Report states that the 80-trip per day vehicle limitation on Ramirez Canyon Road is at the request of the neighbors. The statement is incorrect. Since 1993, the neighbors have consistently objected to the unlawful use of the Road, and have preserved their challenge in administrative and legal proceedings. The Staff Report also states that the Conservancy's daily vehicle trips occur "pursuant to the conditions of a Coastal Development Permit previously issued" by the Commission. The CDP to which the Staff Report refers was declared void by the Ventura Superior Court. The unlawful use of property does not create any vested right or entitlement to continue that use (*Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813).

Rather than conduct an independent daily trip analysis for the Conservancy's Ramirez Property, the Conservancy's Traffic and Parking Study simply adopted the 80-daily trip limitation imposed by the prior CDP (FEIR, App. O). Therefore, there is no evidence to support 80 daily trips for the lawful use of the Ramirez Property. Assuming, *arguendo*, that the Conservancy were entitled to the same number of vehicle trips as the residents in the Canyon, even though the Conservancy is not using the Property for residential use, the evidence demonstrates that the average daily vehicle trips for each residence is 8.4. (Exh. G, Ramirez Canyon Road Traffic Trip Calculations.) Applying that formula to the five Conservancy parcels which previously designated residential, the Conservancy would be entitled to 40 trips per day, not 80. (See, Exh. C, December 23, 2008 Letter from Fund to Commission, Sec. VII, J, 4 and Attachment A, Sec. 6.0; see, also, Exh. G, Ramirez Canyon Road Traffic Trip Calculations.)

VI

IN ANY EVENT, THE CONSERVANCY'S PROPOSAL TO ACCESS THE RAMIREZ CANYON PROPERTY OVER PRIVATE ROADS VIOLATES APPLICABLE ZONING LAWS.

The PWP proposal to use Ramirez Canyon Road, Delaplane, and Via Acero to access the Conservancy's Ramirez Property for non-residential purposes violates zoning laws. The properties over which those roads pass are zoned rural-residential (RR). The Conservancy's Ramirez Property is zoned open space (OS). The use of land in one zoning district for ingress and egress to land in another zoning district must not exceed the use allowed in the first district.[2] Therefore, even if the Conservancy acquired the property rights required to use and/or widen these roads, the Conservancy would have no right to use the roads to access the Property for office or commercial use unless the zoning for the properties underlying the roads were changed.

In addition, parks are allowed in RR zones only with a conditional use permit (LIP, Table B-Permitted Uses). Therefore, even if the Conservancy acquired the necessary property rights, and even if the PWP proposed to limit the use of the Ramirez Property to park uses, the Conservancy would be required to obtain a CUP from the City of Malibu to access the Property from Ramirez Canyon Road, Delaplane or Via Acero.

VII

THE CONSISTENCY ANALYSIS IS FUNDAMENTALLY FLAWED.

There is no evidence to support the proposed findings that the PWP is consistent with the Coastal Act and/with the Malibu LCP (Pub. Res. Code, sec. 30605; 14 Cal. Code Regs., sec. 13357) for the following reasons:

A. The PWP is Not Consistent with the Coastal Act. The PWP is not consistent with the Coastal Act for the following reasons:

1. Balancing Conflicts In the Manner Most Protective of Significant Coastal Resources. Public Resources Code Section 30007.5 states: "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such ***conflicts be resolved in a manner which on balance is the most protective of significant coastal resources***. . .." (Emphasis added.) Neither the PWP nor the Staff Report analyzes the PWP for consistency with this overarching policy. The PWP, and the LCP Override which the Commission certified to facilitate the PWP, violate this fundamental policy in ways including, but not limited to: (a) elevating "public access and recreation" over the protection of ESHA, necessitating extensive trenching and grading for utility and water lines, and the placement of chemical toilets, *in the ESHA* in the Conservancy's Ramirez Property; (b) allowing regional administrative offices, extensive "support facilities," and commercial leasing for private events, *in the ESHA* in the Conservancy's Ramirez Property; (c) including development to widen Ramirez Canyon Road, which involves the placement of concrete and asphalt *in the Ramirez Creek ESHA*, and

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[2] Am. Jur., Zoning, sec. 167; Miller & Starr, California Real Estate, sec. 15:54. See, also, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487 and *City & Co. of S.F. v. Safeway Stores, Inc.* (1957) 150 Cal.App.2d 327.

(d) allowing grading and brush clearance *in the Ramirez Canyon ESHA and in the Ramirez Creek ESHA*

2. **Public Access and Recreation Policies.** There is no evidence to support the proposed finding that "the proposed PWP will provide maximum public access and recreational opportunities for all people, consistent with the need to protect public safety, private property and natural resources." The manner in which the PWP violates the mandate to protect natural resources is discussed in Section IV, A, 3 and Section IX, below. The manner in which the PWP violates the mandate to protect public safety is discussed in Section IV, A, 4 below. Those discussions are incorporated by this reference.

The PWP violates the Coastal Act mandate to provide access consistent with the need to protect private property for the reasons set forth in Section IV, 6, below, and for the following reasons:

The PWP provides for the institutional and commercial use of property located at the dead end of a private road which passes through an established, rural, residential community. The Ramirez Canyon residents have never objected to the use of the Conservancy's Ramirez Property for public access and passive recreation (e.g., camping and other facilities and programs that increase the level of accessibility for disabled visitors, children's educational programs, riparian interpretative trails, picnic facilities, senior and public outreach programs, canyon and garden tours, and hiking, picnicking, etc.). However, the intensive development proposed by the PWP (office use, commercial events, central maintenance center, etc.) and the unlawful proposal to use and widen Ramirez Canyon Road to facilitate that intense development, violate the Coastal Act because those proposals, *inter alia*, (a) do not take into account the "proximity of the access area to adjacent residential uses" (Pub. Res. Code, sec. 30214), (b) violate the "time, place and manner" restrictions for public access (*Ibid.*); (c) do not protect the rights of the surrounding private property owners (*Id.*, sec. 30210), and (d) do not "distribute" the facilities throughout the plan area "so as to mitigate against the impacts" of that overuse (*Id.*, sec. 30212.5).

There is no precedent for allowing the Conservancy to bring more than 41,000 people each year up a private road, through a quiet residential neighborhood, to a property never intended and not suited for office and event use. (See Exh. H, A Compelling Precedent: Brazil Ranch (Big Sur).) There is also no precedent for allowing that use to occur seven days per week, sometimes until as late as 11 p.m. (*Ibid.*)

The Staff Report adopts the Conservancy's assertion that its use of the Ramirez Property is by reservation "at the request of the neighbors." The statement is not correct. Since 1993, the neighbors have consistently objected to the Conservancy's overuse of the Ramirez Property and have preserved their right to challenge that use in administrative and legal proceedings. The PWP proposal to provide for use of the Property "by appointment" does not resolve the conflict.

The public access provisions of the Coastal Act do not authorize the intensive, non-recreational, upland development proposed by the PWP for the Conservancy's Ramirez Property. The "public access" provisions of the Coastal Act are specifically designed to provide "*access to the coastline and the beach.*" These provisions are part of the Constitutional right of public access to navigable waters (see, Chap. 3, Coastal Resources Planning and Management Policies, *Article 2*; Pub. Res. Code, sec. 30210, et seq.; Cal. Const., Art. X, sec. 4).[3] The *recreation* provisions of the Coastal Act are set forth

[3] The legislative history of the Coastal Act confirms that the public access provisions set the "goal of maximum public *access to coast*." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended 8/5/76, p. 2.) See, also, Chap. 6, "Implementation," Art. 3, "*Coastal* Public Access Program," Pub. Res. Code, sec. 30530, et seq. (requiring the preparation and implementation of a "program to *maximize public access to and along the coastline*").

separate and apart from the public access provisions (see Chap., Coastal Resources Planning and Management Policies, *Article 3*.)[4] The Malibu LUP confirms these statutory principles. Section 7.2 of the Malibu LUP (p. 123) provides: "Publicly financed recreational facilities and access improvement projects, including all projects of the State Coastal Conservancy, shall be permitted consistent with the policies contained in the Access and Recreation section of the LCP and the Access and Recreation policies of the Coastal Act *when located between the sea and the first public road*." (Emphasis added.)

3. ESHA and Water Quality. There is no evidence to support the proposed findings with respect to ESHA and Water Quality for numerous reasons. Section IX below, which discusses the manner in which the PWP violates CEQA, is incorporated herein in its entirety.

Public Resources Code Section 30240 mandates the protection of ESHA, and "only uses dependent on such resources shall be allowed in such areas." The PWP obliterates the protective mandate of the Coastal Act by allowing broadly defined "support facilities" in ESHA, including but not limited to: regional administrative offices, private and commercial events, parking lots within 25 feet of stream banks, grading and brush clearance for campsites and 4 to 5 foot wide trails, extensive utility trenching (2 to 3 feet wide by 3.4 to 4 feet deep), camping, chemical toilets, and increased canine and equestrian use. None of these uses are "resource-dependent." (See, e.g., *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493.)

Public Resources Code section 30230 and 30231 mandate the protection of marine resources and the "biological productivity and the quality of coastal waters." Numerous provisions of the PWP violate this mandate, including but not limited to, increased canine and equestrian use of riparian ESHA, placement of chemical toilets in watersheds, grading for creek crossings, campsites and 4 to 5 foot wide trails, and grading and trenching for utility lines. The watersheds in the Plan area drain into the Santa Monica Bay, which has a history of beach water quality ratings among the worst in the state. (See Fund Comment Letter YY to DEIR.) In addition, studies are underway to assess the possible sources of bacteria, and the Regional Water Quality Control Board recently issued orders prohibiting new septic systems and requiring the phase-out of existing septic systems. (Ibid.)

Alteration of natural streams for the purpose of stream road crossings is prohibited, except where the alteration is not substantial, there is no other feasible alternative to provide access to public recreation areas or development on legal parcels, *and* the alteration does not restrict movement of fish or other aquatic wildlife. (Pub. Res. Code, sec. 30236; Malibu LUP, Policy 3.33.) None of these exceptions applies to the proposed substantial widening of Ramirez Canyon Road, which involves the placement of concrete and asphalt *in the Arizona crossings in Ramirez Creek*. The Staff Report does not address the proposed modifications to the Arizona crossings on Ramirez Canyon Road; the only discussion in the Staff Report concerns one Arizona crossing located on the Conservancy's Ramirez Canyon Property. Therefore, there is no evidence to support the proposed finding that "the proposed improvements to Ramirez Canyon Road / Delaplane Road, if ultimately required, minimize impacts to coastal resources and are consistent with the applicable policies of the Malibu LCP."

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[4] Article 3 refers to the use of "upland areas necessary to support coastal recreational use" (see, e.g., Pub. Res. Code, sec. 30223). However, the recreation provisions of the Act focus on "water-oriented recreational activities" (sec. 30220), "oceanfront land suitable for recreational use" (sec. 30221), and use for "coastal recreation" (sec. 30222). The legislative history of the Coastal Act confirms that these provisions "protect *shorefront* property suitable for recreation; encourages use of private lands for recreation and recreational boating facilities in certain areas." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended August 5, 1976, p. 2, emphasis added.)

4. **Hazards.** Public Resources Code section 30253 mandates that new development minimize risks to life and property in areas of high fire hazard. There is no evidence to support the proposed finding that the PWP improvements "have been sized, designed, and sited to minimize risks to life and property from geologic and flood hazard."

The Fund incorporates by this reference the following portions of the attached exhibits: Exh. C, December 23, 2008 Letter from Fund to Commission, sec. VII.F, Attachment H and Attachment A, sec. 2.0; Exh. E, June 5, 2009 Letter from Fund to Commission, secs. I and VII and attached letters from Chief Freeman and Fire Marshal Dargan; Exh. F, Briefing Paper regarding Adverse Impacts of Override. The only manner by which to comply with the Hazards policies of the Coastal Act is to require direct vehicular access from the Conservancy's Ramirez Property to a public road.

The entire plan area is designated a Very High Fire Hazard Severity Zone. The LACFD has confirmed, so far as pertinent here, that the proposed development of large public events "may jeopardize public safety by unnecessarily increasing the risk of fire" and also increasing "the potential for fire related incidents." (LACFD, Comment Letter DDD to DEIR.) LACFD has also confirmed that "human behavior in a very high fire risk area can not be fully mitigated." (*Ibid.*) The Staff Report does not discuss the threat imposed by large events in Ramirez Canyon, where alcohol will be permitted and where it will be difficult if not impossible to enforce a "no smoking" rule. Limiting the number of large events at the Ramirez Property and/or limiting the season in which the events may be held (i.e., March through October) does not alleviate the hazard, because the California fire season is now all year long.

The suggested modifications delete the requirement for a secondary access for Phase 1. That is not consistent with the hazards policies of the Coastal Act for the following reasons:

The Staff Report states that "it is considered very unlikely that a wildfire scenario would occur that would preclude safe relocation of *visitors and staff*" from the Ramirez Property," and the PWP proposes "relocation" (i.e., evacuation) of visitors to the Ramirez Property at the first sign of fire or flood. There is no evidence that staff, visitors *and Canyon residents* could be *safely, simultaneously* evacuated – even if the Conservancy acquired the property rights necessary to widen Ramirez Canyon Road.

There is no proposal for any direct vehicular access from the Conservancy's Ramirez Property to a public road for Phase 1. If there is a fire in the Canyon that renders Ramirez Canyon Road impassable, or if there is a fire on the Conservancy's Property which makes it impossible for staff and visitors to reach Ramirez Canyon Road, there will be no means of ingress to the Conservancy Property for fire fighting equipment and no means of egress for staff and visitors.

For secondary access for Phase 2, the suggested modifications adopt the PWP proposal to utilize Via Acero. However, Via Acero does not provide direct egress from the Conservancy Property to a public road either. In order to access Via Acero, it is necessary for Conservancy staff and visitors to leave the Conservancy Property and travel a distance down Ramirez Canyon Road. The concerns set forth in the preceding paragraph also render the proposal to use Via Acero inconsistent with the Coastal Act.

Suggested Modifications Nos. 31, 32, and 43 require the construction of secondary access over Via Acero for Phase 2 only "if demonstrated to be feasible and necessary." The LACFD comment letter leaves little doubt that secondary access will be necessary. The LACFD comment letter also strongly suggests that secondary access over Via Acero is not feasible because portions of Via Acero exceed the allowable grade. (LACFD, Comment Letter DDD to DEIR.) In order to comply with the Hazard policies of the Coastal Act, the PWP must identify a feasible secondary access route.

The PWP states that if there are no funds for maintenance and supervision of campgrounds, the campgrounds will be closed. The PWP then claims: "Unmaintained campgrounds would not pose a

greater fire danger than existing wildland conditions at the site under current conditions." (PWP, p. 4-7). There is no evidence to support that statement and experience confirms that the statement is not true. Unmaintained and unsupervised public lands create an attractive nuisance, as evidenced by the Corral Canyon fire, which was caused by an illegal campfire on improved, but unmaintained and unsupervised State Park land.

5. **Visual Resource Policies.** The Staff Report acknowledges that the "Plan area, in its entirety, represents a significant scenic area." Public Resources Code Section 30251 mandates the consideration and protection of the scenic and visual qualities of coastal areas, and requires that development be sited and designed to be "visually compatible with the character of surrounding areas." Ramirez Canyon is a rural, residential area. Ramirez Canyon Road is a narrow lane, framed by mature trees and picturesque landscaping. The PWP proposes a widened Ramirez Canyon Road and a new Via Acero, with 20-26 feet of pavement and an additional 10-20 feet of grading and brush clearance on either side (i.e., two vegetation-free swaths of land, each 40-66 feet wide) with no analysis of the visual impact. (See Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. II.) Without the required analysis, there is no evidence to support a finding that the PWP is consistent with the Visual Resource Policies of the Coastal Act.

6. **New Development.** There is no evidence to support the proposed finding that the PWP will "ensure compatibility with adjacent residential development in Ramirez Canyon" and (b) there is no evidence to support the proposed finding that "potential impacts on adjacent neighbors and potential conflicts between park users and private residences are minimized" for the following reasons:

The Fund incorporates the inconsistencies set forth in Sections VII, A, 1 through 5 above. The only manner by which to comply with the Coastal Act is for the Commission to require direct vehicular access from the Conservancy's Ramirez Property to Kanan Dume, the nearest public road.

Ramirez Canyon is a "box" canyon, up, down and through which sound echoes. There is no analysis of the noise which would be created by the conduct of large events at the Conservancy's Ramirez Canyon Property, and there is no analysis of the feasibility of containing that noise to the Property. The condition which requires that no *amplified* sound be audible beyond the Property boundaries does not address the noise created by the persons attending and staffing the events.

The PWP includes the transport of visitors to the Ramirez Property by "vans," "mini-coaches," "buses"" and "shuttles." Those vehicles have not been described with any specificity. The response to DEIR comment YY-164 acknowledges that these vehicles will most likely generate noise levels greater than the passenger vehicles assumed to be used in the noise analysis (i.e., sedans, sport utility vehicles etc.) (see, also, response to comment YY-163). However, there is no quantification of the noise levels and there is no analysis of the manner in which those noise levels will be amplified by the "box" nature of the canyon.

The PWP proposes use of the Ramirez Canyon Property as a "maintenance center" for the entire plan area, which will presumably involve a significant amount of heavy maintenance vehicle traffic. There is no description of the nature of the activity or the nature of the vehicles required to conduct the activity. There is no quantification of the noise which will be created by that use, and no analysis of the manner in which the noise will be amplified by the "box" nature of the canyon.

B. The PWP is Not Consistent with the Malibu LCP, as certified by the Commission in 2002.

Much of the Consistency Analysis in the Staff Report is based on the LCP Override, which was drafted by the Conservancy and certified by the Commission in 2009. The Override was not lawfully certified by the Commission, for all of the reasons set forth in the pending legal challenge by the City and the Fund (L.A. Superior Court Case No. BS121650). The proper standard of consistency review for those

portions of the PWP which propose development in Malibu is the Malibu LCP as certified by the Commission in 2002. The PWP is not consistent with the Malibu LCP as certified by the Commission in 2002. (See Exh. M, August 23, 2010 Letter from Fund to Conservancy, Appendix.) Therefore, there is no evidence to support the finding of consistency required by 14 California Code of Regulations, Section 13357, subparagraph (4).

C. The PWP is Not Consistent with the Malibu LCP Override. Assuming, *arguendo*, that the Malibu LCP Override was lawfully certified by the Commission, the PWP is not consistent with the Override for reasons which include, but are not limited to, the following:

1. ESHA. The Override maps and the PWP maps incorporate the Malibu LUP designations of ESHA. The Staff Report states in numerous places that designated ESHA is "not ESHA" (see Sec. IX, below).

2. Arizona Crossings. Malibu LCP Override policy 3.4.2.D.7.b.iii states that the "[u]se of Arizona crossings shall be limited to repair and maintenance of existing, legal crossing consistent with the repair and maintenance provisions of Section 13.4.2 . . (Coastal Commission Revised Findings Staff Report, September 22, 2009, p. 33.) The PWP proposes the widening of two Arizona crossings along Ramirez Canyon Road and one within the Conservancy's Ramirez Property. The Staff Report confirms that the Arizona crossing within the Ramirez Property involves "widening" not repair and maintenance. (Staff Report, p. 120.) Neither the FEIR nor the Staff Report discusses the impacts of widening the two Arizona crossings on Ramirez Canyon Road.

Policy 3.4.2.D.7.b.iii requires that "[a]ll new stream crossings shall consist of a span bridge design which minimizes placement of any new structures within the stream bed or channel and avoids removal of natural riparian vegetation to the maximum extent feasible." The proposed PWP incorporates these provisions verbatim. However, Suggested Modification No. 25 proposes deletion of the very language adopted by the Commission and instead adds provisions which allow the expansion of the Arizona crossings if "the alteration is not substantial." The Staff Report states that the reason for the modification is to allow the Conservancy to widen the existing Arizona crossing within the Ramirez Property, if required by the responsible fire agency, because the span bridge proposed by the PWP would be too costly. (Staff Report, p. 120.) This is inconsistent with both the LCP Override and the Coastal Act.

3. Trail Network. PWP, Figures 3 and 7 (Proposed Trail Resources), Figure 8 (Proposed Trail and Park Resources), and Figure 8a (Proposed Trail and Park Resources) are not consistent with the Proposed Trail Resource Map, certified by the Commission as part of MAL-MAJ-1-08 (Revised Findings). The Staff Report refers to trail alignments that are not depicted on any of those maps or figures (see, e.g., Staff Report, p. 84, reference to "Trail 1b"). For these reasons, there is no evidence to support the finding of consistency required by Title 14, California Code of Regulations, Section 13357, subparagraph (4).

D. The Proposed Modifications Do Not Resolve the Inconsistencies. The Staff Report suggests numerous modifications to the PWP, for the primary stated purpose of ensuring that the PWP complies with the Coastal Act and with CEQA. The modifications do not accomplish those goals because (a) the modifications create additional inconsistencies as set forth in Section VII, C(b) the modifications do not resolve the inconsistencies set forth in Section VII, A, B and C, above, and (c) the modifications do not resolve the issues set forth in Section IX, below.

The suggested modifications also raise additional questions about Coastal Act and CEQA consistency, which cannot be resolved by reference to the Conservancy's submission. For example, the suggested modifications include provisions for locating support and other facilities within "previously disturbed

areas (where the habitat has not been illegally removed or degraded)." However, extensive support facilities are located on the Conservancy's Ramirez Property, all of which is designated ESHA, and a significant amount of that development involves illegal removal or degradation of habitat.

VIII

THE PWP INCLUDES NUMEROUS MIS-STATEMENTS ABOUT THE HISTORY OF THE CONSERVANCY'S UNLAWFUL USE AND DEVELOPMENT OF THE RAMIREZ PROPERTY, THE GOVERNING LEGAL PRINCIPLES, AND THE RULES WHICH APPLY TO DEVELOPMENT UNDER THE PWP.

A. Inaccurate History. The PWP is not limited to a plan for development (Pub. Res. Code, sec. 30605; 14 Cal. Code Regs., sec. 13353). It includes lengthy, inaccurate and self-serving discussions about the history of the Conservancy's use of its Ramirez Canyon Property. The history should either be stricken or corrected to reflect the facts. (See Exh. C, December 23, 2008 Letter from Fund to the Conservancy, Sec. II.)

B. The Conservancy's Claim of Immunity. The PWP erroneously states that the Conservancy is immune from land use regulation by the City of Malibu. (See discussion in Section II, A, II, B and VI, above.)

C. The Standards and Procedures That Apply to Development Under the PWP. The PWP mis-states the standards and procedures that will apply to future development under the PWP. (See Exh. M, August 23, 2010 Letter from Fund to the Conservancy, sec. IV, E.) Suggested Modification No. 47 corrects one significant mis-statement, i.e., concerning the provisions which govern amendments to public works plans. However, the PWP includes other, equally as significant mis-statements, particularly with respect to the notice procedures for NOIDs.

Public Resources Code section 30606 provides:

> Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university, shall notify the commission and other interested persons, organizations, and governmental agencies of the impending development and provide data to show that it is consistent with the certified public works plan or long-range development plan. No development shall take place within 30 working days after the notice. (Emphasis added.)

The Staff Report cites the highlighted portion of Section 30606. However, PWP section 4.1.1 omits the required notice. Instead, PWP Section 4.1.1 states only (a) that the NOID must include a "list of recipients of the NOID" and (b) that supporting information be sent to "persons and agencies requesting" the information. Those provisions are not consistent with Section 30606. This PWP has an impact on hundreds of parcels of private property (particularly in Ramirez Canyon (see FEIR App. MRA-8, Figure MRA-5a-1)). At a minimum, Section 30606 requires notice of impending development to the owner of any "affected parcel."

PWP, Section 4.1.5 purports to exclude certain developments from the NOID procedures. However, Section 30606 expressly states that a notice of impending development must be sent "prior to the commencement of any development pursuant to Section 30605" (emphasis added).

The Commission's Guidelines include detailed provisions which govern specific project review after the certification of a PWP (14 Cal. Code Regs., sec. 13359, et seq.). Section 13359 mandates that the agency pursuing the PWP must submit the information required by Section 13353. The "NOID Content" set forth in PWP, Section 4.1.1 does not include the information required by Section 13353. Suggested Modification No. 47 corrects the mis-statement that appears in another section of the PWP, but does not correct the mis-statement in PWP Section 4.1.1.

After the approval of a PWP by the Commission, the Commission may approve proposed projects only if "the proposed development is consistent with the certified public works plan." (14 Cal. Code Regs., sec. 13359, subd. (b).) The PWP includes a definition of "Development Consistency" (PWP, p. 4-1) which is not authorized by either the Coastal Act or the Commission's Regulations.

The PWP provides for approval of projects pursuant to NOID Content and Procedures (PWP, p. 4-1). However, as explained above, the PWP includes elements which may not lawfully be included in a PWP (e.g., offices, leasing for events, etc.). Those proposed uses are subject to Malibu's land use regulation.

Suggested Modification No. 46 requires clarification. This modification deleted a proposed PWP exception to the NOID procedure for development authorized by a CDP issued by the Commission prior to the certification of the PWP. Suggested Modification No. 46 deletes the excepton proposed by the PWP, but then states that "development that was previously authorized pursuant to a Coastal Development Permit and has commenced prior to CDP expiration is considered vested and should not be included in the NOID exclusion provision of the PWP." The development at the Conservancy's Ramirez Canyon Property which was conducted pursuant to CDP 4-98-334, is not "vested" because that CDP was declared invalid by the Ventura Superior Court. (*Pettitt v. City of Fresno, supra,* 34 Cal.App.3d 813.)

IX

THE PWP VIOLATES CEQA.

The Fund incorporates by reference Sections I through VII, above, and the following portions of the attached exhibits: Exh. A, October 11, 2010 Letter from R. Thompson to Commission; Exh. C, December 23, 2008 Letter from Fund to Commission, Attachment A, SAIC Report; Exh. E, June 5, 2009 Letter from Fund to Commission, secs. VII-XIII. The Fund also incorporates by reference all comments submitted by the Fund in relation to the PWP EIR, including the Fund's October 6, 2009 letter to the Conservancy regarding the PWP EIR Scope of Analysis, the Fund's March 22, 2010 letter to the Conservancy regarding comments on the DEIR, and the Fund's August 23, 2010 letter to Conservancy regarding comments on the proposed FEIR (see Exh. M, August 23, 2010 Letter from Fund to Conservancy, secs. II and IV). Many of these comments were not addressed by the Conservancy and have not been addressed in the Staff Report.

A. Procedural CEQA Issues.

1. **Inadequate Public Review Period and Insufficient Notice.** Public Resources Code section 21091 provides for a public review period for a draft environmental impact report of not less than thirty days. Section 21091 applies to EIR equivalents prepared pursuant to a certified regulatory program. (*Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689.) The Commission's publication of the Staff Report and the Commission's functionally equivalent

environmental review document, less than two weeks before the scheduled hearing on October 13, 2010, violates section 21091.

Notice of the PWP must be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing. (Pub. Res. Code, sec. 21080.5, subd. (d)(2)(F).) This requirement was not satisfied. According to the Staff Report, the Commission provided notice of the filing of the PWP to the City of Malibu on September 13, 2010 and, due to the large volume of pertinent documents, directed the City and the public to go find those documents on multiple websites. Then, on September 29, 2010, the Commission released a 250 page Staff Report proposing new modifications to the PWP. The public was not provided sufficient time to review and comment on either the Commission's new proposals or the large volume of documents upon which the Staff Report is based. Moreover, the Commission's decision to hold the meeting on the PWP in Oceanside, *120 miles from the project area*, undermines public trust and the Coastal Act mandate for maximum public participation.

2. **Failure to Respond to Comments**. By conducting an abbreviated public review period and providing insufficient notice, the Commission has left itself little time to prepare and include written responses to significant environmental points raised during the evaluation process. (See, e.g., Pub. Res. Code, sec. 21080.5, subd. (d)(2)(D) ["...final action on the proposed activity [shall] include the written responses of the issuing authority to significant environmental points raised during the evaluation process"].) As set forth below, significant environmental effects of the PWP were either not analyzed or were under-analyzed. Most of the significant adverse effects can be avoided or reduced. However, other significant adverse effects are unavoidable. The September 29, 2010 Staff Report, logically, cannot respond to public comments during the evaluation process because the Staff Report is the Commission's functionally equivalent EIR.

Contrary to statements in the Staff Report, the Commission did not "address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the Staff Report." (Staff Report, p. 175.) The Fund submitted a detailed comment letter to the Conservancy on August 23, 2010 (Exh. M), which addressed significant changes to the project and significant new information introduced after the close of the public review period. Neither the Conservancy nor the Commission has addressed the significant effects raised in the Fund's letter.

3. **Reliance on an Inadequate EIR.** Reliance on flawed environmental documents undermines the Commission's own findings and environmental review. The Commission's functionally equivalent EIR relies on the Malibu Public Access Enhance Plan – Public Works Plan Final Environmental Impact Report (SCH #:2009091018), certified by the Conservancy on August 23, 2010. The Fund filed a Complaint/Petition on September 24, 2010 challenging, *inter alia*, the adequacy of the FEIR and the findings adopted by the Conservancy in support of the PWP. The violations of CEQA set forth in the Petition/Complaint include project shifting, recirculation, failure to consider and adopt all feasible alternatives/mitigation measures and inadequate analysis of impacts to biological resources, land use, visual resources, hazards. The Petition seeks a peremptory writ of mandate directing the Conservancy to rescind its approvals and suspend processing of the PWP until the Conservancy has complied with CEQA. If the writ is granted, the Commission's action, which is based on the inadequate FEIR, will not stand. Accordingly, the Commission should defer any action on the PWP until the litigation is resolved.

B. **Substantive CEQA Issues**. A functionally equivalent EIR must analyze the "significant or potentially significant effects" that a project might have on the environment. (Title 14, Cal. Code of Regs. , sec. 15000 et seq. (Guidelines), sec. 15252(a)(2); *Western States Petroleum Ass'n v. South Coast Air Quality Mgmt. Dist.* (2006) 136 Cal.App.4th 1012, 1024; Pub. Res. Code, sec. 201080.5,

subd. (d)(2)(A)-(B).) The functionally equivalent EIR must also address cumulative effects. (*Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1393; *Environmental Protection Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 624.) The analysis must utilize scientific and other empirical evidence to support its conclusions. (See Kostka & Zischke, sec. 21.17, *citing Ebbetts II*, 43 Cal.4th 936; *Joy Road Area Forest & Watershed Assn. v. Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 677; *Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal.App.3d 1043, 1047.) A project cannot be approved unless all feasible alternatives or mitigation measures are imposed that would substantially lessen any significant adverse effect the activity may have on the environment. (Pub. Res. Code, sec. 21080.5, subd. (d)(2)(A).)

1. **The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects Because it Relies on a Legally Deficient EIR**. As noted above, the Commission's reliance on a legally deficient EIR undermines the Commission's findings regarding the environmental effect of the project. The FEIR and the Commission's Staff Report fail to adequately analyze impacts on, *inter alia*, ESHA, stream resources, native trees, land use, water quality, hazards, and visual qualities. The FEIR and the Commission's Staff Report also fail to address the cumulative effects of these project impacts. Without an adequate analysis of significant project effects, a reasoned analysis of alternatives and mitigation measures cannot be conducted and the required findings cannot be made.

2. **The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to ESHA.** The analysis of effects to ESHA is inadequate. Impacts on ESHA have been severely understated based on a legally flawed finding that designated ESHA is not ESHA, in violation of the Malibu LCP. ESHAs are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. (Malibu LUP, Policy 3.1.) ESHA are shown on the Malibu LUP ESHA Map. (*Id.*) Once ESHA is designated on the LUP ESHA Map, specific procedures must be followed to remove the designation, including discretionary review by the City of Malibu. (Malibu LUP, Policy 3.7.) Moreover, any area mapped as ESHA cannot be deprived of protection as ESHA on the basis that the area has been illegally removed or degraded. (Malibu LUP, Policy 3.6.)

a. **Access Roads/Parking Areas.** Areas adjacent to Ramirez Canyon Road, Via Acero and the proposed Kanan Dume parking areas are all designated ESHA on the Malibu LUP ESHA map. The PWP Draft EIR acknowledges this fact and confirms that non-resource dependent uses such as access roads and parking areas *would* impact ESHA. The Commission's analysis, based on the FEIR, reaches a different conclusion, i.e., that non-resource dependent uses *would not* impact ESHA because the improvement areas are not ESHA, despite their map designation. This conclusion is legally flawed because the City has not removed the designation, nor is there any evidence that the City was asked to remove the designation, in accordance with Malibu LUP Policy 3.7.

The substantive basis for the finding of an ESHA exemption is equally flawed. Despite the ESHA map designation and substantial evidence that sensitive vegetative communities are present, areas along access roads and parking areas are determined not to be ESHA because, under Malibu LUP, Policy 3.1, "[e]xisting, legally established ... fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA." There is no evidence that proposed improvement areas adjacent to Ramirez Canyon Road or within the Kanan Dume parking area are subject to existing, legally established fuel modification required by LACFD. Along Ramirez Canyon Road, the PWP provides for the removal of alleged "encroachments" to obtain full access road width and clearance standards. However, as explained above, there are no encroachments on Ramirez Canyon Road, and the reference to the existence of improvements strongly suggests that fuel modification areas do not presently exist along this ESHA corridor. Even if such conditions did exist,

the road widening would nevertheless increase these hypothetical, fuel modification areas, causing impacts in the expanded fuel modification zones.

The analysis is also flawed because (a) illegal uses are not a valid basis for depriving mapped ESHA of the ESHA protective policies and (b) a designated habitat area is protected regardless of its continued viability. For example, no evidence is presented to establish that any existing disturbance within the Kanan Dume parking areas is the result of legal use. Informal vehicle parking in designated ESHA is not a legally permitted use and cannot form the basis for an exemption from ESHA policies.

Had a proper analysis been conducted, the extent of ESHA that would likely be destroyed as a result of the Ramirez Canyon Road, Via Acero and Kanan Dume parking "improvements" is significant. The PWP proposes to widen the existing 12-20 foot Ramirez Canyon Road pavement to achieve clearance of 20-26 feet. LACFD fuel modification requirements may widen the impact area another 20-40 feet, for a potential maximum of 60-66 feet for the length of the road. This would effectively wipe out all designated ESHA along the road. Further, the conceptual design plans for the Ramirez Canyon Road widening clearly identify a significant stretch of the riparian and bottomland habitat that will be directly paved over.[5] Because access roads and parking are non-resource dependent uses, mitigation measures cannot be used to circumvent the strict limits on the uses permissible in ESHA. (*McAllister v. California Coastal Commission* (2009) 169 Cal.App.4th 912, 932-933, *citing Bolsa Chica Land Trust v. Superior Court, supra,* 71 Cal.App.4th 493, 507-508.) The access road and parking ESHA impacts must be fully analyzed.

b. Ramirez Property. The Conservancy's Ramirez Property is also mapped ESHA. (Staff Report, p. 116.) Nevertheless, the Commission finds that the existing development and fuel modification zones for existing developments are exempt from the ESHA definition. (*Id.*) As noted above, this unilateral conclusion violates Policy 3.7 of the Malibu LUP. Further, if any of the existing disturbed areas are associated with illegal uses or structures, then the exemption does not apply. The fact that residential structures and ancillary facilities may have been built prior to the adoption of the Coastal Act does not establish that they were otherwise legally permitted or that they were not illegally modified after their original construction. Moreover, the Commission's evaluation does not address the Conservancy's unpermitted conversion of what was a single family residence into an office park and event center with 54 parking spaces. These uses are not resource dependent uses and are not permitted in ESHA. (Malibu LUP, Policy 3.8.) These uses will also disturb the quiet setting in this rural, box canyon. Large events, with amplified music, bright lighting and loud busses shuttling guests to and from the property, all have the potential to impact wildlife movement and behavior. These potential effects require analysis.

c. Vehicle and Pedestrian Bridges. Vehicle bridges proposed on Ramirez Canyon Road and on the Conservancy's Ramirez Property will also significantly effect ESHA. The PWP proposes to replace an existing 10 foot wide wooden bridge on Ramirez Canyon Road just south of its intersection with Via Acero with a 25 foot wide steel bridge. Because the Commission's evaluation improperly treats the mapped ESHA as a legally disturbed fuel modification zone (i.e. not ESHA), the bridge construction ESHA impacts have not been analyzed.

The PWP also allows a minimum of 12 pedestrian trail bridges. However, as part of its consistency analysis, the Staff Report analyzes only 4 pedestrian trail bridges. Each bridge requires vehicle access, heavy equipment and construction of concrete abutments, all potentially impacting ESHA.

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[5] Other paving runs through "Grass and Herb Dominated Communities" and "Broad Leafed Upland Tree Dominated" habitat.

3. The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to Streams. Ramirez Canyon Creek is a blue-line riparian stream that runs through the Conservancy's Ramirez Property and down the length of Ramirez Canyon Road. The certified Malibu LCP expressly prohibits substantial stream alterations, except for specific and very limited purposes. Malibu LUP, Policy 3.32 provides in part:

> Channelizations or other substantial alterations of streams shall be prohibited except for: 1) necessary water supply projects where no feasible alternative exists; 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat.

Under the Malibu LCP, road widening is not permitted if it will substantially alter a stream. The Staff Report and FEIR provide no analysis of the impacts of the proposed Ramirez Canyon Road widening on Ramirez Canyon Creek. Moreover, substantial alteration to a natural stream for purposes of stream road crossings is prohibited unless there is no other feasible alternative to provide access to public recreation areas. (Malibu LUP, Policy 3.33.[6]) There is a feasible alternative to provide access, i.e., access from the Conservancy Property over the Lauber Property to Kanan Dume.

Widening the existing Arizona stream crossing on the Conservancy's Ramirez Property could also substantially alter the stream. The only reason the stream crossing is proposed to be widened is to accommodate the Conservancy's increased use of the Ramirez Property. The large busses, shuttles, vans and maintenance vehicles that will cross through the stream every day may substantially alter the stream. This potential effect must be analyzed.

4. The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to Native Trees. The analysis of Native Tree impacts is inadequate. As with ESHA, the analysis significantly underestimates the impacts of the proposed widening of Ramirez Canyon Road and Delaplane on adjacent Native Trees. The Commission Staff Report states:

> Very minor encroachments into California sycamore-coast live oak and coast live oak areas would result from the Ramirez Canyon Road widening improvements. These minor road widening encroachments would be limited to within disturbed areas already subject to fuel modification requirements associated with surrounding residential uses on both sides of the road. However, native trees are significant coastal resources that are afforded special protection under the Coastal Act and Malibu LCP. *According to a Native Tree Protection Plan (Dudek, August 2010) that was prepared for the project as part of the EIR, a maximum of five native coast live oak trees and two native black walnut trees adjacent to the existing road would likely require removal to widen the road.* Additionally, approximately 36 other native trees may be encroached upon as a result of the widening. (Staff Report, p. 154, emphasis added.)

The Native Tree Protection Plan relied upon by Commission staff is fundamentally flawed. Despite the proposal to remove all "encroachments" to achieve full clearance standards, the Tree Protection Plan conspicuously avoids surveying the clearance zones. The Tree Location Exhibit (App. A-3) depicts only the proposed paved areas as the "project development area" and ignores the clearance and fuel

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[6] Malibu LUP, Policy 3.33: "Alteration of natural streams for the purpose of stream road crossings shall be prohibited, except where the alteration is not substantial, there is no other feasible alternative to provide access to public recreation areas or development on legal parcels, and the alteration does not restrict movement of fish or other aquatic wildlife. Any other stream crossings shall be accomplished by bridging." Even if it is assumed that the LCP Override is valid, Policy 3.4.2.D.7(b)(iii) allows only "repair and maintenance" to Arizona stream crossings.

modification zones. Similarly, the conceptual road widening plans identify only trees that are directly impacted by the newly paved portions of the road. This narrowing of the Native Tree survey area for the road-widening is in stark contrast to the 20-foot-wide buffer used for park facilities and the 10-foot-wide buffer used along proposed trail alignments (both sides of trails). A rational, science based approach requires that the survey area for access roads include a similar buffer. Had a proper survey been conducted, direct and indirect impacts to Native Trees would dramatically increase along these tree-lined roads. As it stands, the FEIR identifies 24 coast live oak, 12 western sycamore, 4 alder and 3 black walnut that will be directly impacted by the road widening – 7 of which the FEIR states will need to be removed.

On Via Acero, the Staff Report again relies on the Tree Protection Plan. The report identifies the removal of a coast live oak and a white alder. However, as with Ramirez Canyon Road and Delaplane, the survey area only accounts for newly paved areas, not clearance or fuel modification zones. Even within the limited survey area, the Tree Location Exhibits identify a total of 5 trees (3 oaks and 2 alders) that will be direçtly impacted by the road widening. It is clear from the exhibits that at least 4 of these trees are located on the proposed development areas. Moreover, in many cases, *the exhibits show the development area running right through existing trees, without identifying the trees*. Reliance upon the FEIR's fundamentally flawed analysis renders without basis staff's conclusion that Native Tree impacts have been mitigated to the maximum extent feasible.

5. The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to Land Use. The analysis of land use effects is inadequate. The City of Malibu Land Use Plan (LUP) Policy 3.8 provides:

> "[ESHAs] shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas."

The Draft EIR released for public review and comment found that the project would have a Class 1, or significant and unavoidable, impact on land use because ESHA would be impacted for non-resource dependent uses.[7] This is consistent with the ESHA map and Malibu policies concerning ESHA designation. The FEIR analysis, for the first time and without adopting any new mitigation, found this same impact to be Class 2, or less than significant with mitigation. The rationale for this about-face is the FEIR's conclusion that the ESHA identified in the Draft EIR as being impacted by non-resource dependent uses is not ESHA. As explained above, there is no evidence to support the conclusion.

a. Ramirez Canyon Road/Delaplane. As previously discussed, the mapped ESHA (including riparian and bottomland habitat) in which Ramirez Canyon Road is located will be wiped out under the PWP road-widening. Nevertheless, neither the Staff Report nor the FEIR includes any discussion of the impacts of road widening impacts on ESHA. Both documents avoid the required analysis with a number of erroneous mis-statements.

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[7] According to the DEIR: "These improvements and associated impacts generally consist of development encroachment and/or fuel modification requirements for support facilities that are not defined as resource-dependent uses per the Coastal Act or City Local Coastal Program and include: 1) encroachment of parking areas and associated fuel modification proposed on Kanan Dume Road and emergency access road improvements for Via Acero, ... Though minor, these facility and fuel modification requirements do not constitute resource-dependent uses (as defined by Section 30240 of the Coastal Act and City of Malibu Local Coastal Program Policies 3.8, 3.9, and 5.69) and *would therefore result in impacts to environmentally sensitive habitat areas inconsistent with Section 30240 of the Coastal Act and City of Malibu Local Coastal Program Policies 3.8, 3.9, and 5.69.*" (Emphasis added)

The FEIR identifies the road-widening as "minor road improvements" within an existing and disturbed development footprint for which there are no other alternative locations which could accommodate the road widening improvements. There is no evidence to support the conclusion that the proposed road improvements are "minor." The improvements include (i) 12,000 square feet of new pavement over approximately one mile of road, (ii) 40 feet of clearance and fuel modification, and (iii) 20 feet of clearance "to the sky."

In an interesting twist, the FEIR concludes that the mapped ESHA is not actually ESHA, but then attempts to reassure that the road improvements are located and designed *so as not to impact ESHA.* (See App. B. Policy Consistency Analysis, pp. B-37, B-38.) The FEIR's flawed analysis consequently undermines the conclusions in the Staff Report.

Impacts to Native Trees are found to be "very minor encroachments." Even using the flawed FEIR survey, 43 Native Trees will be impacted by Ramirez Canyon Road/Delaplane widening. Adopting offsite mitigation is not a sufficient response where feasible alternatives and/or mitigation measures exist to reduce the impacts to Native Trees.

The Staff Report also ignores the fact that Ramirez Canyon Road is a private road which was built for residential purposes, not for institutional and commercial use. The Coastal Act requires that recreational opportunities shall be provided consistent with rights of private property owners (Pub. Res. Code, sec. 30210). As it stands, the PWP proposes a quasi-public use of an easement that is limited to private residential use. Accordingly, the Ramirez Canyon Road widening land use effects are significant and have not been fully analyzed or mitigated, all contrary to the proposed findings in the Staff Report.

b. Via Acero. Unlike the proposed Ramirez Canyon Road widening, the Staff Report purports to address the impacts of the proposed Via Acero expansion on ESHA. The analysis is inadequate for the following reasons:

The Staff Report identifies .17 acre of California sagebrush scrub vegetation that would be impacted, but avoids any discussion of that impact by citing to residential development that "appears to have commenced" that would require a residential property owner to widen Via Acero to 20 feet from Ramirez Canyon Road to his property line. Without evidence of any "existing development," staff takes the "existing development" into account and reduces the impacts to .04 acre, which the Staff Report states "does not meet the Coastal Act or Malibu LCP definition of ESHA." Even if staff's summary is taken at face value, the Commission does not have unilateral authority to un-designate mapped ESHA without complying with the Malibu LCP. As a non-resource dependent use impacting ESHA, the proposed Via Acero access road conflicts with LUP Policy 3.8 and results in a Class 1 impact.

In addition, the CDP to which the Staff Report refers did not include any specific plans for the required road improvement to Via Acero, and there is no evidence that the Fire Department has approved any specific plans for the road improvements. As noted above, LACFD has commented that the slopes on Via Acero exceed the allowable limits. Moreover, the CDP to which the Staff Report refers does not include any condition that the property owner connect Via Acero to Kanan Dume.

For these reasons, the Commission is not entitled to rely on another's hypothetical road improvements and simultaneously find that "improvements have been sited and designed to minimize grading and impacts to sensitive coastal resources to the maximum extent feasible" and consistent with the Malibu LCP and Coastal Act.

c. **Kanan Dume Parking**. The Staff Report acknowledges encroachments into bigpod ceanothus chaparral, but concludes that the encroachments are not significant because they are within the existing Kanan Dume roadside corridor that would already be subject to vegetation management and fuel modification requirements typical for public roads and/or existing parking areas. Based on these statements, the Staff Report finds that the areas of encroachment are not ESHA. Again, even if the underlying analysis were correct (i.e., that the existing parking is a legal use and the encroachment areas are subject to existing, legal fuel modification) the Commission cannot unilaterally un-designate mapped ESHA.

6. **The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to Water Quality.** The analysis of water quality impacts is inadequate. Water quality within the coastal zone is protected by policies that control stormwater runoff and limit expansion of impervious surfaces. (See Malibu LUP, Policies 3.95-3.123.) Under Malibu LUP, Policy 3.96, "[n]ew development shall not result in the degradation of the water quality of . . . coastal streams. . . . Urban runoff pollutants shall not be discharged or deposited such that they adversely impact coastal streams . . .." Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern that may result in significant impacts from site runoff from impervious surfaces. (Malibu LUP, Policy 3.97.) Moreover, post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate. (Malibu LUP, Policy 3.99.)

a. **Ramirez Canyon Road**. The widening of Ramirez Canyon Road (a non-resource dependent use) for office use and for special events will significantly impact the quality of Ramirez Creek, a blue line stream feeding into the Santa Monica Bay. Expanding the paved portion of the Road to a width of 20 feet will add over *9,000 sq. ft. of new pavement, some of which is along the stream and some of which is in the stream.* These figures do not account for the additional road widening to 26 feet for 50 feet on either side of fire hydrants.

The PWP will allow an unspecified number of large busses, shuttles vans and maintenance vehicles to utilize the expanded roadway. Although these vehicles have yet to be identified with any specificity (see discussion above), there is no doubt that they will bring oil, grease, hydrolic fluid and particulates into this riparian corridor. The expanded impervious surface may also result in increased stormwater runoff into Ramirez Creek and then on to the Santa Monica Bay. None of these potential impacts are addressed in either the Staff Report or the FEIR.

b. **Ramirez Property.** Large special events at the Conservancy's Ramirez Property may overwhelm existing wastewater systems and cause harmful discharges into the watershed, ESHA and Ramirez Canyon Creek. The Staff Report states:

> At Ramirez Canyon Park, the [Conservancy] previously installed an advanced wastewater treatment and recycled water system which currently serves the park uses. The Plan includes connections to this existing system for all new restrooms at Ramirez Canyon Park. *The existing system has been sized and designed to process the effluent from uses accommodating up to 200 people.* Should any use or combination of uses at the park result in a capacity of visitors exceeding 200 people at any one time, temporary, portable restrooms are proposed to supplement the treatment capacity of the wastewater treatment system. Therefore, the proposed Plan will not result in any new wastewater discharge. Policies have been included in the PWP to ensure this, including a Water Quality Monitoring Program that includes provisions for quarterly analysis of water samples up- and down-stream of the site. (Staff Report, p. 121, emphasis added.)

The PWP calls for special events of 200 people plus staff of 50 people. Therefore, every large special event will exceed the design capacity of the existing treatment system. At full capacity, there is no

enforceable measure that ensures that portable toilets will be used when "regular" bathrooms are available. Overflow of waste water not only poses unacceptable on-site health risks, but overflow may enter ESHA and Ramirez Creek. Further, new sewer lines and utility pipes connecting the new restrooms to the treatment system are prone to crack, break and leak, particularly in a wooded setting. Such leaks can go undetected while the untreated waste seeps into the ground and makes its way to Ramirez Creek. By proposing a new sewer line that travels under Ramirez Creek, the PWP increases the potential of the un-analyzed significant water quality effects.

7. **The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects re Hazards.** The analysis of hazardous effects on Ramirez Canyon is inadequate. The dramatic intensification of uses in this box canyon, which is designated a Very High Fire Hazard Severity Zone, creates unacceptable and avoidable risks. Increasing traffic along Ramirez Canyon Road and dramatically intensifying the use of the Conservancy's Ramirez Property creates a significant fire hazard, even with mitigation.

Neither the Staff Rreport nor the FEIR considers or analyzes the risk of a fire on the Conservancy property that would require evacuation of staff and visitors to the Conservancy *as well as local residents* along Ramirez Canyon Road -- potentially at the same time fire safety personnel are using Ramirez Canyon Road. This impact must be analyzed.

The Staff Report identifies a condition that requires emergency power generators and a fuel supply to be maintained at the Ramirez Property, sufficient to maintain emergency lighting for at least 12 hours. There is no discussion of the type of fuel that will be used or where the fuel will be stored. There is also no discussion of what precautions will be taken to prevent an accidental release or fire hazard, and no discussion of the impact of an explosion of the fuel supply in the event of a wildfire.

8. **The Functionally Equivalent EIR Fails to Address All Potentially Significant Effects to Visual Qualities.** Under the Coastal Act and Malibu LCP, visual qualities shall be protected and permitted development shall be sited and designed to be visually compatible with the character of surrounding areas. (Pub. Res. Code, sec. 30251.) Neither the Staff Report nor the FEIR includes any analysis of the visual impacts of the proposed widening of Ramirez Canyon Road or Via Acero. For both roads, the project proposes to transform a 12 to 20 foot wide rural canyon road into a 46 to 66 foot wide modern subdivision road. On Ramirez Canyon Road, the entrance gate will be replaced, bridges will be widened, retaining walls constructed and existing trees and overhanging branches will be removed or significantly trimmed. The widening of both roads will significantly alter both the design of the roads and the visual character of Ramirez Canyon.

9. **The Analysis Fails to Analyze All Feasible Alternatives/Mitigation.** The Staff Report finds that there are no other feasible alternatives or mitigation measures that would further lessen the significant adverse effect that the approval of the PWP would have on the environment. As documented in this letter, the Staff Report and FEIR fail to document the effects of various project components on ESHA, Streams, Native Trees, Land Use, Water Quality, Hazards and Visual Qualities. The Staff Report and FEIR also fail to document the cumulative effects of the PWP, which is a prerequisite to a reasoned analysis of feasible alternatives and mitigation measures. The majority of identified significant effects can be mitigated by requiring *primary, exclusive access* to the Conservancy's Ramirez Canyon Property over the Lauber property to Kanan Dume and utilizing Ramirez Canyon Road as an emergency, secondary access road. As set forth in the letter from biologist Rosemary Thompson, submitted concurrently (Exh. A), primary access over the Lauber property is the environmentally superior alternative/mitigation measure. Not only will this alternative

reduce the significant effects of the proposed PWP, it will enhance access by providing a direct connection from the Property to a public road. The Lauber access has been deemed potentially feasible and there is no evidence to support a finding that the alternative is not feasible.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK, by:

Steven A. Amerikaner

Diane M. Matsinger

cc: Richard Mullen, President, Ramirez Canyon Preservation Fund
Christi Hogin, Malibu City Attorney
Jack Ainsworth, Deputy Director, South Central District, California Coastal Commission
Deanna Christensen, Coastal Program Analyst, California Coastal Commission

Exhibits:

Exh. A: October 11, 2010 Letter from Rosemary Thompson, PhD., Senior Consultant, ENTRIX

Exh. B: June 30, 2006 Letter from California Coastal Commission to the Conservancy re Draft Public Works Plan

Exh. C: December 23, 2008 Letter from Fund to Commission re Override with enclosures

Exh. D: January 6, 2009 Letter from Fund to Commission re City LCPA with enclosures

Exh. E: June 5, 2009 Letter from Fund to California Coastal Commission regarding LCPA 1-08 with enclosures: Letter to Commission from Chief P. Michael Freeman, dated June 2, 2009; Letter to Commission from State Fire Marshal Kate Dargan, dated June 2, 2009

Exh. F: Briefing Paper: The Adverse Impacts of the Conservancy's Application to Override the City of Malibu's Local Coastal Plan and Intensively Develop Properties in the Malibu Foothills, May 2009

Exh. G: Ramirez Canyon Road Traffic Trip Calculations, December 2008

Exh. H: A Compelling Precedent, Brazil Ranch (Big Sur)

Exh. I: A Brief History of Alternative Access Across the Lauber Property

Exh. J: History of Unpermitted Development on the Conservancy's Ramirez Canyon Property

Exh. K: July 20, 2009 Letter from Richard Mullen to the Conservancy regarding Ramirez Canyon Road

Exhs. L: Conservancy Grant Deeds

Exh. M: August 23, 2010 Letter from Fund to Conservancy, Comments on Proposed Public Works Plan and Final EIR

Exh. N: Standstill Agreement

SB 560230 v1:011142.0011

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BY E-MAIL AND HAND DELIVERY

October 11, 2010

Honorable Chair Neely and Members of the California Coastal Commission
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

RE: Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority Malibu Parks Public Access Enhancement Public Works Plan FEIR
Agenda Item 7A, Commission Meeting of October 13, 2010

Dear Chair Neely and Members of the Commission:

This letter is submitted on behalf of the Ramirez Canyon Preservation Fund (Fund).

On August 23, 2010, the Santa Monica Mountains Conservancy (SMMC or Conservancy) and the Mountains Recreation and Conservation Authority (MRCA) approved a Public Works Plan for submission to the California Coastal Commission. At the same time, both agencies certified a Final Environmental Impact Report (FEIR) for the Public Works Plan (PWP).

The Coastal Commission provided a comment letter on the Draft EIR dated April 13, 2010. The Fund also submitted a comment letter dated March 22, 2010. I have reviewed the Commissionôs comment letter, the Fundôs comment letter, the FEIR, including the various studies and reports relating to the projectôs biological impacts, and the Commissionôs September 29, 2010 staff report. The purpose of this letter is to offer comments and conclusions on the Plan and the EIR with specific regard to road access to the Conservancyôs Ramirez Canyon Property, with as much detail as possible given the very limited time available.

In my opinion, the FEIR does not adequately respond to the comments offered by either the Coastal Commission or the Fund on the Draft EIR. In addition, the FEIR is fatally flawed as a result of significant errors and omissions and is not an adequate environmental analysis upon which the Coastal Commission can base a decision regarding the PWP. Finally, I believe the PWP as approved by SMMC and MRCA is inconsistent with core policies of the Coastal Act and the Malibu LCP relating to protection of coastal resources.

With specific reference to the analysis of biological impacts related to road access to the Conservancyôs Ramirez Canyon property:

1. Impacts resulting from fuel modification zones up to 20 feet wide on each side of all fire access roads have not been analyzed. This includes areas within and adjacent to ESHA.

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2. Impacts to native trees along Ramirez Canyon Road/Delaplane Road are not consistently evaluated among the project alternatives.

3. The analysis of alternative access routes to the Conservancyôs Ramirez Canyon property does not accurately and thoroughly evaluate all feasible alternatives.

My Qualifications

I am a biologist who has been conducting environmental impact analyses for over 35 years in southern California as well as throughout the U.S. I have managed entire documents as well as prepared the biological resources section of numerous CEQA documents, including Environmental Impact Reports (EIRs) and Mitigated Negative Declarations (MNDs), for many types of projects. I visited the Lauber property, Via Acero, and Delaplane/Ramirez Canyon roads in the fall of 2008 so am familiar with the biological resources present.

Comparison of Approved Project (Via Acero/Ramirez Canyon/Delaplane Roads) versus Lauber Road Alternative

The project approved by the SMMC/MRCA (entitled the ñModified Redesign Alternativeò or MRA) includes widening of Ramirez Canyon/Delaplane roads for use as the primary access to the Conservancyôs Ramirez Canyon property and widening/extension of Via Acero Road for use as a secondary access. The Commission staff recommends a modification to specify that improvements to Via Acero would only be constructed if demonstrated to be ñfeasible and necessary.ò However, from an environmental standpoint, the impacts of the road must be fully considered in your evaluation of the PWP and you must also consider feasible alternatives that would result in reduced environmental impacts. In its DEIR comment letter, the Fund suggested an alternative route: construction of a new access road over the Lauber property (ñLauber Roadò) for use as the primary access to SMMCôs property. Under this alternative, Ramirez Canyon Road would be used as a secondary emergency access road only and would not be widened, and Via Acero would remain unchanged.

The SMMC/MRCA evaluated construction of a fire access road on the Lauber property as an alternative in the DEIR (see 2002 LCP and Redesign alternatives). Both the Commissionôs and the Fundôs DEIR comment letters identified gaps in the analysis of the Lauber Road alternative and requested additional information. The SMMC/MRCA did not provide the requested information in the FEIR with no explanation as to the reason for its omission. The SMMC/MRCA August 23, 2010 staff report indicated that the SMMC was not able to gain access to the property to conduct further on site evaluation. However, it goes on to state that ñat the time the DEIR was circulated, Lauber Road as an alternative secondary access road was potentially feasible as required by State CEQA Guideline 15126.6 9 (and may still be fully feasible pending access to conduct the necessary studies)ò (SMMC Staff Report, Aug. 23, 2010 Hearing, page 14, note 2). The staff report further states, ñThe Conservancy and MRCA staffs have done technical analysis on the feasibility of the Lauber Road but have not determined the cost necessary for construction and maintenanceò (*Id.*, page 15).

The FEIR clearly indicates that construction of all of the contemplated fire access improvements necessary to provide safe public access to the Conservancyôs Ramirez Canyon property will have impacts on sensitive biological resources. The Coastal Act requires the balancing of public safety, coastal access, and protection of sensitive coastal resources. Further the Act mandates that when a policy conflict exists the conflict shall be resolved ñin a manner which on balance is the most protective of significant coastal resourcesò (PRC §30007.5). The SMMC stated that the Lauber access is technically feasible. Therefore,

this alternative must be fully evaluated and compared to the approved project to determine which is the most protective of coastal resources.

Gaps and Errors in the FEIR Access Road Analysis

In order to fulfill its purpose as an informational document, the FEIR should include an objective and complete evaluation of the biological impacts of access to the Conservancyôs Ramirez Canyon property for the proposed project (MRA) as compared with the Lauber access alternative, or provide a defensible rationale as to why this alternative would not be feasible. Unfortunately, the FEIR does not do so. The Lauber Road alternative access was included in the 2002 LCP and Redesign alternatives with a minimal and inadequate analysis in the DEIR. No corrections or improvements were made to the analysis in the FEIR. In addition, the FEIR substantially understates the biological impacts of the approved project and has many internal inconsistencies and errors. These include but are not limited to the following:

Error #1. The FEIR's biological impact analysis approved by SMMC substantially understates the biological impacts of the Plan because it does not take into account the fuel clearance requirement imposed by the Fire Department.

Because Ramirez Canyon is located in the Very High Fire Hazard Severity Zone, the Los Angeles County Fire Department (LACFD) will impose brush clearance requirements on all fire access roads. In a comment letter on the DEIR, the Fire Department stated:

> òAccess roads shall be maintained with a minimum of 10 feet of brush clearance on each side or as determined by the Forestry Division of the Fire Departmentò (County of Los Angeles Fire Department letter, dated April 21, 2010, p. 5).

SMMC incorporated this fire safety requirement into the PWP and in fact, proposes to increase brush clearance areas to 20 feet on each side of access roads in most areas, with possible reductions to 10 feet in ESHA (FEIR Appendix MRA-1, p. MRA-16). The Public Works Plan includes a Fire Protection Plan (FPP, incorporated by reference into the PWP and included as Appendix MRA-5 of the FEIR).

However, neither the figures depicting the proposed access routes in the FPP, nor the biological impact figures identify the required fuel modification areas around access roads within the plan area. Further, the text describing the biological analysis includes no indication that impacts resulting from fuel modification adjacent to access roads were considered in the analysis.

The required fuel clearance (i.e., ongoing, routine vegetation removal) will occur in part within ESHA, including riparian ESHA along Ramirez Canyon Road, and will result in direct, permanent impacts to sensitive vegetation communities. In coastal scrub (ESHA) such as that along portions of Via Acero, the routine removal of shrubs would eventually convert the habitat to non-native grasses and weedy species (non-ESHA). Thus, the FEIR substantially understates the biological impacts of fuel clearance that would occur as a result of PWP implementation.

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Error #2. The FEIR and PWP include conflicting information regarding the scope of fuel clearance and misstate the requirements of Los Angeles County Fire Code Section 317.10. As a result, the environmental analysis is inadequate.

The FPP includes the requirement that flammable growth be cleared and removed ñfor a minimum of 20 feet on each side of Fire Access Roads ([Los Angeles County] Fire Code Section 317.10) or to property or easement line; Ramirez Canyon Road vegetation will be trimmed back, if requiredò (Appendix MRA-5, p. 69). However, Los Angeles County Fire Code Section 317.10[1] requires a minimum of 10 feet of flammable vegetation clearance on each side of every roadway, whether public or private. Thus, per the Fire Code, fuel clearance along all fire access roads within the plan area would result in cleared areas a minimum of 40 feet wide (assuming a minimum 20-foot road width) regardless of the location of property and easement lines. If Ramirez Canyon Road is used as a fire access road, this standard will apply. As such, the FEIR understates the actual amount of fire clearance that would be required by the Fire Code and in any case, as stated above, fails to evaluate the impacts of any vegetation clearance along access roads within the plan area.

Furthermore, the definition of which species are considered flammable are not described. The method of removal (herbicides, mowing, hand clearing only of specific plants, etc) is not described. Without a clear and consistent description of the standard that will be applied and figures and analysis that reflect these standards, it is impossible to determine the extent of the impacts.

Error #3. The FEIR does not evaluate the biological impacts of fuel breaks created around grading, site work and other construction activities in areas where there is flammable vegetation.

The project description indicates that such fuel breaks will be created (FEIR Appendix MRA-1, p. MRA-16); however, the biological study areas and analysis do not account for them. Such fuel breaks could result in significant impacts to biological resources where work is occurring in or near ESHA such as the proposed access improvements for extension of Via Acero as well as along Ramirez Canyon Road and within the Conservancyôs Ramirez property. As such, the biological impacts are understated by this omission.

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[1] Los Angeles County Fire Code Sec. 317.10 states in full: ñRoadway clearance. The fire code official or commissioner may require removal and clearance of all flammable vegetation or other combustible growth for a minimum of 10 feet on each side of every roadway, whether public or private. The fire code official or commissioner may enter upon private property to inspect, remove and clear vegetation and growth as required by this section and may charge the responsible party for the cost of such action. This section shall not apply to single specimens of trees, ornamental shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground cover, provided that they do not form a means of readily transmitting fire. As used in this section, ñroadwayò means that portion of a highway or private street improved, designed, or ordinarily used for vehicular travel. The minimum clearance of 10 feet may be increased if the fire code official determines additional distance is required to provide reasonable fire safety. (Ord. 2007-0112 § 20 (part), 2007)ò

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<u>Error #4.</u> The FEIR's biological impact analysis is internally inconsistent concerning the widening of Ramirez Canyon Road and its impact on sensitive resources.

The FEIR states, ñProposed widening/removal of encroachments along Delaplane Road/Ramirez Canyon Road would occur in existing developed/disturbed areas along the road shoulder and would not impact sensitive vegetation communitiesò (FEIR, Sec. 5.4, p. 5.4-86). However, this statement is contradicted by the information contained in Tables 5.4-10, 5.4-11, and 5.4-12 and Figures BIO-5c and BIO-5d which indicate direct, permanent impacts to ESHA and native trees. The text goes on to describe other indirect impacts to these resources. Additionally, Figure BIO-5c shows ñProposed Facilitiesò associated with Ramirez Canyon Road widening within mapped Coast Live Oak habitat. However, impacts to this area are not accounted for in the analysis.

Additionally, the text on page 16 of the FEIR Native Tree Protection Plan (NTPP, Appendix MRA-10) indicates up to four native trees would be removed as a result of Ramirez Canyon Road widening for the MRA. However, this is in direct conflict with Table 7 on the following page which indicates seven native trees would be removed.

<u>Error #5.</u> The native tree impact analysis for Delaplane/Ramirez Canyon road widening includes numerous errors.

As described in the EIR, a number of trees are present along Delaplane/Ramirez Canyon roads, and some of those are native trees. The analysis of impacts to those native trees for each alternative, however, is inaccurate in both the Draft and Final EIR. This does not allow an assessment of actual impacts that could occur or a proper comparison of alternatives. Some of the inaccuracies are:

1. **Inconsistency between figures and tables**. Tables 7 and 8 in the NTPP do not reflect what is shown in Figures A-2 and A-3 for numbers of trees present along the roadway. For example, the figures show 19 oak trees while Tables 7 and 8 indicate there is a total of 28. No alders are shown along the roadway but four are listed as directly affected and one indirectly affected, and the sycamore and black walnut numbers also do not match the number of trees shown in the figures. These discrepancies need to be corrected and the number of native trees affected and those to be removed accurately assessed. . In addition, the 2002 LCP and Redesign Alternatives have the same road improvements shown in Figures 8.2-1c & d and 8.2-2c & d; however, Tables 15-6 and 15-28 show two more sycamore trees affected by the Redesign Alternative than by the 2002 LCP Alternative. Table 7 in the NTPP indicates no sycamore trees would be removed as a result of Ramirez Canyon Road widening, but the civil plans (Appendix MRA-3, Figure MRA-39) specifically calls out removal of one sycamore tree at the bridge widening. The civil plans also fail to show the removal of the black walnut trees and some of the coast live oak trees identified in Table 7 as trees to be removed.

2. **Mapping errors**. In several cases, the labels for trees on the tree location figures in the NTPP (Appendix MRA-1, Figures A-2 and A-3) are not present or labels are present but no trees are there. This prevents a comparison with Table B of the NTPP to determine which trees are to be removed.

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<u>Error #6.</u> The mitigation proposed for native tree impacts resulting from Delaplane/Ramirez Canyon road widening would be ineffective or infeasible.

Mitigation for trees removed along Delaplane/Ramirez Canyon roads is inadequately discussed. The Biological Concept Mitigation/Restoration Plan states that willow scrub and sycamore-coast live oak habitat impacts are to be mitigated completely off site. Impacts to these plant communities in Ramirez Canyon would be mitigated at King Gillette Ranch (KGR). This implies that none of the native trees removed along Delaplane/Ramirez Canyon roads would be replaced on site. However, the NTPP, in Section 6 (p. 22), states that ñ[a]ny tree requiring removal will be mitigated with 10:1 tree planting at on-site locationsò, with no definition of where ñon siteò is located. The number of native trees to be removed for Ramirez Canyon Road widening, based on Table 7 in the NTPP, would be seven, resulting in the need to plant 70 trees. Given fuel clearance requirements along Ramirez Canyon Road, it is unlikely that these trees could be planted there. Figure 7A shows restoration sites within the Conservancyôs Ramirez Canyon property, and it could be assumed that the trees would be planted there. This could be construed as ñon site,ò but would not replace the ecological function of the trees at the locations where they were removed (see following).

The NTPP does not specify how many of the non-native trees would be removed along Delaplane/Ramirez Canyon roads which prevents an assessment of the total effect of tree canopy and wildlife habitat loss. Further, the Los Angeles County Fire Code requires fire access roads to have ña minimum unobstructed width of 20 feet, clear-to-sky or provide a minimum vertical clearance of 13ô6ò under protected tree speciesò (Los Angeles County Fire Department letter dated April 21, 2010, FEIR Sec. 16.3, letter DDD). This will result in a significant, permanent loss of tree canopy along the length of Delaplane/Ramirez Canyon roads, <u>which will significantly impact the biology and ecology of the area</u>. The oak trees, in particular, provide food (e.g., acorns and insects) for a variety of wildlife as well as roosting and nesting habitat for birds. Removal or trimming of trees along this roadway, even if they are replaced elsewhere, would alter the local ecology. In addition to the food and habitat effects, loss of tree canopy (both native and non-native) would allow more sunlight to reach the ground. This would change soil temperature and moisture regimes that could adversely affect the remaining trees (native and non-native) as well as understory plants. Of particular concern would be effects on remaining native trees that were stressed by construction activity within their root zones.

It is possible that some native trees could be planted along the roadway for mitigation, but such planting would be on private property and would need approval of the landowner as well as an agreement or deed restriction to ensure that the trees would remain in order for the mitigation to be valid.

Further, MM BIO-13.1 requires monitoring and replacement at 10:1 for trees that die or decline in health within ten years after construction. The measure does not say where the replacement trees would be planted. As noted above, that many new trees are unlikely to be planted along the roadway, so even more of the tree canopy could be lost in the future as a result of the project. Even if the new trees were planted there, it would take decades for oak trees to reach similar size and ecological function.

Roadwork would occur within the dripline of native trees so that MM BIO-13.2, 13.3, 13.7, and 14 should be implemented. However, these measures, which call for fencing to the edge of the dripline and the use of hand tools for grading or excavation that encroaches in the protected zone, are not feasible for road construction because driplines extend into the road and proposed widening areas and road construction requires heavy equipment and cannot be completed with hand tools.

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<u>Error #7.</u> Direct impacts to ESHA and native trees resulting from the extension and widening of Via Acero Road are incorrectly stated and internally inconsistent.

The FEIR includes the following description of the biological impacts of the Via Acero Road improvements under the MRA as compared to the proposed Plan:

> ñ**Via Acero Road Improvements.** Improvements to Via Acero Road would result in direct impacts to 1.28 acres of vegetation communities/land covers under the MRA, compared to 1.01 acres of vegetation communities/land covers under the proposed Plan. Therefore, there would be an increase in impacts by 0.27 acres from the proposed Plan, and no native trees or ESHA would be directly impacted at this location. Three native trees would be impacted; this represents an increase in direct impacts by 1 tree as compared to the proposed project.ò (FEIR Sec. 15.0, pp. 15-83 to 15-84)

The paragraph is internally inconsistent in that the second sentence states there would be no direct impacts to native trees and the third states that three native trees would be directly impacted. Further, the statement above indicates there would be no impacts to ESHA. No explanation is provided as to how the total area of directly impacted vegetation increased by 0.27 acre while direct impacts to ESHA went from 0.24 acre under the proposed Plan (FEIR Sec. 5.4, Table 5.4-11) to zero under the MRA. Given that the location of the road did not change and the area of disturbance increased from the proposed Plan to the MRA, this appears to be an erroneous statement. Furthermore, the statement on page 15.0-14 of the FEIR that more paving is needed for the MRA than the proposed Plan to meet minimum grade and width requirements implies that the proposed Plan would not have met those requirements. As such, the extent of direct impacts to ESHA that would result from the construction of Via Acero Road is unclear. Further, no discussion is included regarding if/how cut slopes and graded areas outside the paved area (as shown in MRA Figure BIO-5b) would be restored. The Commissionôs staff report provides different findings related to ESHA impacts associated with improvements to Via Acero. However, there is no evidence to support these findings. Therefore, this analysis uses the information contained in the FEIR.

<u>Error #8.</u> The FEIR's biological impact analysis does not take into account the avoided biological impacts resulting from using the Lauber property for access, and thus not building two homes on the two existing pads on the property.

In its DEIR comment letter, the Commission recommended a quantitative comparison between the biological impacts associated with road development and residential development. The SMMC ignored this recommendation with no explanation as to why it was disregarded.

The Lauber property consists of three parcels which can be developed for residential use. If the Conservancy purchased the two eastern parcels of the Lauber property to use for a fire access road and parking for its Ramirez Canyon property, the biological impacts associated with residential development on those two parcels would be avoided.[2] In order to fully evaluate the environmental impacts of the Lauber access alternative, it is necessary to quantify (1) the biological impacts associated with road development as compared to residential development and (2) the area that would be available for on-site mitigation of biological impacts of the PWP.

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[2]An access easement over the westernmost Lauber parcel is already held in favor of the eastern parcels such that it would not be necessary for the Conservancy to purchase this property.

The Lauber property is zoned Residential Agriculture (R-A-1) by Los Angeles County. Assuming 70 percent of the two eastern parcels remained in open space and 30 percent was developed with residential uses, consistent with Los Angeles County hillside management standards, the total area of development would be 5.4 acres (18 ac x 0.30). Further assuming that areas that are already disturbed or contain non-sensitive vegetation (2.5 ac) would be developed before encroaching into ESHA, residential development would result in approximately 2.9 acres of new impacts to ESHA. By comparison, construction of an access road and parking as depicted in Alternative 2 of the FEIR would result in 1.59 acres of direct impacts to ESHA according to the FEIR.[3]

The two eastern parcels of the Lauber property include approximately 2.5 acres of area classified as developed, ruderal, or non-sensitive vegetation according to FEIR Figure 8.2-1b and 8.2-1c. Subtracting the area of developed, ruderal, and non-sensitive vegetation on these two parcels that would be used for the fire access road, parking, and associated fuel clearance (approximately 1.5 acres), there would remain approximately one acre of land available for on-site biological impact mitigation. (See Exhibit B for details regarding the assumptions used for these calculations.)

Error #9. The analysis of the Lauber access alternative is inadequate.

Table 15-7 (Lauber Property/West Ramirez Canyon, Summary of Impacts to Vegetation Communities Under 2002 LCP) lists permanent impacts to vegetation under ñparkingò including impacts to coastal sage scrub and disturbed scrub, while Figure 8.2-1b shows parking only to be in grassland and disturbed areas with a very small amount of coyote brush scrub in the fuel modification buffer for parking along Kanan Dume Road. Therefore, it can be assumed that the shrubland permanent impacts of 1.57 acres are for the 20-foot wide access road to Ramirez Canyon Road. The 1.57 acres would equal a 20-foot wide road plus a 12.5-foot buffer on each side for a road that is 1,500 feet long (estimated length in shrubland from Figure 8.2-1b). A permanent vegetation loss of 0.7 acre would occur under the road (20 feet x 1,500 feet). Since the shrubland is ESHA, I have assumed the fuel modification buffer would be the minimum of 10 feet on each side, resulting in a permanent disturbance to 0.7 acre, but the ñproposed facilityò corridor on the figure does not include this. Based on the figure, additional areas disturbed during construction would occur outside the road pavement footprint, and that area could be restored. The impact to 0.02 acre of coast live oak listed in the FEIR would be for road construction potentially under the canopy of oak trees at the road connection to Ramirez Canyon Road. However, the tree location map in the DEIR NTPP (Figure A-3) does not show any oak trees adjacent to where the new road would be. The impact analysis on page 15-28 says no trees would be directly affected, which is correct. A more detailed impact analysis is needed in order to compare the effects of Lauber Road to those of Via Acero plus Delaplane/Ramirez Canyon roads. Such an analysis does not require access to the site as stated in the SMMC/MRCA August 23, 2010 staff report.

[3]The FEIR indicates 1.59 acres of ESHA impacts on the Lauber property. Taking the area of new paving plus fuel clearance in ESHA per FEIR Figures 8.2-1b and 8.2-1c shows only approximately 1.4 acres of ESHA would be permanently impacted. The discrepancy may exist because the FEIR analysis included areas to be graded outside of the road and fuel clearance areas. Since these areas can be restored following completion of construction, they would not be permanently impacted. However, to be conservative in this analysis, the larger amount was assumed.

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With the Errors Corrected, a Comparison of the Approved Project with the Lauber Alternative Plainly Shows that Lauber is Environmentally Superior

Correcting for the errors identified above, a direct comparison of the approved access and the Lauber Road alternative shows that the Lauber alternative is the environmentally superior alternative. The summary table below provides a comparison of the biological impact of these two scenarios. A detailed table with FEIR citations and an explanation of all assumptions in this comparison is attached as Exhibit B.

	Approved Access (Ramirez Canyon Road & Via Acero Road)	**Lauber Property Alternative**
Direct Impacts to Native Trees[1]	46 (9)	0 (0)
Indirect Impacts to Native Trees	10	0
Direct Impacts to Sensitive Vegetation	Ó0.28 ac	1.59 ac
Direct Impacts to Non-Sensitive Vegetation	Ó1.29 ac	<1.10 ac
Area available on-site for biological impact mitigation[2]	None	2.2 ac

1. Native trees removed are in parentheses and are included in the total number presented
2. Estimated area for on-site mitigation includes graded and non-sensitive vegetation areas adjacent to Kanan Dume Road, excluding proposed parking area and access road areas with 20-foot fuel clearance buffer.

Conclusion

Given the errors, omissions, and inaccuracies of the biological analysis contained in the FEIR for the Public Works Plan, it is my professional opinion that an independent biological assessment is necessary to determine the actual impact of the proposed plan (MRA) and alternatives.

Thank you for considering this information in your analysis of the proposed Public Works Plan and its associated Final Environmental Impact Report.

Sincerely,

Rosemary Thompson

Rosemary Thompson, Ph.D.
Senior Consultant

cc: Jack Ainsworth, Deputy Director, California Coastal Commission (by e-mail)
Deanna Christensen, Coastal Program Analyst, California Coastal Commission (by e-mail)
Richard Mullen, President, Ramirez Canyon Preservation Fund (by e-mail)

Attachments: Exhibit A ï Curriculum vitae, Rosemary Thompson, Ph.D.
Exhibit B ï Comparison of Biological Impacts of Access Improvements to Ramirez Canyon, Conservancy Approved Access vs. Lauber Alternative

File: ENTRIX letter to CCC re bio impacts of alt access V3.doc

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Rosemary A. Thompson, Ph.D.

SENIOR CONSULTANT

DISCIPLINE/SPECIALTY

- Aquatic Ecology
- Marine Biology
- Fisheries Biology
- Wetland Delineation
- NEPA/CEQA
- Permitting
- Threatened/Endangered Species

EDUCATION

- B.A., Zoology, University of Missouri, 1967
- Ph.D., Marine Biology, UCSD Scripps Institution of Oceanography, 1972

CERTIFICATIONS/PERMITS

- SCUBA Advanced NAUI, 1974
- California Scientific Collecting Permit SC-002731
- Section 10(a)(1)(A) Permit TE815144-7 for tidewater goby, California red-legged frog, California tiger salamander, unarmored threespine stickleback

PROFESSIONAL TRAINING

- Wetlands and Waters of the United States, 1989
- Wetland Delineation: Atypical and Problem Areas, 1995
- Wetland Soils and Hydrology, 1999
- U.S. Army Corps of Engineers Nationwide Permits, 1997
- California Fish Passage, 2004

PROFESSIONAL AFFILIATIONS

- American Fisheries Society
- Desert Fishes Council
- Sigma Xi

SUMMARY OF QUALIFICATIONS

Dr. Thompson has over 30 years of experience in studying aquatic (both marine and freshwater) ecology, with extensive experience in aquatic habitats and endemic fishes of the arid west (California, Nevada, New Mexico, Arizona, Texas, Idaho, and Washington). She is certified as a scuba diver, with many hours logged in research projects at the offshore islands (Santa Catalina to San Miguel) and along the coastline from San Diego to Point Estero. She has completed training by the American Fisheries Society and the Wetland Training Institute in wetlands delineation as applicable to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. She has expertise in assessing barriers to fish passage in streams and also has a federal permit to sample for the tidewater goby, unarmored threespine stickleback, California red-legged frog, and California tiger salamander, and a state collecting permit for aquatic species. She has experience conducting visual surveys for steelhead and has handled individuals of this species under a project-specific Biological Opinion.

She has conducted environmental studies for a wide variety of projects throughout the United States, including urban development, golf courses, wastewater treatment plants/pipelines and discharges, reservoir enlargement and dam repair (strengthening), cloud seeding, power plants (nuclear, fossil fuel, and small-scale hydroelectric), missile-system testing and deployment, artificial reef feasibility and design, harbor dredge and landfill, coal gasification, oil and gas developments (onshore and offshore), urban lake restoration and management, a defense emergency communication system, water and gas delivery pipelines, debris and water diversion basins, flood control maintenance in streams and sloughs, aquatic habitat restoration, bridge replacement or repair, stream bank repair or stabilization, harbor water quality, vineyard/winery development, and a management plan for petroleum development to minimize impacts on biological resources. These studies have included surveys for and analysis of impacts to species listed as threatened or endangered under the federal Endangered Species Act and the California Endangered Species Act.

Dr. Thompson has prepared environmental reports for the above-mentioned projects complying with a wide range of regulatory requirements. These include numerous joint federal/state environmental impact statements/reports (EIS/EIRs) and other documentation under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) (e.g., environmental assessments and reports, negative declarations, and initial studies), Endangered Species Act Section 7 biological assessments and Section 10 permits (including Habitat Conservation Plans), listed species protection plans, and mitigation plans for biological resources. She has prepared environmental mitigation specifications and drawings for construction contract bid documents as well as revegetation plans and specifications. She has also provided information for waterfront development permits, including U.S. Army Corps of Engineers Sections 10 and 404, Coast Guard requirements, and the California Coastal Commission, and has obtained U.S. Army Corps of Engineers Nationwide Permits (with approved mitigation plans) and individual permits, California Department of Fish and Game Streambed Alteration

Agreements, and Regional Water Quality Control Board Section 401 Certifications for a variety of projects in streams and rivers.

RELEVANT EXPERIENCE

NEPA/CEQA

Principal Investigator — Salton Sea Species Conservation Habitat EIR/EIS, Imperial County, California
Assisting with development of project goals and objectives as well as project alternatives. Managing and contributing to the biological resources section of the EIR/EIS that includes describing the existing conditions and analyzing effects of the alternatives.

Principal Investigator — Development/Redevelopment Projects, Port of Los Angeles, California
Prepared biological resources section of the Pacific Marine Terminal Crude Oil Terminal SEIS/SEIR and managed preparation of the water quality section. The biological section included a detailed analysis of impacts to the California least tern and other special status species and a biological assessment for Section 7 consultation under the Endangered Species Act. Also prepared a 404(b)(1) alternatives analysis. Prepared biological resources and water quality sections of the Berths 136-147 Terminal EIS/EIR that an included analysis of impacts to Essential Fish Habitat, threatened and endangered species, and marine mammals. Dredge and fill impacts to water quality were also addressed, and a Section 404(b)(1) analysis was prepared for the Corps of Engineers.

Principal Investigator — Development/Redevelopment Projects, Port of Long Beach, California
Prepared biological resource and water quality/oceanography sections of an EIR for the Piers D/E/F Terminal Development Project, a subsequent EIR for the Pier S Terminal Development Project, and the Pier B Railyard Expansion Project EIR. Prepared the biological resources and water quality sections of the Middle Harbor Redevelopment EIR and a 404(b)(1) alternatives analysis.

Project Manager — Coastal Branch, Phase II, and Mission Hills/Santa Ynez Extension Project, San Luis Obispo and Santa Barbara Counties, California
Managed the Mission Hills/Santa Ynez Extension EIR and associated environmental studies. For the EIR, managed preparation of the document, prepared the project description, coordinated with the client and other involved agencies (federal, state, and local), wrote portions of the biological resources section, reviewed the entire document for technical quality, and responded to public comments. Also prepared two addenda and two supplements to the EIR. Managed preparation of two Environmental Assessments under NEPA for the pipeline segments across Vandenberg Air Force Base and the Cachuma Recreation Area. Managed development of detailed biological and cultural resource mitigation plans and provided input for the Section 404 (Clean Water Act) permit covering the numerous stream crossings along more than 40 miles of pipeline right-of-way. Developed environmental mitigation specifications and drawings as part of the engineering plans, managed preconstruction field surveys and revegetation plan development, obtained CDFG streambed alteration agreements, performed quality assurance field inspections for environmental specification compliance, and assisted the client in all environmental issue areas including presentations at public hearings and meetings. Obtained California Department of Fish and Game permit for installation of a pile retard system in the Santa Ynez River where bank erosion threatened the water pipeline microtunnel shaft. Currently managing the revegetation monitoring program and preparing a Habitat Conservation Plan under Section 10 of the Endangered Species Act for operation and maintenance of 131 miles of the pipeline and appurtenant facilities.

Project Manager — San Jose Creek Capacity Improvement Project, City of Goleta, California
Managed preparation of a mitigated Negative Declaration for the San Jose Creek Capacity Improvement Project in Goleta. Conducted field surveys to verify that steelhead were not present. The project was redesigned to include a fish passage component and an addendum to the MND was prepared to address those changes. Prepared environmental permit applications (U.S. Army Corps of Engineers, California Department of Fish and Game, and Regional Water Control Board) and coordinated with permitting agencies.

Project Manager — South Coast Conduit Upper Reach Reliability Project, Santa Barbara County, California
Managed preparation of the EIS/EIR. This included coordination with the client, U.S. Bureau of Reclamation, and design engineers; planning field surveys; preparing two Biological Assessments for Section 7 consultation; and

document QA/QC. Completed environmental permit applications and is coordinating with permitting agencies and the Bureau of Reclamation.

Project Manager — Lauro Debris Basin Project, Santa Barbara County, California
Prepared a Mitigated Negative Declaration, conducted a wetland delineation and a protocol survey for the California red-legged frog, obtained environmental permits, and managed construction environmental monitoring and preparation of a revegetation plan for enlargement of the basin.

Project Manager — Mission Creek South Coast Conduit Crossing and Fish Passage Project, City of Santa Barbara, California
Preparing a mitigated Negative Declaration/Environmental Assessment for constructing a fish passage project and relocation of the SCC to protect it from scour. Issues include the presence of steelhead and perennial flow. A wetland delineation and protocol California red-legged frog surveys were performed. Coordinating with permitting agencies and design engineers in preparation for construction.

Principal Investigator — Flood Control Dredging Project, Santa Barbara County, California
Prepared biological resources section of an EIR for a flood control dredging project involving five creeks and the Goleta Slough. Key issues included potential for impacts to sensitive species and wetlands. Prepared a supplement to that EIR addressing impacts to steelhead (after listed as endangered) and water quality.

Principal Investigator — Salton Sea Ecosystem Restoration Program Programmatic EIR, Imperial County, California
Compiled information on fish species potentially suitable for introduction into the Salton Sea; analyzed effects of alternative restoration designs on fish and birds.

Principal Investigator — Santa Ana River Water Right Applications for Supplemental Water Supply EIR, San Bernardino County, California
Wrote aquatic biological resources sections, with an emphasis on the Santa Ana sucker. Conducted field surveys to assess river habitat suitability for the Santa Ana sucker when water was flowing.

Principal Investigator — Colorado River Shortage Guidelines EIS, Lake Powell to Mexican Border
Prepared section on threatened and endangered fish. Wrote setting and impact analysis based on modeling of flow and temperature changes under different releases from Lake Powell.

Principal Investigator — Lower Colorado River Multi-Species Habitat Conservation Program EIS/EIR, Lake Mead to Mexican Border
Prepared biological resources section that covered existing conditions and impacts of the proposed action to vegetation, wildlife, and threatened/endangered/sensitive species for the study area as well as three alternative off-site conservation areas in the Virgin River/Muddy River, Bill Williams River, and lower Gila River. Also coordinated closely with the U.S. Fish and Wildlife Service and contractor preparing the HCP and Biological Assessment.

Principal Investigator, Quantification Settlement Agreement (QSA) Program EIR, Metropolitan Water District of Southern California, Imperial Irrigation District, Coachella Valley Water District, and San Diego County Water Authority
Contributed to the biological resources section of the EIR.

Principal Investigator, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Other Related Federal Actions EIS, U.S. Bureau of Reclamation
Prepared sections on aquatic biological resources and impacts of the proposed action and alternatives on these resources.

Project Manager — Garrett van Horne Reservoir, Santa Barbara County, California
Managed environmental support for construction and operation of the Garrett van Horne (Los Carneros) Reservoir. Conducted field surveys for sensitive species and cultural resources and prepared a Negative Declaration plus addendum. Trained construction workers regarding sensitive environmental resources and monitored construction activities for compliance with project conditions. Worked closely with the client, an environmental activist group, and the landowner to develop and implement an effective revegetation plan.

Project Manager — Lopez Dam Seismic Remediation Project, San Luis Obispo County, California
Prepared a constraints analysis and EIR for the project. Conducted surveys for the federally listed steelhead and California red-legged frog as well as vegetation mapping. Obtained permits/certifications for construction of the Lopez Dan project from the U.S. Army Corps of Engineers (included Biological Assessments for federally listed species), Regional Water Quality Control Board, and California Department of Fish and Game. Coordinated with those agencies throughout construction in compliance with permit conditions. Construction monitoring included capture and relocation of steelhead during dewatering of a channel connected to Arroyo Grande Creek.

Principal Investigator — Hanford 200 Area Environmental Assessment, Hanford, Washington
Prepared biological resources section for an environmental assessment of a potential steam/cogeneration facility and its associated pipelines. Alternatives considered included fuel (coal or natural gas), facility technology (boilers and turbines), pipeline routes from the east and west, and plant size (steam only and cogeneration from 60 to 300 MW). This analysis required evaluations of protected species and wetlands. GIS technology was applied to this comprehensive constraints and siting analysis to organize data and overlay resource constraints. Dr. Thompson completed a preliminary wetlands evaluation of all potential pipeline routes from sources near Sunnyside to Zanger Junction and impacts to threatened and endangered species from the crossing of the Columbia and Snake rivers.

Principal Investigator — Oil Development Projects, Santa Barbara County, California
Prepared the marine biology, commercial fishing, and aquatic biology sections of the Santa Ynez Unit and San Miguel project EIS/EIRs. Analyzed impacts of oil spills on all types of marine organisms and habitats, assessed impacts on commercial and recreational fishing, and evaluated impacts on freshwater habitats. Interviewed fishermen and developed detailed mitigation strategies for collision of oil-related vessels with marine mammals and for kelp canopy loss due to support vessel traffic. Responsible for budgets, schedules, and report preparation, including the biological assessment for marine species. Investigated commercial and recreational fishing issues (including kelp harvesting, mariculture, and salmonids) as well as impacts on freshwater habitats for the Chevron/Texaco Point Arguello field oil development project. Prepared a negative declaration and initial study for the Exxon El Capitan Marine Terminal removal. Work included underwater field surveys. Managed preparation of an addendum to the Exxon Santa Ynez Unit EIS/EIR to address potential impacts of deferring construction of the proposed marine terminal off Las Flores Canyon. Responsible for all resource areas. Designed and implemented the tidewater goby sampling program as part of the Chevron environmental quality assurance program (EQAP) monitoring for the pipeline from Point Conception to Gaviota.

Principal Investigator — Mountain Home Air Force Base Realignment EIS, Idaho
Prepared wildlife and aquatic resource sections in the Tier 1 EIS for realignment of Mountain Home AFB and the proposed expanded capability of Saylor Creek Range in southwestern Idaho. Responsible for data collection from agencies, design of detailed field studies for raptors and big game animals for the Tier 2 EIS, and preparation of the biological assessment for Section 7 consultation under the Endangered Species Act. Performed rare plant surveys and wetland delineations on the base as part of an inventory of natural resources on the facility.

Principal Investigator — Relay Mirror Experiment Environmental Assessment, Florida and Hawaii
Was responsible for gathering and summarizing biological resource data, analyzing impacts, and preparing biological sections. The biological assessment covered six endangered species on Maui, Hawaii and thirteen threatened or endangered species on the Florida coast. Also provided expert testimony for the U.S. Air Force in a court hearing for the Hawaii site.

Project Manager — National Test Facility Project, Colorado Springs, Colorado
Managed the preparation of an environmental assessment for the U.S. Air Force National Test Facility, a component of the Strategic Defense Initiative Program. Impact analysis was performed at an EIS level because this was a high-profile project. Was responsible for planning, schedules, budget, client liaison, staffing, report preparation, and response to client reviews. Also provided technical quality review and assurance.

Principal Investigator — Los Angeles Wastewater Facilities Plan EIS, Los Angeles, California
Completed a literature survey and field studies on the Los Angeles River, analyzed and summarized data collected by numerous researchers, and wrote sections on impacts on marine and freshwater organisms in Santa Monica

Bay and the Los Angeles-Long Beach Harbor. Analyzed impacts on the marine ecosystem and how different levels of treatment and implementing source controls could affect discharge of toxic pollutants such as heavy metals.

Principal Investigator — M-X Deployment Area Selection and Land Withdrawal/Acquisition EIS, Nevada, Utah, New Mexico
Prepared wildlife sections of the EIS, designed and implemented aquatic field studies, and managed a subcontracted instream flow study (with habitat preference curves) for all fish species in the Moapa River above Glendale, Nevada (including Moapa dace, roundtail chub, springfish, mollies, and mosquitofish). Participated in field-data collection and computer simulation of suitable habitat availability using the instream flow incremental methodology developed by the U.S. Fish and Wildlife Service. Performed field surveys of many springs in Nevada, Utah, and New Mexico to describe fish species present (many state or federally listed).

PERMIT SUPPORT

For projects where NEPA/CEQA documents were also prepared, the permitting description is included above. Also managed/conducted surveys for sensitive and listed species (e.g., grunion, western snowy plover, steelhead) in compliance with permits for a number of projects.

Project Manager — Ranches at Figueroa Canyon, Santa Barbara County, California
Conducted field surveys, performed agency coordination, and prepared California Department of Fish and Game permit applications for eleven ranch road stream crossing upgrades.

Project Manager — Santa Barbara City College Creek Maintenance, City of Santa Barbara, California
Developed a creek maintenance plan for Santa Barbara City College to prevent flooding of adjacent property and revised the Long-Range Development Plan to include this work. Obtained permits/certifications for implementation of the plan from the California Department of Fish and Game, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Coastal Commission. Monitored to ensure compliance with permit conditions.

Project Manager — Chorro Valley Water Transmission Pipeline Project Name, San Luis Obispo County, California
Managed preparation of the mitigation program for the Chorro Valley Water Transmission Pipeline that included dust control, erosion control, noise control, traffic control, asbestos health and safety, revegetation, and cultural resource mitigation plans for each of two segments. Prepared environmental mitigation drawings and specifications to be included in construction contracts in consultation with the design engineers and San Luis Obispo County by segment. Also prepared revegetation requirements jointly with the design engineers for bid documents. Obtained 404 permit from the Corps of Engineers and a Streambed Alteration Agreement from the California Department of Fish and Game for stream crossings in Segment 2. Responsible for document quality control, client liaison, schedule, and budget.

Project Manager — Cabrillo Bridge Replacement Project, Mission Creek in City of Santa Barbara, California
Preparing a Mitigation, Monitoring, and Reporting Plan; a Tidewater Goby Protection and Aquatic Species Management Plan; and a Restoration Plan for the project. Will conduct tidewater goby surveys in April and August 2011 prior to construction.

Project Manager — Dos Pueblos Golf Links Project, Santa Barbara County, California
Prepared a Habitat Conservation Plan and Environmental Assessment for two federally listed species, tidewater goby and California red-legged frog.

Project Manager — Wastewater Reclamation Project, San Luis Obispo Creek in San Luis Obispo County, California
Analyzed potential impacts to steelhead in San Luis Obispo Creek that could result from changes in the discharge of reclaimed wastewater as part of a Biological Assessment.

Principal Investigator — Oroville Dam FERC Relicensing Project, California
Reviewed and commented on study plans for fish studies to assess efficacy and relevance to the relicensing process.

OTHER CLIENT SUPPORT

Principal Investigator — Proposed Revised Critical Habitat Evaluations, Southern California
Assisted Metropolitan Water District in evaluating the effects of proposed revisions to critical habitat for the arroyo toad, Santa Ana sucker, and thread-leaved brodiaea on operation and maintenance of their facilities.

Project Manager — Sycamore Creek Flood Control Project, City of Santa Barbara, California
Conducted a biological resources survey of lower Sycamore Creek from Indio Muerto Street to just downstream of the Union Pacific Railroad bridge. Developed an impact analysis and recommended measures to avoid or minimize impacts during widening the creek for flood protection.

Project Manager — Santa Barbara Harbor Projects, California
Managed a water quality sampling program for Santa Barbara Harbor that involved monthly sampling for bacteria, salinity, temperature, and dissolved oxygen at several locations. Managed air quality, water quality, and biological resources special studies for the Marina One and Marina Four expansion project in Santa Barbara Harbor. Conducted a field survey in harbor waters and prepared the biological resources study. Managed a monitoring program for the western snowy plover and California grunion during dredging activities and beach restoration at the Harbor.

Project Manager — California Tiger Salamander Projects, Santa Barbara County, California
Assisted in the preparation of a Low Effect Habitat Conservation Plan for vineyard development near known breeding ponds for the California tiger salamander. The parcel being developed also has a pond that is used by the California red-legged frog and assisted in developing mitigation for potential take of these two species. Performed an evaluation of a parcel within the known range of the California tiger salamander for upland habitat suitability and the potential that the species could be present. Prepared a management plan for California tiger salamanders on property being developed into a vineyard.

Project Manager — Carpinteria Salt Marsh Enhancement Project, Santa Barbara County, California
Managed a biological evaluation of Basin 1 in Carpinteria Salt Marsh that included wetland delineations (Corps of Engineers and Coastal Commission methods), bird surveys, small mammal trapping, a butterfly survey, and recommendations for habitat restoration in the basin. Managed the biological portions of a salt marsh enhancement plan that included restoration of tidal flows, identification of areas for enhancement, development of a planting plan and construction specifications for planting, and development of a monitoring plan to ensure that enhancement is successful. Managed environmental monitoring during implementation of the enhancement plan.

Principal Investigator — Bird Aircraft Strike Hazard (BASH) Plans, Nevada and California
Prepared BASH plans for Fallon Naval Air Station (Nevada) and Lemoore Naval Air Station (California).

Project Manager — Artificial Reef, Estero Bay, California
Managed feasibility and design studies for the Texaco artificial reef. Coordinated with client and regulatory agencies, obtained permits from the U.S. Army Corps of Engineers and the California Coastal Commission, prepared reports, developed construction and quality assurance specifications, and supervised reef construction.

Principal Investigator — Power Plant Projects, Nebraska and Minnesota
Assessed the impacts of adding a second unit to the existing Fort Calhoun Nuclear Power Plant (Nebraska) on aquatic or biological resources. Conducted surveys of fish impingement at the existing unit and analyzed existing data on aquatic organisms from plankton to fish. For the Nebraska City Fossil Fuel Power Plant, collected and analyzed existing data for the Missouri River, conducted fish surveys in the river and associated backwaters, and prepared aquatic sections of the report. Conducted intake and discharge studies on three existing power plants on the Mississippi River in Minnesota. For the Prairie Island Nuclear Generating Station, studied the effects of thermal discharges. For the Riverside and Highbridge Power Plants, conducted intake studies. These studies were performed under the Clean Water Act, Sections 316 (a) and (b).

Completed a number of small projects, including performing field surveys and reporting on California red-legged frogs and tidewater gobies in Laguna Channel (for the City of Santa Barbara) and Eagle Canyon Creek (in Santa Barbara County), tidewater gobies in Arroyo Burro Creek (for Santa Barbara County Flood Control) plus red-legged frogs (City of Santa Barbara), red-legged frogs in an irrigation drainage adjacent to the Santa Maria River

(for the City of Guadalupe), red-legged frogs in the Santa Ynez River (west of Buellton) and at a golf course in Goleta, red-legged frogs in San Bernardo Creek (in San Luis Obispo County), California tiger salamanders and red-legged frogs for two vineyard developments and the Santa Maria Public Airport Master Plan update, steelhead in Santa Monica and Franklin creeks, and western snowy plovers on Goleta Beach. Directed field surveys related to the Bradbury Dam safety improvements project (U.S. Bureau of Reclamation) and Rancho Canada project in Carmel (red-legged frogs). Monitored for and relocated red-legged frogs and tidewater gobies at an emergency bridge repair site on Vandenberg Air Force Base. Also conducted monarch butterfly surveys on two parcels in Santa Barbara and monitored a pipeline replacement project in Gaviota Creek for steelhead and tidewater gobies in compliance with biological opinions.

EMPLOYMENT HISTORY

- ENTRIX, Inc., Senior Consultant, 2009-present
- Science Applications International Corporation, Senior Biologist, 1989-2009
- Swift& Environmental Analysis, President/Principal Aquatic Biologist, 1985-1995
- URS Consultants, Inc., Senior Biologist, 1984-1989
- HDR Sciences, Inc., Aquatic Biologist, 1974-1984
- EG&G, Biologist, 1974
- University of Southern California, Biologist, 1972-1973

PUBLICATIONS

CONFERENCE AND WORKSHOP PRESENTATIONS

- Klug, T., R. A. Thompson, and T. W. Mulroy. 2007. Facilitating recovery of a long-disturbed maritime chaparral site in Santa Barbara County. Presentation at the 2007 National Meeting of the Ecological Society of America, San Jose California (Abstract PS 68-202).
- Klug, T., and R. A. Thompson. 2005. Facilitating recovery of a long-disturbed maritime chaparral site in Santa Barbara County. Presented at the Maritime Chaparral Workshop, Moss Landing California.
- Thompson, R. 1988. Tidewater goby monitoring for the Point Agruello Project onshore pipeline. Poster presented at the Riparian Systems Conference, Davis, California.

Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon
Conservancy Approved Access vs. Lauber Alternative

	Ramirez Canyon/Delaplane Road Widening (Per Modified Redesign Alternative)	**Via Acero Road Extension/Widening** (Per Modified Redesign Alternative)	**Combined Ramirez Canyon & Via Acero Access Improvements** (Conservancy Approved Access)	**Lauber Road Access Improvements Alternative** (2002 LCP Alternative)
Project Specifications				
Existing conditions[1]	12-20-ft wide paved roadway with 10-ft wide wooden bridge and 2 Arizona crossings	Approx. 1,400 (linear feet) lf dirt road and 1,538 lf of 10-20 ft wide paved road	n/a	Approx. 600 lf existing 20-ft wide paved road, remainder undeveloped
Specifications for proposed access improvements[2]	Widen entire length to 20 ft with 26-ft width for 50 ft around 7 existing fire hydrants, 10 ft of fuel clearance on each side = 40-46 ft wide road disturbance corridor Road length: 3,473 lf Retaining walls: unknown[3]	Widen and extend to 20 ft, 10-20 ft of fuel clearance on each side = 40-60-ft wide road disturbance corridor Road length: 2,938 lf Retaining walls: 1,460 lf	See individual descriptions. Road length: 6,411 lf Retaining walls: >1,460 lf	Construct 20-ft wide road, 10-20 ft of fuel clearance = 40-60-ft wide road disturbance corridor Road length: 2,095 lf Retaining walls: 1,110 lf
New paved road area[4]	11,391 sf + 20% contingency = 13, 669 sf[5]	33,695 sf + 20% contingency = 40,434 sf	45,086 sf + 20% contingency = 54,103 sf	41,220 sf + 20% contingency = 49,464 sf
New parking[6]	n/a	n/a	14 spaces in 3 areas adjacent to Kanan Dume Road	18 spaces in 2 areas on Lauber property and 9 spaces in 2 areas adjacent to Kanan Dume Road
Grading for access road improvements[7]	Cut: 500 cy Fill: none	Cut: 1,587 cy Fill: 2,946 cy	Cut: 2,087 cy Fill: 2,946 cy	Cut: 6,755 cy Fill: 1,560 cy
Estimated fuel clearance areas for access roads[8]	1.5 ac (includes 0.5 ac ESHA)	2.5 ac (includes 0.2 ac ESHA)	4.0 ac (includes 0.7 ac ESHA)	1.7 ac (includes 0.7 ac ESHA)

Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon
Conservancy Approved Access vs. Lauber Alternative

	Ramirez Canyon/Delaplane Road Widening (Per Modified Redesign Alternative)	**Via Acero Road Extension/Widening** (Per Modified Redesign Alternative)	**Combined Ramirez Canyon & Via Acero Access Improvements** (Conservancy Approved Access)	**Lauber Access Alternative** (2002 LCP Alternative)
Total permanently disturbed surface area (excluding parking)[9]	3.6 ac (includes 0.5 ac ESHA)	5.2 ac (includes 0.4 ac ESHA)	8.8 ac (includes 0.9 ac ESHA)	2.9 ac (includes 1.4 ac ESHA)[10]
Area available for on-site biological impact mitigation[11]	None	None	None	1.0 ac
Direct Impacts to Vegetation				
Direct impacts to sensitive vegetation (excluding fuel clearance areas)[12]	0.04 ac[13]	Ó0.24 ac[14]	Ó0.28 ac	1.59 ac[15]
Direct impacts to non-sensitive vegetation	0.25 ac[16]	Ò1.04 ac[17]	Ó1.29 ac	<1.10 ac[18]
Native Tree Impacts				
Direct impacts to native trees	43[19]	3[20]	46	0[21]
Native trees removed	7[22]	2[23]	9	0[24]
Indirect impacts to native trees	8[25]	2[26]	10	0[27]

1. Appendix MRA-3, MRA Civil Plans; Appendix MRA-1, pp. 44-47; and Appendix D-2, Alternative 2 Civil Plans.
2. Appendix MRA-3, MRA Civil Plans; Appendix MRA-1, p. MRA-16 and pp. 44-47; and Appendix D-2, Alternative 2 Civil Plans.
3. The Civil Plans include notes indicating the possible need for new retaining walls and identify the relocation of some existing walls but do not provide the length of walls to be constructed or relocated.
4. Appendix MRA-3, MRA Civil Plans and Appendix D-2, Alternative 2 Civil Plans.
5. Ramirez Canyon/Delaplane new paved road area includes a 20% contingency but does not specifically account for the area necessary to accommodate an additional 6 feet of paving for a 50 foot length adjacent to existing fire hydrants as required by LACFD because this data was not provided in the FEIR. There are seven existing fire hydrants along

Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon Conservancy Approved Access vs. Lauber Alternative

Ramirez Canyon Road.

6. Appendix MRA-3, MRA Civil Plans and Appendix D-2, Alternative 2 Civil Plans.
7. Appendix MRA-1, pp. 46-47 and Appendix D-2, Alternative 2 Civil Plans. Figures exclude grading associated with new parking facilities.
8. The FEIR did not analyze the biological impacts of fuel clearance areas of up to 20 feet on each side of the fire access roads. Based on Appendix MRA-1, p. MRA-16 and Los Angeles County Fire Code Sec. 317.10, the above totals assume 10 feet of fuel clearance on each side of access roads in ESHA and 20 feet of fuel clearance on each side of access roads outside of ESHA. An estimate of the area affected by fuel clearance was derived from measurements taken from the civil plans and biological maps for each road (Appendices MRA-3, MRA-10 and D-2 and Sec. 8.0 Alternative 2 Impacts to biological resources figures).
9. The total permanently disturbed area was determined by adding the area of the proposed roads and the estimated fuel clearance areas associated with the roads.
10. As described in footnote 15, the FEIR appears to indicate 1.59 acres of ESHA impacts on the Lauber property. Taking the area of new paving plus fuel clearance in ESHA per FEIR Figures 8.2-1b and 8.2-1c shows only approximately 1.4 acres of ESHA would be permanently impacted. The discrepancy may exist because the FEIR analysis included areas to be graded outside of the road and fuel clearance areas. Since these areas can be restored following completion of construction, they would not be permanently impacted.
11. Ramirez Canyon and Via Acero roads are private and all adjacent property is privately owned. Therefore there is no area available for mitigation of biological impacts onsite/ adjacent to the roadways. If the Conservancy purchased the two easternmost parcels of the Lauber property for parking and access to its Ramirez Canyon property and obtained an easement over the westernmost parcel, the property could be used for on-site mitigation of biological impacts associated with the access road and other components of the Public Works Plan. The area in the table was determined based on measurements taken from Figure 8.2-1a ï 2002 LCP Alternative ï Impacts to Biological Resources. The area includes land classified as Developed, Ruderal, or non-sensitive vegetation on the figure less area that will be used for the access road, parking and associated fuel clearance.
12. The data in this row was taken directly from the FEIR and does not account for biological impacts in fuel clearance areas of up to 20 feet on each side of all fire access roads. An estimate of the area affected by fuel clearance is listed separately.
13. Sec. 15.0, Table 15-47.
14. Statement in Sec. 15.0, p. 15-83 that no ESHA is directly impacted by Via Acero improvements is inconsistent with Sec. 5.4, Table 5.4-11, which indicates 0.24 ac of direct impacts to ESHA would result under the proposed plan. Because the disturbance area of the Via Acero improvements increased under the MRA as compared to the proposed plan, the direct ESHA impacts are assumed to be equal or greater to those reported in the DEIR for the proposed plan.
15. The FEIR does not specifically state the direct impacts to sensitive vegetation resulting from Lauber Road construction. For the purposes of this analysis, it was assumed that the ñParkingòcolumn in Table 15-7 includes impacts associated with the proposed parking facilities on the Lauber property and the road. The proposed parking area is located in an area containing non-sensitive vegetation, therefore all impacts to ESHA were assumed to be associated with road improvements.
16. Sec. 15.0, Table 15-47.
17. As stated above, the statement on Sec. 15.0, p. 15-83 that no ESHA would be directly impacted by the Via Acero improvements is inconsistent with Sec. 5.4, Table 5.4-11. Sec. 15.0, p. 15-83 indicates total impacts to vegetation communities increased from 1.01 ac under the proposed plan to 1.28 ac under the MRA, however no supporting data is provided. Using the data from Table 5.4-11, impacts to non-sensitive vegetation were calculated to be Ò1.04 ac (1.28 ac total impacts under MRA less 0.24 ac ESHA impacts under proposed plan).
18. As stated above, it was assumed that the ñParkingòcolumn in Table 15-7 includes direct impacts associated with both proposed parking facilities and the access road on the Lauber property. Impacts to non-sensitive vegetation resulting from parking facilities are included in the reported amount of 1.10 ac. Therefore, the impacts to non-sensitive vegetation resulting from the road alone would be some amount less that this total.
19. Appendix MRA-10, Table 7.
20. Appendix MRA-10, Table 7.
21. Sec. 15.0, p. 15-28.
22. Appendix MRA-10, Table 7. (Assumes conflicting text on Appendix MRA-10, p. 16 is incorrect.)
23. Appendix MRA-10, Table 7.
24. Sec. 15.0, p. 15-28.
25. Appendix MRA-10, Table 8.
26. Appendix MRA-10, Table 8.
27. Sec. 15.0, p. 15-28.

August 23, 2010

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BY ELECTRONIC MAIL AND FACSIMILE

Santa Monica Mountains Conservancy
Mountains Recreation and Conservation Authority
Attn: Chairs Schafer and Lange
570 West Avenue 26, Suite 100
Los Angeles, CA 90065

RE: Comments on Malibu Public Access Enhancement Plan, Public Works Plan (Modified Design Alternative) and Comments on Proposed Final Environmental Impact Report (Modified Redesign Alternative)

Dear Chairs Schafer and Lange and Board Members:

Introduction

This letter is submitted on behalf of the Ramirez Canyon Preservation Fund ("Fund") and pertains to the items on your August 23, 2010 agenda relating to the proposed "Malibu Parks Public Access Enhancement Plan, Public Works Plan, Modified Redesign Alternative"(PWP) and the Final Environmental Impact Report (FEIR) prepared in connection therewith.

As you will see from this letter, there are numerous legal and policy reasons for the Conservancy and Authority Boards to request changes to the FEIR and to defer any decision on the PWP, including the simple unfairness of giving people a banker's box of material to read just a few days before an important hearing. To the extent that time allowed, we have set forth the comments and objections required to exhaust our administrative remedies. However, our primary purpose is to focus your attention on the one issue that would resolve this now 17-year controversy between your agencies and the Fund, i.e., access to the Conservancy's Ramirez Canyon property.

For those of you who may not be familiar with the origins of the dispute, and who might wonder why the Fund so strenuously objects to your proposed road improvements, please consider the following:

You may know that when the Conservancy acquired the property in 1993, Mr. Edmiston promised everyone that it would never be used as a "park." It was zoned Rural Residential and was slated for use as an environmental think tank, which would have had limited impact on the neighborhood. "Times change"- the Conservancy has consistently said so as it has greatly intensified its use of the property, culminating in a change of zoning to Open Space. However, no change in the zoning of the site would ever resolve the question of access. The Fund respectfully submits that your decisions with respect to access must fulfill the promises that were made on acquisition:

In 1993, the Conservancy promised that it would "carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community"(MOU between the Conservancy and Ms. Streisand). Shortly thereafter, the Conservancy advised the Coastal Commission that issues "such as additional access from Kanan Dume Road . . . will be the subject of a

future permit application to the Commission.ò In 1994, Mr. Edmiston advised the Fund: ñUnfortunately, we do not currently have budgeted funds for the alternative road access, but continue to pursue such funds and will cooperate with the Ramirez Canyon Association and we all want and support the City of Malibu in obtaining this important alternative access road for ourselves and our neighbors in the Canyon.ò The promise was repeated in 1995: The Streisand Center ñwill continue its efforts to seek funds to develop an alternative public access route to the site via Kanan Dume Road.ò (Draft CDP Application by the Conservancy to the Commission.)

Over the years, the promise fell by the Conservancyôs wayside, despite continued administrative and legal efforts by the Fund to stop the Conservancyôs unlawful use of Ramirez Canyon Road. When the alternate access did not appear in the Draft PWP or the Draft EIR, the Fund raised the issue again. The Conservancyôs response was to add an alternative to consider the ñLauber access.ò However, as you will see from the comments below, the FEIR does not adequately examine that alternative. Instead, the FEIR proposes to eliminate a rural residential road, framed by large, mature and magnificent trees, and replace it with a "highway in the Canyon" -- a new road that is 20-26 feet wide, clear to the sky, with a vegetation clearance zone from the edge of pavement that is up to 20 feet wide on each side, for a total of 60-66 feet of vegetation clearance. The FEIR proposes the same sort of highway up Via Acero to Kanan Dume.

The road access issues lie at the heart of the Fundôs concerns about the Conservancy project. As long as that issue remains unresolved, the Fund will be unwavering in its opposition to the Conservancyôs plans for its Ramirez property.

I

Procedural Objections

The public has not been provided sufficient time to read and understand the massive amount of information that will be presented to the SMMC and MRCA Boards at the August 23 hearing, and the late release of those documents is not consistent with applicable legal requirements.

SMMC and MRCA (herein ñthe Conservancyò) posted the agenda for the August 23, 2010 meetings on August 11, 2010, advising the public for the first time that the FEIR and the PWP would be considered on August 23. The ñDraft Final PWP,ò which included 379 pages of text and 12 figures, was not released to the public with the agenda for the meeting; it was made available with web access on Saturday night, August 14. Since the web version came out on a Saturday night, we presume that the document was not available to the public in print form until Monday, August 16, just one week prior to the hearing.

This lack of adequate notice was compounded by the late release of the FEIR, which consists of 1175 pages plus 727 pages of appendices (not including the text of the DEIR and Draft Final PWP). That mass of documents was posted for the first time to the SMMC and MRCA websites during the evening hours of August 18, 2010, just three business days prior to the hearing.

It bears noting that much of the substance of the PWP is found outside of the PWP text, in a set of plans and reports which lie at the heart of the PWP but which were released as part of the FEIR. For example, Volume IV of the FEIR includes an Appendix MRA-5 entitled ñFire Protection Plan for the Malibu Parks Public Access Enhancement Plan ï Public Works Plan, Modified Redesign Plan.ò That document was not posted to the web site until the evening of August 18 (with the FEIR), even though it is essential to a full understanding of the fire safety aspects of the PWP.

The staff reports, consisting of 20 pages each plus attachments, were not released until Friday, August 20. On Sunday, August 22 (as this letter was being finalized), a Mitigation, Monitoring and Reporting Program (96 pages) and proposed Resolutions and Findings (125 pages each) were posted to the websites.

One of the essential principles of the Coastal Act (ñActò) is the importance of public participation in planning decisions involving the coast:

> The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation. (Pub. Res. Code, sec. 30006)

This principle is a fundamental part of the Coastal Commissionôs regulations for public works projects (14 Cal. Code Regs., sec. 13353.5), which require that a local public hearing on a public works plan be held ñwithin a reasonable time prior to submission of the plan . . . such that the public is afforded an adequate and timely comment period on the proposed plan. . . ..ò These standards for public participation have not been met.

The Resolution which was posted on Sunday at 1:00 p.m. includes 116 pages of Findings and Facts in Support of Findings. Section IV (Project Alternatives), A (No Project Alternative), 1 (Summary of Alternatives) includes the following statement:

> Although trails, camping, public parking areas and other parkland support facilities (including park offices), and public gatherings/programs are primary permitted uses at the parklands included in the Plan, given the extraordinary history of debate and contention over development of the proposed parkland uses and facilities, and to provide a very conservative basis for comparative impact analysis, the No Project Alternative assumes no new implementation of additional recreational amenities within the Plan area. (Emphasis added.)

Given "the extraordinary history of debate and contention," it is particularly egregious that the Conservancy would act before the public was afforded a reasonable opportunity to review and comment upon the material.

In addition, CEQA mandates that the SMMC and MRCA Boards consider the FEIR before acting upon it. The "Final EIR is comprised of [list of several components] and the Mitigation Monitoring and Reporting Programò(MMRP, p. 4, para. 14). Therefore, the FEIR was not fully released until approximately 1:00 p.m. on Sunday, August 22, just 28 hours prior to the hearing. Under the circumstances, it would be impossible for the members of your Boards to fulfill their responsibilities under CEQA if you decide to certify the FEIR on August 23.

Because the Conservancy did not provide sufficient time to allow comprehensive review, analysis, and comment upon the materials, the Fund incorporates by this reference all comments and evidence which it has submitted to the Conservancy and to the Coastal Commission during all prior proceedings on this Plan (i.e., back in time to and including the Draft PWP the Conservancy submitted to the Coastal

Commission in June of 2006). Given the brief amount of time available to prepare this letter, we will limit the discussion to the most significant issues.

II

Alternate Full-Time Access Over the Lauber Property is A Far Better Alternative to Creating a 60 to 66-foot Wide Vegetation Clearance Zone Through This Rural, Rustic Canyon.

A. The Proposed Road Widening of Ramirez Canyon Road and the Construction of a New Road over Via Acero Will Destroy the Rural Environment of Ramirez Canyon.

The PWP includes two elements relating to access to the Conservancyøs Ramirez Canyon property (herein ñRamirez propertyò): widening Ramirez Canyon Road and constructing a secondary emergency access along Via Acero. In both cases, the Plan states that the road work would occur if required by the fire agency with jurisdiction. While this might seem like a contingency, there is little doubt that the Los Angeles County Fire Department (LACFD) will require the road construction prior to any intensification of use of the Ramirez property (see FEIR, page DDD-4, paragraphs 18 and 19).

The LACFD comment letter on the DEIR also states that the Conservancy will be required to conduct significant vegetation removal in connection with the proposed road work, including (i) a minimum of ten (10) feet of brush clearance on both sides of each road (id., page DDD-5, paragraph 29), and (ii) a minimum unobstructed clear zone ñto the skyò of twenty (20) feet for each road, except for certain protected tree species. In response to the LACFD, the MRA states that there will be twenty (20) feet of brush clearance on each side of the road, except for native trees (see FEIR App. MRA-1, p. MRA-16). Since each road must be twenty (20) feet in width (plus an additional six (6) feet near fire hydrants, for a distance of fifty (50) feet), the proposed vegetation clearance zone will be sixty to sixty-six (60-66) feet in width for the entire length of each road.

This extensive vegetation removal will permanently and adversely change the character of this rustic canyon and will significantly reduce property values. The vegetation removal will also significantly impact the biological resources in the Ramirez Creek riparian corridor, including the Ramirez Creek ESHA, and is thus impossible to reconcile with the resource protection policies of the Act.

Over the years, in various comment letters to the Conservancy and in proceedings before the Coastal Commission, we have provided facts and legal arguments to confirm that the Conservancy has no legal right to destroy the peace and tranquility of Ramirez Canyon to further its desire to convert property built and used for residential purposes to an office and fundraising complex. In July of 2009, when the Conservancy threatened to widen the road under the ñemergencyò provisions of the Act, Fund President Richard Mullen summarized those reasons for the SMMC and MRCA Boards. For your convenience, Mr. Mullen will submit a copy of that letter before the public hearing.

B. There is a Better Alternative.

In our October 6, 2009 comment letter on the scope of the EIR, in our oral comments at the DEIR public hearing on February 22, 2010, and in our March 22, 2010 comment letter on the DEIR, the Fund urged the Conservancy to study the ñLauber alternativeò as the primary access to the Ramirez property (see FEIR, page YY-28 and Mr. Mullenøs comments at the February 22, 2009 meeting).

The FEIR discusses Lauber Road as an alternative to the proposed widening of Ramirez Canyon Road and construction of a new road at Via Acero (see FEIR, sec. 15.0). It undertakes a comparison of the two access alternatives, and concludes that the impacts on biological resources and visual resources would be fairly similar. However, the analysis is unclear on one essential point:

Does the analysis assume that both Via Acero and Ramirez Canyon Road will have (i) twenty (20) feet of pavement, (ii) an additional six (6) feet of pavement for a distance of fifth (50) feet on both sides of a fire hydrant, and (iii) a vegetation removal zone of twenty (20) feet on each side of the road as specified in the Project Description? (FEIR App. MRA-1, p. MRA-16.) With all three elements, a new Via Acero and a widened Ramirez Canyon Road would require two vegetation-free swaths of land that are each sixty to sixty-six (60-66) feet wide ï two ñhighways in the canyon.ò Does the impact analysis use this full description of the highways the Conservancy plans to build?

If the answer to the above question is yes, then the FEIR should be clarified to plainly so state. However, the answer appears to be no. This conclusion may be implied from the answers to various comments on the DEIR (see, for example, Comment CCC-4 from the Coastal Commission and the response thereto), and from the Impacts to Biological Resources Figures in the FEIR (Appx MRA-8, Figures BIO-5a through BIO-5d). The biological assessment studied a fifty (50) foot buffer around the proposed improvements to Via Acero, but the study area for Ramirez/Delaplane was limited to forty (40) feet. No fuel modification buffer is identified on any of these exhibits.

If the answer is no, then the FEIR significantly understates the impact of the proposed road improvements. This understatement is particularly important with respect to biological resources, because one of the core policies of the Coastal Act is to minimize impacts of development on sensitive coastal biological resources. Ramirez Canyon Road is located in a designated riparian ESHA, which includes a significant number of native trees. Therefore, the impact of road widening and associated vegetation removal appears to be far most significant than analyzed in the FEIR.

These facts compel the conclusion that the biological impact portion of the FEIR is fundamentally flawed and must be corrected. In addition, two fundamental changes have occurred since the DEIR was circulated for public comment. First, the LACFD issued its DEIR comment letter unequivocably stating that fire code compliance requires vegetation clearance for ten (10) feet from each side of the fire access roads, and (ii) the Conservancy made the policy decision to formulate a <u>new</u> alternative that includes a twenty (20) foot vegetation removal zone on each side of the fire access roads. This additional vegetation removal will occur <u>within a riparian ESHA</u>. These changes to the project -- occurring after the DEIR was circulated for comment -- indisputably will result in additional impacts to sensitive coastal biological resources compared to the project analyzed in the EIR. These new impacts are reasonably likely to cause the biological impacts of the project to shift from "Less than Significant" to "Significant." These changes are not analyzed in the FEIR, and must be reviewed so that the document fully discloses the environmental impacts of the project. Under the circumstances, recirculation of the biology portion of the EIR is required under CEQA. In addition, the new analysis of biological impacts of the Ramirez Canyon and Via Acero road improvements must be completed before any meaningful comparison of those improvements with the "Lauber Road" option can be accomplished.

For the purpose of comparing the alternatives, it is highly significant that the Lauber property is not designated ESHA (PWP Fig. 6) and the FEIR does not identify any native trees on the Lauber parcel.

The FEIR also and inexplicably fails to analyze and/or compare the traffic and noise impacts of building the Lauber Road and using it as primary access to the Ramirez property, as compared to building two highways. It is undisputed that exclusive use of the Lauber alternative would eliminate the proposed 80 trips per day on Ramirez Canyon Road, with the attendant traffic congestion and noise impacts on the neighborhood.

The FEIR also and inexplicably fails to analyze the feasibility of simultaneously evacuating staff and visitors to the Ramirez property and Ramirez Canyon residents in the event of a fire or flood hazard. In this respect, a comprehensive analysis of the Lauber Road alternative is essential. Neither the proposal to widen Ramirez Canyon Road nor the proposal to create a new road on Via Acero will resolve the hazard which will arise if a fire or flood blocks the entrance to the Ramirez property.

For all these reasons, it is apparent that the Lauber Road access option is clearly ñenvironmentally superiorò to the proposal to widen Ramirez Canyon Road and build a new Via Acero. The Lauber alternative will reduce traffic and noise impacts from the Ramirez element of the project and, at a minimum, cause no significantly greater environmental impacts in other respects. Indeed, when the impacts of vegetation removal are fully considered, the Lauber Road alternative may prove to be environmentally superior in every way.

Given all these facts, why does the Modified Redesign Alternative propose widening Ramirez Canyon Road and building a new Via Acero, rather than building the Lauber Road alternative? The FEIR does not address the issue. However, the Staff Report for the August 23 hearing includes the following comment:

> It should be noted that after issuance of the DEIR and before the draft FEIR was published, the [Lauber property] landowner requested a large and non-refundable sum of money for full MRCA/Conservancy access to conduct geologic and soil studies on the property. To avoid any allegation that the payment of such an amount violates the prohibition on the gift of public funds contained in the California Constitution at Article XV, Section 6, the MRCA/Conservancy has not determined the feasibility of constructing and using the Lauber Road as a secondary access road at this time. However, at the time the DEIR was circulated, Lauber Road as an alternative secondary access road was potentially feasible as required by State CEQA Guideline 15126.6 9 (and may still be fully feasible pending access to conduct the necessary studies). (Staff Report, Aug. 23, 2010 Hearing, page 14, note 2.)

There is a further explanation on the next page:

> The Conservancy and MRCA staffs have done technical analysis on the feasibility of the Lauber Road but have not determined the cost necessary for construction and maintenance. (*Id.*, page 15.)

The quoted explanation is noteworthy in three respects. First, it plainly states that the road is technically feasible, but that the Conservancy has not yet done a cost analysis. Second, it does not explain why the cost analysis has not been done. Third, it does not find that the Lauber Road is infeasible. Indeed, it could not so state because the work is not yet complete.

Since the Lauber Road will have less environmental impacts than the access proposed by the MRA, and since there is no evidence upon which the Conservancy could make a finding that the Lauber Road alternative is infeasible, the Fund respectfully submits that CEQA does not authorize the Conservancy

to ignore that alternative. The absence of a complete feasibility analysis on the Lauber Road alternative in the FEIR represents a significant flaw in that document which renders it inadequate under CEQA.

C. Additional Factual and Legal Issues re Ramirez Canyon Road.

The PWP states that the only private property impacted by the Plan is limited to the proposed trail corridors. However, Figure MRA-5a-1 (Modified Redesign Alternative ï Affected Parcels ï Ramirez Canyon Park) demonstrates that the statement is not correct. More than 80 parcels of private property in Ramirez Canyon would be significantly impacted by the PWP, as would Via Acero and Ramirez Canyon Road, private roads which traverse private properties.

The PWP also states that the Conservancyõs use of the Ramirez property is by reservation ñat the request of the neighbors.ò To the extent that the statement implies acquiescence, it is not accurate. For 17 years now, the neighbors have consistently objected to the Conservancyõs overuse of the Ramirez property and of Ramirez Canyon Road, and have preserved their right to challenge that use by their participation in administrative and legal proceedings.

The PWP acknowledges that the Conservancy would be required to acquire property rights by easement or eminent domain in order to widen Via Acero and connect it to Kanan Dume. The PWP does not include a similar plan to acquire the property rights necessary to widen Ramirez Canyon Road because the PWP assumes that the Conservancy has the lawful right to make the proposed improvements. The assumption is not correct.

The Conservancy has consistently refused to respond to the extensive factual and legal analysis which proves that the Conservancy has no right to use the road for the proposed development, and no right to widen the road in any event. The Conservancyõs response to the Fundõs comments to the DEIR take the same approach, and states only that the claims are ñunsubstantiated.ò The response does not meet the requirements of CEQA Guidelines, section 15088, subdivision (c).

No property owner in Ramirez Canyon owns a ñ40-foot easement.ò on Ramirez Canyon Road. The easement is defined by deed as an <u>easement for ingress and egress</u> over a 40-foot strip of land. The scope of the easement was settled in the 1950õs, when the road was constructed. The existing width of the road has been maintained since that time. The owners of the parcels over which the road passes own the land, in fee, to the middle of the road. Therefore, no use by a resident of the unpaved portion of the 40-foot strip would ever constitute an encroachment.

The chain of title to properties in Ramirez Canyon demonstrates that the Ramirez Canyon Road easement was created to provide access for residential purposes. The Conservancy has no right to change the character of the easement by using it for office and commercial use. A change in the character of use of a private easement is not authorized because, as a matter of law, the change in use adds a ñnew and additional burden.ò not contemplated when the easement was created.[1] Therefore, if LACFD requires code-compliant access for the proposed development, the Conservancy must construct an alternate vehicular access.

[1] See, e.g., *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 686; *Gaither v. Gaither* (1958) 165 Cal.App.2d 782; *Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 976.

The Conservancyôs use of Ramirez Canyon Road and proposed use of Via Acero for non-residential purposes also violates zoning laws. The properties over which Ramirez Canyon Road and Via Acero pass are zoned rural-residential (RR). The Ramirez property is zoned open space (OS). The use of land in one zoning district for ingress and egress to land in another zoning district must not exceed the use allowed in the first district.[2] That means that, even if the Conservancy acquired the necessary property rights, the Conservancy would have no right to use either Ramirez Canyon Road or Via Acero for access for active recreation, office or commercial use unless the zoning for the properties underlying the road were changed.

In addition, parks are allowed in RR zones only with a conditional use permit (LIP, Table B-Permitted Uses). Therefore, even if the Conservancy acquired the necessary property rights, and even if the PWP proposed to limit the use of the Ramirez property to a park, the Conservancy would be required to obtain a CUP from the City of Malibu to access the property from either Ramirez Canyon Road or Via Acero.

Finally, there is no legal or factual basis for the Conservancyôs claim of right to 80 trips per day on Ramirez Canyon Road, and no public agency has the power to authorize that use.[3] Therefore, if the Conservancy does not acquire the property rights necessary to use and/or widen Ramirez Canyon Road, the proposed use of the Road for the development proposed by the PWP would constitute a ñtakingòfor which compensation would be required.

III

The PWP is Not Consistent with the Malibu LCP

A PWP must be consistent with the governing LCP (Pub. Res. Code, sec. 30605). The PWP asserts that it is consistent with the LCP Override approved by the Coastal Commission in 2009. However, the jurisdiction of the Commission to certify the Override has been challenged by both the City of Malibu and the Fund. The challenge is presently pending in consolidated Los Angeles Superior Court Case No. BS121650.

The Conservancyôs decision to go forward with administrative proceedings under the auspices of the Override while litigation is pending is unduly time-consuming and expensive for the taxpayers, the City, and the residents of Malibu. However, because the Conservancy has chosen to do so, the Fund objects to the PWP because it is not consistent with the only valid Malibu LCP -- the LCP as certified by the Commission in 2002. Attached as an Appendix to this letter, and incorporated herein, is an ñAnalysis of Inconsistenciesòbetween the PWP and the Malibu LCP as certified by the Commission in 2002.

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[2] Am. Jur., Zoning, sec. 167. California Courts follow the rule. (Miller & Starr, California Real Estate, sec. 15:54. See, also, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487 and *City & Co. of S.F. v. Safeway Stores, Inc.* (1957) 150 Cal.App.2d 327.)

[3] In addition, as the Conservancy has consistently acknowledged, the majority of the daily trips are for office use, sometimes as many as 68 trips per day. Early Conservancy studies demonstrated that if the Ramirez property were used as a park, weekday daily trips would be 9-14, Saturday daily trips would be 13-16, and Sunday daily trips would be 24 (see ñITE Land Use 413 Trip Generation Rates ï State Park (per acre),òsubmitted with 2006 version of PWP).

IV

Comments on PWP and FEIR

Without waiving any of the other objections set forth in this letter, the Fund respectfully submits the following comments on the Draft Final PWP (PWP) and the Draft Final EIR (FEIR) and supporting documentation:

A. General Comments.

Since 2006, when this Plan was first revealed, the City, the Fund, and on at least one occasion the Coastal Commission, have asked the Conservancy to provide specific information about various aspects of the Plan. For all of the properties, that information includes, but is not limited to, the intensity of the proposed use of the properties (e.g., the number of campers, hikers, picnickers, dog-walkers, etc.). For the Ramirez property, the information includes, but is not limited to, the types of "vans," "shuttles" and "convoys" proposed for transporting visitors, the nature of the proposed "events," the condition of the existing structures, etc. To date, the information has still not been disclosed. Without disclosure and analysis, both the PWP and the FEIR are fatally inadequate.

The PWP makes repeated references to the CDP previously issued by the Coastal Commission, and states that it seeks to "re-establish" those entitlements at the Ramirez property. There are no "entitlements" to "re-establish." The Conservancy's development of the Ramirez property was instituted with no permits in plain violation of the Act. The CDP was declared unlawful and set aside because neither the Conservancy nor the Coastal Commission considered Malibu's land use regulations. The unlawful use of property does not create any vested right or entitlement to continue that use. (*Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813.)

The PWP erroneously states that the amendments to Public Resources Code section 33208 and 33211.5(d)(1)(2)) "overruled" the appellate court decision that held that the Conservancy is subject to Malibu's land use regulations (*City of Malibu vs. Santa Monica Mountains Conservancy* (2002) 98 Cal.App.4th 1379). The legislative history of the cited statutes (AB 1812) does not demonstrate any legislative intent to overrule the appellate decision. Everyone in the State of California – including the State itself - is subject to the Coastal Act (Pub. Res. Code, sec. 21066, 30111, 30600; see also, 65 Ops. A.G. 88). Under the Act, with limited exceptions, the City has land use regulatory power over the Conservancy.

The PWP includes several lengthy discussions about "process" and "history" which are editorialized and slanted to make it appear as if the Conservancy has consistently followed all applicable laws (see, e.g., PWP, pp. 2-5 – 2-9 ("Planning/Permitting" History of Ramirez); PWP, pp. 2-16 – 2-17 (PWP "process"); PWP, pp. 2-21 – 2-25 ("Local hearings and Community Involvement")). The late posting of the materials makes it impossible to comment on each of the misstatements contained in those passages. Therefore, the Fund incorporates its previous comments and objections, and reserves the right to raise additional objections if required during further administrative and/or legal proceedings.

B. The PWP Includes Elements Which Are Not Lawfully Included in a PWP.

Public Resources Code section 30114 provides for public works, which include "publicly financed recreational facilities" (Pub. Res. Code, sec. 30114). At least three elements of the PWP do not

constitute either public works or recreational facilities. Therefore, these elements are not lawfully included in the PWP.

1. Regional Administrative Offices. As a matter of law, a public works plan may include only indispensable facilities, *directly and immediately* related to the provision of the primary service. Any other facilities require authorization by local authorities. (See, e.g., *City of Lafayette v. East Bay Municipal Utility District* (1993) 16 Cal.App.4th 1005.) The PWP admits that the proposed office use of the Ramirez property is not limited to the administration of the Plan. Instead, the PWP proposes use of the structures as offices for ñadministrative responsibilities associated with open space acquisitions, planning, research, the management of conservation and recreation activities at Conservancy and MRCA holdingsò (PWP, p. 2-2, emphasis added). That use is not a proper element of a public works plan,[4] and it does not constitute a ñrecreational facility.ò[5] Therefore, even if the Override were to stand, office use would be authorized only under a CDP issued by the City of Malibu.

2. Leasing-Out for Private Commercial Events. The PWP proposes to lease the Ramirez property to private persons for ñrevenue-raisingò large events and apparently (see discussion below) for revenue raising small ñmeetings.ò These undefined ñeventsò and ñmeetingsò are also not ñpublic worksò or ñrecreational facilities.ò Therefore, these events may not lawfully be included in a PWP for recreational purposes. The undefined ñeventsò and ñmeetingsò will require permits from the City of Malibu (e.g., CDP, CUP or TUP).

3. A PWP Cannot Include a Hypothetical Trail System. The PWP acknowledges that the Conservancy does not have land use regulatory power and does not presently hold the easements and/or other property interests required to develop the proposed trail network. The PWP also acknowledges that there are not sufficient offers to dedicate to allow for the development of the trail network (see, e.g., PWP, OTD Map, Fig. 9). There is no statutory authority for the adoption of a public works plan for a hypothetical project. There is also no manner by which to comply with CEQA unless the ñprojectò can be defined. Therefore, those portions of the proposed trail network which cannot be developed at the present time are not properly part of the PWP. If and when the Conservancy acquires the property interests necessary to construct the trail network, the Conservancy may apply for an amendment to the PWP.

C. Issues and Uses Which Require Clarification and/or Additional Analysis.

1. Camping in Ramirez Canyon. The PWP proposed to construct an ADA camp area on the tennis court site for visitors with special needs. The Draft Final PWP refers to camping facilities for ñvisitors with special needs,ò but also refers to ñspecial camping experiencesò and camping ñby reservation.ò Throughout the PWP, there are general references to ñthree campground locationsò (i.e.,

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[4] The PWP includes a list of properties which allegedly house administrative offices similar to the Conservancy offices at the Ramirez property. The evidence submitted by the Fund in connection with the Override hearing before the Coastal Commission demonstrated that, while some of the properties housed administrative offices, the administration was limited to the specific site (i.e., office use which might lawfully be included in a ñpublic workò). None of the properties housed regional executive offices like those proposed by the PWP.

[5] See, e.g., *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 232 (only areas actually used for recreation are properly included within the scope of ñrecreational purposeò).

Ramirez, Corral Canyon and Malibu Bluffs). Is the camping in Ramirez Canyon limited to persons with special needs and their companions or is it open to any member of the public?

2. "Baseline" vs. "Phase 1." The PWP acknowledges that the existing use of the Ramirez property is defined by the terms of the Stipulation entered into between the Conservancy and the City. Those terms are not set forth in the PWP. However, the Stipulation was attached as an Exhibit to the Staff Report for the hearing, and limits the current use of the property to the following:

a. administrative offices for up to 15 employees,
b. residential caretaker and family,
c. two special programs a week for disabled youth or seniors,
d. occasional training programs,
e. ongoing property maintenance.

Under CEQA, this existing use is the ñbaseline.ò The PWP (a) states that Phase 1 ñcontinues existing baseline uses at the park with only minor new improvements . . .ò (PWP, p. 3-81). At the same time, however, Phase 1 is described as including ñprograms and use limitationsòfar more extensive than the baseline (see PWP, p. 3-81). For example, in the PWP, Phase 1 changes the description of the existing ñprograms . . . for disabled youth or seniorsòto ñexisting small events.ò Phase 1 adds an unspecified number of ñpublic outreach, events, gatherings, tours, and workshops,òincluding use of the Peach House and Barn for ñgroup gatherings and tours.ò Phase 1 also includes references to amplified music, a monitoring program, and revenue raising events, none of which are authorized by the Stipulation.

Neither the ñModified Redesign Project Descriptionònor the ñModified Redesign Alternativeòin the FEIR resolves the confusion. Both documents assume that the ñexisting baselineòfor programs is much greater than ñtwo special programs a week for disabled youth or seniorsòauthorized by the Stipulation. (See FEIR App. MRA-1, pp. MRA-31 ï MRA-32 (project description) and FEIR, pp. 14-11: ñWhile the number of small events is similar in the MRA (Phase 2) compared with the Proposed Plan, the MRA (Phase 1) is limited to continuation of existing small events (e.g., public outreach, meetings, etc.) two days/week (maximum 40 participants with an additional 20 staff on-site) and Conservancy/MRCA employee training and workshops (twice per month; maximum 60 people (FEIR, p. 14-11).) This latter description differs from the baseline in both quality and quantity of use. In addition, the summary of existing uses is not correct. Other than employee training sessions (which might be characterized as ñmeetingsò), ñmeetingsòare not permitted by either the Stipulation or the Override. In addition, the Stipulation does not permit 20 staff in addition to the 40 participants at the ñspecial programs a week for disabled youth or seniors.ò The Override does not include any provision by which 20 staff could be added to <u>any</u> of the permissible uses.

Because of the inconsistencies between and among the PWP, Draft Final EIR, and MRA, the environmental impact of the development proposed by Phase 1 is neither clearly disclosed nor properly analyzed in the FEIR. Therefore, the FEIR does not evaluate either the impact of the proposed Phase 1 development or the measures which might be required to mitigate that impact. For example, LACFD might require a 20-foot access road for small ñrevenue-raisingòevents, but might not require a 20-foot access road if Phase 1 is truly limited to the baseline defined by the Stipulation.

3. "Events" and "Meetings." As noted above, various persons and agencies have requested that the Conservancy identify the nature of the proposed use of the property for groups of 40 persons or less. The use of the terms ñeventòand ñmeetingòthroughout the discussion of Phase 1 and Phase 2 adds to the confusion caused by the lack of specificity. For example, the PWP and the MRA

suggest that the Conservancy intends to lease the Ramirez property for small private ñeventsò and ñmeetings.ò However, that use was not authorized by the Override. The Commission Findings allowed for ñpublic outreach,ò ñtours and/or small gatheringsò (Rev. Findings, p. 46). The term ñeventòwas not used to describe those small programs. The term ñSpecial Eventsòwas defined as a gathering ñof guests numbering more than 40ò (Rev. Findings, p. 46). The Commissionôs Revised Findings do not authorize any sort of ñmeeting.ò Without a precise definition of the scope of the use in each phase, it is not possible to evaluate the increase from baseline, the impacts of the Phase 1 improvements, or the consistency (or lack thereof) with the Override.

4. "Facilities Plan." The PWP uses this term but does not define it, and definition is essential. Although the term appears in various contexts (i.e., transportation, sewer outfalls, etc.), it does not appear in the Act, in CEQA, or in the regulations which apply to recreational facilities or to the processing of public works plans by the Coastal Commission.

5. Structures in Ramirez Canyon. As noted above, this is another area in which the Conservancy has consistently refused to provide information. In the response to our comments on the DEIR, the Conservancy invokes the CEQA ñbaselineòconcept and relies on the existing condition of the structures CEQA baseline concepts do not determine the validity of the PWP itself. Simply stated, the Conservancy cannot continue to avoid any analysis of the structures on the property by simply ñwrappingòthose structures into an application for some other form of land use entitlement.

This was a single-family residential compound until the Conservancy converted and developed it into an office park and event center without lawful permits and in violation of the governing land use principles. The unlawful use of property never creates any vested right or entitlement to continue that use. (*Pettitt v, City of Fresno* (1973) 34 Cal.App.3d 813.) Therefore, the ñdeveloped natureòof the property cannot justify the proposed uses. The fact that the PWP does not call for any ñnew, habitable, or flammable structures,ò does not excuse the Conservancy from the requirement that it procure entitlements for unpermitted improvements and otherwise bring the buildings up to the Code requirements for the public use of state buildings.[6] This information must be disclosed and analyzed during the PWP process. Without it, the FEIR cannot disclose or assess the proposed use of the structures.

The PWP recognizes the governing legal principles, by including methods by which to remedy the unlawful diversion/channelization of Ramirez Creek. The structures are no different, and the Coastal Commission has advised the Conservancy on at least one occasion that any request for a land use entitlement must include a description of the structures, a description of any unpermitted developments, and proposals to remedy any violations.

6. Insufficient Responses to Comments on the DEIR.

CEQA Guidelines, Section 15088(c) requires the lead agency to respond to public comments on a DEIR under the following standard:

> The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the

[6] Contrary to the statements in the PWP, this process would also require geology and soils analysis, including drainage and erosion studies, for all buildings, not only for ñnewòstructures.

> comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

Many of the comments provided by the Fund in our written comment letter dated March 22, 2010 and by Richard Mullen at the DEIR public hearing on Feburary 22, 2010 have not been adequately addressed with a reasoned analysis supported by factual information. Given the limited time provided for review of the FEIR, we will highlight several while noting that others exist.

a. **Intensity of Use of Properties in the Plan Area**. Despite numerous requests for this information, the FEIR includes no figures concerning the proposed intensity of use of any of the properties for camping or passive recreation (i.e., hikers, picnickers, dog-walkers, equestrians, etc.). Without that information, there is no manner by which to evaluate the environmental impact of the Plan.

b. **Cumulative Impacts/Ramirez Canyon.** The response to comment YY-7 clarifies that the assumed maximum number of people who might be present at the Ramirez property at one time is 250. However, with the exception of the Fire Protection Plan, the response fails to indicate whether each of the analyses of various potential impacts in the DEIR is based on that assumption. The response also fails to indicate whether the analyses have been updated as necessary before concluding that no revision to the DEIR is required. For example, the response indicates that the Utilities/Service Systems analysis in the DEIR evaluated impacts based on a 200-person event rather than the maximum 250 people who may be present on the site. This analysis must be updated and mitigation measures proposed if the septic system is not capable of effectively receiving and treating the effluent generated by 250 people. Similarly, any impacts to the land use and planning, transportation and parking, noise or any other issue areas must also be addressed based on the 250 person assumption.

c. **Existing Violations.** Comments YY-8, YY-13 and YY-116, among others, address the safety risks and other potential impacts of the current and proposed use of residential buildings at the Ramirez property for non-residential purposes. As noted above, the fact that these buildings exist and are therefore part of the baseline does not obviate the need to evaluate any existing unlawful use of the structures, particularly in light of the fact that the PWP proposes to greatly intensify the use of these facilities. The response indicates that the buildings proposed to be used as fire shelters will be retrofitted to comply with certain provisions of the Fire Code. However, the improvements required by the California Building Code for a change of use from residential to public assembly and office extend beyond fire safety retrofits and include upgrades and changes for accessibility, kitchen facilities and seismic retrofits. The response to these comments and the FEIR fail to adequately address these issues.

d. **Transportation and Parking.** The response to comment YY-169 acknowledges that construction related traffic trips combined with other trips associated with the Ramirez property could exceed the 80 trips per day threshold on Ramirez Canyon Road. The response indicates that construction would be phased to avoid that excess; however, no revision to the EIR or PWP is proposed. The requirement that construction at the Ramirez property, Ramirez Canyon Road and Via Acero be phased should be included as a mitigation measure in the FEIR to ensure that any potential impact is adequately monitored and mitigated.

Similarly, the response to YY-172 regarding the manner in which the Ramirez property would be õmanagedò and õmonitoredòto limit parking to 47 vehicles and total trips to 80 per day indicates that the Conservancy has utilized a monitoring program in the past. In order for this provision of the Plan to be

adequately monitored to ensure less than significant impacts, a management and monitoring plan must be included as a mitigation measure of the FEIR, analyzed for its feasibility and provided to the public within a reasonable amount of time before the hearing in order to allow for meaningful comment.

e. Fire Hazards. The response to comment YY-120 indicates that the MRCA Executive Director states that existing MRCA staff will be able to conduct periodic and annual maintenance pursuant to the vegetation management plan and fire protection plans. We reiterate our comment that vegetation management is extremely labor intensive and the requirements proposed by the plan are extensive. Without an analysis based on the area to be managed, topography, and types of vegetation, there is not sufficient factual information to support the conclusion that the MRCA has adequate existing staff to implement the proposed plan.

The Fundôs comment YY-142 requested clarification concerning whether Conservancy staff would be present at the Ramirez property on Red Flag Days and during Flash Flood/Flood Warnings and Urban/Small Stream Advisories. Clarification was requested because the traffic analysis failed to include any trips generated by the property over Ramirez Canyon Road under these circumstances. The response indicates that SMMC/MRCA staff will in fact be present on these days but fails to correct the traffic analysis to incorporate this fact.

f. Noise Impacts. As noted above, despite numerous requests, the Conservancy has still not identified the types of vans, mini-coaches and buses that will be used to transport visitors to the Ramirez property. The response to comment YY-164 acknowledges that these vehicles will most likely generate noise levels greater than the passenger vehicles assumed to be used in the noise analysis (i.e., sedans, sport utility vehicles etc.) (see, also, response to comment YY-163). However, the response does not quantify this noise level. Therefore, the conclusion that the impact is less than significant is not supported by factual information.

g. Lighting Impacts. The response to comment YY-28 regarding the DEIRôs failure to evaluate the impacts of lighting for special events recognizes that additional lighting will not only be allowed, but will be encouraged in some areas of the Ramirez property during special events. The response concludes that due to the limited duration of the events and the dense vegetation surrounding the Ramirez property, lighting will not have any significant impacts. Without providing information regarding the permissible maximum wattage and direction of lighting, there are no facts to support the conclusion. For example, high wattage spot lights or lights directed toward the sky could be visible even with the existing vegetation and could have a significant impact on nearby residents and wildlife.

The response to comment YY-69 also recognizes that temporary lighting will be allowed for special events without any apparent restrictions. This response also concludes, with no factual support, that the impact would not be significant because the lighting is limited in duration. MM BIO-10.3 provides no feasible and measurable means of reducing lighting impacts for special events.

h. Alternatives Analysis – King Gillette Ranch. Comment YY-187 and Mr. Mullenôs oral comments at the February 22, 2010 public hearing identified King Gillette Ranch (KGR) as a feasible alternative for some of the uses proposed by the Plan. The Fundôs comments specifically listed camping, special events and administrative offices as uses which could be accommodated at KGR rather than the Ramirez property in order to reduce and/or avoid impacts related to traffic, fire safety and ESHA. The response focuses solely on why KGR is not an appropriate alternative for camping and fails to address the other proposed uses.

7. Jurisdiction over Fire Safety Matters. The PWP includes conflicting and inconsistent references about the "appropriate" fire agency, and infers that the Coastal Commission might have jurisdiction over compliance with applicable Fire Codes. The Commission has no such jurisdiction, and is not authorized to modify any applicable regulation. Ramirez Canyon Road is located on private property, over which the LACFD has jurisdiction. The Ramirez property is located on state-owned property, over which CALFIRE has jurisdiction. The entire Plan area is located in an urban-wildland interface, which is supervised by the Director of the California Department of Forestry and Fire Protection. The appropriate fire agency for each activity should be identified.

In addition, the PWP includes the following provision (PWP, p. 3-57):

> Where it is infeasible to meet all applicable current Building and Fire Code requirements for fire protection due to site or resource constraints, modifications may be granted pursuant to an approved Fire Protection Plan, as provided by Section 702A of Chapter 7A of the 2007 California Building Code and Section 4702.1 of the 2007 California Fire Code, as may be amended. Such Fire Protection Plan will analyze the site fire risk at a fine scale and develop customized measure for mitigating the risk including design, construction, maintenance and operation requirements of the park improvements in compliance with applicable fire codes and, where necessary, fire protection enhancement requirements to provide "same practical effect" or functional equivalency for any non-code complying park improvement element.

The sections cited from the Building and Fire Codes do not involve modifications to fire safety requirements. Without the correct citations, it is not possible to evaluate the need for or impact of any potential modification.

D. SMMC is Not Authorized by Statute to Operate and/or Maintain Recreational Facilities.

The PWP is described as a "Joint Agency Public Works Plan" (PWP, p. 1-5). However, under the common powers provision of the Joint Exercise of Powers Act, a joint plan would be authorized only if both SMMC and MRCA independently had the power to pursue the plan (Govt. Code, sec. 6502). The PWP cites SMMC's "Mission Statement" to support its power to participate in the Plan (PWP, p. 1-5). However, SMMC's enabling act does not support the Statement.

When the Legislature intends that an agency have the power to maintain and operate recreational facilities, the Legislature includes that power in the agency's enabling act.[7] The Legislature did not include the power to operate and maintain recreational facilities in SMMC's enabling act (Pub. Res. Code, sec. 33000, *et seq.*). With respect to recreational facilities, the Legislature included only two provisions, each of which constitutes a limitation.[8] The legislative history of SMMC's enabling act confirms that SMMC is not empowered to develop, operate, or maintain a PWP:

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[7] See, e.g., Public Resources Code, section 5786, subdivision (c) (recreation and parks districts are empowered to "[a]cquire, construct, improve, maintain, and operate recreation facilities"); Government Code, section 61100, subdivision (e) (community services districts are empowered to "[a]cquire, construct, improve, maintain, and operate recreation facilities"); Water Code, section 55337 (county waterworks districts are empowered to "maintain, improve, and operate recreational facilities in connection with any dams, reservoirs, or other works owned or controlled by the district").

[8] Public Resources Code, section 33204, subdivision c, authorizes grants to other agencies "for the purpose of "acquiring sites identified as necessary for park, recreation, or conservation purposes

> ñAB 1512 creates the [SMMC]. Like the Coastal Conservancy, this body is expected to carry out its assigned duties primarily by acquiring parcels of land and re-selling or otherwise conveying them to private individuals with appropriate restrictions on future use. . . .
>
> Although the SMMC is authorized to acquire sites ñnecessary for parks, recreation or resource preservation,ò it is prohibited from holding that land for more than 10 years.ò
>
> Stats 1979, Ch. 1087 (AB 1512), Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, pp. 1-2.

E. <u>The PWP Mis-States the Legal Principles Which Govern Development Pursuant to a PWP.</u>

The PWP mis-states the governing law in numerous respects, including but not limited to the following:

Public Resources Code section 30606 provides:

> Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college or private university, <u>shall notify the commission and other interested persons, organizations, and governmental agencies of the impending development</u> and provide data to show that it is consistent with the certified public works plan or long-range development plan. No development shall take place within 30 working days after the notice. (Emphasis added.)

The ñDevelopment Review Proceduresòdescribed in Section 4.1.1 omit the notice mandated by Section 30605. Instead, they (a) provide that the NOID must include a ñlist of recipients of the NOIDòand (b) require that supporting information be sent to ñpersons and agencies <u>requesting</u>òthe information. Those provisions are not consistent with Section 30606. Because this PWP has an impact on so many parcels of private property (particularly in Ramirez Canyon (see FEIR App. MRA-8, Figure MRA-5a-1)), Section 30606 requires - at a minimum ï notice of impending development to the owner of any ñaffected parcel.ò

Section 4.1.5 purports to exclude certain developments from the NOID procedures. However, Section 30606 expressly states that a notice of impending development must be sent ñprior to the commencement of <u>any development</u> pursuant to Section 30605ò(emphasis added).

The Coastal Commission Guidelines include detailed provisions which govern specific project review after the certification of a PWP (14 Cal. Code Regs., sec. 13359, et seq.). Section 13359 mandates that the agency pursuing the PWP must submit the information required by Section 13353. The ñNOID Contentòset forth in PWP, Section 4.1.1 does not include the information required by Section 13353.

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and for development of essential related public facilities.ò Section 33204, subdivision (d), authorizes advance acquisition of sites ñidentified as necessary for park, recreation, or conservation purposes, when a state or local agency is unable, due to limited financial resources or other circumstances of a temporary nature, to acquire the siteòsubject to a 10-year holding period after which, if the property is not acquired by the target agency, it must be sold (Pub. Res. Code, sec. 33205).

After the approval of a PWP by the Commission, the Commission may approve proposed projects only if "the proposed development is consistent with the certified public works plan." (14 Cal. Code Regs., sec. 13359, subd. (b).) The PWP includes a definition of "Development Consistency" (p. 4-1) which is not authorized by either the Act or the Regulations.

The PWP provides for approval of projects pursuant to NOID Content and Procedures (p. 4-1). However, as explained above, the PWP includes elements which may not be lawfully included in a PWP (e.g., offices, leasing for commercial events, etc.). Those proposed uses require appropriate permits from the City of Malibu.

The Commission's Regulations include a procedure by which to amend a public works plan (14 Cal. Code Regs., sec. 13365). The PWP incorrectly states that the procedure may be used to amend "authorization for development that has been deemed consistent with the PWP" (PWP, p. 4-4). There is no such provision.

F. The Proposal to Fund the PWP with Grants from SMMC to MRCA is Unlawful.

The PWP states that the "project would be implemented using Proposition 84 [SMMC] funding, a coastal watersheds of the Santa Monica Bay component," and from MRCA's "annual maintenance budget" (PWP, pp. 4-5 to 4-6). If these sources include grants from SMMC to MRCA, those grants would also violate the common powers provision of the Joint Exercise of Powers Act (Govt. Code, sec. 6502) because SMMC does not have the power to grand bond funds to itself. SMMC's violation of the common powers rule is currently pending before the California Court of Appeals, Second Appellate District, Division One, in Case No. B216702 (L.A. S.Ct. Case No. LC077488).

G. The PWP is Not Consistent with Either the LCP or the Coastal Act.

The PWP includes a 98-page "Consistency Analysis" (Appendix B). As noted above, the analysis was not made available within a reasonable amount of time before the hearing so as to allow for detailed comment. Therefore, the Fund reserves its right to raise additional objections in future administrative and legal proceedings. Insofar as the Consistency Analysis is based on the Override, the Fund repeats its jurisdictional objections. However, with or without the Override, the PWP is not consistent with either the Coastal Act or the provisions of the Malibu LCP which implement the mandates of the Act, in at least the following areas:

1. **Resolution of Conflicts and Protection of Resources.** "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such ***conflicts be resolved in a manner which on balance is the most protective of significant coastal resources***. . . ." (Pub. Res. Code, sec. 30007.5, emphasis added; see also, sec. 30200, subd. (b).) The PWP violates this fundamental principle because, even if it were limited to uses which constitute "public access," it still elevates those uses over all of the provisions of the Act which mandate the protection of significant coastal resources. Appendix B rarely acknowledges this fundamental policy -- particularly with respect to ESHA (see No. 2, below). However, even where the PWP discusses the policy, the discussion makes little sense.

For example, Appendix B includes the following statement about the proposed widening of Via Acero Road:

> ñAs there appears to be a conflict between the coastal access, recreation, and ESHA protection policies of the Coastal Act and LCP, the Via Acero road improvements may be found consistent with these applicable policies because the proposed road improvements would, on balance, improve conditions for coastal resources subject to LCP policy mandate by improving emergency ingress/egress into Ramirez Canyon and enhancing public access and recreation opportunities at Ramirez Canyon Park.ò (PWP, App. B, p. 37.)

The proposed widening of Via Acero will involve the destruction of significant amounts of ESHA, for the sole purpose of allowing the Conservancy to lease the Ramirez property to large groups for private events. There is no manner by which that destruction of ESHA ñimprove[s] conditions for coastal resources.ò

The Consistency Analysis does not even mention the mandatory provisions for the resolution of conflicts in the discussion of the proposed widening of Ramirez Canyon Road ï the entirety of which is located in the riparian ESHA for Ramirez Creek. Instead, Appendix B simply characterizes the improvements as ñminorò(PWP, App. B, p. 37). The improvements are not ñminor.ò The Conservancy proposes to take an existing narrow rural road, 12-20 feet wide, and change it into a 20-26 foot wide asphalt strip, with an additional 20 feet of ESHA brush clearance on either side (see No. 4, below).

2. <u>ESHA.</u> The Coastal Act mandates the protection of environmentally sensitive habitat areas (Pub. Res. Code, Secs. 30210, 30236, 30240, and 30250). Sections 30210 and 30240 authorize public access and recreation only where consistent with the protection of natural resource areas from overuse. Almost all of the properties in the Plan area are designated ESHA; the entirety of the Ramirez property within the City of Malibu is so designated (PWP Fig. 6). The PWP obliterates the protective mandate of the Act by allowing broadly defined ñsupport facilitiesòin ESHA, including but not limited to regional offices, grading and brush clearance for campsites and 4 to 5 foot wide trails, extensive utility trenching (2 to 3 feet wide by 3.4 to 4 feet deep), chemical toilets, increased canine and equestrian use, large ñspecial events,òand parking lots within 25 feet of stream banks. None of these uses are ñresource-dependent.ò

Section 30250 not only prohibits commercial development <u>in</u> ESHA, it prohibits commercial development <u>near</u> ESHA if that development will have a significant impact. The PWP proposes the commercial use of the Ramirez property (i.e., leasing it for private events).

3. <u>Hazards.</u> Public access must be consistent with ñpublic safetyò(Pub. Res. Code, sec. 30210). The PWP is not consistent with this requirement. The LACFD DEIR comment letter confirms that allowing camping in Very High Fire Hazard Severity Zones presents an unacceptable risk to public safety.

The PWP states that if there are no funds for maintenance and supervision of campgrounds, the campgrounds will be closed. The PWP then claims: ñUnmaintained campgrounds would not pose a greater fire danger than existing wildland conditions at the site under current conditions.ò(PWP, p. 4-7). No evidence is offered to support that claim, and experience confirms that the statement is not true. Unmaintained and unsupervised public lands create an attractive nuisance, as evidenced by the Corral Canyon fire, which was started on improved, but unmaintained and unsupervised State Park land.

The information the Fund has submitted during prior proceedings on this project demonstrates that leasing the Ramirez property for large events also presents an unacceptable risk of fire. Limiting the

number of those events and/or limiting the season in which they may be held (i.e., March through October) does not alleviate the hazard, because the California fire season is now all year long.

4. Neighborhood Compatibility. Public access and recreational opportunities can be provided only if they are "consistent with public safety needs and the need to protect public rights, rights of private property owners and natural resource areas from overuse" (Pub. Res. Code sec. 30210). The PWP violates this policy in numerous respects. The proposal to widen Via Acero and Ramirez Canyon Road to 20-26 feet, with 20 feet of brush clearance on either side, will fundamentally change the character of these neighborhoods. Therefore, even if the Conservancy acquires the property rights necessary for these improvements, this proposed development will violate the Coastal Act.

Section 30214 requires that implementation of public access policies take into account, among other things, the "proximity of the access area to adjacent residential uses." The Ramirez Canyon residents have not objected to the use of the Ramirez property for passive recreation (e.g., camping and other facilities and programs that increase the level of accessibility for disabled visitors, children's educational programs, riparian interpretative trails, picnic facilities, senior and public outreach programs, canyon and garden tours, and hiking, picnicking, etc.). However, any use of the property seven (7) days per week is not consistent with the Act. Regional office and commercial use of the property (until 11 p.m.) also violates the Act's mandate for neighborhood compatibility.

5. Use of Upland/Inland Properties. The PWP is premised on providing "public access." However, as noted above, several elements of the proposed PWP do not involve public access (i.e., regional offices, leasing the property for private events, etc.). In addition, the public access provisions of the Act do not apply to the inland development proposed by the PWP for Ramirez Canyon.

The "public access" provisions of the Coastal Act are specifically designed to provide *access to the coastline and the beach."* These provisions are part of the Constitutional right of public access to navigable waters (see, Chap. 3, Coastal Resources Planning and Management Policies, *Article 2*; Pub. Res. Code, sec. 30210, et seq.; Cal. Const., Art. X, sec. 4).[9]

The *recreation* provisions of the Coastal Act are set forth separate and apart from the public access provisions (see Chap., Coastal Resources Planning and Management Policies, *Article 3*.)[10] The Malibu LUP confirms these statutory principles. Section 7.2 of the LUP (p. 123) provides: "Publicly financed recreational facilities and access improvement projects, including all projects of the State Coastal Conservancy, shall be permitted consistent with the policies contained in the Access and Recreation

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[9] The legislative history of the Coastal Act confirms that these provisions set the "goal of maximum public *access to coast*." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended 8/5/76, p. 2.) See, also, Chap. 6, "Implementation," Art. 3, "*Coastal* Public Access Program," Pub. Res. Code, sec. 30530, et seq. (requiring the preparation and implementation of a "program to *maximize public access to and along the coastline*").

[10] This Article refers to the use of "upland areas necessary to support coastal recreational use" (see, e.g., Pub. Res. Code, sec. 30223). However, the recreation provisions of the Act focus on "water-oriented recreational activities" (sec. 30220), "oceanfront land suitable for recreational use" (sec. 30221), and use for "coastal recreation" (sec. 30222). The legislative history of the Act confirms that these provisions "protect *shorefront* property suitable for recreation; encourages use of private lands for recreation and recreational boating facilities in certain areas." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended 8/5/76, p. 2, emphasis added.)

section of the LCP and the Access and Recreation policies of the Coastal Act *when located between the sea and the first public road*.ò

6. **Water Quality.** Public Resources Code section 30231 mandates that the ñbiological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.ò Numerous provisions of the PWP violate this mandate, including but not limited to, increased canine and equestrian use of riparian ESHA, placement of chemical toilets in watersheds, grading for creek crossings, campsites and 4 to 5 foot wide trails, and grading and trenching for utility lines.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK

By:



Steven A. Amerikaner



Diane M. Matsinger

cc: Richard Mullen, President, Ramirez Canyon Preservation Fund
Christi Hogin, Malibu City Attorney
California Coastal Commission, attn: Deanna Christensen, Coastal Program Analyst

Appendix: Analysis of Inconsistencies Between the Malibu Local Coastal Program and the Malibu Parks Public Access Enhancement Plan Public Works Plan

APPENDIX A TO AUGUST 23, 2010 COMMENT LETTER BY THE RAMIREZ CANYON PRESERVATION FUND REGARDING DRAFT FINAL MALIBU PARKS PUBLIC ACCESS ENHANCEMENT PLAN, PUBLIC WORKS PLAN, MODIFIED DESIGN ALTERNATIVE.

The Comment Letter explains that the Coastal Commission did not have jurisdiction to utilize the override procedures of the Coastal Act to approve MAL-MAJ-1-08. Therefore, MAL-MAJ-1-08 does not provide the proper standard of review for PWP consistency. The proper standards of review are set forth in the Malibu Local Coastal Plan (LCP), Land Use Plan (LUP) and Local Implementation Plan (LIP) (sometimes collectively referred to herein as "LCP"), all as certified by the Commission in 2002. In addition, because SMMC is subject to Malibu's local land use regulations, any proposed development must also be consistent with the Malibu Municipal Code (MMC).

The PWP is inconsistent with the LCP and the MMC in numerous respects, including, but not limited to the following:

1. Permissible Uses in Open Space.

The properties in the plan area are designated Open Space (LCP, Land Use Maps 2 and 3, Zoning Maps 2 and 3). Only "*passive recreation*, research and education, nature observation and recreational and support facilities" are allowed in open space (LUP, p. 99, emphasis added). No government offices are allowed in Open Space (LIP, Table B, Permissible Uses). The PWP proposes regional administrative offices for both SMMC and MRCA in Ramirez Canyon. Residences are not allowed in Open Space (LIP, Table B, Permissible Uses). The PWP proposes a ranger/maintenance supervisor residence in Ramirez Canyon and ranger/host housing at other properties. Events require temporary use permits and are limited to four per year on any parcels under contiguous ownership (LIP, pp. 24-25 and sec. 13.4.9 (p. 216); MMC, Chap. 17.68). The PWP proposes numerous small and large events in Ramirez Canyon with no requirement for temporary use permits.

Support facilities permitted in Open Space are limited to picnic areas, restrooms, trash receptacles, parking and construction of access improvements for trails (LUP, pp. 11, 19 and 26). The PWP defines "support facilities" as including "parking, public restrooms, picnic amenities, ranger/maintenance supervisor housing, nature centers, administrative personnel facilities related to the daily operation and maintenance of parklands and park programs." The PWP also states that "existing and proposed support facilities provided for in the Plan are those facilities deemed necessary to support the primary permitted land use."

2. Environmentally Sensitive Habitat Areas.

Most of the properties for which the PWP proposes development are designated ESHA (LCP, ESHA Overlay Maps, No. 2 and No. 3). Use of property within ESHA is restricted to "accessways, trails, directional signs, interpretive signage, restoration projects and projects designed to protect and enhance habitat values" (LIP, sec. 4.5.3 (p. 127); see, also, LUP, sec. 3.9 (p. 50)). In all of the plan area, the PWP proposes to develop ESHA with the following: parking lots, maintenance vehicles, chemical restrooms, grading and construction of retaining walls and brush clearance. In three of the park areas, the PWP proposes to develop housing, camping, and grading/trenching for utility lines. In Ramirez Canyon, the PWP proposes to develop personnel facilities, small and large events, and a regional office.

Applications for "development on sites containing or adjacent to a stream . . . shall include evidence of preliminary approval from the California Department of Fish & Game" (LIP, sec. 4.4.1 (p. 124)). The

Fish and Game Code regulates streambed alteration by ñany person, state or local governmental agency, or public utilityò(Fish and Game Code, sec. 1601). The PWP proposes extensive restoration of Ramirez Creek and numerous streambed alterations on other properties for vehicular and pedestrian crossing. The PWP does not include the requirements of either the LCP or the Department of Fish and Game.

The LCP requires buffers of various widths around coastal sage scrub ESHA and chaparral ESHA to ensure that no required fuel modification area will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the plant community (LIP, sec. 4.6.1, paras. E and F (p. 129)). The PWP proposes development in these buffer zones, and makes no provision for ESHA buffers.

The mandatory 100 foot buffer for stream/riparian ESHA shall be measured ñfrom the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject streamò(LIP, sec. 4.6.1, para. A (p. 128)). The PWP proposes only that ñfacilitiesòbe located a minimum of 100 feet ñto the maximum extent feasible.ò In at least several instances, development is proposed within 25 feet of stream/riparian ESHA.

3. Parking, Vehicular Access and Use of Private Roadways.

The MMC includes conditions for the joint use of parking facilities and requires that agreements for joint use include the City as a party (MMC, sec. 17.48.040). The PWP proposes offsite parking to accommodate the demand created by the use of the Ramirez property for groups of 200 people, and deletes the conditions and the requirement for participation by the City.

The LCP requires compliance with all Fire Safety Statutes and Regulations (Chap. 4, pp. 90-91). Title 19, California Code of Regulations, section 3.05 provides that vehicular access from every public building to a public street must be not less than 20 feet in width. There are no exceptions and there are no provisions for waiver of the minimum width requirement.[11] The only vehicular access to the Ramirez property is by Ramirez Canyon Road ï a rural, very narrow (less than 20 feet in some places), private roadway. For the reasons stated in the comment letter, SMMC has no lawful right to, *inter alia*, widen Ramirez Canyon Road. Therefore, the PWP does not provide for fire compliant access.

The properties on which Ramirez Canyon Road and Via Acero are located are designated ñrural-residentialò(RR). Active recreation, camping, office and commercial uses are not allowed in an RR zone (LIP, Table B-Permitted Uses). The ñuse of land in one zoning district for an access road to another district is prohibited where the road provides access to uses that would themselves be barred if they had been located in the first zoning district; in such a situation, the access is considered to be in the same use as the parcel to which the access leads.[12] Therefore, even if SMMC had a lawful right to use either Ramirez Canyon Road or Via Acero, SMMC would not have the right to use either road for

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[11] See, also, L. A. County Fire Code, which mandates that all fire apparatus access roads have an *unobstructed width of not less than 20 feet* and an unobstructed vertical clearance clear to the sky. (*See* Los Angeles County Fire Code § 902.2.2.1.) The required width *may be increased* when, in the opinion of the Chief of the Fire Department, widths are not adequate to provide fire apparatus access. (*Ibid*.) The Chief does not have the authority to decrease the required width.

[12] Am. Jur, Zoning, sec. 167. California courts follow the rule. Miller & Starr, California Real Estate, sec. 15:54. See, also, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487 and *City & Co. of S.F. v. Safeway Stores, Inc.* (1957) 150 Cal.App.2d 327.

access for active recreation, camping, office and/or commercial use. In addition, parks are allowed in RR zones only with a conditional use permit (LIP, Table B-Permitted Uses). Therefore, even if the PWP proposed to use the Ramirez property only as a park, SMMC would be required to obtain a CUP from the City of Malibu to access the park over either Ramirez Canyon Road or Via Acero.

4. Hazards.

The LCP governs Hazards in the portion of the plan area that lies within the City of Malibu (LUP, p. 76, *et seq*. and LIP,p. 165, *et seq*.) and the MMC adopts the General Hazards Policies of the Los Angeles County Code (sec. 8.16).

All of the properties proposed for development are located in a Very High Fire Hazard Severity Zone. Development in this zone must be ñsized, designed and sited to minimize risks to life and property from . . . fire hazardò (LUP, secs. 4.1 and 4.2 (p. 80)) and can be approved only if the ñproject, as proposed, will neither be subject to nor increase . . . . fire hazardsò [or] have ñsignificant adverse impacts on . . . . fire hazardsò (LIP, sec. 9.3 (pp. 166-167)). The LACFD has confirmed that elements of the development proposed by the PWP (e.g., camping and events in Ramirez Canyon) create fire hazards and unnecessary risks to life and property (LACFD, Comments on DEIR).

Public access shall not be required where it is ñinconsistent with the public safety . . .ò (LIP, sec. 12.6 (p. 195)). Numerous proposals in the PWP are inconsistent with public safety (e.g., camping in high fire danger areas and active and intense recreational and commercial use of Ramirez Canyon).

5. Trails.

The LCP provides for a trails system designed (a) to connect parks and recreational facilities within Malibu and with trails systems of adjacent jurisdictions, (b) to accept offers to dedicate, and (c) to expand parking and other support facilities (LUP, pp. 24-29; LIP, Chap. 12, pp. 191-208). The LCP also provides that the acceptance of offers to dedicate and implementation of a trail system shall be determined through ñcoordinationò with the National Park Service, the State Department of Parks and Recreation, the State Coastal Conservancy, Los Angeles County, SMMC, the Santa Monica Trails Council, and nonprofit land trusts and associations (LUP, sec. 2.46 (p. 25), and sec. 2.54, et seq. (pp. 27-29)). Only the City of Malibu and the County of Los Angeles have the regulatory power to plan for recreation and trails within the plan area, subject to certification by the Coastal Commission. The PWP purports to adopt alternative trail alignments, which are inconsistent with the LCP, and which do not require any consultation with the City for their implementation.

The LCP provides for ñtrail accessò to provide ñpublic access (i.e., hiking and equestrian) along a coastal or mountain recreational path, including to and along canyons, rivers, streams, wetlands, lagoons, freshwater marshes, significant habitat and open space areas, or similar resource areas, and which also may link trails or recreational facilities to the shorelineò (LIP, sec. 12.3, para. D (p. 193)). Trails on roadways are not authorized. The PWP includes several trail alignments on roadways.

The LCP provides that public access shall not be required where inconsistent with the ñprotection of fragile coastal resourcesò (LIP, sec. 12.6 (p. 195)). The PWP proposes to allow ñtrail construction resulting in unavoidable impacts to ESHA.ò

6. Water Quality and Wastewater Treatment.

The LCP includes an exhaustive Water Quality Protection Ordinance (LIP, pp. 258-289), under which *"recreational facilities" are treated as "commercial development"* and are subject to extensive and strict regulation (LUP, pp. 66-74). The PWP substitutes its own water quality and treatment standards for those set forth in the LCP and LIP.

7. Grading and Runoff.

The Malibu Grading Ordinance (LIP, p. 162, *et seq*.) governs grading in the portion of the plan area that lies within the City of Malibu. Section 3.46 of the LUP (p. 57) requires that ñgrading or earthmoving [in ESHA] exceeding 50 cubic yards shall require a grading permitòfrom the City of Malibu. Most of the projects proposed by the PWP involve a substantial amount of grading, brush clearance and destruction of ESHA, and the PWP substitutes its own grading and runoff standards for those included in the LCP.

CONTINENTAL LAWYERS TITLE
800 E. COLORADO BLVD.
PASADENA, CALIFORNIA 91101

RECORDING REQUESTED BY

94 2078542

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

Name: State of California
Street Address: Santa Monica Mountains Conservancy
3700 Solstice Canyon Road
City State Zip: Malibu, CA 90265

Title Order No. 941028-39 Escrow No.

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
NOV 17 1994 AT 8 A.M.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GIFT DEED

FREE D

THE UNDERSIGNED GRANTOR(S) DECLARE(S) State of California Official Business
DOCUMENTARY TRANSFER TAX is $ Document entitled to free recordation
pursuant to Gov't Code Sec. 6103
☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Barbra Streisand

hereby GRANT(S) to

The Santa Monica Mountains Conservancy by and behalf of the State of California.
the following described real property in the
County of Los Angeles State of California:

SEE EXHIBIT "A" ATTACHED CONSISTING OF 2 PAGES AND BY THIS REFERENCE MADE A PARI HEREOF.

RECEIVED
STATE OF CALIFORNIA
DEC 16 1994
SANTA MONICA
MOUNTAINS CONSERVANCY
MALIBU

Dated May 31, 1994

Barbra Streisand

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On May 31, 1994 before me,
Susan Keenberg
personally appeared Barbra Streisand

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Susan Keenberg

SUSAN KEENBERG
COMM. # 952445
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires DEC 13, 1996

(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

FATCOLA 72 (9/91)

4467-2-40

PARCEL 1:

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

COMMENCING AT A POINT THAT IS SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 200.00 FEET FROM T.M. NO. 8, AS DESCRIBED IN SAID PATENT, SAID T.M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY BOUNDARY LINE OF SAID RANCHO; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 333.62 FEET; THENCE SOUTH 11 DEGREES 38 MINUTES 10 SECONDS EAST 95.62 FEET TO THE EASTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN DEED TO HOWARD N. WAYMIRE AND WIFE, RECORDED ON DECEMBER 12, 1947 AS INSTRUMENT NO. 209, IN BOOK 25944 PAGE 70, OFFICIAL RECORDS, OF SAID COUNTY, AS HAVING A BEARING AND LENGTH OF NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 1632.19 FEET; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAND OF WAYMIRE, NORTH 52 DEGREES 04 MINUTES 48 SECONDS EAST 450.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 52 DEGREES 04 MINUTES 48 SECONDS WEST 178.00 FEET; THENCE NORTH 62 DEGREES 02 MINUTES 13 SECONDS WEST 107.13 FEET; THENCE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 200.00 FEET; THENCE NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 60.00 FEET; THENCE NORTH 6 DEGREES 15 MINUTES 54 SECONDS WEST 125.35 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO HERBERT E. METCALF AND WIFE, RECORDED ON OCTOBER 13, 1950 AS INSTRUMENT NO. 277 IN BOOK 34542 PAGE 254, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 160.00 FEET TO A LINE THAT BEARS NORTH 17 DEGREES 57 MINUTES 16 SECONDS WEST FROM SAID TRUE POINT OF BEGINNING; THENCE SOUTH 17 DEGREES 57 MINUTES 16 SECONDS EAST 379.74 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON, WITHIN AND UNDER SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY, AS PROVIDED FOR IN THE DEED FROM MARBLEHEAD LAND COMPANY, A CORPORATION, RECORDED ON APRIL 14, 1942 IN BOOK 19308 PAGE 12, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 2:

A NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND UTILITY PURPOSES OVER A PARCEL OF LAND IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGE 407 ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

EASEMENT "A":

A STRIP OF LAND, 20.00 FEET IN WIDTH, LYING 10.00 FEET, MEASURED AT RIGHT ANGLES, ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON RECORD OF SURVEY FILED IN BOOK 89, PAGES 23 AND 24, OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, AS HAVING A BEARING AND DISTANCE OF "NORTH 11 DEGREES 38 MINUTES 10 SECONDS WEST, 20.03 FEET"; THENCE ALONG SAID CENTERLINE:

1ST:- NORTH 11 DEGREES 38 MINUTES 10 SECONDS WEST, 20.03 FEET; THENCE,
2ND:- NORTH 35 DEGREES 15 MINUTES 14 SECONDS EAST, 20.00 FEET; THENCE,
3RD:- NORTH 24 DEGREES 38 MINUTES 53 SECONDS EAST, 20.00 FEET TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING A POINT IN A CIRCULAR PARCEL OF LAND 40.00 FEET IN DIAMETER, THE CENTER OF SAID CIRCLE BEING NORTH 14 DEGREES 59 MINUTES 50 SECONDS EAST, 39.26 FEET FROM THE WESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND DISTANCE OF "NORTH 53 DEGREES 38 MINUTES 38 SECONDS EAST, 1237.09 FEET"; THENCE,
4TH:- NORTH 24 DEGREES 38 MINUTES 53 SECONDS EAST, 20.00 FEET; THENCE,
5TH:- NORTH 26 DEGREES 00 MINUTES 26 SECONDS WEST, 172.40 FEET; THENCE,
6TH:- NORTH 23 DEGREES 05 MINUTES 08 SECONDS WEST, 57.91 FEET; THENCE,
7TH:- NORTH 3 DEGREES 20 MINUTES 36 SECONDS WEST, 32.00 FEET; THENCE,
8TH:- NORTH 13 DEGREES 13 MINUTES 53 SECONDS EAST, 32.05 FEET TO A POINT "C" HEREINAFTER REFERRED TO IN EASEMENT "C"; THENCE,
9TH:- NORTH 0 DEGREES 54 MINUTES 55 SECONDS EAST, 45.70 FEET; THENCE,
10TH:- NORTH 22 DEGREES 38 MINUTES 32 SECONDS WEST, 105.88 FEET TO A POINT "B" HEREINAFTER REFERRED TO IN EASEMENT "B"; THENCE,
11TH:- NORTH 31 DEGREES 10 MINUTES 25 SECONDS WEST, 90.76 FEET; THENCE,
12TH:- NORTH 23 DEGREES 08 MINUTES 31 SECONDS WEST, 108.25 FEET TO AN INTERSECTION AND TERMINUS IN THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND DISTANCE OF "NORTH 68 DEGREES 14 MINUTES 20 SECONDS EAST, 70.00 FEET".

PARCEL 2
EASEMENT "A" CONTINUED

THE EASTERLY AND WESTERLY SIDELINES TO BE PROLONGED OR FORESHORTENED SO AS TO TERMINATE NORTHERLY IN SAID COURSE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND DISTANCE OF "NORTH 68 DEGREES 14 MINUTES 20 SECONDS EAST, 70.00 FEET", AND TO TERMINATE SOUTHERLY IN SAID CIRCULAR PARCEL OF LAND HAVING A DIAMETER OF 40.00 FEET.

EASEMENT "B""

A STRIP OF LAND, 20.00 FEET IN WIDTH, LYING 10.00 FEET, MEASURED AT RIGHT ANGLES, ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT POINT "B" HEREINBEFORE DESCRIBED IN EASEMENT "A"; THENCE ALONG SAID CENTERLINE.

1ST:- NORTH 7 DEGREES 01 MINUTES 05 SECONDS WEST, 70.67 FEET; THENCE,
2ND:- NORTH 3 DEGREES 38 MINUTES 22 SECONDS EAST, 194.60 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 17.61 FEET; THENCE,
3RD:- NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 37.60 FEET; THENCE TANGENT TO SAID CURVE,
4TH:- SOUTH 54 DEGREES 00 MINUTES 50 SECONDS EAST, 95.76 FEET TO AN INTERSECTION WITH THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY HAVING A BEARING AND DISTANCE OF "NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST, 200.00 FEET".

EXCEPTING THEREFROM THAT PORTION THEREOF LYING WITHIN THE HEREINBEFORE DESCRIBED EASEMENT "A".

THE NORTHERLY AND SOUTHERLY SIDELINES TO BE PROLONGED OR FORESHORTENED SO AS TO TERMINATE EASTERLY IN SAID COURSE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND DISTANCE OF "NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST, 200.00 FEET", AND TO TERMINATE SOUTHERLY IN THE EASTERLY SIDELINE OF THE HEREINBEFORE DESCRIBED EASEMENT "A".

EASEMENT "C":

A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET, MEASURED AT RIGHT ANGLES, ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT POINT "C" HEREINBEFORE DESCRIBED IN EASEMENT "A", THENCE,

1ST:- TO THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND DISTANCE OF "NORTH 52 DEGREES 04 MINUTES 48 SECONDS EAST, 1248.68 FEET", THENCE ALONG SAID LAST MENTIONED COURSE:
2ND:- NORTH 52 DEGREES 04 MINUTES 48 SECONDS EAST, 150.00 FEET; THENCE,
3RD:- SOUTH 68 DEGREES 37 MINUTES 45 SECONDS WEST, 60.01 FEET; THENCE,
4TH:- SOUTH 44 DEGREES 16 MINUTES 57 SECONDS WEST, 81.32 FEET TO AN INTERSECTION WITH A LINE SHOWN ON SAID RECORD OF SURVEY AS HAVING A BEARING AND LENGTH OF "SOUTH 11 DEGREES 38 MINUTES 34 SECONDS EAST, 95.61 FEET"; THENCE CONTINUING ALONG THE PROLONGATION OF THE LAST COURSE,
5TH:- SOUTH 44 DEGREES 16 MINUTES 57 SECONDS WEST TO THE EASTERLY SIDELINE OF THE HEREINBEFORE DESCRIBED EASEMENT "A".

EXCEPTING THEREFROM THAT PORTION THEREOF LYING WITHIN THE HEREINBEFORE DESCRIBED EASEMENT "A".

4

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by deed or grant, dated May 31, 1994, from Barbra Streisand to the SANTA MONICA MOUNTAINS CONSERVANCY BY AND BEHALF OF THE STATE OF CALIFORNIA, is hereby accepted by the undersigned officer on behalf of the State of California, pursuant to authority conferred by authorization of the Santa Monica Mountains Conservancy, adopted on November 1, 1993, and the grantee consents to the recordation thereof by its duly authorized officer

STATE OF CALIFORNIA
Resources Agency
Santa Monica Mountains Conservancy

By: Belinda V Faustinos
Belinda V. Faustinos
Deputy Director

The Department of Finance does hereby approve the acceptance of this conveyance pursuant to California Code Section 11005.

DEPARTMENT OF FINANCE

By: Dennis Hordyk
DENNIS HORDYK
ASSISTANT DIRECTOR
DEPARTMENT OF FINANCE

Date: 8/20/94

94 2078342

K

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary SUSAN KENNEDY

Date Commission Expires 12/13/96

Notary Identification Number 980665

(For Notaries commissioned after 1-1-1992)

Manufacturer/Vendor Identification Number NNA1

(For Notaries commissioned after 1-1-1992)

Place of Execution of this Declaration NORWALK

Date 11-17-94

Signature (Firm name if any)

94-2078342

R747 1/92

RECORDING REQUESTED BY

CLT

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

Name: State of California
Santa Monica Mountains Conservancy
Street Address: 3700 Solstice Canyon Road
City State Zip: Malibu, CA 90265

Title Order No 5091779-67 Escrow No.

93 2512000

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
21 MIN. PAST 3 P.M. DEC 27 1993

FREE 7 M

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GIFT DEED

4467-002-45, 46, 48, 49 + 4465-004-67

THE UNDERSIGNED GRANTOR(S) DECLARE(S) State of California Official Business
DOCUMENTARY TRANSFER TAX is $ Document entitled to free recordation pursuant to Gov't Code Sec. 6103

☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Barbra Streisand

hereby GRANT(S) to The Santa Monica Mountains Conservancy by and behalf of the State of California

the following described real property in the County of Los Angeles State of California:

SEE EXHIBIT "A" ATTACHED CONSISTING 7 PAGE(S) AND BY THIS REFERENCE MADE A PART HEREOF.

Dated 11/30/93

Barbra Streisand

aka Barbra Streisand Gould

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss

On 11/30/93 before me,
Susan Keenberg
personally appeared Barbra Streisand

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Susan Keenberg

SUSAN KEENBERG
COMM. # 990455
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires DEC 13, 1996

(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name | Street Address | City & State

FATCO(LA 72 (9/91)

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

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

BEGINNING AT A POINT THAT IS DISTANT SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 270.00 FEET FROM T. M. NO. 8 AS DESCRIBED IN SAID PATENT, SAID T. M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY BOUNDARY OF SAID RANCHO; THENCE SOUTH 68 DEGREES 14 MINUTES 20 SECONDS WEST 70.00 FEET; THENCE NORTH 26 DEGREES 53 MINUTES 40 SECONDS WEST 93.10 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN DEED TO HAROLD D. LAUBER, RECORDED APRIL 27, 1964 AS DOCUMENT NO. 4276 IN BOOK D-2449 PAGE 185 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 60 DEGREES 41 MINUTES 00 SECONDS WEST ALONG SAID NORTHEASTERLY LINE OF SAID LAUBER FOR A DISTANCE OF 120.00 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 1, AS DESCRIBED IN DEED TO ROBERT C. TUNNELL AND BARBARA TUNNELL, RECORDED AS DOCUMENT NO. 261 ON FEBRUARY 14, 1972, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 6 DEGREES 05 MINUTES 30 SECONDS EAST 376.54 FEET TO THE SOUTHWESTERLY CORNER OF SAID TUNNELL PARCEL 1 SAID SOUTHWESTERLY CORNER BEING AT A POINT IN THE SOUTHERLY BOUNDARY OF THE PARCEL DESCRIBED IN DEED TO HOWARD N. WAYMIRE AND VERN L. WAYMIRE, RECORDED JANUARY 12, 1947 IN BOOK 25944 PAGE 70, OFFICIAL RECORDS, RECORDS OF SAID COUNTY, THAT IS DISTANT THEREON SOUTH 76 DEGREES 02 MINUTES 50 SECONDS EAST 1321.47 FEET FROM THE MOST WESTERLY CORNER THEREOF; THENCE ALONG SAID SOUTHERLY LINE SOUTH 76 DEGREES 02 MINUTES 50 SECONDS EAST 310.72 FEET TO THE MOST SOUTHERLY CORNER OF SAID TUNNEL PARCEL 1; THENCE NORTH 11 DEGREES 38 MINUTES 10 SECONDS WEST 95.62 FEET TO AN ANGLE POINT ON THE EASTERLY LINE OF SAID TUNNELL PARCEL 1; THENCE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 263.62 FEET TO THE POINT OF BEGINNING.

EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY, AS PROVIDED IN THE DEED FROM MARBLEHEAD LAND COMPANY, RECORDED APRIL 14, 1942, IN BOOK 19308 PAGE 12, OFFICIAL RECORDS.

PARCEL 2:

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

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BEGINNING AT AN ANGLE POINT IN THE NORTH BOUNDARY LINE OF SAID RANCH, BEING TOPANGA MALIBU NO. 8, AS DESCRIBED IN SAID PATENT, THENCE ALONG SAID NORTH LINE, NORTH 70 DEGREES 34 MINUTES 30 SECONDS EAST 1349.92 FEET; THENCE SOUTH 9 DEGREES 52 MINUTES 45 SECONDS WEST 263.67 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 52 DEGREES 04 MINUTES 48 SECONDS WEST 1248.68 FEET; THENCE NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 632.19 FEET; THENCE NORTH 81 DEGREES 43 MINUTES 08 SECONDS WEST 404.64 FEET; THENCE SOUTH 0 DEGREES 56 MINUTES 10 SECONDS EAST 275.56 FEET; THENCE SOUTH 75 DEGREES 41 MINUTES 05 SECONDS EAST 2091.62 FEET; THENCE NORTH 53 DEGREES 18 MINUTES 38 SECONDS EAST 1237.09 FEET; THENCE NORTH 53 DEGREES 03 MINUTES 40 SECONDS WEST 238.00 FEET; THENCE NORTH 31 DEGREES 07 MINUTES 54 SECONDS EAST 264.12 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE EASTERLY TERMINUS OF THAT CERTAIN COURSE HEREINABOVE MENTIONED HAVING A BEARING AND LENGTH OF NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 1632.19 FEET; THENCE THEREON NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 300.00 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 55 DEGREES 30 MINUTES 41 SECONDS EAST 213.49 FEET; THENCE SOUTH 60 DEGREES 51 MINUTES 34 SECONDS EAST 135.52 FEET; THENCE SOUTH 11 DEGREES 38 MINUTES 10 SECONDS EAST 229.04 FEET TO A POINT IN THE HEREINBEFORE MENTIONED COURSE HAVING A BEARING AND LENGTH OF NORTH 53 DEGREES 18 MINUTES 38 SECONDS EAST 1237.09 FEET DISTANT THEREON NORTH 53 DEGREES 18 MINUTES 38 SECONDS EAST 3.314 FEET FROM THE MOST WESTERLY TERMINUS THEREOF.

ALSO EXCEPT THEREON A CIRCULAR PARCEL OF LAND 40.00 FEET IN DIAMETER THE CENTER OF SAID CIRCLE BEING NORTH 14 DEGREES 59 MINUTES 50 SECONDS EAST 39.26 FEET FROM THE MOST WESTERLY TERMINUS OF THAT CERTAIN COURSE HEREINABOVE MENTIONED HAVING A BEARING AND LENGTH OF NORTH 53 DEGREES 18 MINUTES 38 SECONDS EAST 1237.09 FEET.

ALSO EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL, AND OTHER HYDROCARBON SUBSTANCES CONTAINED IN, ON, WITHIN AND UNDER SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY, AS RESERVED IN THE DEED FROM MARBLEHEAD LAND COMPANY, A CORPORATION, RECORDED MARCH 27, 1942 IN BOOK 19183 PAGE 261, OFFICIAL RECORDS.

PARCEL 3:

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

BEGINNING AT A POINT THAT IS DISTANT SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 270.00 FEET FROM T.M. NO. 8 AS DESCRIBED IN SAID PATENT. SAID T. M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY BOUNDARY OF SAID RANCHO; THENCE SOUTH 68 DEGREES 14 MINUTES 20 SECONDS WEST 70.00 FEET; THENCE NORTH 26 DEGREES 53 MINUTES 40 SECONDS WEST 93.10 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN DEED TO HAROLD D. LAUBER, RECORDED APRIL 27, 1964 AS DOCUMENT NO. 4276 IN BOOK D-2449 PAGE 185 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 60 DEGREES 41 MINUTES 00 SECONDS WEST 430.39 FEET TO THE MOST NORTHERLY CORNER OF SAID LAUBER PARCEL, BEING ON THE NORTHERLY LINE OF SAID RANCHO TOPANGA MALIBU SEQUIT; THENCE SOUTH 86 DEGREES 29 MINUTES 30 SECONDS EAST ALONG SAID NORTHERLY LINE 370.00 FEET TO THE FIRST ABOVE MENTIONED CORNER NO. 8; THENCE CONTINUING ON SAID NORTHERLY LINE OF SAID RANCHO NORTH 70 DEGREES 34 MINUTES 30 SECONDS EAST 968.80 FEET TO AN ANGLE POINT ON THE NORTHERLY LINE OF PARCEL 1, DESCRIBED IN DEED TO HERBERT E. METCALF AND CAROL R. METCALF, RECORDED AS DOCUMENT NO. 277 ON OCTOBER 13, 1950 IN BOOK 34542 PAGE 254 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST ALONG THE NORTHERLY LINE OF SAID METCALF PARCEL 1, A DISTANCE OF 665.85 FEET TO A POINT THAT IS DISTANT NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 305.00 FEET FROM THE NORTHWESTERLY CORNER OF SAID METCALF PARCEL 1; THENCE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 30.00 FEET; THENCE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 140.00 FEET; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID METCALF PARCEL 1 THAT IS DISTANT NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 165.00 FEET FROM THE NORTHWESTERLY CORNER THEREOF; THENCE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 95.00 FEET; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 60.00 FEET; THENCE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 70.00 FEET TO A POINT THAT IS DISTANT SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 260.00 FEET FROM THE FIRST ABOVE MENTIONED T. M. NO. 8; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 10.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES CONTAINED IN, ON, WITHIN AND UNDER SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY, AS PROVIDED FOR IN THE DEED FROM MARBLEHEAD LAND COMPANY, A CORPORATION, RECORDED APRIL 14, 1942 IN BOOK 19308 PAGE 12, OFFICIAL RECORDS.

PARCEL 4:

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

BEGINNING AT A POINT THAT IS SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 200.00 FEET FROM T. M. NO. 8, AS DESCRIBED IN SAID PATENT, SAID T. M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY BOUNDARY LINE OF SAID RANCHO; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 333.62 FEET; THENCE SOUTH 11 DEGREES 38 MINUTES 10 SECONDS EAST 95.62 FEET TO THE EASTERLY TERMINUS OF THAT CERTAIN COURSE, DESCRIBED IN THE DEED TO HOWARD N. WAYMIRE AND WIFE, RECORDED ON DECEMBER 12, 1947 AS INSTRUMENT NO. 209, IN BOOK 25944 PAGE 70, OFFICIAL RECORDS OF SAID COUNTY, AS HAVING A BEARING AND LENGTH OF NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 1632.19 FEET THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAND OF WAYMIRE, NORTH 52 DEGREES 04 MINUTES 48 SECONDS EAST 272.00 FEET; THENCE NORTH 62 DEGREES 02 MINUTES 13 SECONDS WEST 107.13 FEET; THENCE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 200.00 FEET; THENCE NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 60.00 FEET; THENCE NORTH 6 DEGREES 30 MINUTES 12 SECONDS EAST 125.53 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN PARCEL 1 OF THE DEED TO HERBERT E. METCALF AND WIFE, RECORDED ON OCTOBER 13, 1950 AS INSTRUMENT NO. 277, IN BOOK 34542 PAGE 254, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 305.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF SAID LAND, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LAND; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LAND, SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 60.00 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 70.00 FEET; THENCE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 60.00 FEET TO THE NORTHWESTERLY LINE OF SAID LAND; THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 70.00 FEET TO THE POINT OF BEGINNING, TOGETHER WITH THAT PARCEL OF LAND SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGES 407 ET SEQ. OF PATENTS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS DISTANT SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 200.00 FEET FROM T. M. NO. 8, AS DESCRIBED IN SAID PATENT, SAID T. M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY LINE OF SAID RANCHO; SAID POINT OF BEGINNING BEING ON THE SOUTHEASTERLY LINE OF THE PARCEL DESCRIBED IN DEED TO ROBERT E. JOHNSON AND WIFE RECORDED AUGUST 27, 1963 AS DOCUMENT NO. 381 IN BOOK D-2159 PAGE 558, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST ALONG SAID SOUTHEASTERLY LINE 165.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE NORTH 58 DEGREES 44 MINUTES 20 SECONDS EAST 140.00 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE NORTH 24 DEGREES 45 MINUTES 40 SECONDS WEST 30.00 FEET; THENCE SOUTH 58 DEGREES 44 MINUTES 20 SECONDS WEST 140.00 FEET; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 30.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 5:

LOT 7, SECTION 32, TOWNSHIP 1 SOUTH, RANGE 18 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

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PARCEL 6:

A NON-EXCLUSIVE EASEMENT FOR ROAD PURPOSES OVER THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407, ET SEQ., OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT T. M. NO. 8, AS DESCRIBED IN SAID PATENT, SAID T. M. NO. 8 BEING AN ANGLE POINT IN THE NORTHERLY BOUNDARY OF SAID RANCHO; THENCE SOUTH 24 DEGREES 45 MINUTES 40 SECONDS EAST 533.62 FEET; THENCE SOUTH 11 DEGREES 38 MINUTES 10 SECONDS EAST 95.62 FEET TO THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED AS HAVING A BEARING OF SOUTH 52 DEGREES 04 MINUTES 48 SECONDS WEST AND A LENGTH OF 1248.63 FEET IN THE DEED TO WILFRED C. HAGEDORN AND WIFE, RECORDED FEBRUARY 21, 1958, AS INSTRUMENT NO. 1972, IN BOOK D-20 PAGE 402, OFFICIAL RECORDS; THENCE FOLLOWING THE BOUNDARIES OF SAID LAST MENTIONED LAND, AS FOLLOWS: NORTH 76 DEGREES 02 MINUTES 50 SECONDS WEST 1632.19 FEET; NORTH 81 DEGREES 43 MINUTES 08 SECONDS WEST 404.64 FEET; SOUTH 0 DEGREES 56 MINUTES 10 SECONDS EAST 275.56 FEET; AND SOUTH 75 DEGREES 41 MINUTES 05 SECONDS EAST 2091.62 FEET TO THE MOST SOUTHERLY CORNER OF SAID LAND OF HAGEDORM; THENCE NORTH 14 DEGREES 59 MINUTES 50 SECONDS EAST 39.26 FEET TO A POINT HEREINAFTER CALLED POINT "A"; THENCE SOUTH 14 DEGREES 59 MINUTES 50 SECONDS WEST 39.26 FEET TO SAID MOST SOUTHERLY CORNER AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 75 DEGREES 41 MINUTES 05 SECONDS WEST 57.60 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE TANGENT TO A CIRCLE HAVING A RADIUS OF 60.00 FEET, THE CENTER OF WHICH BEING POINT "A" HEREINABOVE MENTIONED; THENCE FOLLOWING THE ARC OF SAID CIRCLE, NORTHERLY, EASTERLY AND SOUTHERLY TO THE INTERSECTION OF SAID ARC WITH A LINE WHICH BEARS NORTH 53 DEGREES 08 MINUTES 38 SECONDS EAST FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 53 DEGREES 08 MINUTES 38 SECONDS WEST TO THE POINT OF BEGINNING.

EXCEPT FOR THAT PORTION OF SAID LAND INCLUDED WITHIN A CIRCLE HAVING A DIAMETER OF 40.00 FEET, THE CENTER OF WHICH BEING POINT "A" HEREINABOVE MENTIONED.

PARCEL 7:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THAT PORTION OF A PARCEL OF LAND IN LOS ANGELES COUNTY, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ., OF PATENTS OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND 40.00 FEET WIDE, THE CENTER LINE OF SAID 40.00 FOOT WIDE STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT ENGINEER'S STATION 624 PLUS 00.67 IN THE CENTER LINE OF THE 80.00 FOOT STRIP OF LAND DESCRIBED IN THE DEED FROM T. R. CADWALADER, ET AL., TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15226 PAGE 342, OFFICIAL RECORDS OF SAID COUNTY, SAID ENGINEER'S STATION BEING AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS NORTH 73 DEGREES 08 MINUTES 40 SECONDS EAST 1248.62 FEET THENCE SOUTH 16 DEGREES 51 MINUTES 20 SECONDS EAST 40.00 FEET TO THE SOUTHERLY LINE OF SAID 80.00 FOOT STRIP OF LAND; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID 80.00 FOOT STRIP OF LAND, BEING A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 4960.00 FEET, A DISTANCE OF 444.53 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 8 DEGREES 34 MINUTES 50 SECONDS WEST 92.03 FEET; THENCE NORTH 3 DEGREES 30 MINUTES 50 SECONDS WEST 168.74 FEET; THENCE NORTH 43 DEGREES 42 MINUTES 10 SECONDS WEST 111.89 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 77.27 FEET; THENCE NORTHERLY ALONG SAID LAST MENTIONED CURVE AN ARC DISTANCE OF 38.75 FEET; THENCE TANGENT NORTH 22 DEGREES 06 MINUTES 30 SECONDS EAST 138.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 50.95 FEET; THENCE NORTHERLY ALONG SAID LAST MENTIONED CURVE, AN ARC DISTANCE OF 67.82 FEET THENCE TANGENT NORTH 54 DEGREES 09 MINUTES 50 SECONDS WEST 151.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 151.92 FEET; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED CURVE, AN ARC DISTANCE OF 139.34 FEET; THENCE TANGENT NORTH 1 DEGREES 36 MINUTES 50 SECONDS WEST 248.22 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 67.68 FEET; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED CURVE, AN ARC DISTANCE OF 98.18 FEET; THENCE TANGENT NORTH 84 DEGREES 43 MINUTES 50 SECONDS WEST 59.63 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 102.37 FEET; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED CURVE, AN ARC DISTANCE OF 76.26 FEET; THENCE TANGENT NORTH 42 DEGREES 02 MINUTES 50 SECONDS WEST 519.37 FEET; THENCE NORTH 18 DEGREES 03 MINUTES 30 SECONDS WEST 113.14 FEET; THENCE NORTH 5 DEGREES 04 MINUTES 30 SECONDS WEST 196.38 FEET; THENCE NORTH 30 DEGREES 44 MINUTES 30 SECONDS WEST 189.22 FEET; THENCE NORTH 24 DEGREES 55 MINUTES 10 SECONDS WEST 103.54 FEET; THENCE NORTH 22 DEGREES 39 MINUTES 50 SECONDS WEST 200.68 FEET; THENCE NORTH 26 DEGREES 45 MINUTES 10 SECONDS WEST 207.74 FEET; THENCE NORTH 46 DEGREES 06 MINUTES 10 SECONDS WEST 306.69 FEET; THENCE NORTH 29 DEGREES 29 MINUTES 10 SECONDS WEST 73.70 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A

RADIUS OF 145.26 FEET THENCE NORTHERLY ALONG SAID LAST MENTIONED CURVE, AN ARC DISTANCE OF 86.33 FEET; THENCE TANGENT NORTH 4 DEGREES 33 MINUTES 50 SECONDS EAST 210.10 FEET; THENCE NORTH 26 DEGREES 08 MINUTES 10 SECONDS WEST 622.93 FEET, MORE OR LESS, TO THE SOUTHEASTERLY PROLONGATION OF THAT CERTAIN COURSE DESCRIBED AS SOUTH 42 DEGREES 02 MINUTES 10 SECONDS EAST 50.00 FEET, IN THE DEED FROM R. M. WOOLPERT AND WIFE, RECORDED ON APRIL 17, 1942 AS INSTRUMENT NO. 574; THENCE NORTH 42 DEGREES 02 MINUTES 10 SECONDS WEST 301.24 FEET, MORE OR LESS, ALONG SAID SOUTHEASTERLY PROLONGATION AND ALONG THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN SAID LAST MENTIONED DEED TO THE NORTHWESTERLY TERMINUS OF SAID LAST MENTIONED COURSE; THENCE ALONG THE WESTERLY LINE OF THE LAND DESCRIBED IN SAID LAST MENTIONED DEED NORTH 15 DEGREES 59 MINUTES 10 SECONDS WEST 83.00 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN SAID LAST MENTIONED DEED AND ITS NORTHWESTERLY PROLONGATION NORTH 46 DEGREES 32 MINUTES 10 SECONDS WEST 85.34 FEET; THENCE NORTH 4 DEGREES 47 MINUTES 50 SECONDS EAST 94.97 FEET, MORE OR LESS TO A POINT DISTANT SOUTH 4 DEGREES 47 MINUTES 50 SECONDS WEST 85.00 FEET FROM THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO HOPE ANN GOODRICH, RECORDED ON MARCH 27, 1942 IN BOOK 19183 PAGE 261, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 26 DEGREES 12 MINUTES 09 SECONDS WEST 77.47 FEET; THENCE NORTH 11 DEGREES 12 MINUTES 47 SECONDS EAST 62.21 FEET TO THE BEGINNING OF A CURVE, HAVING A RADIUS OF 40.00 FEET AND WHICH IS CONCENTRIC WITH THE EXTERIOR BOUNDARY OF THAT CERTAIN CIRCULAR PARCEL DESCRIBED IN THE FIRST EXCEPTION FROM SAID LAST MENTIONED DEED; THENCE NORTHERLY, EASTERLY, AND SOUTHERLY ALONG SAID LAST MENTIONED CURVE 118.28 FEET; THENCE TANGENT SOUTH 0 DEGREES 47 MINUTES 28 SECONDS WEST 45.00 FEET; THENCE SOUTH 36 DEGREES 19 MINUTES 04 SECONDS WEST 95.65 FEET TO THE NORTHERLY EXTREMITY OF THAT CERTAIN COURSE HEREINABOVE DESCRIBED AS NORTH 4 DEGREES 47 MINUTES 50 SECONDS EAST 94.97 FEET.

THE SIDE LINES OF SAID 40.00 FOOT STRIP OF LAND ARE TO BE PROLONGED OR SHORTENED SO AS TO INTERSECT AT ANGLE POINTS AND TO TERMINATE AT ITS SOUTHERLY END IN THE SOUTHERLY LINE OF THE 80.00 FOOT STRIP OF LAND DESCRIBED IN SAID DEED TO THE STATE OF CALIFORNIA.

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by deed or grant, dated November 30, 1993, from Barbra Streisand to the STATE OF CALIFORNIA, is hereby accepted by the undersigned officer on behalf of the State of California, pursuant to authority conferred by authorization of the Santa Monica Mountains Conservancy, adopted on November 3, 1993, and the grantee consents to the recordation thereof by its duly authorized officer

STATE OF CALIFORNIA
Resources Agency
Santa Monica Mountains Conservancy

By: _____
Joseph T. Edmiston
Executive Director

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)SS.
County of Los Angeles

On this 24th day of December, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph T. Edmiston, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

_____
(signature)

HOWARD R. SPANIER
(name typed or printed)
Notary Public in and for
the State of California

93 2512000

RAMIREZ CANYON PRESERVATION FUND

5969 Ramirez Canyon Road
Malibu, CA 90265

August 23, 2010

Board of Directors
Santa Monica Mountains Conservancy

Advisory Committee
Santa Monica Mountains Conservancy

Board of Directors
Mountains Recreation and Conservation Authority

Re: Agenda Items 9 and 10 SMMC Board Meeting 23 August, 2010

Dear Board Members and Advisory Committee Members:

I am submitting a copy of a letter sent I sent to you on July 20, 2009 to address Ramirez Canyon aspects of Agenda Items 9 and 10 of this evening's agenda.

Thank you very much for considering these views. If you would like to discuss these matters, please feel free to call me. 310-457-7502.

Sincerely,

R. D. Mullen

Richard Mullen
President
Ramirez Canyon Preservation Fund

RAMIREZ CANYON PRESERVATION FUND

5969 Ramirez Canyon Road
Malibu, CA 90265

July 20, 2009

Board of Directors
Santa Monica Mountains Conservancy

Advisory Committee
Santa Monica Mountains Conservancy

Board of Directors
Mountains Recreation and Conservation Authority

Re: Your Malibu Parks Public Access Enhancement Plan --
Notification of Reduction in Price of Lauber Property

Dear Board Members and Advisory Committee Members:

I write to you in my role as President of the Ramirez Canyon Preservation Fund. The purpose of this letter is to advise you of a significant reduction in the price of three parcels that could make it possible to build a direct vehicular access road to your Ramirez Canyon property from Kanan-Dume Road. Building and using that access road would resolve most – if not all – of the pending disputes between your agencies and the Fund.

The three parcels, known as the "Lauber properties," have been reduced in price to a total of $4.710 million ($ 1.32 M, $1.4 M, and $1.999 M). Copies of the broker's recent flier and current MLS listing are enclosed. This reduced price is well below the amount that SMMC has granted to MRCA for the purpose of acquiring the properties and providing direct vehicular access to Ramirez.

As you know, the disagreement between your agencies and the residents of Ramirez Canyon has been long and expensive. Litigation about the Override and, if necessary, about your right to use and/or widen the road for public use will stretch the controversy out even further. While the dispute continues, your agencies are unable to proceed with your plans. The Conservancy has been promising to build an alternate access road to Kanan Dume ever since the Conservancy acquired the former Streisand property in 1993. Therefore, it would be in everyone's best interests for your agencies to fulfill that promise now and pursue this alternative.

I'm aware of statements to the effect that the Coastal Commission would not approve an access road over the Lauber Property. However, no application has ever been put before the Commission. I've also heard reports that the Commission is concerned about disturbing ESHA. However, as you can see from the attached photographs, the Lauber properties have been significantly graded. Therefore, because the ESHA has already been significantly disturbed, we respectfully urge you to acquire these properties and make the appropriate application to the Commission.

The History of Relevant Grants.

I know that many matters come before you each month. Therefore, for your convenience, here is a summary of the grants which are relevant to the acquisition of the Lauber properties:

July 30, 2007. SMMC amended Resolution No. 07-64 to add the three Lauber Parcels over which access could be provided from Kanan Dume to the Ramirez Canyon Property: APN No.'s 4467-002-042, 4467-002-044, 4467-002-044 (the three parcels now for sale for $4.710 M).

August 8, 2007. MRCA authorized the expenditure of Coastal Habitat Impact Mitigation Funds to acquire many parcels in the area covered by the Malibu Public Access Enhancement Plan, including the Lauber parcels (Res. No. 07-115).

August 27, 2007. SMMC granted MRCA Prop 84 funds not to exceed $7 million to acquire fee simple to the Lauber properties (Res. No. 07-76). On September 20, 2007, MRCA accepted the grant and also resolved to apply for Excess Proposition A funds in an amount not to exceed $4,700,000 which, in combination with other funds made $12,940,625 available to acquire 11 parcels, including the Lauber parcels (Res. No. 07-130).

This means that your agencies could acquire the Lauber parcels at the reduced price and still have funds remaining to acquire the remaining properties which you have targeted for the Coastal Slope Trail.

The Recently Approved "Override" Does Not Resolve the Access Issue.

The City's lawsuit about the Override procedure, and the lawsuit which will be filed by the Fund to address the Override issues specific to Ramirez Canyon, will involve only the action taken by the Coastal Commission. Neither of those actions will resolve the real property issues and the Fund's longstanding objections to your public use of Ramirez Canyon Road.

I have gone through the legal arguments that the Fund's attorneys have included in our various letters to you about this Plan, and I will try to translate them into English as best I can – because I believe it is important for you to consider these issues as an integral part of your consideration of the Lauber acquisition:

SMMC/MRCA Are Not Entitled to Change the Character or Expand the Scope of the Use of the Hope Ann Goodrich Easement.

When SMMC acquired the Ramirez property from Ms. Streisand, it came with an easement down Ramirez Canyon Road – but the easement was created for residential use. An easement for residential use cannot be converted into an easement for "public use."

Here's some history:

All of the rights in Ramirez Canyon Road were created by an easement deed from Marblehead Land Company to Hope Ann Goodrich in 1942. That is why Ramirez Canyon Road is sometimes referred to as the "Hope Ann Goodrich easement." In the 1940's, all of the properties that were granted the use of the road had covenants recorded against them which restricted them to residential use.

Persons who later acquire an easement are restricted in use to the purpose of the original grant. The purpose of the Hope Ann Goodrich Easement was for residential use. Public use of the easement constitutes a change in the "character of the use," and is not lawful. (Cases that say this: Wall v. Rudolph (1961) 198 Cal.App.2d 684; Bartholomew v. Staheli (1948) 86 Cal.App.2d 844). Because it is not lawful to use the easement for public use, you can't make it lawful by limiting the number of vehicle trips to those you contend could be attributed to lawful, residential use. In other words, it's not the amount of the use – the problem is the nature of the use.

There is also another problem with your agencies' use of the Hope Ann Goodrich easement. When Ms. Streisand made the original grant to the Conservancy (i.e., five parcels), she included the Hope Ann Goodrich easement. But the deed did not state which of the five parcels was "attached" to the easement. We looked at the title history of the five parcels and we found that only one parcel was ever part of the original Ramirez tract -- the most down-canyon unimproved parcel, upon which the traffic circle is located (APN 4467-002-903). The other four parcels (as well as the parcels which Ms. Streisand later donated to SMMC), came with easements from Kanan Dume over the three Lauber properties.

The fact that only one parcel ever had the right to use Ramirez Canyon Road may have been the reason for another interesting thing we found in the chain of title. In 1996, the Conservancy obtained an easement deed from Mr. Lauber and the other people who then had interests in the properties. That deed provided for access from the Conservancy's Ramirez property up to Kanan Dume. The existence of that easement was not revealed during the hearings on the 2000 Coastal Development Permit. Apparently, under the impression that the CDP resolved the issue, the Conservancy gave the easement back right after the Coastal Commission issued the permit. However, the CDP did not create any property rights and – as you know – the CDP was set aside by the courts. Therefore, it is essential that your agencies now acquire the Lauber lots and fulfill your promise to build the road.

SMMC/MRCA Have No Right to Widen Ramirez Canyon Road.

Both state and local Fire Codes require that access roads be 20 feet wide. Ramirez Canyon Road is not 20 feet wide – in places, it is 13 feet wide. Apparently in 2000, before the old CDP issued and under an old version of the Fire Code, your agencies sought to convince the State Fire Marshal and a Los Angeles County Fire Department Captain that you could use alternatives (e.g., water tanks, vegetation clearing, etc.) to overcome the problem. However, things are very different today. Southern California is in drought and has experienced an onslaught of fires in recent years, with dwindling funds available for fire suppression. Therefore, even if your agencies had some right to use Ramirez Canyon Road for public use, it is not a "sure thing" that Fire Officials would look at the situation the same way. And, if and when you either apply for coastal development permits or submit a public works plan, you will need the approval of those Fire Officials.

As a solution to the road width problem, your Executive Director recently represented to the Coastal Commission that your agencies would "explore widening" Ramirez Canyon Road. It is important that you understand that, even if your agencies had some right to use Ramirez Canyon Road for public use, you would have no right to widen the Road.

In the 1940's easement deed, the Hope Ann Goodrich easement is described as a "strip of land 40.00 feet wide." However, the road has been fixed to its present width for 60 years. According to the cases our lawyers have found, parties to an easement "have the right to insist that so long as the easement is enjoyed it shall remain substantially the same as it was at the time the right accrued, entirely regardless of the question as to the relative benefit and damage that would ensue to the parties by reason of a change in the mode and manner of its enjoyment." (Cases: Whalen v. Ruiz (1953) 40 Cal.2d 294, 302, citing Allen v. San Jose Land & Water Co. (1891) 92 Cal. 138, 141.) "Where the right, not definitely limited by grant, has become fixed by the manner of its use, it cannot be enlarged without the consent of the parties who may be affected." (Quoted from: Goubert v. Pomona Val. Water Co. (1955) 137 Cal.App.2d Supp. 852, 853-854.)

Ramirez Canyon Road passes over the private property of more than forty people. My experience in dealing with the residents of the Canyon ensures me that it would be extremely difficult – if not impossible – to gain the consent of each of those owners to widen the road – no matter what the purpose.

SMMC/MRCA Cannot Use Ramirez Canyon Road for Access for Active Recreation, Camping, Office Use or Leasing for Private Events Without Violating Zoning Law.

There's also a zoning problem - and it was not solved by the Commission's approval of the Override either.

Ramirez Canyon Road passes over properties that are designated by the Malibu Local Coastal Program as rural-residential (RR). Your Ramirez property is designated open space (OS). The rule is that the use of land in one zoning district (e.g., RR, Ramirez Canyon Road) for access to land in another zoning district (e.g., OS, your Ramirez property) cannot exceed the use allowed in the first district. (Citations: Am. Jur, Zoning, sec. 167; Miller & Starr, California Real Estate, sec. 15:54. And also the following cases: Teachers Ins. & Annuity Assn. v. Furlotti (1999) 70 Cal.App.4th 1487 and City & Co. of S.F. v. Safeway Stores, Inc. (1957) 150 Cal.App.2d 327.)

Active recreation, camping, office and commercial uses are not allowed in the RR zone (Malibu LIP, Table of Permitted Uses). "Parks" are allowed in the RR zone only with a conditional use permit (Malibu LIP, Table of Permitted Uses). That means that your agencies have no right to use Ramirez Canyon Road to access the Ramirez property for active recreation, camping, office or commercial use. In addition, you could not lawfully use the Road for access for passive "park" use without applying for a conditional use permit from the City of Malibu. That CUP process could result in limitations on your ultimate use of the Ramirez property.

Conclusion.

The people who live in Ramirez Canyon are not opposed to your use of the Ramirez property for safe public use – as long as you respect their quiet, rural canyon and their private road. They remain committed and unified in working with you to reach a reasonable resolution of the longstanding disagreements. They also believe that solutions exist, as long as people are willing to be open-minded and reasonable in pursuing alternatives. This is one of those occasions where your open-mindedness about the Lauber property would serve everyone well.

Thank you very much for considering these views. If you would like to discuss these matters, please feel free to call me. 310-457-7502.

Sincerely,



Richard Mullen
President
Ramirez Canyon Preservation Fund

Encl. Broker's Brochure
Multiple Listing Service Information
Aerial Photograph of Lauber Parcels

Cc: SMMC Office
MRCA Office

BILL RHODES

310-293-2084

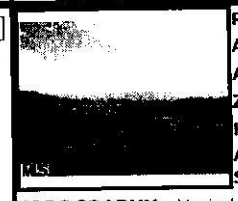
www.ComeHomeToMalibu.com

1



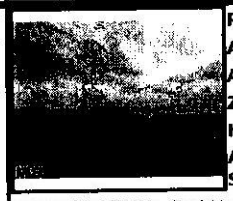
RES-LND: 5330 KANAN DUME RD , MALIBU ,CA 90265 **MLS#:** 09-343427 **LP:** $1,320,000
AREA: (33)Malibu **STATUS:** A **VIEW:** Yes **MAP:** 627/F7
APN: UNAVAILABLE **GAS:** Bottled **WATER:** In Street **ELEC:** In Street
ZONE: LCA1 **TELEPHONE:** Yes **CABLE:** Yes **SEWER:** Septic
HORSES: **APX ACR:** 5.50 **STAKED:** Yes **APX LDM:** A5.5/AS **APX LSZ:** 0/AS
ADP: **VIEW TYPE:** City Lights,Mountains,Ocean
SZONE: Coastal Commission **BONDS:** SEE TITLE
TOPOGRAPHY: Pad,Varied **SITE:** Varied
REPORTS ON FILE: Cert. of Compliance,Coastal Com. Permit,Geological Report,Percolation,Survey,Topography Report
DIRECTIONS: PCH TO KANAN, 1 MILE ON RIGHT
REMARKS: ONE OF THREE INCREDIBLE ESTATE LOTS IN THE HEART OF MALIBU. THESE LOTS HAVE SWEEPING OCEAN VIEWS AND MOUNTAIN VIEWS AND ARE ARCHITECT READY WITH UNDERGROUND UTILITIES, LARGE ENGINEERED PADS, GATED DRIVEWAY WITH FIRETRUCK TURN AROUND ALL IN AND COASTAL APPROVED. IMPOSSIBLE TO DUPLICATE, EXTENDING FROM KANAN TO RAMIREZ CANYON WITH LOTS OF USABLE AREAS BORDERING PARKLAND. LOT 1 IS 5.5 ACRES, LOT 2 10 ACRES, LOT 3 8 ACRES. GATED PROPERTY CALL AGENT FOR SHOWINGS.
LP: $1,320,000 **DOM:** 106 **LD:** 01/27/2009 **OLP:** $1,650,000

2



RES-LND: 5340 KANAN DUME RD , MALIBU ,CA 90265 **MLS#:** 09-345295 **LP:** $1,400,000
AREA: (33)Malibu **STATUS:** A **VIEW:** Yes **MAP:** 627/F7
APN: 4467-002-042 **GAS:** Bottled **WATER:** In Street **ELEC:** In Street
ZONE: **TELEPHONE:** Yes **CABLE:** Yes **SEWER:** Septic
HORSES: **APX ACR:** 10.00 **STAKED:** Yes **APX LDM:** **APX LSZ:** 178,596/VN
ADP: **VIEW TYPE:** City Lights,Mountains,Ocean
SZONE: Coastal Commission **BONDS:**
TOPOGRAPHY: Varied **SITE:** Varied
REPORTS ON FILE: Cert. of Compliance,Coastal Com. Permit,Geological Report,Percolation,Soils Report,Survey,Topography Report
DIRECTIONS: PCH TO KANAN 1 MILE UP ON RIGHT
REMARKS: ONE OF THREE INCREDIBLE ESTATE LOTS IN THE HEART OF MALIBU. THESE LOTS HAVE SWEEPING OCEAN AND MOUNTAIN VIEWS AND ARE ARCHITECT READY WITH UNDERGROUND UTILITIES, LARGE ENGINEERED PADS, GATED DRIVEWAY WITH FIRETRUCK TURN AROUND ALL IN AND COASTAL APPROVED. IMPOSSIBLE TO DELICATE, EXTENDING FROM KANAN TO RAMIREZ CANYON WITH LOTS OF USABLE AREAS BORDERING PARKLAND. LOT 1 IS 5.5 ACRES, LOT 2 10 ACRES, LOT 3 8 ACRES. GATED PROPERTY CALL AGENT FOR SHOWING.
LP: $1,400,000 **DOM:** 99 **LD:** 02/03/2009 **OLP:** $1,850,000

3



RES-LND: 5350 KANAN DUME RD , MALIBU ,CA 90265 **MLS#:** 09-341587 **LP:** $1,990,000
AREA: (33)Malibu **STATUS:** A **VIEW:** Yes **MAP:** 627/F7
APN: 4467-002-044 **GAS:** None **WATER:** On Site **ELEC:** Other
ZONE: LCRA1Y **TELEPHONE:** Yes **CABLE:** Yes **SEWER:** None
HORSES: No **APX ACR:** 8.00 **STAKED:** Yes **APX LDM:** A8.0/AS **APX LSZ:** 350,000/DV
ADP: No **VIEW TYPE:** City Lights,Mountains,Ocean
SZONE: Coastal Commission **BONDS:** SEE TITLE
TOPOGRAPHY: Pad,Varied **SITE:** Varied
REPORTS ON FILE: Cert. of Compliance,Geological Report,Percolation,Soils Report,Survey,Topography Report
DIRECTIONS: PCH TO KANAN APPX. 1.5 MILES ON THE RIGHT
REMARKS: ONE OF THREE INCREDIBLE ESTATE LOTS IN THE HEART OF MALIBU. THESE LOTS HAVE SWEEPING OCEAN AND MOUNTAIN VIEWS AND ARE ARCHITECT READY WITH UNDERGROUND UTILITIES, LARGE ENGINEERED PADS, GATED DRIVEWAY WITH FIRETRUCK TURN AROUND ALL IN AND COASTAL APPROVED. IMPOSSIBLE TO DUPLICATE, EXTENDING FROM KANAN TO RAMIREZ CANYON WITH LOTS OF USEABLE AREAS BORDERING PARKLAND. LOT 1 IS APPX 5.5 ACRES, LOT 2 APPX. 10 ACRES, LOT 3 APPX 8 ACRES. GATED PROPERTY CALL AGENT FOR SHOWINGS.
LP: $1,990,000 **DOM:** 113 **LD:** 01/20/2009 **OLP:** $2,250,000

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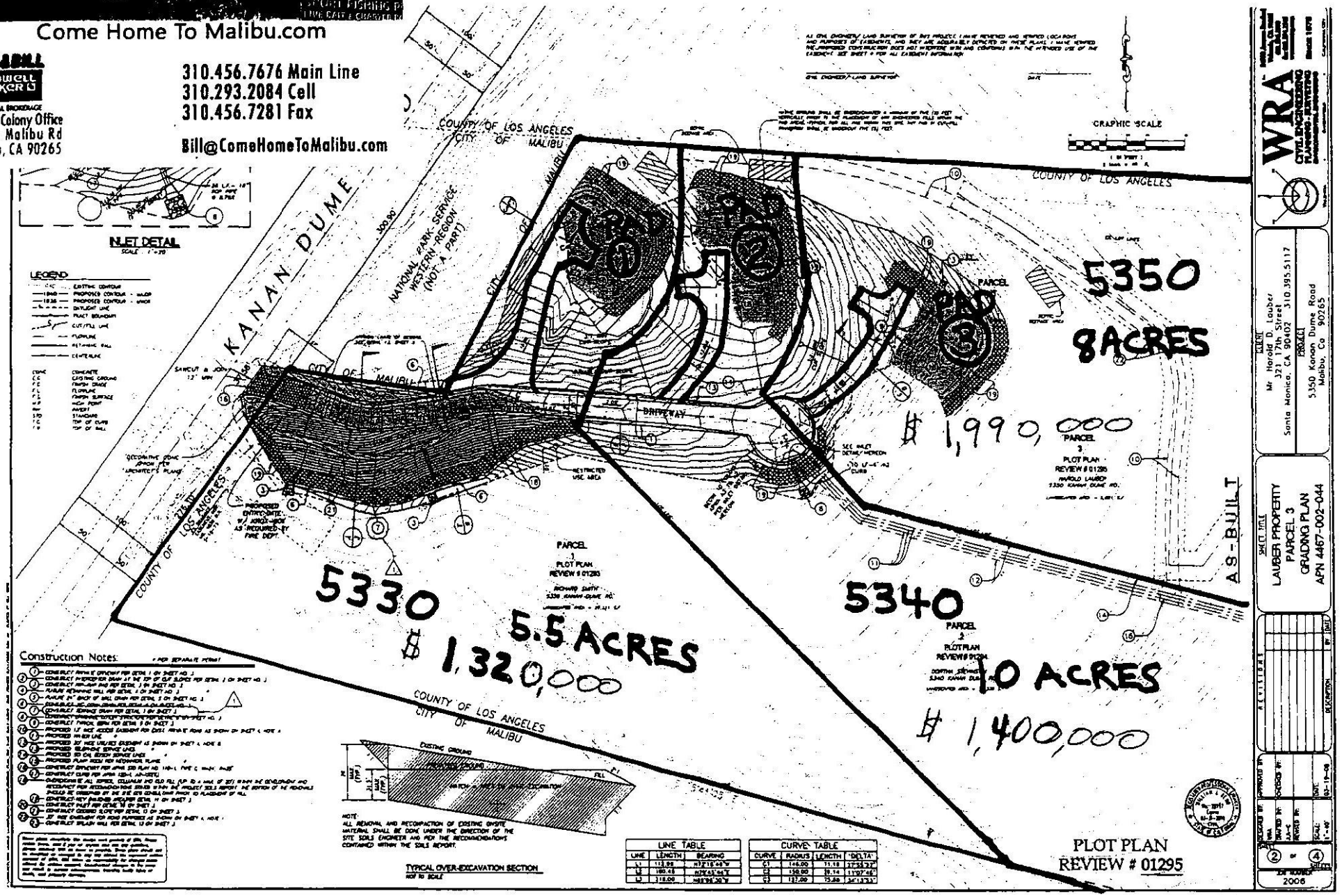
OVER

Come Home To Malibu.com

BILL & BILL
COLDWELL BANKER
RESIDENTIAL BROKERAGE
Malibu Colony Office
23676 Malibu Rd
Malibu, CA 90265

310.456.7676 Main Line
310.293.2084 Cell
310.456.7281 Fax

Bill@ComeHomeToMalibu.com



BILL RHODES 310-293-2084

OVER →

STATUS: Active **ADDRESS:** 5350 KANAN DUME RD , MALIBU 90265 **LP:** $1,990,000





Add'l Photos View Larger Map

RESIDENTIAL LAND	**AREA:** (33) Malibu		**MLS#** 09-341587	**MAP:** 627/FZ
APN: 4467-002-044	**SUB:**	**GAS:** None	**WATER:** On Site	**ELECTRIC:** Other
APX ACREAGE: 8.00	**ZONE:** LCRA1Y	**TELEPHONE:** Yes	**TV/CABLE:** Yes	**SEWER:** None
ADP: No	**VIEW:** Yes	**STAKED:** Yes	**APX LDM:** A8.0/AS	**APX LSZ:** 350,000/DV
HORSE PROP: No	**BONDS/ASSESSMENTS:** SEE TITLE			
ELEM: CALL CITY	**JRHS:** CALL CITY	**SRHS:** CALL CITY		

DIRECTIONS: PCH TO KANAN APPX. 1.5 MILES ON THE RIGHT
REMARKS: ONE OF THREE INCREDIBLE ESTATE LOTS IN THE HEART OF MALIBU. THESE LOTS HAVE SWEEPING OCEAN AND MOUNTAIN VIEWS AND ARE ARCHITECT READY WITH UNDERGROUND UTILITIES, LARGE ENGINEERED PADS, GATED DRIVEWAY WITH FIRETRUCK TURN AROUND ALL IN AND COASTAL APPROVED. IMPOSSIBLE TO DUPLICATE, EXTENDING FROM KANAN TO RAMIREZ CANYON WITH LOTS OF USEABLE AREAS BORDERING PARKLAND. LOT 1 IS APPX 5.5 ACRES, LOT 2 APPX. 10 ACRES, LOT 3 APPX 8 ACRES. GATED PROPERTY CALL AGENT FOR SHOWINGS.

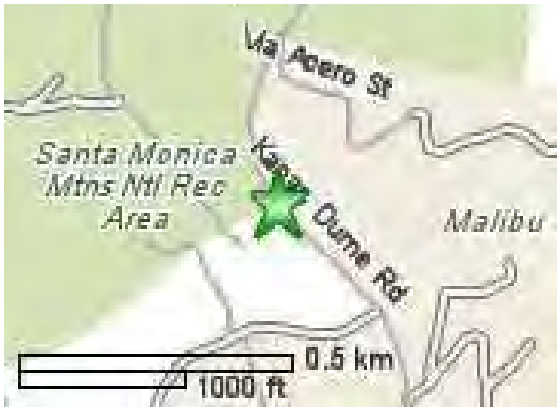
GAS: None
WATER: On Site
ELECTRIC: Other
TOPOGRAPHY: Pad,Varied
SITE: Varied
STREET: Asphalt,Curbed,Private
ON FILE: Cert. of Compliance,Geological Report,Percolatior,Soils Report,Survey,Topography Report
VIEW TYPE: City Lights,Mountains,Ocear
SEC:
SEWER: None
DISC: As Is
OCC/SHOW: Listing Agent Accompanies
WATERFRONT: None
FIN: Cash To New Loar
POSS: Close Of Escrow
SZONE: Coastal Commissior

LP: $1,990,000	**DOM:** 174	**SP:**	**SSP:**	**OLP:** $2,250,000
LD: 01/20/2009	**CD:**	**SD:**	**WD:**	

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STATUS: Active **ADDRESS:** 5330 KANAN DUME RD , MALIBU 90265 **LP:** $1,320,000





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View Larger Map

RESIDENTIAL LAND	**AREA:** (33) Malibu		**MLS#** 09-343427	**MAP:** 627/FZ
APN: UNAVAILABLE	**SUB:**	**GAS:** Bottled	**WATER:** In Street	**ELECTRIC:** In Street
APX ACREAGE: 5.50	**ZONE:** LCA1	**TELEPHONE:** Yes	**TV/CABLE:** Yes	**SEWER:** Septic
ADP:	**VIEW:** Yes	**STAKED:** Yes	**APX LDM:** A5.5/AS	**APX LSZ:** 0/AS
HORSE PROP:	**BONDS/ASSESSMENTS:** SEE TITLE			
ELEM: CALL CITY	**JRHS:** CALL CITY	**SRHS:** CALL CITY		

DIRECTIONS: PCH TO KANAN, 1 MILE ON RIGHT
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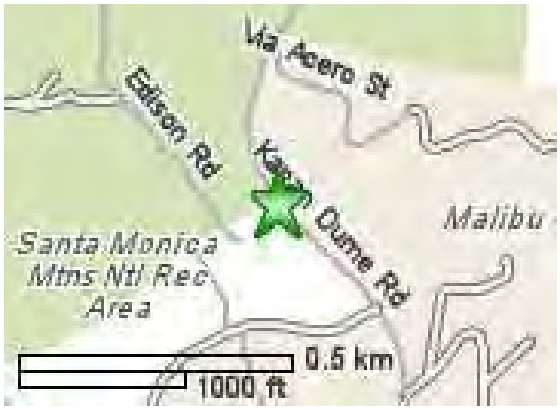
GAS: Bottled
WATER: In Street
ELECTRIC: In Street
TOPOGRAPHY: Pad,Varied
SITE: Varied
STREET: Asphalt,Dirt/Gravel,Public
ON FILE: Cert. of Compliance,Coastal Com. Permit,Geological Report,Percolation,Survey,Topography Report
VIEW TYPE: City Lights,Mountains,Ocear
WATERFRONT: None
SEC:
FIN: Submit
SEWER: Septic
POSS: Close Of Escrow
DISC: As Is
SZONE: Coastal Commission
OCC/SHOW: Call LA 1

LP: $1,320,000	**DOM:** 167	**SP:**	**SSP:**	**OLP:** $1,650,000
LD: 01/27/2009	**CD:**	**SD:**	**WD:**	

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STATUS: Active **ADDRESS:** 5340 KANAN DUME RD , MALIBU 90265 **LP:** $1,400,000





Add'l Photos

View Larger Map

RESIDENTIAL LAND	**AREA:** (33) Malibu		**MLS#** 09-345295	**MAP:** 627/F7	
APN: 4467-002-042	**SUB:**	**GAS:** Bottled	**WATER:** In Street	**ELECTRIC:** In Street	
APX ACREAGE: 10.00	**ZONE:**	**TELEPHONE:** Yes	**TV/CABLE:** Yes	**SEWER:** Septic	
ADP:	**VIEW:** Yes	**STAKED:** Yes	**APX LDM:**	**APX LSZ:** 178,596/VN	
HORSE PROP:	**BONDS/ASSESSMENTS:**				
ELEM: CHECK WITH CITY	**JRHS:** CHECK WITH CITY	**SRHS:** CHECK WITH CITY			

DIRECTIONS: PCH TO KANAN 1 MILE UP ON RIGHT
REMARKS: ONE OF THREE INCREDIBLE ESTATE LOTS IN THE HEART OF MALIBU. THESE LOTS HAVE SWEEPING OCEAN AND MOUNTAIN VIEWS AND ARE ARCHITECT READY WITH UNDERGROUND UTILITIES, LARGE ENGINEERED PADS, GATED DRIVEWAY WITH FIRETRUCK TURN AROUND ALL IN AND COASTAL APPROVED. IMPOSSIBLE TO DELICATE, EXTENDING FROM KANAN TO RAMIREZ CANYON WITH LOTS OF USABLE AREAS BORDERING PARKLAND. LOT 1 IS 5.5 ACRES, LOT 2 10 ACRES, LOT 3 8 ACRES. GATED PROPERTY CALL AGENT FOR SHOWING.

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SEC:
FIN: Submit
SEWER: Septic
POSS: Negotiate
DISC: As Is
SZONE: Coastal Commission
OCC/SHOW: Call LA 1,Listing Agent Accompanies

LP: $1,400,000	**DOM:** 160	**SP:**	**SSP:**	**OLP:** $1,850,000
LD: 02/03/2009	**CD:**	**SD:**	**WD:**	

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SMMC
Attachment
8-27-07
Item 16
KANAN DUME RD
0
125
250
500
Feet
N

THERE IS EXTENSIVE UNPERMITTED DEVELOPMENT ON THE CONSERVANCY'S RAMIREZ CANYON PROPERTY.

THE CONSERVANCY'S PENDING "OVERRIDE" APPLICATION DOES NOT RESOLVE THE VIOLATIONS.

As a matter of policy, where there has been unpermitted development on a site, the Commission requires applicants proposing new development to include measures to legalize the unpermitted development.

There is extensive unpermitted development on the Conservancyôs Ramirez Canyon property. The pending ñOverrideò application by the Conservancy does not propose any remedial measures, and the Conservancyôs proposed ñOverrideò would delete the provisions of the Cityôs LCPA that require Coastal Development Permits.

For that reason alone, the Conservancyôs Override should be denied.

The History of the Unpermitted Modification and Channelization of the Streambed

December, 1993 The Conservancy acquired Ramirez Canyon property by gift from Barbra Streisand. At that time, previous owners had made the following unpermitted improvements to Ramirez Canyon Creek as it runs through the property:

> Approximately nine hundred (900) feet of the streamôs east bank has been improved with a grouted rock revetment from the northern edge of the property to the driveway bridge near the southern entrance. This includes the eastern edge of the stream along the meadow and Barn and Peach House, where weddings and other large attendance events take place.
>
> Three hundred and fifty (350) feet of the west bank has been similarly improved ï in front of the Barwood house and from the driveway bridge to the southern edge of the property.
>
> Five hundred (500) feet of the stream has been re-aligned upstream of the Barwood house.
>
> Nine (9) checkdams and other structures have been constructed in the creek channel for flood and sediment control (referred to variously as ñimpoundment structures,ò ñwaterfallsò and/or ñdrainage systemsò).
>
> Five (5) bridges have been constructed over the creek - two (2) of which connect Barwood, two (2) decorative pedestrian bridges near the barn, and one (1) bridge near the tennis court.

December 23, 1993 Mr. Edmiston advised Ms. Grove, Commission District Director that ñ[i]ssues such as additional access form Kanan-Dume Road, stream mitigation, and

vegetation restoration will be the subject of a future permit application to the Commission.ò

January 26, 1994 Mr. Edmiston advised Ms. Grove, Coastal Commission District Director, that the Conservancy accepted the Commissionôs conclusion that a CDP to remedy the unpermitted streambed modifications was necessary. Mr. Edmiston further stated:

> ñStream Mitigation. First priority is deciding what mitigation is necessary, and applying for the necessary coastal and stream alteration permits. . . . This mitigation is **our highest priority** because it affects the natural resources of the property, and the amount we need to spend on this phase of the project will to some extent determine what is left for other aspects.ò (Emphasis added.)

June 10, 1994 Coastal Commission requested that Conservancy address unpermitted streambed violations in order to avoid an enforcement action.

Early 1995 Conservancy submitted application for CDP to Commission which included proposed uses as well as permit for streambed modifications.

January 8, 1995 Draft Agreement between the Conservancy and California Department of Fish and Game (CDFG).

May, 1995 Conservancy withdrew CDP application.

December 21, 1998 Conservancy filed another CDP application, but did not address streambed improvements and would not commit to a time frame for doing so.

October, 1999 City of Malibu urged Commission to deny the Conservancyôs Application for CDP 4-98-334, in part, because of unpermitted streambed modifications.

January, 13, 2000 During the hearings on CDP 4-98-334, the Conservancy promised to submit the application for the CDP for the streambed modifications within three months. Commissioner Wan stated:

> ñIt had better be in front of this Commission in 90 days, because I have to tell you I am going to take a very dim view of that. That is very disturbing to me. That is a real permit violation.ò (Transcript of Jan. 31, 2000 hearing, p. 152.)

April 11, 2000 One day before the April Commission meeting, the Conservancy filed a very cursory application for CDP for the streambed modifications.

April 12, 2000 During the final hearing on CDP 4-98-334, the Conservancy advised the Commissioners that it had submitted the application. Commissioner Wan stated:

ñYou met your commitment to the Commission in terms of getting it in before this meeting. I want a commitment that you are going to proceed with this, and actually get this through in as expeditiously a manner as is possible, because otherwise, I think, you are going to have some unhappy Commissioners here.ò

Mr. Edmiston responded:

ñThe last thing we want is unhappy Coastal Commissioners. You have my promise.ò (Transcript of April 12, 2000 hearing, p. 53.)

May 10, 2000 Coastal Commission advised Conservancy of need to obtain approval of ñstill undefinedò project description from CDFG.

May 17, 2000 Conservancy advised Commission that it would submit revised project description to CDFG.

May 23, 2000 Commission advised Conservancy that the application for CDP was still incomplete and project description still lacking.

January 18, 2001 In the litigation filed by the City of Malibu over CDP 4-98-334, the Conservancy stipulated to the fact that it had not obtained a CDP for the unpermitted streambed modifications.

May 7, 2001 In the litigation filed by the City of Malibu over CDP 4-98-334, Judge Kellegrew declined to rule on the streambed modification issue because the Commission had ñundertaken review.ò

January, 2002 Final Agreement between the Conservancy (and MRCA) and CDFG.

January 12, 2003 CDFG inquired about the status of the work under January, 2002 Agreement. No response in the record.

There is **no evidence** of any further efforts by Conservancy to obtain permits.

Additional Comments

The unpermitted streambed modifications are not addressed in the Conservancyôs proposed ñOverride.ò Instead, there is simply a promise to initiate a ñsite-specific comprehensive analysisò of the issue (Override, Land Use Implementation Plan, p. 14, Sec. 7, B). The Conservancyôs ñOverrideò would also delete the existing LCP requirement that streambed modification proposals ñare subject to a [CDP] and all other relevant permits from appropriate agencies.ò (*Id*.)

The History of Unpermitted Improvements to the Structures

1993 The Conservancy acquired Ramirez property by gift from Barbra Streisand. Five structures, all previously used as residences: Barn (ñLodgeò); Art Deco House; Ranger Residence; Peach House (or ñMediterranean Houseò) and Barwood. Some improvements were permitted, some were not.

1993 Conservancy changed the use, which required that all structures be brought up to existing Codes.

1995 Draft CDP Application by the Conservancy to the Coastal Commission noted the following unpermitted improvements:

> Conversion of previous garage of Art Deco house to living space, addition of a new garage and second story, and expansion of footprint of Barwood Headquarters;
>
> Lighting of pre-existing tennis court and addition of a two story viewing structure;
>
> Site grading to channelize the stream and construction of weathered rock channel retaining walls, installation of foot bridges over creek and two concrete waterfalls, and construction of on-site aboveground and underground drainage system;
>
> Grading to create two meadow areas, construction of garden terraces, patio areas, and terraced rock retaining walls;
>
> Installation of decorative driveway and walkway paving.

November 5, 1998 Mr. Edmiston advised Mr. Timm, Coastal Commission Program Manager, South Coast District, that the Conservancy used the property for administrative offices, garden tours, special events, but had ñnot made any structural changes to the property.ò

October, 1999 Coastal Commission Public Hearing Notice: Project Description: ñThe applicant requests óafter the factô approval to convert 5 existing single-family residences on five lots to use for offices . . .ò

October, 1999 Coastal Commission Staff Report: Described the project as a request for ñafter the factò approval.

December, 1999 Staff Report: Dropped the words ñafter the factò ï no further mention. Project Description: ñThe applicant requests approval to convert 5 existing single family residences on 6 lots for use for offices and appurtenant facilities . . ..ò

January 13, 2000 Coastal Commission Hearing on CDP 4-98-334: The Conservancy advised the Commissioners that it had not made a ñsingle physical changeò to the

property (Transcript of Jan. 13, 2000 hearing, pp. 29-30). For fire safety purposes (*i.e.*, ñhunkering downò in case of a fire), the Conservancy proposed to install double paned windows in Art Deco house, and replace wooden shingles and replace them with fire retardant materials (*Id*., p. 9).

June, 2006 The Conservancy submitted application for a Public Works Plan to Commission. The Commission staff requested information on unpermitted development. The Conservancy did not provide that information and later withdrew the Plan.

Early 2007 The Conservancy filed an application with the City of Malibu for an LCP Amendment. Malibu certified the LCPA, but with requirement that Conservancy obtain coastal development permits.

April 14, 2008 The Conservancy submitted its application to the Commission to ñOverrideò the Malibu LCPA. The ñOverrideò deletes the Cityôs requirement for coastal development permits, and does not address any of the unpermitted development.

A BRIEF HISTORY OF ALTERNATIVE ACCESS ACROSS THE LAUBER PROPERTY

Alternate Vehicular Access to the Conservancy's Ramirez Property is an Essential Public Safety Component of Any Development Plan.

The Conservancy Has Promised and Planned for that Access since 1993.

The City's LCPA Requires Alternate Access as a Pre-Condition of Intensification of the Use of the Property.

The Commission Should Support That Condition.

A Brief History of the Alternative Access Issue

1993 The Conservancy promised that it would ñcarefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community.ò (Memorandum of Understanding between the Conservancy and Ms. Streisand.)

1993 The Conservancy promised the Ramirez Canyon residents:

> ñThe Streisand Center property is a donation and therefore it will never have to be and will never be dedicated to park purposes. We are realists enough to realize **this is not a place that lends itself to public use or access**, and certainly we have a **long road of Ramirez that is narrow, and does not lend itself to safe access**, and in fact, with the stream coming through, it may be washed out a good portion of the year. . . .ò

December 23, 1993 The Conservancy advised Ms. Tami Grove, Coastal Commission District Director: ñIssues such as additional access from Kanan-Dume Road, stream mitigation, and vegetation restoration will be the subject of a future permit application to the Commission.ò

January 1994 The City of Malibu indicated that it would support a CDP application by the Conservancy if primary access were provided from Kanan Dume Road, rather than Ramirez Canyon Road.

1994 The Conservancy advised the Ramirez Canyon Preservation Fund: ñUnfortunately, we do not currently have budgeted funds for the alternative road access, but continue to pursue such funds and will cooperate with the Ramirez Canyon

Association and we all want and support the City of Malibu in obtaining this important alternative access road for ourselves and our neighbors in the Canyon.ò

1995 The Conservancy writes that the Streisand Center ñwill continue its efforts to seek funds to develop an alternative public access route to the site via Kanan Dume Road.ò (Draft CDP Application by the Conservancy to the Commission.)

December 3, 1996 ***The Conservancy acquired an easement from Kanan Dume Road to the Ramirez Canyon Property from Mr. Lauber, Ms. Stevinson and Mr. and Mrs. Smith.***

January 13, 2000 Coastal Commission Hearing on CDP 4-98-334: The fact that Ramirez Canyon Road is ñsubstandardò (i.e., less than the 20-foot width required by state and local Fire Codes) was raised in the original staff report and staff stated that ñevacuation is impossible.ò No ñmodificationò of that requirement was granted by the State Fire Marshall or the Los Angeles County Fire Department. (See Briefing Paper: Ramirez Canyon Road Does Not Meet The Mandatory 20-Foot Width Required By State And Local Fire Codes. The Issue Was Raised, But Not Resolved, During The Proceedings On CDP 4-98-334.ò)

> ***There was no mention of the fact that the Conservancy had acquired the easement from Kanan-Dume Road to the Ramirez property in the staff reports or at the Commission hearings.***

At the January 13, 2000 hearing, Commissioner Daniels noted the existence of the ñback roadò and asked: ñIs that in any way feasible?ò (Transcript of Jan. 13, 2000 hearing, p. 144). Commissioner Hale said the question was ñcomplicatedò (*Id*., p. 145). Executive Director Douglas stated: ñWell we have looked at that . . . we have made it very clear that an alternative road, or an additional accessway here would be environmentally disruptive that we couldnôt see a way to recommend approval under the Coastal Act, so we have pretty much made it clear that if that is what is required, that isnôt going to be ï certainly in our view ï permissible under the Coastal Act.ò There is no evidence in the record to support the statement. Attached is a photograph of the current condition of the hillside over which the road would pass.

April 12, 2000 Coastal Commission approved CDP 4-98-334, which allowed extensive use of the Ramirez property with substandard Ramirez Canyon Road as the sole means of access.

May 16, 2000 ***The Conservancy quitclaimed the easement back to Mr. Lauber, Ms. Stevinson and Mr. and Mrs. Smith.***

Early 2007 The Conservancy filed an application with the City of Malibu for an LCP Amendment.

August, 2007 The Conservancy granted $7,000,000 to the Mountains Recreation and Conservation Authority to acquire the parcels between the Conservancy Ramirez property and Kanan Dume (SMMC Grant No. 07-76), all three of which are now owned by Mr. Lauber.

November 2007 The Conservancy amended the scope of Grant No. 07-76 to include ñplanning for and development of . . . vehicular access from Kanan Dume Road to Ramirez Canyon Park.ò

December 5, 2007 The City of Malibu approved the Conservancyôs Application for LCPA and, for the Conservancyôs proposed development in Ramirez Canyon, conditioned certain intensification of use on the construction of the alternate vehicular access.

April 14, 2008 The Conservancy submitted its application to the Commission to ñOverrideò the Malibu LCPA. The ñOverrideò deletes the Cityôs requirement for alternate access.

A COMPELLING PRECEDENT: BRAZIL RANCH (BIG SUR)

	BRAZIL RANCH (Consistency Analysis, 2007)	**RAMIREZ CANYON (Proposed, 2009)**
Location	Big Sur	Malibu
Size	1200 acres	22 acres
Applicant	U.S. Forest Service	Santa Monica Mountains Conservancy
Zoning	Watershed and Scenic Conservation	ESHA and Open Space
Calif. Fire Designations	Very High Fire Hazard Severity Zone Wildland/Urban Community at Risk	Very High Fire Hazard Severity Zone Wildland/Urban Community at Risk
Agency Executive Offices	No	Yes
Weddings, Family Retreats	No	Yes
Special Events Allowed for Any Purpose	No Limited to conservation purposes	Yes
Camping	No *	Yes
Unsupervised Hiking	No. Guided Hikes Only (to prevent damage from ñvolunteerò trails created by users on their own)	Yes
Large Group Events Per Year	4	32
Max. Visitors at Large Group Events (per year)	600 150 people per event	6400 200 people per event
Max. Visitors Per Event	70	200
Max.Visitors Per Year	None stated	44,240

* ñIntensive visitor-serving recreation facilities and activities (such as visitor centers or campgrounds) will not be considered.ò From the Forest Service Plan, quoted in Coastal Commission Staff Report, 2/9/06, page 16.

RAMIREZ CANYON ROAD TRAFFIC TRIP CALCULATIONS

(December 2008)

Monitoring Period (2008)	Per day average
September ï October 5	499.9
October 6 ï October 12	566.7
October 13 ï October 19	517.6
October 20 ï October 26	554.1
October 27 ï November 2	566.1
Average over monitoring period	540.9 (see Note 1)
Less: Trips generated from SMMC property	36.7 (see Note 2)
Equals: Trips generated from canyon homes	504.2
Divided by number of homes (= 60)	**8.4 daily trips per home**

Notes:

1. Traffic counter placed on Ramirez Canyon Road just north of intersection with Delaplane.
2. SMMC traffic generation based on counts taken from November 10, 2008 to December 7, 2008 just outside the gate to the SMMC property.
3. Traffic count records available upon request.

BRIEFING PAPER

THE ADVERSE IMPACTS OF THE SANTA MONICA MOUNTAINS CONSERVANCY'S APPLICATION TO "OVERRIDE" THE CITY OF MALIBU'S LOCAL COASTAL PLAN AND INTENSIVELY DEVELOP PROPERTIES IN THE MALIBU FOOTHILLS

Ramirez Canyon Preservation Fund
May 2009

EVACUATION IS “IMPOSSIBLE”

ñThus, emergency evacuation for the lots developed with residences, together with the additional lots on Ramirez Canyon Road that are eligible for future residential development, could entail as many as 93 families trying to evacuate the canyon on the same substandard road; if the additional burden of trying to evacuate 200 guests is added to the burden already placed on the roadway, the scenario for evacuation becomes virtually impossible to execute.ò

Coastal Commission Staff Report, CDP 4-98-334,
Oct. 14, 1999, page 15, emphasis added.

Summary of Key Points

Malibu Welcomes Visitors. The City of Malibu has a long history of welcoming visitors. Each year, millions of people visit the City, more visitors per capita than any other city in California. Many of these guests stay overnight in the campgrounds located in or near Malibu, which area has about 400 campsites that can accommodate 2700 guests.

The Conservancy's Dangerous Proposal. The City of Malibu is proud of its record of keeping its visitors safe. This commitment to public safety is directly challenged by the Conservancyôs application to ñOverrideò the Malibu LCP and allow intensive development ï not along the coast ï but in Malibuôs up-canyons. The Conservancy properties at issue are located in the most fire-prone portions of Malibu, including a luxurious residential estate formerly owned by a Hollywood star. These parcels sit at the end of narrow box canyons -- far from safe access routes. The Conservancy wants to develop these parcels with projects that will bring large groups of visitors to places where fire and flood are constant threats and evacuation is impossible.

The Conservancyôs proposal should be rejected by the Coastal Commission because it:

Would bring up to **45,000 people each year** into a state-designated Very High Fire Hazard Severity Zone, surrounded by residential neighborhoods, without safe evacuation routes for visitors or residents.

Would build 25 hike-in and trail campsites which are impossible to monitor in dry box canyons with high fuel loads (100% ESHA) accessed only by narrow and winding dead-end roads.

Ignores much safer alternate locations and mitigation measures.

Would increase fire fighting costs in an urban area while the State is facing an unprecedented financial crisis and fire suppression budgets are strained.

Is not supported by any showing of public need.

Would place executive offices for top agency officials on a luxurious, isolated, gated residential estate.

Runs roughshod over local land use authority, in violation of the fundamental policies of the Coastal Act.

Description of Conservancy Properties and Summary of Proposed Uses

The three Conservancy properties proposed for development have some important characteristics in common. They are all:

In the Malibu foothills above Pacific Coast Highway.

Adjacent to and surrounding residential neighborhoods.

In a State-designated ñVery High Fire Hazard Severity Zoneò[1]

In a State-designated ñWildland/Urban Community at Riskò[2]

All 100% ESHA; primarily chaparral, highest fuel load [3]

Ramirez Canyon: Former Barbra Streisand Estate, gated, 22 acres. Five residential structures built in the 1960ôs and 70ôs, no evidence that structures have been brought up to State Building and/or Fire Codes. Only access is 5000 feet up a private dead-end road through a residential neighborhood; the Road is too narrow to meet the Fire Code requirements. (Note: These issues were not resolved during the earlier hearings on the 2000 CDP, which was later declared invalid.)

Proposed Development: The Conservancy is requesting authorization to use the former estate for the following activities each year in addition to daily use of the estate as an executive office complex for top agency management and five new campsites. Some of the proposed uses are for revenue-raising purposes only, for example, leasing for private, ñspecial events.ò

Activity	Participants/Events	Events/Year	Participants/Year
Special Events	200	32	6,400
Tours/Small Events	60	144	8,640
ñPublic Outreachò	40	730[4]	29,200
Total (annual)		**906**	**44,240**[5]

The events would occur seven days a week, dawn to dusk; some weekends until 11 pm.

Escondido Canyon: narrow box canyon; dead-end, winding access road.

Proposed Development: Eight hike-in and trail campsites; pave over meadow for parking lot to increase equestrian use of an area with known watershed quality issues.

Corral Canyon: dry foothills. Location of a catastrophic 2007 fire (see below).

Proposed Development: Sixteen hike-in and trail campsites (two accessible).

Conclusions and Recommendations

There is no safe way to accommodate the Conservancyôs proposals for camping and large group gatherings in these isolated, dry box canyons.

SAIC Recommendations

The Analysis of Issues prepared by Science Applications International Corporation (SAIC Report) examines the impacts of the Conservancyôs proposals and makes the following recommendations:

> ñ**Recommendation No. 1**: No camping in any of the three canyons (except for accessible camping at Ramirez provided there is close supervision of such activities) and no special events at Ramirez.
>
> ñ**Recommendation No. 2**: No trail camping in Ramirez and Escondido canyons.
>
> ñ**Recommendation No. 3**: If camping is allowed at any of the three canyons, or special events and/or offices are allowed in Ramirez Canyon, additional precautions must be taken.ò SAIC Report, page 29-30.

Ramirez Canyon Preservation Fund Recommendations

In addition to the SAIC recommendations, the Ramirez Canyon Preservation Fund asks that the Coastal Commission reject the Conservancyôs ñOverrideò Plan unless it is revised to meet the following criteria:

a. Strict enforcement of state/local Fire Codes for property in the Very High Fire Hazard Severity Zone (ñHigh Fire Areasò) (no modifications, no waivers).

b. No intensive public uses should be allowed in High Fire Areas.

c. Conditional use permits should be required for all non-residential uses in High Fire Areas.

[For further details, see ñA Brief Summary of the Issuesò below, including references to source material cited above]

A Brief Summary of the Issues

1. People Cause Fires; Camping Causes Fires. The majority of fires within California, and specifically within Los Angeles County, are caused by humans ï on average ten times more than by natural causes. During the last 20 years in California, 142 fires were started by campfires alone; those fires burned more than 360,000 acres and cost more than $140 million to suppress.[6] Campfires and cooking were the #5 cause of wildfires in the Santa Monica Mountains National Recreation Area in 1981-2003. Smoking is the #12 cause.[7]

2. The Conservancy's Proposals Would Create Unnecessary Risk to Visitors and Residents Because These Canyons Do Not Have Safe Access Roads for Fire Apparatus. Most people who die in wildland fires do so while evacuating. Evacuation operations require large commitments of firefighters who could be better utilized for fire suppression. Evacuation operations also impair traffic, which affects firefighter response.[8] The properties on which the Conservancy is proposing camping and special events do not have safe access roads for fire apparatus.

> The Ramirez Canyon estate is located at the furthest up-canyon point of Ramirez Canyon, one mile up a dead-end road. The road is only 13-feet wide in places; state and local Fire Codes require fire apparatus access roads to be a minimum of 20-feet wide. The Road crosses a blue line stream with old, narrow bridges and Arizona crossings; there are nine speed bumps. The substandard nature of Ramirez Canyon Road was **not resolved** during the hearings on the Conservancyôs 2000 CDP (which was ultimately declared void by the courts).
>
> The Escondido Canyon property is accessed by Winding Way, a winding, dead-end road which travels up and over a hill with hairpin turns.
>
> The Corral Canyon property is adjacent to Pacific Coast Highway, but the proposed campsites are located up-canyon, with no vehicular access.

The Conservancyôs proposals for each of these Canyons should not be considered unless the Conservancy can provide **two** safe and Fire Code-compliant means of ingress and egress. No waivers or modifications of fire code standards should be allowed.

3. Malibu's Fire-Prone Foothills Are The Wrong Place to Locate More Overnight Camping.

> **There is No Demonstrated Need for More Camping Facilities in Malibu.** There are nearly 400 public campsites with capacity for nearly 3000 campers in and around Malibu.[9] Most are along the beach, on properties which are not heavily vegetated, and outside of the high fire area. All are close to Pacific Coast Highway or adjacent to a major cross-mountain highway for easy access.
>
> **Even if There Were a Need, Malibu's Isolated Canyons Are Not the Place to Offer Additional Camping Opportunities**. Malibuôs canyons are isolated and heavily vegetated with dry chaparral and coastal sage scrub ESHA that has not burned in decades. Canyon residents have endured numerous and devastating

wildfires. There were at least two significant fires in 2007, the last of which (in Corral Canyon, one of the sites included in the Conservancyôs development proposal) destroyed 63 homes and damaged another 54 homes, along with the Malibu Presbyterian Church, Our Lady of Malibu and Webster Elementary School. Six firefighters were injured, including one who suffered second-degree burns to his face. That disaster was started by young people building an illegal campfire on state-owned property who apparently disregarded the ñNo Firesò signs.

There are Safer Alternative Locations and Reasonable Mitigation Measures to Reduce Fire Risk. The Conservancy should not build campgrounds and other facilities in high fire areas unless it can demonstrate a compelling need and no feasible alternative locations. Even then, the Conservancy should be required to prove that there is both (i) a means of ingress and egress that meets Fire Code standards, and (ii) guaranteed 24/7 monitoring of campers.

Posting Signs and Periodic Ranger Visits is Not Enough. People ignore posted signs. Indeed, the devastating 2007 Corral Canyon fire was started by people who ignored the prominent No Fires signs. Periodic ranger visits are not sufficient, because people will do what they want when no one is watching. And, promises of adequate on-site supervision (i.e., to enforce no fire and no smoking regulations) are not enough, since no one can predict whether the Conservancy will have the funds in future years to fulfill that promise.

4. Are the Ramirez Structures Fire Safe? During past Commission proceedings, the Commission asked the Conservancy to provide information about the unpermitted development on the property. To our knowledge, the Conservancy has never responded, and the information is not included in the Conservancyôs Application. In response to a recent Public Records Act request for all documents concerning improvements on the site since 1993, the Conservancy did not produce any documents showing that the wood-sided structures on the Ramirez property were brought up to State Building and Fire Codes when the Conservancy changed the use from residential to public/commercial, nor that any fire protection measures (sprinklers, fire safe walls, windows, and doors) were installed.[10] If visitors are trapped at the Ramirez property, will they be protected?[11]

5. An "Event Center" Does Not Belong At the End of a Dead-End Substandard Road in a Dry Box Canyon.

There is No Public Need for an "Event Center" in Ramirez Canyon. Malibu has a long history of welcoming large group events. There are 23 event, catering and conference facilities in the Malibu area that can each accommodate 100 to 500 people. The estimated total capacity of these facilities is approximately 6045 people.[12] There is no evidence that additional facilities are necessary and, even if there were a need, there are safer and more suitable alternate locations, e.g., King Gillette Ranch, a 500-acre parcel close to Malibu near the intersection of Mulholland Highway and Malibu Canyon Road (*id.*). King Gillette has plenty of space, adequate parking, good access and existing buildings.

Incompatible with Neighboring Uses. Ramirez Canyon is a rural, residential neighborhood with one narrow private road, overgrown and mature vegetation, and many wood-sided houses built decades ago right next to the road. The Streisand property was built as a single-family estate, and operated that way for years. It is designated ESHA and zoned for Open Space uses only. Putting a high intensity use like an event and catering center on that property ï in that neighborhood ï violates fundamental principles of land use compatibility.

6. An Executive Office Complex for Top Agency Officials Does Not Belong in Old Residential Structures in a Very High Fire Hazard Severity Zone With Just One Narrow Access Road.

Fire Danger. The Conservancy is requesting authorization to use the 22-acre gated Streisand estate as an executive office complex for itself and a sister agency. As noted above, there is no evidence that the structures have been improved for that purpose, and the access road does not meet Fire Code standards. In an evacuation, the Conservancyôs employees would be trying to leave Ramirez Canyon along with the residents of the Canyon, while fire emergency equipment was attempting to go up the canyon.

An Extravagant Indulgence for a Public Agency's Executive Staff. There is no publicly-defensible or logical reason to place the executive offices for two public agencies (the Conservancy and its sister agency Mountains Recreation and Conservation Authority (MRCA)) on a lavish estate in a residential neighborhood located in a Very High Fire Hazard Severity Zone. The Conservancy and MRCA own numerous properties and office facilities throughout Los Angeles County and should locate their administrative offices in a traditional office building, just like every other public agency.

7. Fire Dangers in California Are Growing, Along with Firefighting Costs. Proposals for camping in the hot and dry mountains of Southern California present serious public safety concerns.

ñIn recent years, both the number of acres burned by wildland fires and the costs to suppress fires has been increasing. From 1995 to 1999, wildland fires burned an average of 4.1 million acres each year. From 2000 to 2004, the fires burned an average of 6.1 million acres per year, an increase of almost 50 percent. During the same periods, the costs incurred by federal firefighting entities to suppress wildland fires more than doubled, from an average of $500 million annually to about $1.3 billion annually. Although efforts to fight these larger, more severe fires have accounted for much of the increase in suppression costs, the continuing development of homes and communities in areas at risk from wildland fires and the efforts to protect these structures also contribute to the increasing costs. Forest Service and university researchers estimate that about 44 million homes in the lower 48 states are located in the wildland-urban interface.ò[13]

Fifteen of the twenty largest wildfires in California history have occurred since 1985.[14] Nearly 1.2 million acres burned in the state during the record-setting 2008 fire season (*id.*).

8. State and Local Governments Are Facing Severe Financial Challenges. The increased risk of wildfires cannot be managed by fire suppression strategies alone.[15] The California Department of Forestry and Fire Protectionôs fire protection expenditures increased from $475 million in 1996-97 to $869 million in 2006-07 ï an **83% increase**.[16] The 2008-08 budget for CDF is $1.6 billion. The stateôs fiscal resources are not keeping pace with this demand. Los Angeles Countyôs fire planners say:

> ñThe most effective way to limit damage and loss due to wildfire is to prevent all but the most blatant ignitions due to arson or other unforeseeable circumstances.ò[17]

9. It is Not Fiscally Responsible To Develop New Public Facilities When The State Cannot Afford to Operate the Facilities It Already Owns. The state is considering sale of the Los Angeles Coliseum, the Los Angeles State Office Building, and other facilities in order to raise money for vital programs. It is anomalous that, at the same time, the Conservancy is proposing to spend public money on new public facilities which will increase fire suppression costs, when there is no demonstrated need for the facilities, and when the Conservancy cannot demonstrate that it has the funds necessary to maintain and supervise those facilities.

10. The Conservancy's Proposal Would Upset the Careful Balance of Authority Between the Commission and Local Government Reflected in the Coastal Act and Would "Ambush" the City of Malibu. The Malibu LCP was certified by the Commission in 2002. The elements of the Conservancyôs ñOverride Planò were formulated before that certification occurred. The Coastal Act allows use of the ñoverrideò procedures only where a specific public work was ñnot anticipatedò by the applicant when the local LCP was before the Commission for certification. That requirement is not met here.

The Conservancy is asking the Commission to give it a long-term ñblank checkò with no local input into its development decisions. No other agency has been granted such privileges.

<u>Conclusion</u>

The first job of government is to keep people safe. The stateôs fiscal crisis cannot keep up with the growing fire threat. Given these facts, it makes no sense for public agencies to be developing public uses in high fire areas when they are having so much trouble safely operating the facilities they already own.

The Conservancyôs proposal should be rejected because there are feasible and safer alternative locations for all of the proposed development. At the very least, intensification of use should not be permitted on any Conservancy property unless it is served by at least one road, and preferably two roads, that meet Fire Code standards.

We support the Conservancyôs mission of acquiring and conserving open space lands for future generations. The Conservancy should concentrate on serving environmental values ï and not open new public facilities that create unreasonable risks to Conservancy visitors and nearby communities.

REFERENCE NOTES

[1] California Department of Forestry and Fire Protection, Fire Hazard Severity Zone Re-Mapping Project. http://frap.cdf.ca.gov/webdata/maps/los_angeles/fhszs_map.19

[2] California Department of Forestry and Fire Protection, ñThe Wildland Urban Interface (WUI): Assessing wildfire related risks to people, property and infrastructure in California.ò http://frap.cdf.ca.gov/projects/wui/index.asp

[3] California Department of Forestry and Fire Protection, 2005a, ñFuels: Surface Fuelsò Raster Digital Data. 2005. http://frap.cdf.ca.gov/data/frapgisdata/select.asp?theme=5; Anderson, H.E. 1982, ñAids to Determining Fuel Models for Estimating Fire Behaviorò; National Wildfire Coordinating Group, 1994, ñIntroduction to Wildland Fire Behavior S-190,ò Student Workbook; The California Chaparral Institute, http://www.californiachaparral.com/awheresthechaparral.html.

[4] Assumes two events per day. In fact, the Conservancy proposes no limit on the number of ñPublic Outreachò events that may be held each day.

[5] This annual total translates into monthly numbers: 76 events/month; 3,687 participants/month.

[6] California Department of Forestry and Fire Protection, 2008, ñFire Perimeters.ò Vector Digital Data, June, 2008, http://frap.cdf.ca.gov/data/frapgisdata/select.asp?theme=5.

[7] U.S. Department of the Interior, National Park Service, Final Environmental Impact Statement for a Fire Management Plan, Santa Monica Mountains National Recreation Area (Sept. 2005), pages 3-15.

[8] Hunt, J., ñListen to Experts Concerning Fire Protection,ò Santa Barbara News-Press, December 21, 2008. Mr. Hunt is a former county fire department captain and a wildland/urban interface fire protection consultant for the past 29 years.

[9] Science Applications International Corporation, ñAnalysis of Issues Relating to Application by the Santa Monica Mountains Conservancy For a Local Coastal Program Amendment Override,ò December 2008, pp. 2-3, submitted to the California Coastal Commission by letter dated December 23, 2008.

[10] The Conservancyôs change in use amounted to a ñchange in occupancyò under the Uniform Fire Code (24 Cal. Code Regs., § 202) and required that the structures be brought up to Code: ñNo change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the California Building Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the California Building Code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.ò (Title 24, Cal. Code Regs., sec. 102.3, emphasis added.)

[11] In 1999, the Coastal Commission reported that ñhunkering downò would be dangerous. See October 14, 1999 Staff Report, page 13-14.

[12] Science Applications International Corporation, ñAnalysis of Issues Relating to Application by the Santa Monica Mountains Conservancy For a Local Coastal Program Amendment Override,ò December 2008, p. 4 and Appendix A, submitted to the California Coastal Commission by letter dated December 23, 2008.

[13] U.S. Government Accountability Office, *Wildland Fire Suppression: Better Guidance Needed to Clarify Sharing of Costs between Federal and Nonfederal Entities,* July 2006, pp. 3-4.

[14] Associated Press, *Report: Climate Change to Fuel Wildfires in West,"* August 15, 2008.

[15] National Wildlife Federation, ñIncreased Risk of Catastrophic Wildfires: Global Warmingôs Wake-Up Call for the Western United States,ò August 14, 2008.

[16] California Legislative Analystôs Office, ñCalifornia Department of Forestry and Fire Protection: Stateôs Wildland Firefighting Costs Continue to Escalate,ò presented to the Senate Budget Subcommittee No. 2 on Resources, Environmental Protection and Energy, March 26, 2007.

[17] County of Los Angeles Fire Department, Pre-Fire Management Plan, June 2004, p. 9.

June 5, 2009

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BY EMAIL AND FACSIMILE

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

RE: Agenda Items 16a and 16b, June 10, 2009

City of Malibu LCPA 3-07

LCP Override Application by Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority (LCPA 1-08).

Dear Chair Neely and Members of the Commission:

Brownstein Hyatt Farber Schreck and Diane M. Matsinger, Esq. represent the residents of Ramirez Canyon, as the Ramirez Canyon Preservation Fund ("RCPF"). We are disappointed, to say the least, that staff has recommended that you reject the LCPA submitted by the City of Malibu and approve the Conservancy's "Override." We respectfully request that you reject staff's recommendation. The two LCPAs before you are very similar.[1] If your opinion about any specific proposal differs from that which Malibu has included in its LCPA, please work with the City to resolve those differences under standard LCPA procedure.

We are also concerned that, although we filed extensive comments and evidence in late 2008 and early 2009, staff made no attempt to address any of that material. Our comments and evidence establish, among other things, that there is extensive unpermitted development at the Conservancy's Ramirez Canyon property (streambed modifications, structures, etc.) and that the Conservancy's proposals would violate state and local Fire Codes in numerous respects. We respectfully direct your attention to the following documents:

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[1] The two primary differences are camping (which Malibu deleted in the aftermath of two devastating fires – one of which was caused by an illegal campfire on unsupervised State Park land in Corral Canyon), and the requirement for alternate access to the Conservancy's Ramirez Canyon property (which is necessary to protect public safety because Ramirez Canyon Road is too narrow to comply with state and local Fire Code width requirements). Except for camping, the public access programs proposed by the Conservancy – including the programs for park visitors of varying abilities (e.g., physically and mentally challenged) – were approved by the City and are part of the City's LCPA. The City's LCPA also includes development and use standards for the Conservancy's Ramirez Canyon property.

- Letter submitted by RCPF to Commission Chief Counsel Hope Schmeltzer, dated November 24, 2008, explaining why the Conservancy's attempt to use Public Resources Code section 30515[2] to write its own LCP violates the Coastal Act.
- Letter submitted by RCPF to the Commission, dated December 23, 2008, with Comments on the Conservancy's Override. This letter includes, among other things, an extensive factual analysis of the Override prepared by Science Applications International Corporation.
- Letter submitted by RCPF to the Commission, dated January 6, 2009, with Comments on the City's LCPA.
- Letter submitted by RCPF to the Commission, dated May 5, 2009, with Proposed Text Changes to the City's LCPA to Enhance Public Safety.
- Letter submitted by RCPF to the Commission, dated May 19, 2009, which explains that the Fire Code violation with respect to the Conservancy's use of Ramirez Canyon Road (i.e., it is less than the mandatory 20-foot width) was not resolved during the hearings on CDP 4-98-334.
- Letter submitted by RCPF to the Commission, dated May 22, 2009, which explains that there is extensive unpermitted development on the Conservancy's Ramirez Canyon property.

We call your attention to these specific documents because the manner in which staff has posted the materials on the Commission website is very confusing. The Staff Report for the City's LCPA has four of ten exhibits attached. Four of our submissions with respect to the City's LCPA are listed as Exhibits 7 through 10. However, the web site viewer is not told that he or she must click on the Exhibit reference in order to view it.

The Staff Report for the Override lists as Exhibits four of our submissions with respect to the Override. The Staff Report states that the rest of the Exhibits are available on the Commission's website. However, the documents cannot be accessed from the website address provided. Instead, with no notification to the web site viewer, the documents are accessed by clicking on each of them in the Exhibit List. Exhibit 10, our November 24, 2008 letter to Commission Counsel, is not complete. Exhibit 11, our December 23, 2008 letter to the Commission is also not complete.

In addition, the Staff Reports include as part of the "Amendment History" the Public Works Plan (PWP) submitted by the Conservancy in 2006, but the pertinent documents from that submission are not

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[2] All statutory references herein are to this Code.

included. Therefore, we also direct your attention to the following documents in the Commission files pertaining to the PWP, and ask that they be included in the record:

- PWP, submitted by the Conservancy to the Commission on June 9, 2006.
- Letter submitted by the City of Malibu, dated June 12, 2006.
- Our Comment letter to the Commission, dated June 13, 2006.
- The Commission's letter to the Conservancy, dated June 30, 2006.

Staff characterizes the PWP as the beginning of this LCPA process. That is not so. In fact, the Conservancy is attempting to stretch the override procedures beyond recognition in order to cure the deficiencies with its PWP. To briefly explain: A PWP must be consistent with a LCP (Sec. 30605). The PWP submitted by the Conservancy was inconsistent with the Malibu LCP in numerous respects. The Conservancy has invoked the override procedure to write its own LCP -- so that when it re-submits the PWP, the PWP will be consistent with the LCP. We respectfully submit that allowing the Conservancy to do so would turn the Coastal Act on its head.

Finally, we respectfully submit that it is virtually impossible to provide for meaningful public participation in the LCPA process when staff issues 164 pages of staff reports (with 1354 pages of exhibits) 11 days before a hearing on two matters as large and complex as these. Therefore, if you have any doubts about any aspect of Agenda Items 16a and 16b, please do not decide the issue on June 10, but return the matters to staff for additional review.

Because there is not time to file detailed comments on the Staff Reports, we incorporate by this reference all of the comments and evidence which we have submitted to date, and isolate for your attention the following significant errors and omissions in the recommendations and findings proposed by staff:

I

THE COMMISSION DOES NOT HAVE JURISDICTION TO AUTHORIZE LAND USE THAT VIOLATES STATE AND LOCAL FIRE CODES.

On June 2, 2009, P. Michael Freeman, Los Angeles County Fire Chief, Forestry and Fire Warden, submitted a letter to the Commission, requesting that you deny both LCPAs. Also on June 2, 2009, State Fire Marshal Kate Dargan submitted a letter, requesting that you postpone the June 10 hearing to allow the State Fire Marshal the opportunity to review and comment on the LCPAs. Both letters are attached; we respectfully request that you review it at this point.

Please note that the Chief Freeman did review the LCPAs. His letter confirms that the Los Angeles County Fire Department is opposed to any "new campgrounds, hike-in camps, trail camps, or large group gatherings in very high fire risk areas" because those activities pose a serious threat to public safety. Chief Freeman also addressed the specific Fire Code violation caused by the Conservancy's plan to use Ramirez Canyon Road, and stated that the Fire Department would not approve any Fire Evacuation Protection and Emergency Evacuation Plan that did not include a Fire-Code compliant access road to the Conservancy's Ramirez Canyon property. That is the condition imposed by the City's LCPA under the Malibu LIP Section 9.2 (Hazards).

Chief Freeman's recommendations are consistent with the evidence we submitted with respect to numerous violations of state and local Fire Codes at the Ramirez property – violations which were not resolved during the hearings on CDP 4-98-334. Ramirez Canyon Road does not meet the 20-foot road width requirements; the road is as narrow as 13 feet in some places. In addition, the structures on the Ramirez Canyon property have not been brought up to the rigorous standards required of public buildings in Very High Fire Hazard Severity Zones. And, some of the newly proposed trail and hike-in camp facilities are more than 150 feet from a 20-foot wide fire access road.

The Staff Reports do not address any of these issues. Instead, each of the "Transportation" provisions of the Override would authorize the intensive use of the Ramirez property with sole and exclusive access up Ramirez Canyon Road (see, e.g., Override Text, Sec. D, 3, b, (i) and (iii)).[3]

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[3] Staff has also adopted the Conservancy's attempt to not only unlawfully use Ramirez Canyon Road, but to add language which the Conservancy could argue allows it almost unlimited access over it. (See Override Text, Sec. D, 12, b, (x), re access to the "sovereign" property of the State of California.) There is no precedent for this unusual provision.

We respectfully submit that the Commission has no jurisdiction to authorize – much less mandate – development which violates state and local Fire Codes. Therefore, there should be no action on the Conservancy's Plan until and unless these issues are resolved.

II

THIS USE OF THE OVERRIDE PROCEDURE IS NOT CONSISTENT WITH PUBLIC RESOURCES CODE SECTION 30515.

A

The Final Decision About Whether the Conservancy is Entitled to Use the Override Procedure Lies With the Commission.

Staff and the Conservancy (see Ms. Collins letter, dated May 14, 2009) take the position that staff's determination regarding the propriety of the Conservancy's attempt to use the override procedures is not subject to your review. That is not so. The Executive Director made a "preliminary determination" about the propriety of the Conservancy's attempt to use the override procedure (14 Cal. Code Regs., sec. 13666.1). The preliminary determination is not appealable to the Commission. Instead, the Commission must decide, as a threshold matter, whether the applicant is entitled to invoke Section 30515.

We respectfully submit that, for all the reasons set forth in our prior submissions, and for the specific reasons set forth below, the Conservancy's attempt to use the override procedures to write its own LCP for its own properties is not lawful and constitutes an abuse of the Coastal Act.

B

There is No Precedent for the Conservancy's Attempt to Use the Override Procedures to Write its Own LCP for its Properties.

The Staff Report for the Override acknowledges that this is only the second time that a Section 30515 application has come before the Commission. The first time was nothing like this, and the Commission's first use of Section 30515 graphically demonstrates the overbreadth of the Conservancy's application.

In Sand City LCP Amendment No. 1-93, the Commission approved an override to modify a City's land use designation for one parcel of property between the shoreline and the first public road. The

Commission simply added a designation for parks and open space as a conditional use to preserve the City's discretion.

The Conservancy's application is very different. The Conservancy is attempting to use Section 30515 to write its own LCP for its own properties, so that when it re-submits its PWP, the PWP will be consistent with that LCP. For this fundamental reason, we respectfully submit that the Commission should reject the Conservancy's application and follow standard LCPA procedure for the City's LCPA.

C

There is No Substantial Evidence to Support the Required Finding that the Conservancy's Plan Was Not "Anticipated" at the Time the Malibu LCP Was Before the Commission.

One of the threshold requirements for an override is a specific finding that the need for the applicant's proposal "had not been anticipated . . . at the time the local coastal program was before the commission for certification" (Sec. 30515). The City of Malibu submitted extensive evidence that the Conservancy not only anticipated – but planned for – the development proposed by the Override since the late 1990s (City's Letter to the Commission, June 27, 2008, pp. 9-12). That evidence consists of numerous Conservancy and inter-agency planning documents which pertain to the same area at issue here, most of the same properties, and the same trail system. The Staff Reports do not acknowledge any of this evidence.

D

Two of the Conservancy's Proposed Uses Do Not Involve Public Access or Recreational Facilities. Therefore, Even if You Adopt Staff's Recommendation, These Proposed Uses Must be Deleted.

With the exception of hike-in and trial camps (which violate Section 30253 (Hazards)), the Fund supports the public access portions of the Conservancy's plan for its Ramirez Canyon property, as long as each specific use, and the safe conditions for each, are left to the discretion of the ultimate decision maker after notice and proper hearing. Even though the Conservancy did not fulfill its original promise to restrict the use of this property as Ms. Streisand intended, the residents believe that low impact

recreation can be safely accommodated at this site, with minimal conflict with the rural, residential nature of the Canyon.[4]

Please note, however, that Section 30515 authorizes the use of the override procedure only for public works, which include "publicly financed recreational facilities" (sec. 30114). Two aspects of the Conservancy's Override do not involve public access, nor do they constitute "public recreational facilities" which might qualify for processing under Section 30515: regional office use and leasing the property for large, private events.

The Staff Report for the Override does not acknowledge this fact, and does not offer any discussion or evidence of "public need" for these facilities. Public need is one of the essential findings required for an override (Sec. 30515). In addition, the Staff Report for the Override does not include any discussion or evidence that disapproval of these two components of the Conservancy's plan would be "detrimental" to the public welfare as defined by the Coastal Act (14 Cal. Code Regs., sec. 13666.4), another required finding.

Moreover, while staff does acknowledge that the Conservancy's Ramirez Canyon property is designated Open Space, staff does not address the fact that neither government offices nor leasing for private commercial events is permitted in Open Space. The Conservancy offered, and staff apparently adopted without question, a list of publicly-owned facilities which purportedly house administrative offices similar to the Conservancy/MRCA offices at the Ramirez property. We submitted evidence with respect to each of the properties on that list, based on site visits and communication with staff at these offices. The evidence demonstrates that, while some of the properties housed administrative offices, the administration was limited to the specific site (i.e., office use which can be lawfully included in a "public work"). None of the properties housed regional executive offices like those proposed by the Conservancy, i.e., for staff who conduct planning for agency properties and acquisitions throughout all of Southern California. The Staff Report for the Override does not address this issue.

Therefore, we respectfully submit that, even if the Commission were to adopt staff's recommendations, regional offices and leasing for private events must be stricken from the Override.

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[4] "Low impact" recreation includes camping and other facilities and programs that increase the level of accessibility for disabled visitors, children's educational programs, riparian interpretative trails, picnic facilities, senior and public outreach programs, canyon and garden tours, hiking and picnicking.

III

THERE IS NO EVIDENCE UPON WHICH THE COMMISSION COULD MAKE THE FINDINGS REQUIRED BY TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 13666.4.

The override is an exception to the Legislature's requirement that local governments control land use decisions once their LCPs are certified. That is why the procedure is narrowly drawn, to require not only a proposal for a specific public work, but to describe the Commission's findings in terms which require an analysis of that specific public work.

Title 14, California Code of Regulations, Section 13666.4 provides that the Commission may, after public hearing, approve and certify the proposed amendment if, after a careful balancing of social, economic, and environmental effects, the Commission makes the following specific findings:

(a) a public need of an area greater than that included within the certified local coastal program would be met,

(b) ***development*** conforms with and is adequate to carry out the policies of Public Resources Code section 30200, et seq.,

(c) if significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging alternative way to meet such need, and

(d) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public Resources Code Section 30000, et seq.) and the California Coastal Management Program, if applicable.

(14 Cal. Code Regs., § 13666.4, emphasis added.)

A

There is No Substantial Evidence to Support the Required Findings with Respect to "Development."

(14 Cal. Code Regs., sec. 13666.4, subd. (a)(3).)

Our November 24, 2008 letter to Commission Counsel explains that the override procedures were never intended to be used as the Conservancy is attempting to use them here. Subdivision (a), (3) of Title 14, California Code of Regulations, section 13666.4 (highlighted above) specifically requires that the "development" is consistent with the Coastal Act. Because the Conservancy has not proposed any specific development, there is no evidence upon which the Commission might make any of those findings.

Staff and the Conservancy state that applicants for "public works" overrides are not required to submit specific development plans. There is no authority for that interpretation of the regulation, which contradicts both the plain language of Section 13666.4 and the legislative history of that regulation and of Section 30515. The Legislature did not intend to upset the careful balance between Commission and local authority set forth in the Coastal Act, and the Legislature plainly did not intend to authorize any and all agencies that develop public works to write their own LCPs.

B

There is No Substantial Evidence to Support the Proposed Finding that "Disapproval Would Adversely Affect the Public Welfare as Identified in the Findings, Declarations and General Provisions of the Coastal Act . . .."

(14 Cal. Code Regs., sec. 13666.4, subd. (a)(4).)

Title 14, California Code of Regulations, Section 13666.4, subdivision (a), (4) specifically requires a finding that "disapproval would not adversely affect the public welfare." The double negative makes the language somewhat confusing. However, the most direct way to address the finding is to focus on the definition of "public welfare" in the Findings, Declarations, and General Provisions of the Coastal Act (i.e., Sec. 30000, et seq.). In those sections, the Legislature defined the "public welfare" as coastal resource protection. The Staff Report for the Override does not address this issue. Instead, staff recommends that you find that the Override would be "beneficial to the public welfare because it clarifies and expands existing public access and recreation policies in order to maximize public recreational opportunities . . .." Public access is not part of the "public welfare" as defined by the

Legislature in the Coastal Act. Therefore, even if staff had conducted the evaluation required by Section 13666.4 (i.e., to determine whether disapproval would adversely affect the public welfare), public access is not a lawful basis upon which the Commission could make the finding required by Title 14, California Code of Regulations, Section 13666.4.

Further discussion of staff's recommendations with respect to these findings is set forth below, under topic headings which isolate and explain the specific Coastal Act policies which would be violated if the Override were approved.

IV

THE COMMISSION MUST INDEPENDENTLY EVALUATE EACH ELEMENT OF THE PROPOSED OVERRIDE IN THE CONTEXT OF PUBLIC RESOURCES CODE SECTION 30515 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 13666.4.

One of the reasons for the lack of substantial evidence to support any of the findings proposed by staff is that staff and the Conservancy place so much reliance on the CDP for the Conservancy's use of Ramirez Canyon, about which the Commission conducted hearings 10 years ago. We respectfully submit that the reliance is not justified and does not relieve staff from evaluating each element of the proposed Override under the facts as they exist today. Some of the primary differences between 10 years ago and today are (a) the increasing onslaught of fires throughout California, (b) the lack of funds for fire suppression, and (c) the fact that fire season is now all year long.

The Commission's independent, current evaluation of the site constraints of Ramirez Canyon is also critical because the Override includes language which would not only authorize – but mandate – the Conservancy's intensive development in Ramirez Canyon. We submitted extensive current evidence with respect to fire safety, traffic, biology, etc. None of that evidence is even referenced in the Staff Reports.

In addition, we respectfully request your consideration of the following factors, which render so improper the Conservancy's attempt to bootstrap an old CDP into an LCP Amendment:

- The findings required for an Override are very different from the findings required for a CDP.
- This is an application for an LCPA – not a CDP. The purpose of an LCPA is to set forth general policies with respect to land use, so that future development proposals can be

analyzed based on those provisions and site-specific data presented in applications for entitlements (e.g., CDPs, PWPs, etc.). There is no precedent for taking the provisions of a CDP which pre-dated the certification of the LCP, and writing those provisions into law by adding them to the LCP – with no site-specific data or analysis.

- The CDP did not resolve, among other things, the public safety issues presented by the fact that Ramirez Canyon Road does not meet the requirements of state or local Fire Codes. The LACFD has now addressed those issues.

- The CDP did not resolve the issues presented by the extensive unpermitted development on the Conservancy's Ramirez Canyon property, with respect to both streambed modifications, improvements to the structures, and conversion of the structures from residential to office, commercial and public use.

For all these reasons, we request that you examine the sufficiency of the evidence to support each element of the Override without any inferences which might be drawn from the Commission's previous approval of CDP 4-98-334.

V

NEITHER PUBLIC RESOURCES CODE SECTION 303515 NOR TITLE 14 CALIFORNIA CODE OF REGULATIONS, SECTION 13666.4, AUTHORIZES THE COMMISSION TO MANDATE DEVELOPMENT.

The Staff Report for the Override states: "[w]hile the proposed LCP amendment includes only a planning level consideration of uses for Ramirez Canyon Park, the Overlay does include fairly specific detail about the types of uses and frequency of programs and events that are contemplated for this park and would be considered through further approvals in the future" (Staff Report, Override, p. 97). There is a fundamental problem with the proposed finding:

The Conservancy did not draft the Override for Ramirez Canyon at the "planning level," and staff has not revised the language. Instead, staff is proposing that you adopt language which states that the programs in Ramirez Canyon "shall" be developed (Override Text, Sec. D, 12), that the programs "shall consist" of certain uses (*Id.*, Sec D., 12, b, (vii)), and that the programs shall be implemented "to the maximum extent feasible" (*Id.*, Sec. D, 4) – which could allow the Conservancy to bring more than 44,000 people into Ramirez Canyon each year. Neither Section 30515 nor Title 14, California Code

Regulations, Section 13666.4 authorizes the Commission to mandate a particular land use, with no site-specific development proposal or analysis.

Staff did add language which would "authorize" the approval and implementation of the plan "via a public works plan and notice of impending development (NOID) or a coastal development permit" (Override Text, LUP, sec. 5.66). However, the use of the word "shall" to describe the programs and uses of Ramirez could undo that authorization and could limit the discretion of the decision-maker during future proceedings.

For these reasons, we respectfully request that, if the Commission considers the Override on its merits, the word "shall" should be replaced with the word "may" in the description of the programs and uses at Ramirez. That would be consistent with other revisions made by staff (see, e.g., Override Text, Sec. D, 4, a, (i) (outreach programs "may" be conducted), Sec. D, 4, b (facilities "may" be accessible), etc.) and would ensure independent site-specific review and analysis of any development submitted by the Conservancy.

VI

THERE IS EXTENSIVE, UNPERMITTED DEVELOPMENT AT THE CONSERVANCY'S RAMIREZ CANYON PROPERTY.

We submitted evidence of extensive unpermitted development at the Conservancy's Ramirez Canyon Property, consisting of improvements to the structures and streambed modifications (about which the Conservancy broke the promise it made to the Commission during the 2000 hearings on CDP 4-98-334 to obtain a permit). We also brought to staff's attention the lack of any evidence that the residences and accessory buildings (which were constructed from the 1950's to the 1970's) were brought up to Code when the Conservancy changed the use from residential to office, commercial and public assembly. There is no provision in the Override which calls for the correction of these Coastal Act violations, and staff does not recommend that the Commission require the Conservancy to do so prior to any consideration of the Conservancy's application.

Staff's findings acknowledge the streambed violation, and the fact that three of the structures will be used for "park related conferences, retreats, recreational facilities, and paid reserved events" (Staff Report, Override, p. 127). However, rather than address the unpermitted development, staff proposes that you mandate the intensive use of the Ramirez Canyon property (see discussion above) based on its "unique character" (Override Text, Sec. D, 12) and "well established amenities" (*Id.*, Sec. D, 4). Much of the character and amenities consists of unpermitted and potentially unsafe development.

Therefore, we respectfully submit that none of the findings required for an Override should be based on unpermitted development.

Finally, the Staff Report states that the "Overlay contemplates very little development of new, habitable, or flammable structures (only new self-contained public restrooms are proposed) . . ." (Override Staff Report, p. 104). The statement ignores the fact that the Conservancy is attempting – just as it did during the proceedings on CDP 4-98-334 – to avoid any review of the condition of the structures and all of the requirements of state law with respect to the change in use.

VII

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE PROPOSED FINDING THAT THE PLAN CAN BE IMPLEMENTED IN A MANNER WHICH DOES NOT JEOPARDIZE PUBLIC SAFETY.

(Pub. Res. Code sec. 30253.)

We submitted extensive evidence of the risk to the safety of Conservancy visitors and nearby residents posed by two aspects of the Conservancy's plan: hike-in and trail camps at all three properties and large private events in Ramirez Canyon. LACFD Chief Freeman has now confirmed our concerns. In addition to the violations of state and local Fire Codes, the risk factors include, but are not limited to, the following:

- The hike-in and trail camps are not located near accessible areas, but are sited for development up-canyons in the dry brush.
- All three properties are in a Very High Fire Hazard Severity Zone.
- All three properties are located in and surrounding residential neighborhoods.
- Malibu has been designated by the California Department of Forestry and Fire Protection as a wildland/urban community "at risk."
- All three of the properties are 100% Environmentally Sensitive Habitat Area (ESHA) (mostly chapparal), which has the highest fuel load of any ESHA vegetation.

These facts – and the extensive evidence we presented as to the nature of the fire risk – are not mentioned in the Staff Reports.

Instead, Staff recommends that you find that the proposed projects "can be approved and implemented" consistent with Section 30253 (Override Text, LUP, sec. 5.66). There is no substantial evidence before the Commission to support that finding. By way of illustration, and not limitation:

A

If the Commission Considers Camping, Conditional Use Permits Must be Required for Each Site.

Staff recommends that overnight campsites be permitted uses, with no requirement for a conditional, or any other use, permit (Override Text, Sec. D, 2, a, ii). The provision violates Public Resources Code section 30253. There are no site-specific studies of the "general locations" depicted on the Conservancy's site plans. Therefore, there is no evidence that the proposed camp sites can be implemented in those locations without endangering the public and the residents of the surrounding neighborhoods and without significant impacts to ESHA. A requirement for conditional use permits for each campsite or cluster is required to address these issues, as well as the fire safety issues discussed by LACFD Chief Freeman in his July 2, 2009 letter to the Commission.

B

The Findings are Inconsistent with the Site Plans for the Campsites.

The Override requires that campsite locations be "located within existing public use areas to ensure easy access for purposes of maintenance and patrol, and in case of emergency." That is not consistent with the conceptual site plans which staff has recommended for approval. The site plans indicate that many of the non-ADA campsites are not located in public use areas. These campsites are located up the canyons, with no vehicular access, and some do not meet the Fire Code requirement that public facilities be located no more than 150 feet from a 20-foot wide fire apparatus access road. Therefore, there is no substantial evidence to support the proposed finding.

C

FPEEP for Ramirez Canyon.

In early staff reports for CDP 4-98-334, Commission staff concluded that simultaneous evacuation of Conservancy staff and visitors and Canyon residents was "impossible." There is no evidence before you that that fact has changed.

The Override calls for the preparation of a FPEEP for the Ramirez Canyon property (Override Text Sec. D, 2, a, xi). However, the Conservancy has yet to submit that plan, which means that there is no substantial evidence to support the proposed findings with respect to Hazards. More importantly, LACFD Chief Freeman has stated that the Fire Department "will not approve" any FPEEP which does not include alternate Fire-Code compliant access to the Conservancy's Ramirez Canyon property. Therefore, at the very least, the Commission should not act on the Conservancy's application until the Conservancy submits a FPEEP which meets the requirements of the Los Angeles County Fire Department and which demonstrates that the Conservancy can protect the safety of visitors and surrounding residents.

D

A Pedestrian Trail on Ramirez Canyon Road is Not Safe.

The Conservancy's Park Lands Map includes a pedestrian trail on Ramirez Canyon Road (Park Lands Map, Override Text, p. 15). Chief Freeman has confirmed that Ramirez Canyon Road is too narrow to meet state and local Fire Codes for vehicular traffic. Therefore, pedestrian traffic cannot be added to this road without violating section 30253. The Staff Report does not discuss the issue.

E

Flooding.

Ramirez Canyon Road crosses Ramirez Canyon Creek in numerous places with Arizona dip crossings and narrow bridges. In times of heavy rains, Ramirez Canyon Road is impassable, and residents are forced to leave their vehicles and proceed on foot. There is no mention of these facts in the Staff Reports.

F

The Proposed Use of Ramirez Canyon Road for the Intensive Use Proposed by the Conservancy is Unlawful.

We respectfully submit that Chief Freeman's letter is dispositive on this issue. However, it is important to explain why staff's proposed alternate access does not resolve the issues discussed by Chief Freeman in his June 2, 2009 letter.

G

The Alternate Access Suggested by Staff Would Not Solve the Problem.

We submitted extensive evidence of the feasibility of an alternate access road from the Conservancy Ramirez Canyon property to Kanan Dume Road over the Lauber property. We also submitted a history of the Conservancy's promise to build that road, which includes the fact that the Conservancy acquired an easement over the Lauber property in 1996 – but failed to disclose that fact during the 2000 Commission hearings on 4-98-334. None of that evidence is included in the Staff Reports.

The City's LCPA requires alternate access as a condition of the intensification of use of the Conservancy's Ramirez Canyon property. That condition was added, in part, because in 2007, the Conservancy granted the Mountains Recreation and Conservation Authority $7 million to acquire the Lauber property and build the road. The Staff Reports do not mention the issue. Instead, staff has suggested a revision to the Override, which reads as follows:

> "Opportunities for additional emergency ingress/egress to and from Kanan Dume Road over Via Acero shall be explored, including the potential for feasibly obtaining easements from willing property owners. Construction of an additional emergency ingress/egress at Ramirez Canyon may occur consistent with all applicable policies and provisions of the LCP. This policy is not intended to limit the use of, or access to, Ramirez Canyon Park via Ramirez Canyon Road." (Override Text, Sec. 11b, (iv), emphasis added.)

This is the first time that Via Acero has been mentioned as an alternative. It is not a feasible alternative because it is very similar to Ramirez Canyon Road, i.e., it is too narrow to meet state and local Fire Codes, and some of the structures are built very close to the road, which would prevent road-widening.

Public access must be consistent with "public safety" (Sec. 30210). For these and for all the reasons explained in our prior submissions and in Chief Freeman's letter, we respectfully submit that the Conservancy's proposed intensive use of the Ramirez Canyon property cannot be authorized without an access road that complies with state and local Fire Codes.

VIII

THERE IS NO SUBSTANTIAL EVIDENCE THAT THE OVERRIDE RESOLVES POLICY CONFLICTS IN THE MANNER MOST PROTECTIVE OF SIGNIFICANT COASTAL RESOURCES.

(Pub. Res. Code, Secs. 30200 and 30007.5.)

Sections 30200 and 30007.5 provide that, where there is a conflict between policies set forth in the Coastal Act, the conflict must "be resolved in a manner which on balance is the most protective of significant coastal resources." All of the properties included in the Override are ESHA and the evidence before you presents a demonstrable conflict between the public access and resource protection provisions of the Coastal Act. The Staff Report for the Override does not mention these statutes.

IX

There is No Substantial Evidence that the Override Is Consistent with the Mandate for Protection of Environmentally Sensitive Habitat Area.

(Pub. Res. Code, Secs. 30210, 30236, 30240, and 30250.)

Sections 30210 and 30240 mandate the protection of ESHA and allow for public access and recreation only where it is consistent with the protection of natural resource areas from overuse. The Staff Reports ignore the fact that the LIP which this Commission drafted for Malibu restricts the use of ESHA to public accessways and trails, interpretative signage, restoration projects, and invasive plant eradication projects. (Malibu LIP, Section 4.5.3.) Instead, staff recommends that the Commission put public access above resource protection, and obliterate the ESHA restrictions in the Coastal Act and the Malibu LIP to allow regional offices, grading, brush clearance, portable toilets, increased equestrian use, vehicular crossings of streambeds, and large "special events." There is no substantial evidence to support the proposed findings with respect to ESHA for the following reasons:

A

Is Camping a "Resource-Dependent" Use in ESHA?

Staff recommends that the Commission find that camping is a "resource dependent use." We respectfully submit that camping may be a proper use of Open Space, with proper conditions to meet the Hazards provisions of the Coastal Act (Sec. 30523). However, the properties at issue are 100% ESHA and much of that ESHA is undisturbed. Even the "low-impact" campsites recommended by staff

require grading and brush clearance (which are not discussed by staff), both of which are prohibited in ESHA.

B

The Definition of "Support Facilities" Obliterates ESHA Protection.

The Staff Report for the Override recommends a finding that the proposed "support facilities" should also be considered "resource-dependent" uses. If the term "support facilities" were narrowly defined, that might be so. However, staff has recommended a very expansive definition of support facilities, which includes parking lots, public restrooms, ranger/maintenance supervisor housing, administrative personnel facilities, events, (i.e., all of the other uses proposed by the plan (see Override Text, Secs. 5 and 5.71)). These are not "resource-dependent" uses within the meaning of the Coastal Act.

The definition of "support facilities" also includes portable toilets, which would violate Section 30240. And, there is an exemption from the streambed buffer requirements for portable toilets in the parking lots at the Ramirez Canyon property, which are approximately 25 feet from Ramirez Canyon Creek. Those provisions violate Section 30236.

C

Offices and Leasing for Large Private Gatherings are Not Resource-Dependent Uses.

Staff also recommends that you include as principal permitted uses in the Ramirez Canyon ESHA, regional executive offices for two agencies and large events. These are not resource-dependent uses and should not be allowed in ESHA.

In addition, staff recommends that you authorize the Conservancy to lease the Ramirez property for private events. Section 30250 not only prohibits commercial development in ESHA, it prohibits commercial development near ESHA if that development will have a significant impact.

D

Streambed Modifications.

Section 30236 strictly controls alterations to rivers and streams. There are extensive unpermitted streambed modifications on the Conservancy's Ramirez property. As noted above, the Override does not include any provisions to correct these Coastal Act violations.

Staff has also recommended that the Commission approve proposals which would, among other things, (a) allow extensive modifications to streambeds, for both vehicular and pedestrian crossings, (b) allow reduction in required stream buffers, and (c) exempt the Conservancy from the requirements of all regulatory agencies with respect to streambed modification (i.e., the California Department of Fish & Game, the United States Army Corps of Engineers, and the Regional Water Quality Control Board). Those proposals not only violate Section 30236, we respectfully submit that the Commission does not have jurisdiction to exempt the Conservancy from operative provisions of state law.

Finally, in an attempt to justify the intensive intrusion into the ESHA at the Ramirez Canyon property, the Staff Report states that "previous development . . . has resulted in a significantly disturbed and manicured environment." As noted above, staff has failed to mention (a) that the "manicuring" was conducted without permits, (b) that the Conservancy promised the Commission that it would procure those permits but failed to do so, and (c) that the staff is not recommending that the Commission require the resolution of that Coastal Act violation as a pre-condition to considering the Conservancy's application.

X

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE PROPOSED FINDINGS WITH RESPECT TO WATER QUALITY.

(Pub. Res. Code, sec. 30231.)

We submitted extensive evidence that the near-shore waters of the Malibu area of the Santa Monica Bay consistently contain bacterial levels that exceed AB 411 guidelines. Beaches near the mouths of Escondido and Ramirez Creeks have had elevated levels of indicator bacteria during three of the past four years. Studies are underway to identify and assess the possible source(s) of the bacteria, including a Bacterial TMDL Implementation Plan for the City of Malibu and the County of Los Angeles. The Staff Report for the Override does not mention any of that evidence. Without an analysis of that

evidence, and a resolution of the issues, there is no substantial evidence to support the proposed findings with respect to water quality.

Moreover, we respectfully submit that the addition of a condition which requires the Conservancy to conduct quarterly monitoring to ensure that water quality is not suffering any impact is meaningless. That condition was imposed as a condition of CDP 4-98-334. The evidence is undisputed that the Conservancy never complied with the condition.

XI

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE PROPOSED FINDINGS WITH RESPECT TO NEIGHBORHOOD COMPATIBILITY.

(Pub. Res. Code, secs. 30214.)

Section 30214 requires that the implementation of public access policies take into account, among other things, the "proximity of the access area to adjacent residential uses," and the need to protect the rights of the public and the rights of private property owners. The Ramirez Canyon residents have not objected to the use of the Conservancy's Ramirez Canyon property for properly-conditioned passive recreation (e.g., camping and other facilities and programs that increase the level of accessibility for disabled visitors, children's educational programs, riparian interpretative trails, picnic facilities, senior and public outreach programs, canyon and garden tours, and hiking and picnicking). However, regional office and commercial use of the property are not compatible with the rural, residential nature of this Canyon. And, as Chief Freeman has now confirmed, hike-in and trail camps and large gatherings jeopardize the residents' safety.

Moreover, while the residents have no objection to public outreach programs, we respectfully submit that the proposed intensity of those programs is not compatible with the rural, residential neighborhood. Staff has recommended that the Commission authorize outreach programs 7 days per week. In light of the significant numbers of people that the Conservancy intends to bring into the Canyon each month, at least one quiet day per week is required to meet the policy standards mandated by Section 30214.

XII

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE PROPOSED FINDINGS WITH RESPECT TO ALTERNATIVES.

Staff is recommending that you approve a wholesale re-write of numerous sections of the Malibu LCP as they apply to Conservancy properties, and not only authorize – but mandate – the Conservancy's intensive use of its Ramirez Canyon property. Yet, staff's discussion of alternatives is less than one page. We respectfully submit that the evidence is not sufficient for the Commission to make the required findings with respect to alternatives.

We submitted extensive evidence of feasible alternatives for camping, offices and large events, including the Conservancy's property at King Gillette (formerly SOKA University). None of that evidence is discussed in the Staff Reports.

Moreover, the sparse evidence and discussion which staff has included does not constitute substantial evidence upon which the Commission might reject the alternatives. For example, staff's description of the Malibu Bluffs property establishes that there is Fire Code compliant access to that site. The fact that campers might notice the noise associated with PCH does not render the alternative infeasible. In fact, if a site-specific study of camping at Malibu Bluffs demonstrated that the use could be conditioned to be made safe, it would fulfill the policy of the Coastal Act to provide public access to the coast.

Staff's dismissal of the Tuna Canyon site because of vehicular access issues is not consistent with staff's failure to address the same vehicular access issues presented by the use of Ramirez Canyon Road to access the Conservancy's Ramirez property.

With respect to offices, as we demonstrated in our prior submissions, the only office use allowed in a public work is that required for the administration of the specific site at which the office is located. That means that the Conservancy may lawfully provide offices at its Ramirez Canyon property for the staff necessary to administer the Ramirez property. Offices for planners who serve to coordinate acquisitions and future development for all Conservancy and MRCA properties are not lawful. Therefore, these staff members should be accommodated at the LA River Center or elsewhere on Conservancy property that allows office use.

Finally, staff did not address any alternate locations for large, private special events. Therefore, there is no substantial evidence to support any finding of the infeasibility of alternatives for that portion of the Conservancy's plan for Ramirez Canyon.

XIII

IT IS NOT POSSIBLE TO MAKE ANY FINDINGS ABOUT CEQA COMPLIANCE.

Staff relies on the CEQA exemption for LCPAs, which requires only the "functional equivalent" of environmental review. In addition to the arguments we have offered in our prior submissions, please note that – as to the Conservancy's Ramirez Canyon property – the Override mandates certain development, with no site-specific evidence or analysis. Therefore, as to those portions of the proposal, we respectfully submit that there has been no compliance with CEQA.

Thank you for your time and attention to these comments.

Sincerely,

Steven A. Amerikaner

Diane M. Matsinger

Enclosures: Letter to Commission from Chief P. Michael Freeman, dated June 2, 2009
Letter to Commission from State Fire Marshal Kate Dargan, dated June 2, 2009

cc: Pat Veesart, California Coastal Commission (by email and facsimile)
Rick Mullen, President, Ramirez Canyon Preservation Fund
Christi Hogin, Malibu City Attorney

SB 506711 v6:011142.0001

COUNTY OF LOS ANGELES

FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
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P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

June 2, 2009

John Ainsworth, Deputy Director
All California Coastal Commissioners
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Dear Mr. Ainsworth:

CITY OF MALIBU LCP AMENDMENT NO. MAL-MAJ-3-07 JUNE 10 ITEM #16A

CITY OF MALIBU LCP AMENDMENT NO. MAL-MAJ-1-08 JUNE 10 ITEM #16B (SANTA MONICA MOUNTAINS CONSERVANCY OVERRIDE)

We have reviewed the above listed Commission staff report(s) for the two Local Coastal Program Amendments to be presented at the June 10, 2009 Coastal Commission's public hearing. We recommend DENIAL of both proposed amendments and the Commission's staff recommendation to approve LCPA 1-08 as revised, unless mitigating measures are implemented.

Both Local Coastal Program Amendments (LCPA's) cover a large portion of the Malibu area which includes the Ramirez Canyon Park, Escondido Canyon Park, and Corral Canyon Park, all of which are located in the Very High Fire Hazard Severity Zone of Los Angeles County.

Both LCPA's propose significant intensification of use of Conservancy properties, including non-residential uses, large public events, and overnight camping. We are opposed to any new campgrounds, hike-in camps, trail camps or large group gatherings in very high fire risk areas. These activities could jeopardize public safety by unnecessarily increasing the risk of fire and requiring rapid evacuation of narrow box canyons served by limited access routes.

The Conservancy's Ramirez Canyon property was originally designed for single family residential use and was not intended as a public use park. The park property is accessed

from Ramirez Canyon Road, which is a single means of access extending approximately one mile up-canyon from the Pacific Coast Highway. Ramirez Canyon Road is a substandard, privately owned, dead-end road that narrows to as little as 12 – 15 feet in some areas. It is non-compliant with the minimum 20' in width requirement of both the State of California and Los Angeles County Fire Codes. It is also the evacuation route for the canyon residents and the only ingress and egress route for emergency vehicles.

The Conservancy proposes to intensify the original use of the property by attracting large group gatherings and offering overnight camping. This increase in use should only be considered when it can be demonstrated that the proposed property is in strict compliance with all applicable Building and Fire Codes. A second alternate code compliant access road into Ramirez Canyon should be a precondition to any expansion of the current uses as outlined in the City of Malibu's proposed LCPA 3-07.

Both proposed LCPA's under the Hazards category require a Fire Protection and Emergency Evacuation Plan for Ramirez Canyon Park, Escondido Canyon Park, and Corral Canyon Park to be approved by the State Fire Marshal and the Los Angeles County Fire Department. The Los Angeles County Fire Department will not approve any Fire Protection and Emergency Evacuation Plan that shows any intensification of use, unless mitigating measures are implemented. Residential use of the Ramirez Canyon Park for the residential caretaker and his family may be allowed to continue upon verification of completion of the conditions of approval of Coastal Development Permit 4-98-334.

Section 30253 of the Coastal Act states in pertinent part that new development shall minimize risks to life and property in areas of high geologic, flood and fire hazard. This is not accomplished by allowing large numbers of the general public:

1. Into an area of high fire hazard served by a substandard road, through a heavily vegetated, relatively steep box canyon from which there is no alternative evacuation route.

2. Into structures that have not demonstrated to be in compliance with the current ignition resistant building standards for the proposed change in use.

However, consideration will be given by the Los Angeles County Fire Department to approve the Fire Protection and Emergency Evacuation Plan if the following mitigating measures are implemented:

1. An approved emergency access road no less than 20' in width with no vertical obstructions to structures and places of assembly.

2. Approved fire proof shelters strategically located along the trails and in camping areas to accommodate park visitors when evacuation is obstructed by an approaching fire.

3. Open flame is prohibited.

   a. Violations of open flame shall be a misdemeanor. Misdemeanor crimes are punishable by a maximum fine of $1,000 and a County jail term of one year or less.

   b. Violations during red flag warnings may be punishable by fines up to $6,000.

4. The canyons and parks will be closed during periods of high fire danger when a red flag warning is declared by the National Weather Service.

If you have any questions regarding this matter, please feel free to contact Deputy Chief Scott Poster at (323) 881-2461.

Very truly yours,

P. MICHAEL FREEMAN

c: Supervisor Zev Yaroslavsky, Third District
Kate Dargan, California State Fire Marshal

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Office of the State Fire Marshal
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(916) 445-8200
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June 2, 2009

Commissioners
Attention: John Ainsworth, Deputy Director
California Coastal Commission
South Central Coast District
89 South California Street, Suite 200
Ventura, California 93001

RE: CITY OF MALIBU LCP AMENDMENT NO. MAL-MAJ-3-07 JUNE 10 ITEM #16A
CITY OF MALIBU LCP AMENDMENT NO. MAL-MAJ-1-08 JUNE 10 ITEM #16B

Dear Deputy Director Ainsworth:

On May 28, 2009, the California Department of Forestry and Fire Protection (CAL FIRE) – Office of the State Fire Marshal (OSFM) received several letters from the citizens residing in the area of concern requesting fire code interpretations on the above referenced items. The OSFM had not been aware nor had received current fire plan documents to review in regards to these issues. Therefore, we respectfully request a postponement on the above referenced agenda items scheduled for the California Coastal Commission, June 10, 2009 hearings to allow time to review the proposed project specifics for compliance with applicable fire safety requirements.

The State Fire Marshal has the obligation to enforce and regulate building and fire codes for occupancies state owned or occupied buildings. I am requesting that the California Coastal Commission postpone action on the above matter based on the OSFM's authority to review, comment, and approve projects of state ownership/occupancy as referenced. (Health and Safety Code §13145, §13146, §13108). Again, this will allow the OSFM the necessary time to evaluate the project, determine the impact of OSFM regulations, and provide a detailed response to the project applicant.

Thank you for your consideration and assistance. Should you have questions concerning this request, please contact Assistant State Fire Marshal Tonya L. Hoover at tonya.hoover@fire.ca.gov or by telephone at (916) 445-8200.

Sincerely,

KATE DARGAN
State Fire Marshal

cc: P. Michael Freeman, Fire Chief, Los Angles County Fire Department
Ronald P. Schafer, Chair, Santa Monica Mountains Conservancy

January 6, 2009

Steven A. Amerikaner

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BY FEDERAL EXPRESS

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

RE: City of Malibu Local Coastal Program Amendment (LCPA) No. 3-07, scheduled for Hearing on February 4-6, 2009

Dear Chair Neely and Members of the Commission:

Brownstein Hyatt Farber Schreck and Diane M. Matsinger, Esq. represent the Ramirez Canyon Preservation Fund ("RCPF"), residents of Ramirez Canyon who have been dealing with the unlawful use by the Santa Monica Mountains Conservancy of property in Ramirez Canyon since 1993.[1] The purpose of this letter is to provide comments concerning Malibu's LCPA. This letter is a companion to the letter submitted by RCPF on December 23, 2008, analyzing the Conservancy's "override" proposal (MAL-MAJ-1-08). RCPF's December 23, 2008 letter and the materials submitted with it are incorporated by reference and should be considered a part of the Commission record in these proceedings as well.

In broad terms, RCPF supports Malibu's LCPA, and particularly Malibu's well-reasoned requirement that the Conservancy provide alternate access as a precondition to any intensified development at the Ramirez Canyon property. At the same time, however, RCPF respectfully requests that the City and the Commission consider certain revisions to ensure that the LCPA complies with the Coastal Act and with principles of sound community planning.

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[1] The Mountains Recreation and Conservation Authority, a joint powers agency of which the Conservancy is a member, is named as co-applicant. For ease of reference, the agencies are collectively referred to in this letter as "the Conservancy."

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I
INTRODUCTION

The Malibu City Council's public hearings on the Malibu LCPA focused almost entirely on the question of overnight camping. In the end, the process was cut short because the Conservancy essentially stopped participating when the City concluded that public safety considerations precluded expanded overnight and trail camping in high fire areas close to residential neighborhoods. We agree with the City Council's conclusion on this point. At the same time, for the residents of Ramirez Canyon, there is **much more** at stake. Therefore, even though the Conservancy will likely seek to focus the Commission hearings on the question of camping, we urge staff and the Commissioners to also pay special attention to the **specific language** of the Malibu LCPA which authorizes the Conservancy's intensive development and use of its Ramirez property.

We have enclosed the pertinent LCPA provisions as Attachment A to this letter and respectfully request that staff and the Commissioners review them at this point. The provisions are not written in the typical "planning language" of an LCP provision; rather, they appear to be written in the specific terminology of a Coastal Development Permit. Of greatest concern are those provisions which **appear to mandate** the very **intensive development** of the Conservancy's Ramirez Canyon property – all of which is designated Environmentally Sensitive Habitat Area (ESHA) – with no site specific proposal, no site specific analysis, and no alternatives analysis.

We recognize that the Malibu LCPA requires coastal development permits for the Conservancy's developments. At the same time, we respectfully submit that the manner in which the LCPA is drafted puts the proverbial cart before the horse. It would be one thing to amend the LCP to generally authorize tours, gatherings and special events as permitted uses – with the number of events and hours and specifics of operation to be resolved during the permit process. However, the Malibu LCPA sets the detail – without the site specific proposals and site specific analyses that typically precede the imposition of detailed conditions.

Furthermore, we respectfully submit that – except for passive recreation – the site constraints of the Ramirez property render the proposed uses not only inappropriate, but unsafe. We believe that this becomes abundantly clear when the specific features of the Ramirez site are objectively examined.

Finally, if the LCPA is to be certified as presently drafted, we respectfully request that the Commission focus separately on the appropriateness of **each** proposed use, and then analyze

the bundle of uses for their cumulative impact on public safety and on the neighborhood. As explained below, this "bundle of uses" creates significant, cumulative and adverse fire safety, traffic and noise impacts, even if an alternate access road is built. Accordingly, additional specific limitations are appropriate, as described in the following discussion.

II

THE RAMIREZ PROPERTY WAS NOT DONATED, AND WAS NEVER INTENDED, FOR USE AS A PUBLIC PARK, MUCH LESS AN EXECUTIVE OFFICE COMPLEX OR COMMERCIAL EVENT CENTER.

As noted earlier, on December 23, 2008, RCPF submitted to the Commission (a) a Comment Letter addressing the issues presented by the Conservancy's application for a LCP "Override" ("RCPF December Letter"), (b) a Report prepared by Science Applications International Corporation ("SAIC Report"), and (c) extensive supporting material. The RCPF December Letter includes an explanation of why the Commission has two LCPAs pending for what is essentially the same "plan" (sec. I, pp. 2-4), and also explains the history of this Plan vis-à-vis the Conservancy's unlawful use of the Ramirez Canyon Property (sec. II, pp. 4-11). The information presented in those sections of the RCPF December Letter is essential to an understanding by staff and the Commissioners of the conditions imposed by the City and the comments which RCPF offers on the Malibu LCPA. Therefore, before reviewing the material set forth below, we respectfully request that staff and the Commissioners read Sections I and II of the RCPF December Letter.[2]

The residents of Ramirez Canyon are hopeful that the Malibu LCPA can be modified during the Commission's hearing process, so that there might be an end to the 15-year long battle over the Conservancy's use of its Ramirez Canyon property. However, in order for staff and the Commissioners to assist that resolution, it is important to review the purpose of Ms. Streisand's donation, the Conservancy's acknowledgment of that purpose, and the Conservancy's recognition of the site constraints. We urge staff and the Commissioners to keep this information in mind when reviewing the Malibu LCPA and RCPF's request for modifications.

---

[2] Other sections of the RCPF December Letter and SAIC Report, which support the arguments set forth below, are incorporated into and summarized with the discussions to which they pertain.

The Conservancy's Ramirez property sits at the top of a narrow box canyon, in a Very High Fire Hazard Severity Zone, at the dead-end of a private, mile-long, narrow, winding canyon road which is substandard under state and local fire codes. The neighborhood is rural, residential and many of the homes are older and sit very close to the road. There are several Arizona dip crossings on the road; in times of significant rainfall, residents are forced to abandon their cars and proceed on foot. The entire Conservancy property in Ramirez Canyon is designated ESHA by the Malibu LCP. It is vegetated with dry coastal sage scrub and chaparral – the most flammable type of plant material in southern California.

Ms. Streisand did not donate the Ramirez property for use as a public park, much less an executive office complex or commercial event center. In the Memorandum of Understanding by which Ms. Streisand made the donation, the Conservancy promised to use it "as a **retreat and research center** for advanced academic and applied studies directed toward solution of the most pressing conservation and natural ecosystem management problems." (RCPF December Letter, Attachment C, pp. 2-3, emphasis added.) Under California law, Ms. Streisand's intent governs the use of property.[3] Moreover, as a public agency that derives a portion of its support from private donations, the Conservancy should take particular care to honor the intent of its donors for both ethical and practical reasons.

In addition, when the Conservancy executed the MOU with Ms. Streisand, the Conservancy promised to "**carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community**." (RCPF December Letter, Attachment C, pp. 2-3, emphasis added.) The Conservancy has never conducted that evaluation. At the request of RCPF, the City examined the issue during the hearings on the Malibu LCPA, and required alternate access as a precondition of any intensified development. We support that precondition. However, even if alternative access is created, there are issues which require further attention and resolution (see sec. III, below).

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[3] Dedications from the public are broadly construed, but dedications by individuals are strictly construed. (*Slavich v. Hamilton* (1927) 201 Cal. 299, 303.) When an individual has donated land for a specific public purpose, it cannot be diverted to another purpose. (*Harter v. City of San Jose* (1904) 141 Cal. 659, 661; see, e.g., *Mulvey v. Wangenheim* (1904) 23 Cal.App. 268 (extension of a street for commercial purposes would violate the grant of the property for park purposes); *Spires v. City of Los Angeles* (1906) 150 Cal. 64, 70-71 (building on park property could be used for public library purposes, but not for municipal offices).)

Prior to the 1993 acquisition, the Executive Director of the Conservancy met with the residents of Ramirez Canyon, and acknowledged both the purpose of Ms. Streisand's gift and the site constraints of the Ramirez property:

> "The Streisand Center property is a donation and therefore **it will never have to be and will never be dedicated to park purposes**. We are realists enough to realize **this is not a place that lends itself to public use or access**, and certainly we have a **long road of Ramirez that is narrow, and does not lend itself to safe access**, and in fact, with the stream coming through, it may be washed out a good portion of the year. The type of program we want to put on would not be conducive to having a bunch of people running through saying, 'Oh, look at Barbra Streisand's houses' etc., or even ardent hikers on a power hike up the canyon. This is not to be. Honest. That is not the feeling. It is not the play, it's not the event, it's not the way it's going to be used." (Emphasis added.)

None of those promises were kept. Rather than respect Ms. Streisand's intent, or recognize the site constraints, or comply with Malibu's land use regulations, the Conservancy has waged a 15-year long legal, political and public relations battle – all the time using the property for executive offices for itself and for MRCA, private commercial events, tours and gatherings, etc. For most of that period, the Conservancy's use violated the law and, despite court orders, the City and RCPF were unable to stop it.

Now, here we are again. As you view the comments below, please remember that the residents of Ramirez Canyon do not object to the Conservancy's use of the Ramirez property for (a) facilities and programs that increase the level of accessibility for disabled visitors (including supervised camping), (b) children's educational programs, (c) riparian interpretative trails, (d) picnic facilities, (e) senior and public outreach programs, (f) canyon and garden tours, and (g) passive recreation (hiking, picnicking, etc.), provided those specific activities are reviewed during the permit process and regulated by conditions that minimize the fire danger and avoid unnecessary impacts to the residents of the Canyon.

III

PROPOSED REVISIONS TO THE CITY'S PENDING LCPA

For RCPF, the most important issues which require attention at this stage of the proceedings involve (a) the use of language which can be construed to mandate development, (b) the physical condition of the structures at the Conservancy's Ramirez property, (c) alternative access as a prerequisite to intensified development and the need to ensure that the alternative access is the exclusive means of ingress and egress (i.e., with Ramirez Canyon Road available only for emergency public ingress and egress), (d) the number of vehicle trips for public use of this private

roadway, (e) pedestrian access up Ramirez Canyon Road, and (f) the definition of "support facilities."

For all the reasons set forth below, we respectfully request that both the City and the Commission consider the evidence which RCPF has submitted (RCPF December Letter and SAIC Report) and the following proposed revisions to the Malibu LCPA.

A. THE LCPA SHOULD NOT INCLUDE ANY LANGUAGE WHICH CAN BE CONSTRUED TO MANDATE DEVELOPMENT.

The word "shall" appears throughout the Malibu LCPA. In most sections, the directive is not a problem because it involves the implementation of policies. However, the directive is a problem when it appears in provisions which authorize specific development – because the word can be construed to mandate the development without evaluating safety, impacts on ESHA, neighborhood compatibility, etc. Therefore, we respectfully request that the City and the Commission revise the Malibu LCPA as follows:

1. **Administrative and Support Facilities.** The Malibu LCPA states that the Ramirez property "shall be permitted the administrative and support facilities necessary to maintain access programs, daily operations and maintenance of the various park and recreation programs addressed in this Chapter" (Malibu LCPA LIP Sec. 3.4.2, D, 11, first paragraph (page 22), emphasis added). As explained below, there are numerous site specific constraints at the Ramirez property, including but not limited to the following:

The structures on the Ramirez property were not brought up to code in 1993 when the Conservancy acquired the property, and Ramirez Canyon Road is too narrow to meet the requirements of state or local fire codes. Moreover, the Malibu LCPA requires the Conservancy to develop a Fire Protection and Emergency Evacuation Plan (Malibu LCPA LIP, Sec. 3.4.2, D, 10, b, i (page 21)). However, without bringing the structures up to code and providing a legal access road, and without evaluating the FPEEP, it is impossible to ascertain whether any of the proposed permitted uses can be provided in a safe manner (RCPF December Letter, p. 33; SAIC Report, Sec. 2.0, pp. 7-33).

Therefore, we respectfully request that the word "shall" in the Malibu LCPA (LIP Sec. 3.4.2, D, 11, first paragraph (page 22)) be changed to "may." That would be consistent with the provisions for outreach, recreation and education programs, which state that those events "may be permitted" (LIP, Sec. 3.4.2, D, 3, a, i (page 9)), and with the provisions for day use picnic areas and up to

three overnight ADA campsites, which state that those facilities "may be developed" (LIP, Sec. 3.4.2, D, 3, a, iii (page 9) and Sec. 3.4.2, D, 11, b, vi, f (page 25)).

2. **Specialized Programs.** The Malibu LCPA (LIP Section 3.4.2, D, 11, b, vi (page 24)) deals with "specialized programs" at the Ramirez property. The introduction to the subparagraph states: "Specialized programs permitted at Ramirez Canyon Park and associated support facilities **shall consist** of the following uses and restrictions . . ." (*Id.*). For the reasons set forth in paragraph 1, above, the word "shall" should be changed to "may," so that the extent and propriety of the use can be determined during the permit process.

3. **Executive Offices.** As currently drafted, the Malibu LCPA (LIP Section 3.4.2, D, 11, b, vi, a (page 24)) can be construed to mandate the use of the property for executive offices for the Conservancy and MRCA for up to 15 employees. For the reasons explained below, executive offices are not a proper use of either ESHA or Open Space and should not be permitted. In addition, the condition of the structures and other site constraints at the Ramirez property render this use extremely inappropriate. And, in any event, if the provision remains, the language in the introductory paragraph should be changed from "shall" to "may," so that the specifics and propriety of the use can be determined during the permit process.

4. **Small Groups and Tours.** As currently drafted, the Malibu LCPA (LIP Section 3.4.2, D, 11, b, vi, d (page 24)) can be construed to mandate the use of the Peach House and Barn facility for small group gatherings and tours for up to 60 participants each, and to a limited extent, the Art Deco facility for greeting guests or as a component of site tours. As explained below, until the structures are brought up to code, it is not appropriate to allow the use of these buildings for the stated purpose. And, in any event, if the provision remains, the language in the introductory paragraph should be changed from "shall" to "may," so that the precise use of these structures and the appropriate number of participants can be determined during the permit process.

5. **All Uses.** As currently drafted, the Malibu LCPA (LIP Section 3.4.2, D, 11, b, v (pp. 24-25)) can be construed to mandate the use of the property for **office use, a caretaker residence, and 890 tours, gatherings and special events each year, with a total of 41,040 participants.** For the reasons explained below, this use is far too intense for this isolated and remote Canyon property. However, even if these uses are permitted, the language in the introductory paragraph should be changed from "shall" to "may," so that the specifics and propriety of the use can be determined during the permit process.

B. EACH OF THE STRUCTURES ON THE RAMIREZ PROPERTY MUST BE INSPECTED BY FIRE OFFICIALS AND, AS A CONDITION OF ANY FURTHER USE BY THE PUBLIC OR BY ANY PUBLIC EMPLOYEE, THE CONSERVANCY MUST BRING EACH STRUCTURE UP TO CODE.

From a fire safety standpoint, the Conservancy's Ramirez property is a fire trap (RCPF December Letter, pp. 12-15, 32-47; SAIC Report, Sec. 2.0, pp. 7-33; also see Section C, below). It is ESHA, vegetated with dry chaparral – the most flammable vegetation in the region. It sits at the upper end of a narrow box canyon, filled with many older, rural, residences, with only one means of access – a private, mile-long road which is too narrow to meet the requirements of either state or local fire codes (see sec. C, below).

The Conservancy acquired the property in *1993 – 15 years ago*. We recently submitted a Public Records Act (PRA) request to the Conservancy, which asked for all records concerning physical improvements to the property since 1993. The Conservancy provided only records concerning the bridge and wastewater system authorized by the now-defunct 2000 CDP. Only one conclusion is possible: **All of the structures on the property – which date back to the 1950's, 1960's and 1970's and which were built for private residential use – have never been improved to meet the fire safety standards which apply to state-owned buildings.**

Accordingly, we find it very telling that the Conservancy has never offered any information about the condition of the structures. The 2000 CDP included a general authorization to "convert" the structures to office use. However, the Conservancy did not submit plans for the structures as part of the CDP process, and did not obtain any subsequent building permits for the conversion. Moreover, if the Conservancy's response to the PRA is correct, no physical improvements to the structures were ever made (i.e., to bring them up to code) – with or without permits.

When the Conservancy submitted its Public Works Plan (PWP) to the Commission in 2006, the Commission specifically asked for information about any "unpermitted development." The Conservancy never provided that information. Likewise, the Conservancy was silent about that subject during the 2007 hearings on the Malibu LCPA, and has offered its LCPA "override" without the information as well.

Despite this glaring lack of information, the Malibu LCPA states that the property has "well established amenities available to support various public use programs . . ." (Malibu LCPA LIP Sec. 3.4.2, D, 3 (page 9)), and, as drafted, could be construed to mandate the use of the property as set forth in Section III, A, above. For the reasons which follow, it is imperative that each of the

structures be inspected by fire officials and that the Conservancy prove that each structure can and will be brought up to code before the Malibu LCP authorizes **any public or public employee use** of the property.

As a state agency (Pub. Res. Code,[4] § 33200), the Conservancy must comply with fire safety standards adopted by the State Fire Marshal with regard to state-owned or state-occupied buildings (Health & Saf. Code, § 13108(a); 19 Cal. Code Regs., § 1.03(b)). There are special restrictions which apply to buildings in Very High Fire Hazard Severity Zones and in urban/wildland interface communities (Health and Saf. Code, § 13108.5). The regulations are extensive and detailed (see, e.g., 19 Cal. Code Regs., § 2.01, *et seq.*).

Prior to the Conservancy's acquisition, Ms. Streisand used the property as a single-family residence with multiple structures. In 1993, the Conservancy moved its top executive staff onto the premises and began to use some of the buildings for revenue-raising purposes, bringing in large groups of the public for weddings, parties and the like. That change in use amounted to a "change in occupancy" under the Uniform Fire Code (24 Cal. Code Regs., § 202) and required that the structures be brought up to Code.[5]

> Change of use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the California Building Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the California Building Code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use. (24 Cal. Code Regs., § 102.3, emphasis added.)

We have been unable to find any authorization from state fire officials for the Conservancy's change of use.

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[4] All statutory references herein are to this Code, unless otherwise indicated.

[5] 24 Cal. Code Regs., section 202 provides: "A change in the purpose or level of activity within a building that involves a change in application of this code." The same language appeared in the 1992 Uniform Fire Code, at section 2.206, which applied at the time the Conservancy acquired the property.

The Coastal Act requires that development "minimize risks to life and property in areas of high . . . fire hazard" (§ 30253). Therefore, we respectfully request that the Malibu LCPA be revised to condition *any continuing or expanded use* of the Ramirez property by the Conservancy on inspection of each of the structures by fire officials and evidence that the Conservancy has brought each structure into compliance with all applicable requirements of state and/or local fire codes.

C. IT IS ESSENTIAL THAT THE COMMISSION CERTIFY THE CITY'S REQUIREMENT FOR ALTERNATE ACCESS AS A CONDITION OF ANY INTENSIFIED USE OF THE RAMIREZ PROPERTY.

As explained above, the Ramirez property is in a Very High Fire Hazard Severity Zone at the dead-end of a private, mile-long, narrow, winding canyon road which is substandard under state and local fire codes. Based on that fact, the Malibu LCPA provides that an alternative access road "shall be a precondition" for certain intensified use of the Ramirez property by the Conservancy (Malibu LCPA LIP Sec. 3.4.2, D, 11, b, ix (pp. 25-26)). The precondition is consistent with the Coastal Act mandate that development "minimize risks to life and property in areas of high . . . fire hazard" (§ 30253). The precondition is also authorized by the Malibu LIP as an additional development control (Malibu LIP, Hazards, Sec. 9.2).

The RCPF December Letter and SAIC Report include extensive evidence and analysis of the fire hazards (RCPF December Letter, pp. 32-47; SAIC Report, Sec. 2.0. pp. 7-33). While reviewing this issue, please consider the intensity of use allowed by the Malibu LCPA, both with and without alternate access.

Without alternate access, the Malibu LCPA allows the use of the property as **executive-level government offices** for up to 15 employees, **housing** for a caretaker and his family, **104 public outreach programs each year for at least 4,160 seniors and persons with disabilities,** occasional employee training programs, and on-going property maintenance (Malibu LCPA LIP, Sec. 3.4.2, D, 11, b, ix (pp. 25-26)). **Once alternate access is provided**, the executive offices, caretaker residence, training programs, and maintenance may continue, along with hiking and picnicking, **plus** the following events:

Activity	Participants/Event	Events/Year	Participants
Special Events	200	16	3,200
Tours/Small Events	60	144	8,640
Public Outreach (disabled, seniors)	40	730[6]	29,200
Total:		**890**	**41,040**

(Malibu LCPA LIP, Sec. 3.4.2, D, 11, b, vi (pp. 24-25).)

For the reasons set forth below, we respectfully submit that, even with alternate access, this bundle of uses is too intensive, and is neither safe nor appropriate given the site constraints of the Ramirez property. In any event, however, the requirement for alternate access itself is not only warranted, **there is no manner by which any intensified development of this property can begin to be safely accomplished without alternate access.**

That conclusion is confirmed by a review of the Commission's files with respect to public use of "park" properties. **Even for development of far lesser intensity, the Commission requires adequate access, i.e., public roads which meet the requirements of state and local fire codes**. See, e.g., Sand City LCP Amendment No. 1-93 (change of land use designation for beach property; required public access from public right of way); CCC Application Number 5-04-297, El Morro Mobile Home Park, Crystal Cove State Park, Laguna Beach (conversion of mobile home park to campground use, previously authorized by public works plan, 24-foot wide access road required); Salwasser RV Park, Appeal No. A-3-MRB-06-046 (RV camping facility, visitor-serving land use designation, mixed use area (industrial, parkland, hotels), 20-foot access road required for fire safety); CCC Permit Application Number 4-02-067, CA Dept of Parks and Recreation, North Beach Area, Leo Carrillo State Park, LA County (beach property, improvements to camping and day use areas, hazards from shoreline processes, two access routes, main entrance from PCH offramp and additional service entry).

The Malibu LCPA requirement for alternate access is an integral and essential part of the City's decision to allow the Conservancy to intensify its use of the Ramirez property. Therefore, we

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[6] The Malibu LCPA allows "Public Outreach" events every day of the week (including weekends), with no limit on the number of events each day. This table assumes just two events per day. We respectfully request that the Commission limit the maximum daily number of Outreach Events to one per day, with no events on one "quiet day" each weekend, preferably Sunday.

respectfully request that the Commission certify the condition, with the additional modification discussed in Section III, D, below (i.e., that the new road provide exclusive access).

1. Alternate Access is a Necessary and Appropriate Additional Development Control to Reduce Hazards. Alternate Access is Also Required by Law Because Ramirez Canyon Road is too Narrow to Meet the Requirements of State and Local Fire Codes. Fire safety is the primary factor which mandates alternate access:

a. Ramirez Canyon Road. There is only one way in and one way out of Ramirez Canyon – Ramirez Canyon Road, a narrow, winding **private** roadway. The Conservancy's property sits in the most inland portion of the Canyon – almost a mile up that road. To appreciate the constraints on access, it is important to view the photographs submitted with the SAIC Report.

Access to Ramirez Canyon Road from Pacific Coast Highway (PCH) southbound is via a locked gate and 10-foot wide concrete box tunnel under PCH (SAIC Report, Appendix B, Photo 1). Access from southbound and northbound PCH is also via Winding Way and Delaplane. Winding Way and the first segment (about 525) feet of Delaplane are 20-24 feet wide (*id.*, Photo 2). However, Delaplane rapidly narrows to about 14 feet and passes through a gate that is 16 feet wide (*id.*, Photo 3). The gate is locked on weekends. Two speed bumps are present on Delaplane between the gate and Ramirez Canyon Road. Delaplane slopes steeply and ends at Ramirez Canyon Road – there is a closed canopy of trees over the road (*id.*, Photo 4).

From that point up the Canyon, the SAIC Report describes the road as follows (p. 32):

> "Ramirez Canyon Road is a private, rural, narrow roadway, with pavement that is generally 16 to 20 feet wide. The end of the road is a loop so cars can turn around. At this turnaround loop, the pavement narrows to 13 feet (Photo 5). The road is approximately one mile long, with nine speed bumps from Delaplane to the end of the road at [the Ramirez Canyon Property]. The road also has two Arizona-type crossings of Ramirez Creek between PCH and Delaplane and two more to the point at which it accesses the Conservancy's property (Photo 6). Just south of the turnaround loop at the Conservancy property, the road crosses Ramirez Creek via a narrow wooden bridge (11 feet 8 inches drivable width) (Photo 7). Parked cars as well as trash/recycle/green waste bins also restrict the usable roadway width at times (Photos 8)."

Public use of this road creates a public safety hazard in the event of a flood. Because of the Arizona dip crossings, in times of high rain the road becomes impassable and residents are forced to abandon their vehicles and come and proceed on foot.

More importantly, as discussed below, public use of this road creates an extreme public safety hazard in the event of a fire.

b. State and Local Fire Codes.[7] The administrative record of the Commission's proceedings on the 2000 CDP indicates that, although the following issues were raised during the proceedings, they were not resolved (see RCPF December Letter, p. 37). We respectfully submit that this important public safety issue must be given full consideration.

The State Fire Marshal's regulations require a "right-of-way not less than 20 feet in width" for access roads from public buildings to public streets.

> "Specifications. Fire apparatus access roads shall be installed in accordance with Sections 503.2.1 through 503.2.7." (24 Cal. Code Regs. § 503.2.)
>
> "Dimensions. Fire apparatus access roads **shall have an unobstructed width of not less than 20 feet** (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm)." (*Id.*, § 503.2.1, emphasis added.[8])

There is **no authority which allows any fire official to reduce the required 20-foot width**.[9] There is, however, a provision which allows fire officials to increase the width if the circumstances warrant:

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[7] We address both state and local codes because Ramirez Canyon Road is located on private property up to the turnaround at the top of the Canyon at which it accesses the Conservancy's property.

[8] The 20 foot requirement is repeated in Title 19, California Code of Regulations, section 3.05(a), which governs structures. "Required access roads from every building to a public street shall be all-weather hard-surfaced (suitable for use by fire apparatus) right-of-way not less than 20 feet in width. Such right-of-way shall be unobstructed and maintained only as access to the public street." Since the nearest "public road" to the Conservancy's Ramirez property is Pacific Coast Highway, the state standard requiring 20 feet in width is applicable.

[9] During our review of Commission files, we noticed language which suggested that the minimum road width requirement could be waived by the Fire Marshal. That comment does not appear to be supported by the code. The regulation cited in the previous staff reports (former Uniform Fire Code, 24 Cal. Code Regs., sec. 902) authorized the Fire Marshal to grant an exception *only* to the requirement that the nearest paved road be no further than 150 feet from structures. Those provisions are now included in 24 California Code of Regulations, section 503.1, and the authority to grant this narrow exception is unchanged. There is no authority to grant a waiver of the requirement for 20-foot road width (24 Cal. Code Regs., sec. 503.2).

> "Authority. The fire code official shall have the authority to require an **increase in the minimum access widths** where they are inadequate for fire or rescue operations." (*Id.*, § 503.2.2, emphasis added.)

The purpose of the regulation is to provide for safe evacuation and to ensure that fire equipment can reach all properties served by the road.

The same fire safety standard is promulgated and enforced by the Los Angeles County Fire Department.[10] Under the Los Angeles County Fire Code, each "fire apparatus access road" must have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance to the sky (Los Angeles County Fire Code, § 503.2.1). The required width of a fire apparatus access road may not be obstructed in any manner, including parked vehicles, and minimum width and clearance requirements must be maintained at all times (*id.*, § 503.4). The definition of "fire apparatus access road" specifically includes a "private street" (*id.* § 502.1, Definitions), and thus applies to Ramirez Canyon Road.

Finally, both state and Los Angeles County regulations give fire officials **authority to require secondary access** where necessary for fire safety purposes:

> "Additional access. The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access. Additional access must comply with Title 21 of the Los Angeles Fire Code." (LAFC § 503.1.2.)

For this compelling reason, we respectfully request that the Commission support the City's decision to require alternate access with one important addition: the new access road should be the exclusive means of ingress and egress to the Ramirez property and any use of Ramirez Canyon Road by the Conservancy should be limited to emergency use (see sec. III, D, below).

2. The Fire Danger and the Importance of Sufficient and Safe Evacuation Routes. The Ramirez property is in a Very High Fire Hazard Severity Zone. Fire experts agree that safe evacuation routes are an essential part of an overall fire safety plan:

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[10] Since incorporation of the City of Malibu, the Los Angeles County Fire Department has continued to provide fire services to properties within the City.

> "**Most people who die in wildland fires do so while evacuating.** Evacuation operations require large commitments of firefighters who could be better utilized on the fire, and impairs traffic, affecting the response of firefighters." [11]
>
> "Passive Protection. When the inevitable wildfire does occur, the primary protection of life, property and the environment will come from passive protection such as defensible space (fuel reduction/brush clearance), fire-resistive landscaping, fire-resistive construction and good housekeeping. Sufficient firefighting water sources must be on site for use by the property owner and/or the fire department. Moreover, **residents must have the means of self-evacuating and escaping danger through safe and sufficient egress routes while maintaining appropriate ingress routes for responding fire equipment.** The sum effect of passive protection is a force multiplier for active firefighting resources." [12]

The City's first job is to keep its residents safe. Malibu's hillsides are covered with dry coastal sage scrub ESHA, and Malibu has suffered devastating wildfires. In 2007 alone – while the City was considering the Conservancy's application for a LCPA – there were two catastrophic fires in Malibu. In the second fire, 63 homes were destroyed and 54 damaged, along with the Malibu Presbyterian Church, Our Lady of Malibu and Webster Elementary School. Six firefighters were injured, including one who suffered second-degree burns to his face.

Wildland fire conditions are affected by weather, topography and fuels. (SAIC Report, Sec. 2.0, p. 7.) Southern California's Mediterranean climate pattern is a key factor in the prevalence of wild fires in the region. (*Id.*, p. 7.) Vegetation grows well in the mild wet winters – and becomes fuel in the warm dry summers. Vegetation in the undeveloped areas of the Santa Monica Mountains in Malibu is predominantly chaparral and coastal sage scrub with narrow riparian corridors along streams. (*Id.*, p. 9, Figure 1 and Table 2.) **This chaparral, which is most common in Ramirez Canyon, provides the most substantial wildland fire threat in Los Angeles County.**

Characteristics of topography also have a considerable effect on fire behavior. (SAIC Report, Sec. 2.0, p. 8.) Fires starting at the base of **box canyons** and narrow canyons create strong upslope drafts, causing them to spread rapidly upslope and create extreme fire behavior and dangerous conditions. Steep terrain also creates extremely hazardous conditions for firefighting

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[11] Hunt, J., "Listen to Experts Concerning Fire Protection," Santa Barbara News-Press, December 21, 2008. Mr. Hunt is a former county fire department captain and a wildland/urban interface fire protection consultant for the past 29 years.

[12] County of Los Angeles Fire Department, *Pre-Fire Management Plan,* June 2004, p. 11 (emphasis added).

personnel and limits the use of heavy equipment, such as bulldozers, to create fire lines. **Ramirez Canyon is a prime example of this dangerous scenario.**

Recent studies predict that, based upon weather conditions for future climate scenarios, the frequency of wildfires will increase in the Western U.S. as warming intensifies, particularly in areas with the type of vegetation which surrounds the Conservancy properties. (SAIC Report, Sec. 2.0, p. 8.)

Because the Ramirez property is located in a Very High Fire Hazard Severity Zone, it is subject to **more stringent brush clearance standards** than other properties. (SAIC Report, pp. 17-18, 29 and Figure 7.) In Ramirez Canyon, both the Conservancy's property and the steep hillsides surrounding it are thick with brush. The National Park Service does little or nothing to prevent brush accumulation on its property. And, recent Congressional testimony indicates that the Conservancy does not have a good record for keeping up with the requirements for brush clearance.[13]

Last October, the Conservancy made a grant of $950,000 to MRCA for removal of hazardous fuel-loads, restoration of native plant communities, and other wildfire prevention efforts (Conservancy Agenda, October 20, 2008, Item No. 19). However, the grant application states that the MRCA owns "thousands of acres of open space," and the estimated completion date for the project is not until June of 2010.

The State of California, particularly southern California, is suffering more frequent, more intense, and much larger fires. Many of these fires occur in the **urban/wildland interface – e.g., Ramirez Canyon – which significantly increases the cost of the loss**. Experts opine that increased risk of wildfires cannot be managed by fire suppression strategies alone. However, even if the risk could be managed in that manner, California's budget for fire suppression has not kept pace with demand. (RCPF December Letter, pp. 14-15.)

For all these reasons, we respectfully submit that public safety demands that the Commission support the City's requirement for alternate access as a precondition of intensified use.

3. **Alternate Access is Feasible.** As we explained in the RCPF December Letter (pp. 6-7), the Conservancy raised the issue of the alternate access to the Ramirez property in 1993, before

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13 Testimony of Carl Olson before the Subcommittee on National Parks, Forests and Public Lands of the House Natural Resources Committee, June 14, 2007.

it acquired the property, and then again during the City's hearings on the Conservancy's application for a LCPA. Yet, when the City required the access as a precondition of intensified use, the Conservancy balked.

During the ensuing discussions, the Conservancy represented to the City and to the public that the Coastal Commission staff indicated that creating an alternate access would not be permitted because of perceived ESHA impacts. If that representation is accurate, we respectfully urge the Commission to reconsider. **The Conservancy proposes to disturb all of the ESHA on the Ramirez property with executive offices and private revenue-producing commercial use. It would be incongruous to accept ESHA impacts for these non-essential uses and refuse to allow already-disturbed ESHA to be used to create an evacuation route required to protect public safety.**

Moreover, not only is alternate access proper under the circumstances, it is also feasible. Alternate access can be provided from Kanan Dume Road over three privately-owned parcels referred to as the "Lauber Property." An aerial photograph which shows the location of that property in relation to the Conservancy's Ramirez property is enclosed as Attachment B. The Lauber Property is currently on the market and the Conservancy granted MRCA $7 million to buy it.

SAIC examined the Lauber Property, and found two cleared tracks which could provide alternative access to the Conservancy property from Kanan Dume Road (SAIC Report, pp. 32-33 and Appendix B). The first potential access is a 30-foot dirt road from the Conservancy's Ramirez Canyon property, westward across APN 4467-002-068. The dirt road ends near the northern boundary of the parcel just south of the National Park Service (NPS) property. A 13-foot cleared track extends westward from the 30-foot dirt road along the northern boundaries of APN's 4467-002-068, 4467-002-067, and 4467-002-066 to the western boundary of the latter parcel, which is adjacent to property currently being sold by Los Angeles County to MRCA. This property is contiguous to Kanan Dume Road.

A second potential access is a 20-foot wide cleared track which extends westward from the Conservancy's Ramirez Canyon property along the northern boundary of APN 4467-002-067 where it intersects with an approved cul-de-sac connecting to Kanan Dume Road.

The 30-foot dirt road has been cleared in the past, but native coastal sage scrub vegetation has grown over about 700 feet of the eastern portion (SAIC Report, Appendix B, Photo 9). Approximately 450 feet of the western portion has scattered native and non-native plants within

the previously cleared area approximately 12 feet wide. (*id.*, Photo 10.) The density of native plants is low compared to that of undisturbed adjacent habitat. Continuing westward from the end of the dirt road, the cleared track extends another 245 feet. (*id.*, Photo 11.) The distance from the end of the cleared track to an existing short access track (*id.*, Photo 12) from Kanan Dume Road (going around the edge of parcel 4467-002-066), that is not currently cleared, is 385 feet. However, the western portion of this area is dominated by coyote brush, a native species that colonized disturbed areas (*id.*, Photos 13 and 14) and the eastern portion is coastal sage scrub (*id.*, Photo 15).

In addition, two tracks have been recently cleared down the ridgeline along and near the property line between parcels 4467-002-068 and 4467-002-067 to the turnaround at the end of Ramirez Canyon Road, in the area of the 13-foot road easement (*id.*, Photos 16 and 17). These tracks are approximately 6 to 10 feet wide and are dominated by non-native mustard (*id.*, Photo 18). The adjacent vegetation is coastal sage scrub that is dominated by purple sage, California sagebrush, and giant wild rye. Construction of a new access road from Kanan Dume Road to the Conservancy's property in either of these previously disturbed areas appears feasible and would disturb less coastal sage scrub than if the road were placed through undisturbed coastal sage scrub.

For the foregoing reasons, we respectfully urge the Commission to support the City's decision on this important issue.

4. An Executive Office Complex Is Not A Necessary or Appropriate Use of the Ramirez Property. If Office Use is Included as a Permitted Use, Alternate Access Must be Required. Alternate access is not only a question of public safety, it is a land use policy decision. Under the circumstances, we respectfully submit that the City made the correct decision by requiring alternative access.

To gain support for its use of the Ramirez Canyon property, the Conservancy has consistently waved the flag of "public access." However, the Conservancy has all the while insisted on using the Ramirez property as *private executive offices* for two state agencies. The Conservancy is apparently married to this use. The Conservancy has never submitted any version of the present "plan" which does not include the executive office use, and the Conservancy has never offered any alternatives analysis for the executive offices, despite the fact that it owns many other properties more suited to that use (RCPF December Letter, pp. 62-64; SAIC Report, Sec. 8.0, pp. 49-61).

As explained in the RCPF December Letter, there is no public policy which justifies the Conservancy's use of this remote, isolated property, designated ESHA and Open Space, for executive offices (RCPF December Letter, pp. 47-49). Moreover, the Conservancy's use of the Ramirez property for an executive office complex is one of the most glaring examples of incompatibility with this rural, residential neighborhood (*id.*, pp. 54-62; SAIC Report, Secs. 6.0 and 7.0, pp. 45-48). The agencies own numerous other properties, and should locate their executive offices in traditional office buildings, just like every other public agency.

In an attempt to justify the office use, the Conservancy submitted a list of "Park Agency Administrative Office Locations in the Coastal Zone" with its application for override (see Conservancy "Policy Consistency Analysis," dated April 14, 2008, p. 55). The Conservancy uses the list to support its assertion that office facilities like those at Ramirez are an appropriate use of Open Space. However, the list does not support the assertion. The "Policy Consistency Analysis," which the Conservancy submitted with its application for override, explains that the Conservancy uses the offices at Ramirez to **"conduct the administrative responsibilities associated with open space acquisitions, planning, research, the management of conservation and recreation activities <u>at Conservancy holdings</u>** . . ." (*id.*, p. 52). Attachment E to the RCPF December Letter demonstrates that many of the sites on the Conservancy's list do not house offices at all. Others are used for **onsite administration** – which is generally permitted as an "ancillary" use to the management of specific property. The sites that house executive offices either require a CUP or are located in zoning designations that allow the use (e.g., Institutional and Public Facilities). Because of the site constraints in Ramirez Canyon, the Conservancy's property would never qualify for the latter type of zoning designation.

Finally, it is important to note that the City's requirement that the Conservancy build alternate access did not come as a surprise. The Conservancy has been promising to build that alternate access since before it acquired the property in 1993. In fact, during the City's 2007 proceedings on the Malibu LCPA, the Conservancy made a grant of $7 million in bond funds to MRCA for that purpose.

For these and all the reasons which follow, we respectfully submit that the City's requirement for alternate access is not only essential, it is more than fair. If the Commission is inclined to allow this executive office use, at a minimum the Commission should certify the City's requirement that the Conservancy construct <u>alternate access</u>, not only to lessen the risk for the Conservancy's guests and the Canyon residents, but to minimize traffic and noise throughout the Canyon as well.

5. Public Use of Ramirez Canyon Road is Not Lawful for Two Additional Reasons. There are two additional legal reasons which support the City's decision to require alternate access.

First, the alternate access pre-condition is required by zoning law. The properties over which Ramirez Canyon Road passes are zoned rural-residential (RR). The Conservancy's Ramirez property is zoned open space (OS). Active recreation, office and commercial uses are not allowed in the RR zone (Malibu LIP, Table B (Permitted Uses)). "Parks" are allowed in RR zones only with a conditional use permit (*id.*). The general rule is that the use of land in one zoning district (e.g., Ramirez Canyon Road, RR) for ingress and egress to land in another zoning district (e.g., the Conservancy's open space property, OS) must not exceed the use allowed in the first district.[14] That means that, even if Ramirez Canyon Road were not substandard under the fire code, the Conservancy would have no right to use the road for access for active recreation, office or commercial use unless the zoning applicable to the road itself were changed.[15]

Second, the Conservancy does not have a right to use Ramirez Canyon Road for public access because the private easement it is utilizing was created for residential use. A change in the character of the use of a private easement is not authorized because, as a matter of law, the change in use adds a "new and additional burden," not contemplated when the easement was created.[16]

6. Any Modification to the Precondition for Alternate Access Will Require Extensive Modifications to the Malibu LCPA. If, for any reason, the Commission suggests that the City delete or modify the precondition for alternate access, we urge the Commission to carefully consider each use proposed by the Malibu LCPA, and suggest modifications which significantly restrict the intensity of those uses as well (Malibu LCPA LIP Sec. 3.4.2, D, 11, b, vi (pp. 24-25). There are at least two methods by which the corresponding restrictions on use could be made. The first would be to limit the permitted uses to those which the LCPA presently allows without

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[14] Am. Jur., Zoning, sec. 167. California Courts follow the rule. (Miller & Starr, California Real Estate, sec. 15:54. See, also, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487 and *City & Co. of S.F. v. Safeway Stores, Inc.* (1957) 150 Cal.App.2d 327.)

[15] The caretaker's residence is the only exception, because the Conservancy has a right to use Ramirez Canyon Road for access for residential purposes.

[16] See, e.g., *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 686; *Gaither v. Gaither* (1958) 165 Cal.App.2d 782; *Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 976.

alternate access,[17] and to delete all of the other uses. The second would be to delete executive offices and special events as authorized uses, and limit allowed uses to passive recreation and carefully defined and limited-intensity uses, i.e., (a) facilities and programs that increase the level of accessibility for disabled visitors (including supervised camping), (b) children's educational programs, (c) riparian interpretative trails, (d) picnic facilities, (e) senior and public outreach programs, (f) canyon and garden tours, and (g) hiking, picnicking, etc., provided those specific activities are limited in number, reviewed during the permit process, and regulated by conditions that minimize the fire danger and avoid unnecessary impacts to the residents of the Canyon, as further discussed below.

D. ONCE CONSTRUCTED, THE NEW ACCESS ROAD SHOULD BE THE EXCLUSIVE MEANS OF INGRESS AND EGRESS TO THE PROPERTY, EXCEPT IN CASE OF EMERGENCY.

The City Council was discussing this limitation when the Conservancy essentially stopped participating in the Malibu LCPA process. As a result, this important condition is not included in the Malibu LCPA. We respectfully request that the City and the Commission focus on the issue now.

As explained in Section C, above, it is not lawful for the Conservancy to use Ramirez Canyon Road for public ingress and egress. That fact alone warrants the requirement that, once the alternate access is constructed, the Conservancy limit its use of Ramirez Canyon Road to emergency ingress and egress.

In addition, the Conservancy's public use of this private, narrow, rural canyon road is one of the factors which render the Conservancy's use of its property so incompatible with the surrounding neighborhood (RCPF December Letter, pp. 54-62; SAIC Report, Secs. 6.0 and 7.0, pp. 45-48). Neighborhood compatibility is expressly required by the Coastal Act. (See, e.g., sec. 30214, which mandates that the provision of public access take into account the "proximity of the access area to adjacent residential uses" and protect the "privacy of adjacent property owners" (*id.*, subds. (a) (3) and (a) (4)).) (See, also, sec. 30253, which requires that public access be provided

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[17] As presently drafted, without **alternate access,** the Malibu LCPA allows the use of the property as **executive offices** for up to 15 employees, **housing** for a caretaker and his family, **104 public outreach programs each year for at least 4,160 seniors and persons with disabilities**, occasional employee training programs, and on-going property maintenance (Malibu LCPA LIP, Sec. 3.4.2, D, 11, b, ix (pp. 25-26)).

"consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse" (emphasis added).)

For these reasons, we respectfully request the following modifications to the Malibu LCPA:

LIP Section 3.4.2, D, 2, b, i, c (p. 8) should be modified to provide:

> "Until the alternate access road described in Section D, 11, b, ix, is constructed, daily vehicle trips associated with all authorized uses of Ramirez Canyon Park are restricted to a maximum of [see section E, below]. After the alternate access road is constructed, Ramirez Canyon Road should be used by the Conservancy for emergency access only, and the new access road may be used by the residents of Ramirez Canyon for emergency access if necessary."

LIP Section 3.4.2, D, 11, b, ix (pp. 25-26), which adds the alternate access as a precondition for development, should be modified to add the following sentence:

> "After the alternate access road is constructed, Ramirez Canyon Road should be used by the Conservancy for emergency access only, and the new access road may be used by the residents of Ramirez Canyon for emergency access if necessary."

E. IF THE LCPA INCLUDES ANY PROVISION ALLOWING THE CONSERVANCY TO USE RAMIREZ CANYON ROAD AFTER THE NEW ACCESS ROAD IS CONSTRUCTED, THE NUMBER OF VEHICLE TRIPS MUST BE REDUCED SIGNIFICANTLY.

Ever since the Commission's 2000 proceedings on the Conservancy's application for a CDP, the number "80" has been assumed to be the proper number of daily one-way vehicle trips on Ramirez Canyon Road for the Conservancy's uses. The Malibu LCPA uses that number as well. However, the record of the 2000 Commission proceedings demonstrates that the number was literally "pulled from the air" during the hearings.

We respectfully submit that, if the precondition of alternate access road is not modified to require that the new road provide exclusive access (see sec. D, above), it is necessary to require further information about the type of "vans and shuttles" with which the Conservancy proposes to transport people to the property, and to significantly reduce the allowance for 80 vehicle trips per day. The reduction is compelled by the traffic analysis in the RCPF December Letter (pp. 57-62) and the SAIC Report (Sec. 6.0, pp. 45-46), which demonstrates the following:

1. **The Intent of the Donor.** In the Memorandum of Understanding by which Ms. Streisand donated the Ramirez property, the Conservancy not only promised to use the property as a retreat and research center, the Conservancy also promised to "carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community." (RCPF December Letter, Attachment C, pp. 2-3.) The Conservancy has never conducted the analysis.

2. **The Monitoring and Enforcement Problem.** The inclusion of a specific number of vehicle trips in a LCPA is a problematic manner by which to attempt to regulate development. In order to minimize the neighborhood or environmental impacts of a project, land use regulatory agencies typically place restrictions on **uses** by limiting the type of use, square footage, number of occupants or other features of the use. Permitting agencies do not typically attempt to regulate the secondary impacts (such as traffic generation) by limiting the number of trips because monitoring and enforcement can be so difficult to achieve.

Therefore, we respectfully request that the City and the Commission consider modifying the Malibu LCPA to require that the *number of vehicle trips be determined during the permit process*, i.e., when the decision-makers can examine the specific development or use, the need for a particular number of trips to support that development or use, the impact on the neighborhood, and the alternatives. The permitting process will also allow for specific notice to and full participation by the owners of the private property over which this commonly-held private easement passes.

3. **The "Myth of 80 Vehicle Trips" and the Actual Traffic Counts.** The Conservancy claims a "right" to generate 80 trips a day based on the assumption that it owns six legal lots, which could be separately sold and developed with single family homes, each of which would generate 9.57 trips/weekday and 10.09 trips/weekend (57 to 61 trips). Then, the Conservancy adds a kicker to the daily counts based on the size of the hypothetical houses. There are extensive problems with the analysis (see RCPF December Letter, pp. 54-62 and SAIC Report, Sec. 6.0, pp. 45-46).

The Conservancy does not use the Ramirez property for residential purposes, and the property has **never** been used by six separate owners occupying six separate houses on six parcels. Before the Conservancy acquired the property in 1993, it was used as a single residential estate on occasional weekends. Therefore, if "residential use" is to provide any baseline whatsoever, that baseline should be the single residential ownership use that existed prior to the

Conservancy's acquisition and the typical traffic generated by such a use in Ramirez Canyon: 8.4 vehicle trips per day (RCPF December Letter, Attachment H).

In addition, there is no evidence that the Coastal Commission has ever determined that there are six legal parcels which are capable of separate development and sale as single family lots. However, even if there were, the evidence is that the actual residential use of the road averages 8.4 trips per day per lot (RCPF December Letter, Attachment H). Therefore, even if a six-lot residential use calculation were proper under the circumstances, the Conservancy would be entitled to 50 trips per day – at most.

4. **The Studies – Traffic Generated by "Park" Use.** The Conservancy offered two traffic studies with its submission for a LCP "override." The study prepared by Crain & Associates (2006) provided a method by which to calculate vehicle trips based on the number of acres of a proposed "park" site. When that methodology is applied to the Ramirez property, "park" use of Ramirez would result in only 9-14 trips on weekdays, 13-16 trip on Saturdays, and 24 trips on Sundays.[18] That passive park use is more than the historic "baseline" use for the property, but could still be accommodated without undue interference with this rural, residential neighborhood.

5. **The Provisions Which Require Modification.** For all of the reasons set forth above, we respectfully request that the Malibu LCPA not include any specific number of vehicle trips in the LCP, but instead defer that decision to the individual permit process. However, if our suggestion is not adopted, we respectfully request that the City and the Commission carefully consider the specific number of vehicle trips and significantly reduce the number based on the evidence. The provisions of the Malibu LCPA which require a modification to the counts are as follows: LIP Section 3.4.2, D, 2, b, i, c (p. 8), Section 3.4.2, D, 2, b, i, e (p. 8), Section 3.4.2, D, 3, a, iv (pp. 9-10), and Section 3.4.2, D, 11, b, i (p. 23).

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[18] The Conservancy has also presented a second traffic study, by Associated Transportation Engineers, dated August 20, 2007. With no mention of the earlier calculations by Crain & Associates for proper park use, ATE switched to a different reference book – the "San Diego Traffic Manual" – for its calculations, and concluded that the daily trips for park use would be 126-186 (ATE, 8/20/07, p. 16). If that calculation is accurate, then "passive park use" would be equally inappropriate for this property given the access constraints.

F. PEDESTRIAN USE OF RAMIREZ CANYON ROAD IS NOT SAFE.

The City has proposed a pedestrian trail up Ramirez Canyon Road (Malibu LCPA, LUP, Policy 1.4 and Exh. A (Map No. 2)). We respectfully submit that, that trail should not be included for at least three reasons:

First, as demonstrated in the RCPF December Letter (pp. 35-37), the SAIC Report (pp. 31-32), and above, Ramirez Canyon Road is too narrow to meet state and local requirements for vehicular traffic. That situation should not be aggravated by the addition of pedestrian traffic.

Second, the Malibu LIP defines "trail access" as providing "public access (i.e., hiking and equestrian) along a coastal or *mountain recreational path*, including to and along canyons, rivers, streams, wetlands, lagoons, freshwater marshes, significant habitat and open space areas or similar resource areas, and which also may link inland trails or recreational facilities to the shoreline" (Malibu LIP, Sec. 12.3(D), emphasis added). Trail access does not include public access up a road and we respectfully submit that it should not do so. The Malibu LIP acknowledges that "trails" are properly set off-road. That is what distinguishes walking on a street from hiking on a trail.

Third, the Conservancy does not have a pedestrian or equestrian easement over Ramirez Canyon Road, and there are no offers to dedicate which would allow for such a trail. For this reason, the provision for "hike-in" public access to the Conservancy's Ramirez Canyon Property from "public easements along . . . Ramirez Canyon Road" should also be deleted (Malibu LCPA LIP, Sec. 3.4.2, D, 2, b, i, e, iii (p. 8)).

G. NO MATTER WHAT THE CONDITIONS, THIS PROPERTY IS NOT SUITABLE FOR LARGE, PRIVATE, COMMERCIAL EVENTS.

As noted above, the Malibu LCPA requires alternate access as a precondition to these large, private, commercial events. However, we respectfully submit that the construction of alternate access will not make these events a safe or appropriate use of this remote, isolated property, nor will the condition make these events compatible with this rural, residential neighborhood. The RCPF December Letter and SAIC Report include an extensive discussion of the fire hazards which are presented by this use (RCPF December Letter, pp. 32-47; SAIC Report, Sec. 2.0, pp. 7-33), and also explains why the use is not compatible with this rural, residential neighborhood (RCPF December Letter, pp. 54-62; SAIC Report, pp. 47-48). In addition, the Conservancy owns other properties in the vicinity, which are far more suitable for this type of use (RCPF December

Letter, pp. 62-64; SAIC Report, Sec. 8.0, pp. 49-61). In light of that evidence, we respectfully urge the City to reconsider, and the Commission to carefully consider, whether any large, private commercial events should be included as a permitted use at this site.

1. **"Special Events" Do Not Constitute Either Public Access Or Recreation.** The special events involve leasing out the Ramirez property for private, commercial use solely to raise revenue. That is neither "public access" nor "public use."

Moreover, even if the property had been donated as a "park," these special events would not be permitted. The California Recreation and Park District Act, at Public Resources Code section 5780.1, subdivisions (G) and (H), defines permissible recreational uses in parks. Under Section 5780.1, neither leasing of property for private events nor office use qualifies as "recreation." In addition, Section 33211.5, subdivision (d)(1) of the Conservancy's enabling act provides, in part, that the "types of uses and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system." Section 5019.53 defines the permissible uses of state park lands. Section 5019.53 does not allow leasing for commercial events or regional, administrative office. Section 5080.03, subdivision (b), specifically provides that "[c]oncessions shall not be entered into solely for their revenue producing potential." For these fundamental reasons, we respectfully submit that no large, commercial, special events should be included in the Malibu LCPA.

2. **The Use of this Property for Special Events Should Require a Change in Land Use Designation. The Use of an "Overlay" Does Not Provide for a Comprehensive Evaluation of the Use in Relation to the Surrounding Uses**. We respectfully submit that the allowance of these "special events" should be examined in the context of a change in land use designation (e.g., to General Commercial (GC), or Commercial Visitor Serving (CV-1 or CV-2) (Malibu LIP, Sec. 3.3 (J), (K), (L) and Table B)) rather than an "overlay" in ESHA and Open Space. That process would focus on both the site constraints and the location of the property vis-à-vis the land use designations of the surrounding properties (e.g., rural residential and open space). We respectfully submit that, for all the reasons discussed in this letter and in the RCPF December Letter, the Conservancy's Ramirez Canyon property would never qualify for a change in land use designation so as to allow for commercial events.

3. The Intensity of the Use in Context and Coastal Commission Precedent – the Brazil Ranch Public Access Plan Component of the U.S. Forest Service's General Consistency Determination for Authorization of Special Use Activities. Our search of Commission files revealed only one case in which the Commission has evaluated large special event use as part of a "public access" plan – Brazil Ranch. There are some uncanny similarities between the Brazil Ranch plan and the proposed special event use of the Conservancy's Ramirez property. Those similarities – and the differences between the sites – demonstrate why RCPF is asking that the City and the Commission remove the "special event" element from the Malibu LCPA.

Both Brazil Ranch and the Conservancy's Ramirez Canyon property are former residential compounds – Alan Funt owned Brazil Ranch and Barbra Streisand owned the Ramirez property. Like the Conservancy, the U.S. Forest Service (USFS) held weddings and other "special events" at Brazil Ranch for a time. However, as part of the consistency determination for Brazil Ranch, the USFS agreed, among other things, (a) to limit "special events" to conservation forums related to environmental conservation, stewardship and sustainability (e.g., the use for which Ms. Streisand specifically donated the Ramirez property), (b) to eliminate weddings, family retreats or meetings unrelated to conservation forums, (c) to limit the cumulative total of visitors to the Ranch to 70 persons at one time, with one exception: an annual allowance of four activities for 150 people at a time (for five years only, with monitoring to allow for re-evaluation), (d) to provide guided hikes for the public, and (e) to work with the Monterey County Film Commission with respect to permits for filming.

For comparison purposes, it is essential to note that the limitations were adopted for Brazil Ranch even though that property consists of 1200 acres (only portions of which are designated ESHA), with public access from Old Coast Highway **and** State Highway 101.

The Conservancy's Ramirez Canyon property is only 22 acres – all of which is designated ESHA. And, while alternate access can be constructed to meet state and fire codes, that access will still be steep and winding. With alternate access – and even without these "special events" – the Malibu LCPA authorizes 874 tours, gatherings, public outreach and small events per year, for 40-60 persons at a time. That development will bring 37,840 people into Ramirez Canyon each year – a number which RCPF respectfully requests should be further restricted as discussed below. However, the number of smaller public outreach, tours, gatherings and events demonstrates why it is neither necessary nor appropriate to add 16 "special events" and bring another 3,200 people into the Canyon each year – 200 people at a time – particularly in view of the fire hazards.

4. **There is No Evidence that "Special Events" Can be Made Safe.** We respectfully submit that this is another area where the Malibu LCPA puts the cart before the horse. The Malibu LCPA requires that the Conservancy prepare a "Fire Protection, Emergency Evacuation Plan" (FPEEP) (Malibu LCPA, Sec. 3.4.2, D, 10, b, i (p. 21)). However, where – as here – there is a considerable risk to public safety, these events should not be included as a permitted use until and unless the City determines that they can be conducted in a manner which does not present a significant risk to Conservancy visitors and to the residents of Ramirez Canyon.

The intensified nature of the use demonstrates the need for the analysis. People cause fires (RCPF December Letter, p. 40; SAIC Report, pp. 15-16, Table 4 and Figure 4). Therefore, even the smaller events (public outreach, tours, gatherings, etc.) present a risk of fire. The risk during the smaller events is somewhat reduced because the events involve only 40-60 persons and are conducted in the daytime (i.e., they are relatively quiet and easily-monitored). The "special events" are very different. They are parties, with alcohol, and we know that when people drink, they smoke. A "No Smoking" policy will not be adequate, because it cannot be effectively enforced when there are 200 people wandering unsupervised around this canyon property vegetated with so much fire-prone brush.

For these reasons, RCPF respectfully submits that large special events should not be included as a permitted use. However, if these events are included, the City and the Commission should either require the Conservancy to submit its FPEEP now (with an analysis of the number of guests, catering and service staff, who could be safely evacuated along with the Canyon residents), or the City and the Commission should limit the number of events as set forth below and require a temporary use permit for each event.

5. **Even if Special Events are Permitted, Additional Precautions are Required.** In light of the extensive fire hazards which are documented in the RCPF December Letter and the SAIC Report, if large special event use is included in the LCPA, additional precautions should be set forth as well. These should include, but not be limited to, the following:

a. **The Number of Special Events Should be Reduced and All Special Events Should Require Temporary Use Permits.** The Malibu LCPA authorizes sixteen special events per year (Section 3.4.2, D, 11, b, 3 (pp. 24-25)), and provides that at least one week prior to any event involving 100 participants or more, the Conservancy notify the Malibu Planning Manager about the type of event, event hours, number of anticipated guests, and proposed transportation plan (*id.*, sub. (e)). We respectfully submit that the number should be reduced to **four per year**,

and that the Conservancy should be required to obtain temporary use permits, to enable the City to specifically analyze the risks posed by the specific event and the addition of appropriate precautions. Our reasoning is as follows:

Even if the Conservancy's Ramirez Property had been donated as a "park," private, commercial events for revenue raising purposes are not allowed on park property (see sec. III, G, 1, above). In addition, under the Malibu Municipal Code, every property owner is entitled to apply for four temporary events per year (Malibu LIP, p. 28 and § 13.4.9). The fact that the Conservancy owns five contiguous parcels within the City (and one outside the City) does not entitle it to more than four events per year under Malibu's zoning ordinance, because Malibu's Temporary Use Permit provisions treat all parcels under contiguous ownership as one parcel (Malibu Mun. Code, Chap. 17.68).

We respectfully submit that there is no reason to create a special rule for the Conservancy's **private, commercial use** of this property, particularly where – as here - allowing more than four events per year increases the fire danger in the Canyon to an intolerable degree, and poses an unnecessary risk to Canyon residents and Conservancy guests.

b. A Sufficient Number of Vans and Shuttles Should be Kept On-Site During Special Events to Accommodate all Persons on the Property. The Malibu LCPA provides: "Special events held during fire season shall retain all guest vans, shuttles, and drivers continuously on site during the event." (Malibu LCPA LIP Sec. 3.4.2, D., 11, b, v (p. 24).) We respectfully request that the language be modified in two ways:

First, the phrase **"during fire season"** should be deleted. The Governor has acknowledged that fire season is all year long in Southern California. Therefore, the LCPA should require that the vans and shuttles be kept on site during all special events.

Second, the language should be clarified to require that sufficient guest vans, shuttles, and drivers **to accommodate all guests and attendant service personnel** be kept on site. The following example demonstrates why fire safety mandates this additional language:

If the Ramirez property is used for a wedding with 200 guests, those guests would be transported in 15-person vans from a remote parking facility. That will require 14 separate vans each making one trip to drop off and one trip to pick up (28 trips total). Is it realistic to expect that the wedding organizer will rent 14 vans? No. More likely, two vans will be rented, with each making 7 trips to

drop off and 7 trips to pick up. If there are only two vans, how will the 200 people be quickly evacuated in the event of a wildfire, even if both vans are retained on site during the wedding?

c. If the City's Temporary Use Permit Process is Not Utilized, the LCPA Should Incorporate Additional Safety Precautions. The Malibu Zoning Code requires a Temporary Use Permit (TUP) for special events, if certain standards are met. There is no reason to treat the Conservancy's Ramirez property any differently. Further, even if the Conservancy is exempted from the City TUP requirement, certain standard conditions should be imposed on each Conservancy event in order to ensure adequate protection of the public and the neighborhood. These should include, but not be limited to:

- No special events should be allowed from August to November, when Santa Ana winds are prevalent.
- The "No Smoking" policy must be strictly enforced. Anyone caught smoking should be immediately cited and removed from the premises.
- Candles, open barbeques, propane heaters and any other open flames should be prohibited.
- Fire extinguishers should be required for all cooking events.
- All temporary structures, including tents or other fabric enclosures used for special events, should comply with the applicable fire code.

In addition, the LCPA should specify that the Conservancy must ensure that adequate supervision and equipment is present at all times during special events, and its operating protocols should be reviewed and approved by the State Fire Marshal. This should include, but not be limited to, the following:

- At least three staff members with wildland fire training should serve as event monitors for the entirety of each event.
- Rangers should be present at each event at a rate of one ranger for less than 100 people and two rangers for 100 or more people, with a higher number if either weather conditions or the nature of the activity warrants. The specific number of rangers should be determined as part of the City's permitting for each site, based on site-specific physical and operational factors.
- A fire vehicle equipped with a 100-gallon water tank with a 50-gallon per minute pump or greater should be present at all times during special events.
- The water storage tank and water delivery system serving special event area(s) should have the capacity to serve not only the existing permanent structures but any temporary structures that may be installed for special events.

H. THE RESIDENTS OF RAMIREZ CANYON ARE ENTITLED TO QUIET EVENINGS AND AT LEAST ONE QUIET DAY EACH WEEK

As presently drafted, the Malibu LCPA would result in **weekly use** by the following number of persons at the Ramirez property during seven months of the year:

Executive offices for the Conservancy and for MRCA (5 days @ 15 people/day)	75
Outreach Programs (7 days/week at 40 people/event)[19]	280
Tours and Small Groups (3 days/week at 60 people/event)	180
Special Events (1 day/week at 200 people/event)	200
Weekly Total	**735**

That is a total of 11 "events" per week with as many as 735 people and not one quiet day – seven days a week, weekends and holidays.

RCPF respectfully submits that the following modifications will lessen the impact of the Conservancy's activities on the residents of this quiet Canyon.

Special events should be deleted or modified as discussed above. With respect to outreach, tours and small group events, if the new road is required to provide exclusive access once it is constructed, then the level of development as proposed can comply with the mandate of the Coastal Act for neighborhood compatibility without additional restrictions. However, if the LCPA is not modified to require exclusive access via the new road, we respectfully request that the City and the Commission consider the following time, place and manner restrictions.

As presently drafted, the Malibu LCPA specifically allows public outreach programs seven days per week (Malibu LCPA LIP, Sec. 3.4.2, D, 11, b, vi, e, 1 (p. 24)), and 12 tours and small gatherings per month – with no limitation on the day of the week (*id.*, Sec. e, 2 (p. 25)). The residents of this rural, residential Canyon deserve at least one quiet day each weekend – preferably Sunday - unaffected by van and shuttle traffic up and down their private road. Therefore, we respectfully request the addition of this condition.

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[19] The Malibu LCPA allows "Public Outreach" events every day of the week, with no daily limit on the number of events. This table assumes just two events per day. We respectfully request that the Commission limit the maximum daily number of Outreach Events to one per day, with no events on one "quiet day" each weekend.

Finally, as presently drafted, the Malibu LCPA sets the hours for these events from 8 a.m. to dusk (*id.*, Sec. e, 1 and 3 (p. 25)). We respectfully request that, if any vehicular traffic is allowed on Ramirez Canyon Road after the construction of the new road, the hours of operation be limited to 9 a.m. to 6 p.m. in the summer and 9 a.m. to dusk in the winter. That will lessen the interference with the residents coming and going from work and will allow them quiet evenings after they arrive at home.

I. THE TERM "SUPPORT FACILITIES" SHOULD BE SPECIFICALLY DEFINED.

As noted above, all of the Ramirez property is designated ESHA. The current Malibu LIP strictly limits development in ESHA to accessways, trails, directional signs, interpretive signage, restoration projects and projects designed to protect and enhance habitat values (Malibu LIP, Sec. 4.5.3). No "support facilities" are presently allowed in ESHA. Moreover, the "support facilities" currently allowed in Open Space are limited to picnic areas, restrooms, trash receptacles, parking, and access improvements for trails.

The Malibu LCPA would significantly enlarge the definition of "support facilities" to allow many more types of development. We respectfully submit that this expansion is unwise and unwarranted.

The term "support facilities" appears throughout the Malibu LCPA. Policy 5.71 (Malibu LCPA, pp. 2-3) offers examples of those facilities: "e.g., parking, public restrooms, picnic amenities, ranger maintenance, supervisor housing, nature centers, limited personnel facilities related to the daily operation and maintenance of parklands and public access programs." In view of the fact that the entire Ramirez property is designated ESHA, the definition is plainly too broad.

In addition, Section 3.4.2, D, 11 (Land Use and Neighborhood Compatibility) characterizes the **unpermitted development** at Ramirez as "support facilities," and creates additional ambiguities by allowing administrative and support facilities "necessary to maintain access programs, daily operations and maintenance of the various park and recreation programs addressed in this Chapter" (pp. 22-26).[20] That description is not only overly broad, it is ambiguous as well.

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[20] The section provides: "Existing and proposed support facilities are defined as those facilities deemed necessary to support the primary permitted land use, public access and recreation, research and education, and nature observation. The type of support facilities addressed at each park facility shall be based on the level and complexity of public uses and specialized programs offered at each park area. Ramirez Canyon Park, given its unique

We respectfully submit that, once the City and the Commission determine the allowable use of the Ramirez property, the definition of "support facilities" should be clarified and narrowed to include only uses which are absolutely necessary to accommodate the proposed development and which can be provided without undue disturbance to ESHA.

IV
CONCLUSION

The residents of Ramirez Canyon believe in "good neighbor" principles, which emphasize consideration for the quiet enjoyment of their Canyon. Having lived through several disastrous fires, they are also vigilant about fire safety. They have worked very hard for many years to encourage the Conservancy to use its Ramirez property in a manner which is compatible with these principles. To date, their efforts have been unsuccessful. That is why the RCPF, on behalf of the residents, has carefully analyzed and commented upon both the Malibu LCPA and the Conservancy's proposed "override."

The Malibu LCPA is **far superior** to the "override" proposal offered by the Conservancy, and the RCPF generally supports the City's proposed policies. In particular, RCPF supports the City's requirement that there be no intensification of use of the Ramirez property unless and until an alternate access is provided. At the same time, we believe that the Malibu LCPA can be made more safe and more consistent with the Coastal Act and sound planning principles with the modifications proposed in this letter.

We also urge everyone involved in this process to consider the ramifications of this Local Coastal Program Amendment, which extend far beyond the boundaries of Ramirez Canyon and the City of Malibu. The Commission is facing serious policy decisions concerning fire safety in the urban-wildland interface, the appropriate uses of park and open space lands and designated ESHA, and the true meaning of "public access" where public safety is a concern. In addition, the fact that there are two LCPAs pending before the Commission for the same "plan" (i.e., one from the City and one from the Conservancy) present fundamental legal and policy questions: Who Decides? What is the appropriate role of a coastal city in setting land use policy for its own residents and property owners? Should a state agency be permitted to run roughshod over a city which has

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character, limited accessibility to the public, and specialized programs shall be permitted the administrative and support facilities necessary to maintain access programs, daily operations and maintenance of the various park and recreation programs addressed in this Chapter."

worked hard to develop balanced land use policies? We respectfully submit that the answers to all of those questions can be found in the Coastal Act. Resource protection is the primary goal. Public access cannot be mandated where it is inconsistent with that goal, or where it cannot be accomplished in a safe manner.

We have submitted an extensive amount of material for staff and the Commissioners to review and digest, and we very much appreciate the time and attention you are devoting to these issues.

Sincerely,

Steven A. Amerikaner

Diane M. Matsinger

Attachments:

A: Pages 23-25 from Malibu LCPA (permitted uses at the Ramirez Property)

B: Aerial Photo of the Lauber Property

cc: (with attachments, by Federal Express)

Jack Ainsworth, Deputy Director, South Central District Office, Coastal Commission
Pat Veesart, Coastal Commission Staff, South Central District Office (by hand-delivery)
Stacey Rice, Malibu Planning Manager
Christi Hogin, Malibu City Attorney

SB 493813 v14:011142.0001

a. Land Use Compatibility

i. Trail and park improvements shall be located and designed to provide separation between public trails and use areas and private property where feasible. Measures to provide such separation may include but not be limited to:

a) Signs which informs hikers and park visitors of parkland and private property boundaries and includes provisions to restrict trespassing on private property, and to limit activities which may result in nuisance noise, odors, or other uses that may impact the quality of life in residential areas. Such signs shall be found consistent with all other implementation measures of this Chapter and the LIP.

b) Fencing which delineates trail corridors, park boundaries, permitted parking areas, and private property, where located, designed and installed consistent with all other implementation measures of this Chapter and the LIP.

ii. Trail and park improvements, uses, and programs shall be designed and implemented to avoid intrusive traffic circulation in residential neighborhoods. Implementation of park facility improvements shall be conducted in concert with the provisions of Section 3.4.2.D.2 Public Transit of this Chapter to encourage and expand alternative transportation opportunities to public parklands.

iii. Options for a traffic monitoring system shall be evaluated and implemented for the Escondido Canyon Park trailhead parking facility that will provide counts of vehicles utilizing the parking area and transfer use data (parking lot capacity status) to a sign located at the entrance of Winding Way Road via Pacific Coast Highway to notify potential trail users of parking availability at the parking lot.

iv. The SMMC/MRCA shall provide primary trailhead and parking facility location for Escondido Canyon Park, on property located in proximity to Escondido Canyon and accessed via Latigo Canyon Road, to provide pedestrian access to Escondido Canyon Park and the surrounding trail system. In addition, two fully accessible and two trailer parking spaces shall be located conveniently in the area at a site consistent with the policies of the LCP and, to the maximum extent feasible, without disturbing the existing meadow at the top of Winding Way.

b. Specialized Programs – Ramirez Canyon Park

i. All Ramirez Canyon Park uses, including administrative uses, public outreach, events, gatherings, tours, and workshops, etc. shall be limited in size, duration and occurrence to comply with the proposed maximum of 40 trips/day on Ramirez Canyon Road.

ii. Public outreach and education activities are priority uses and shall be accommodated first within the maximum allowed 40 round trips/day for Ramirez Canyon Park uses.

iii. Events, tours, or other special functions permitted pursuant to this section shall be cancelled when any red-flag warning for extreme weather, fire and/or flooding warning is issued. Written warnings of such policy shall be provided to prospective sponsors prior to contracting for park use.

iv. Amplified music may be permitted only in the meadow and garden areas located adjacent to and in front/behind the Barn facility, but not allowed in any location on the park property after 8:00 p.m. Sunday through Thursday evenings or after 10:00 p.m. on Friday or Saturday evenings. Use of amplified sound shall require monitoring of sound levels by park rangers and notices of restrictions on amplified music shall be provided to events sponsors contracting for park use. Amplified music/sound may only be used at six events per calendar year.

v. Special events held during fire season shall retain all guest vans, shuttles, and drivers continuously on site during the event.

vi. Specialized programs permitted at Ramirez Canyon Park and associated support facilities shall consist of the following uses and restrictions:

a) Park administrative offices for the Conservancy and Mountains Recreation and Conservation Authority for up to 15 employees.

b) Ranger/maintenance supervisor residence utilized by MRCA staff charged with security, site management, and public safety duties.

c) Public improvements for the riparian area interpretive trail and picnic facilities designed specifically to provide facilities and amenities required for the safe use of the trail by physically challenged visitors in compliance with Americans with Disabilities Act (ADA) requirements, including trails, picnic facilities, drinking fountains, restrooms, and parking areas.

d) Use of the Peach House and Barn facility for small group gatherings and tours for up to 60 participants each, and to a limited extent the Art Deco facility permitted to be used to greet guests or as a component of site tours.

e) Public Outreach, Events, Gatherings, Tours, And Workshops

1. Public Outreach Programs
(a) Year-Round, Permitted 7 Days/Week
(b) Max 40 Participants
(c) 8:00 a.m. – Dusk

2. Tours And/Or Small Gatherings
   (a) Year-Round, 12 Tours or Gatherings Permitted/Month
   (b) Max 60 Participants
   (c) 8:00 a.m. – Dusk

3. Special Events
   (a) March – October, 16 Events Permitted/Year,
   (b) 1 Event Permitted/Week
   (c) Maximum 200 Participants
   (d) 8:00 a.m. - 9:00 p.m. Sunday-Thursday, and 8:00 a.m. to 10:00 p.m. Friday and Saturday, One Additional Hour is Allotted for Personnel Clean-Up and Securing the Facility.
   (e) At least one week prior to a special event involving 100 participants or more, the City Planning Manager must be notified in writing as to the type of event, event hours, number of anticipated guests and proposed transportation plan.

f) Three day-use picnic areas and up to three overnight campsites may be developed at Ramirez Canyon Park that shall be designed specifically for supervised programs accommodating disabled visitors and their families by reservation. No campfires shall be permitted at any time. The day-use picnic areas shall be located in level, previously disturbed areas so as not to adversely impact sensitive habitat, but shall be located in proximity to natural areas to provide association with natural resources to the maximum extent feasible.

vii. A Transportation and Parking Management Plan shall be developed in conjunction with the City Planning Department and City Public Works Department and maintained to manage traffic trips on Ramirez Canyon Road pursuant to Section 3.4.2.D.2.b.i. of this Chapter.

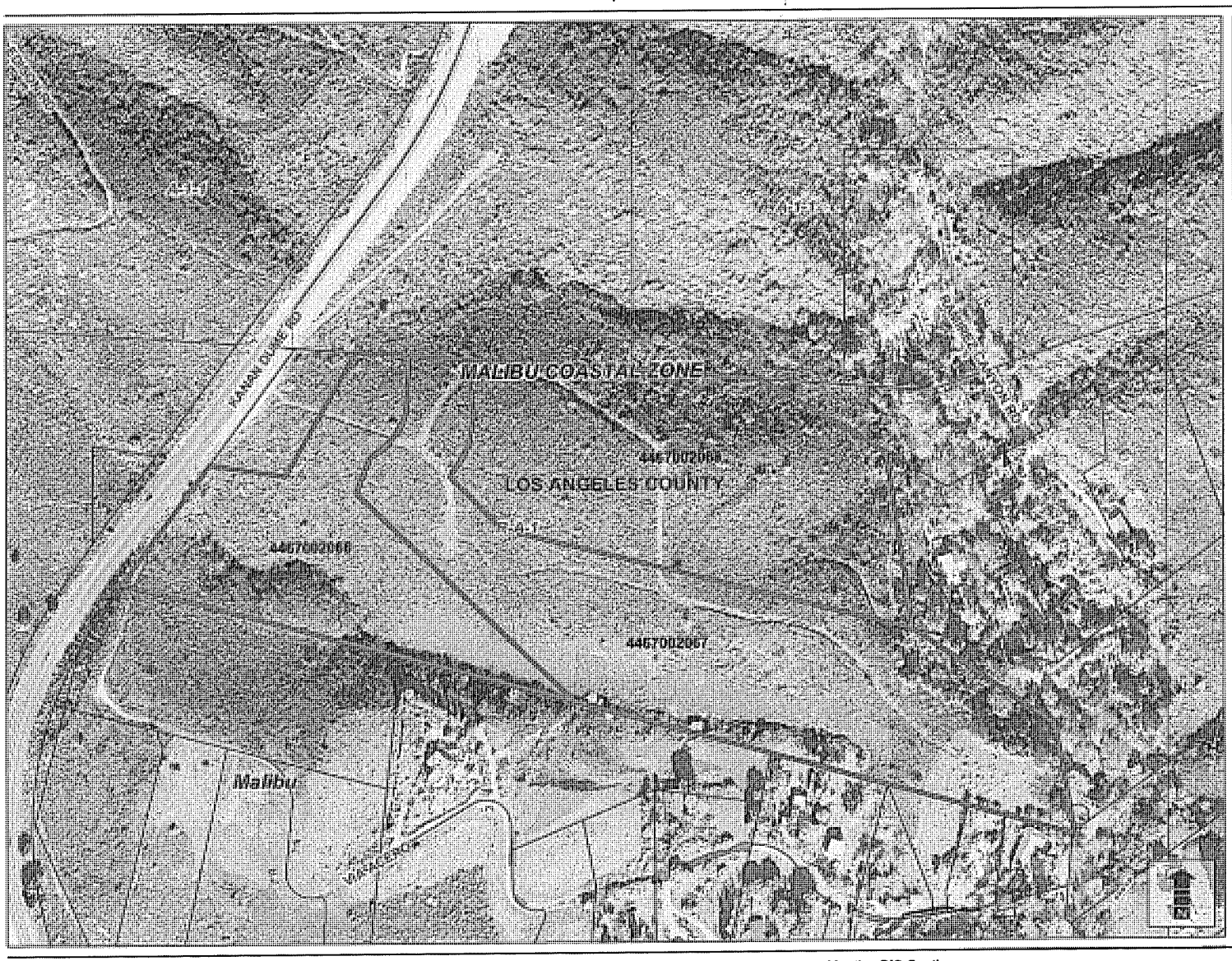
viii. An Event Monitoring Program shall be implemented and shall include submittal of annual monitoring reports to the City. The annual monitoring reports shall include a summary of the number and kind of events, tours, small gatherings, and outreach programs conducted at Ramirez Canyon Park during the annual reporting period, distinguishing revenue-generating and non-revenue generating events, activities, tours, and outreach programs, and specifying the dates, vehicle trip counts, and event sponsor or beneficiary as applicable, for each.

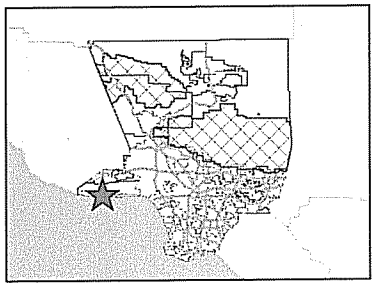
ix. An alternative access road into Ramirez Canyon shall be a precondition for uses of Ramirez Park except as follows:

   A. Administrative and government offices for up to 15 employees
   B. A residential caretaker and his family
   C. Two special programs a week for disabled persons and/or for seniors

Los Angeles County
Department *of* Regional Planning

Lauber Property





Legend

Base Layers

- LOS ANGELES COUNTY
- OTHER COUNTY
- PACIFIC OCEAN
- UNINCORPORATED AREAS
- INCORPORATED CITIES
- HYDRO - PERENNIAL
- HYDRO - INTERMITTENT
- HYDRO - DRY
- HYDRO - LINE
- FREEWAYS
- NATIONAL FOREST
- PARCEL BOUNDARY
- SUPERVISORIAL DISTRICT
- TRANSIT - RAILROAD
- TRANSIT - RAPID TRANSIT
- TRANSIT - UNDERGROUND
- SUBDIVISION ACTIVITY - APPROVED
- SUBDIVISION ACTIVITY - INACTIVE
- SUBDIVISION ACTIVITY - PENDING
- SUBDIVISION ACTIVITY - RECORDED
- RNB (ASSESSOR MAP BOOK) GRID
- ESH (SIGNIFICANT ECOLOGICAL AREA)
- CSD (COM. STANDARDS DISTRICT)
- USD - AREA SPECIFIC
- VERY HIGH FIRE HAZARD SEVERITY
- TOD (TRANSIT ORIENTED DISTRICT)
- EQD (EQUESTRIAN DISTRICT)
- THE THOMAS GUIDE - PAGE
- THE THOMAS GUIDE - PAGE GRID
- ZD (ZONED DISTRICT)
- ZONING INDEX MAP GRID
- ZONING MAP GRID
- TOWNSHIP & RANGE GRID
- USGS QUAD SHEET GRID

Zoning

- ZONE A-1
- ZONE A-2
- ZONE B-1
- ZONE B-2
- ZONE C-1
- ZONE C-2
- ZONE C-3
- ZONE C-H
- ZONE C-M
- ZONE CPD
- ZONE C-R
- ZONE D-2
- ZONE I1
- ZONE M-1
- ZONE M-1.5
- ZONE M-2
- ZONE M-3
- ZONE MPD
- ZONE MXD
- ZONE O-S
- ZONE P-R
- ZONE R-1
- ZONE R-2
- ZONE R-3-CU
- ZONE R-A-CU
- ZONE R-H
- ZONE RPD
- ZONE R-R
- ZONE SP
- ZONE SR-D
- ZONE W

LOS ANGELES - REGION
LAR|eIC
Imagery acquisition consortium

LEGEND MAY NOT CONTAIN ALL LAYERS REPRESENTED IN THE MAP.

Scale: 1:3,707
Printed On: Nov 26, 2008
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November 24, 2008

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BY OVERNIGHT MAIL

Hope Schmeltzer, Chief Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: LCP Override Application by Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority (LCP Amendment 1-08)

Dear Ms. Schmeltzer:

Brownstein Hyatt Farber Schreck and Diane M. Matsinger, Esq. represent the Ramirez Canyon Preservation Fund, a group of citizens who have been dealing with the unlawful use by the Santa Monica Mountains Conservancy of property in Ramirez Canyon since 1993. Our clients are concerned about the Conservancy's pending application to the Commission, which we understand will be heard in January or February of 2009. In this letter, we discuss the following six legal defects in the Conservancy's request for a LCP "Override." (Pub. Res. Code, § 30515.)[1]

First, section 30515 is an exception to the rule that only local governments may submit LCP amendments to the Commission. The Conservancy has taken the position that it is authorized to submit broad amendments to the Malibu LCP (i.e., unaccompanied by an application for a specific public work) simply because the Conservancy is a "person authorized to undertake" public works.[2] There is no authority for that broad interpretation of Section 30515, which would place hundreds of agencies throughout the state on equal footing with local governments and authorize each of those agencies to submit wholesale LCP amendments to the Commission for certification.

Second, the Conservancy's enabling act and the legislative history of those statutes (§§ 33000, *et seq.*) conclusively demonstrate that the Conservancy is not a "person authorized to undertake" public works (§ 30515). The Mountains Recreation and Conservation Authority ("MRCA," the Conservancy's co-applicant) does not have that power either. MRCA is a joint powers authority created and staffed by the Conservancy - which is also a member. Joint powers authorities are authorized to exercise only those powers common to all the constituent members. (Gov't. Code § 6502.)

Third, the provisions of the Coastal Act which govern public works and overrides, and the regulations and legislative history of those provisions, conclusively establish that the override procedure is limited

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[1] All statutory references herein are to this Code unless otherwise indicated. This letter is limited to legal issues with respect to the use of the override process. Site specific legal and factual issues will be addressed to staff and the Commissioners in later submissions.

[2] See the Conservancy's Letter to the Commission, dated July 14, 2008. For counsel's convenience, a copy is included on the CD submitted with this letter.

to those situations where an application for a *specific* public work requires an amendment to a LCP. These materials also demonstrate that, in the absence of such an application, it is not possible for the Commission to either (a) determine the precise scope and manner in which it might be necessary for the Commission to override the decision of a local government, or (b) permit the Commission to make the fact-specific findings necessary for the application of the override procedure.

Fourth, the Conservancy's proposed override is overbroad as a matter of law, because it would amend the Malibu LCP to allow the development of projects as "public works" which do not qualify as public works (e.g., regional administrative offices and commercial use of the Ramirez property).

Fifth, the override procedures may not be invoked for a LCP amendment which is proposed to meet needs which were "anticipated" at the time the LCP was before the Commission for certification. (§ 30515.) Numerous public documents, including the Conservancy's comments on the Malibu LCP during the Commission's certification process, establish that the Conservancy has anticipated the development proposed by its present submission for many years.

Sixth, notwithstanding the Conservancy's attempt to exploit the strong public access policies of the Coastal Act, the Conservancy's proposed LCP override does not involve the public right of access to the sea. The submission involves upland/inland properties, to which the "Public Access" provisions of the Coastal Act do not apply. Therefore, a narrow construction of the exception set forth in section 30515 requires that the override procedures not be utilized to supplant local regulatory authority over the use of upland/inland properties.

The manner in which the Conservancy has drafted its LCP "Override" strongly suggests that the Conservancy has invoked the procedure as part of its longtime – and as yet unsuccessful – campaign to avoid land use regulation by Malibu. It also appears that the Conservancy is attempting to gain "entitlements" without disclosing the site-specific detail required as part of any regulatory process. The authorities set forth in this letter establish that the Conservancy is not entitled to have the Commission pave the way for the Conservancy's future development proposals by amending the Malibu LCP in advance of those proposals.

Therefore, for all the reasons set forth in this letter, we respectfully request that Commission counsel advise policy staff and the Commissioners that the Conservancy's request for a LCP "override" should be rejected on legal grounds.

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I

The Certification and Amendment of Local Coastal Plans is the Sole Province of the Commission and Local Governments – With Only One Very Narrow Exception.

The Coastal Act provides for the submission of LCPs and LCP amendments by local governments to the Commission for review and certification. (§§ 30510, 30514.) "'Local government' means any chartered or general law city, chartered or general law county, or any city and county. (§ 30109.)

The statutory scheme ensures that local land use policy and regulation is the sole province of local governments after a LCP is certified. (§ 30519.) The Commission's review of LCPs and LCP amendments is limited to the criteria set forth in Section 30512.2. As long as those criteria are met, the Commission may make suggestions to local government. (§ 30513.) However, the Commission cannot supplant the decision of local government.[3]

Section 30515 is the only exception to this rule. The statute allows the Commission to override the decision of a local government with respect to a LCP amendment if certain threshold criteria are met and if the Commission can make a series of specific findings. As an exception, Section 30515 must be strictly construed. (*John Doe v. City of Los Angeles* (2006) 137 Cal.App.4th 438, 446, citing *Hayter Trucking, Inc. v. Shell Western E & P, Inc.* (1993) 18 Cal.App.4th 1, 20; *Major v. Silna* (2005) 134 Cal.App.4th 1485, 1494.)

As explained in section III, *infra*, the legislative history of the regulations which implement Section 30515 demonstrates that the override procedure may be utilized only where it is necessary for the Commission to supplant the decision of a local agency with respect to an application for a *specific public work or energy facility*. The Conservancy has acknowledged that its present submission is not an application for a public works plan or public works project (see fn. 2, *supra*). Yet, the Conservancy claims that it is entitled to submit a proposed LCP amendment which includes wholesale revisions to the Malibu LCP simply because it is a person "authorized to undertake" public works.

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[3] Section 30512.2, which applies to LCPs and LCP amendments (§ 30514), provides: "The following provisions shall apply to the commission's decision to certify or refuse certification of a land use plan pursuant to Section 30512: (a) The commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). *In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.* (b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5." (Emphasis added.)

Under the Conservancy's broad interpretation of Section 30515, every state agency with the authority to undertake public works would stand on equal footing with every local government. Every agency would be entitled to ask the Commission – up to three times each year – to override the general planning authority of local governments under the Coastal Act. There is no authority for the Conservancy's position, and its broad interpretation of Section 30515 must be rejected.

II

The Conservancy is Not a "Person Authorized to Undertake a Public Works Project."

Even if the Conservancy's broad construction of Section 30515 were adopted, the Conservancy would still not be authorized to submit **this** LCP amendment because the Conservancy is not authorized to undertake public works - not even for public recreation facilities. (§ 30114.) Because the Conservancy has no such power, MRCA has no such power either. MRCA is a joint powers authority which has only the powers common to all its members. (Gov't. Code § 6502.)

The legislative history of the Conservancy's enabling act (§ 33000, *et seq.*) demonstrates that the Conservancy was created to implement the Legislature's statutory goals for the *protection and preservation* of the economic, environmental, agricultural, scientific, educational and recreational resources within the Santa Monica Mountains Zone for present and future generations. (*Id.*, § 33001.) The Conservancy was legislatively designed to work as a "complimentary" agency to the National Park Service and to local governments whose jurisdictions include portions of the Santa Monica Mountains Zone. (*Id.*, §§ 33004-33009 (emphasis added), 33200, 33204, subd. (f), 33213.)

The Legislature did not intend that the Conservancy to acquire, develop and operate recreational facilities for its own account:

> "AB 1512 creates the [the Conservancy]. Like the Coastal Conservancy, *this body is expected to carry out its assigned duties primarily by acquiring parcels of land and re-selling or otherwise conveying them to private individuals with appropriate restrictions on future use.*
>
> . . .
>
> Although the Conservancy is authorized to acquire sites 'necessary for parks, recreation or resource preservation,' it is 'prohibited from holding that land for more than 10 years.'"

(Stats 1979, Ch. 1087 (AB 1512), Assembly Committee on Resources, Land Use, and Energy, Bill Analysis (emphasis added).)

While the Conservancy's enabling act was pending, Joseph Edmiston (as then-head of the Santa Monica Mountains Comprehensive Planning Commission) presented the Legislature with "A Santa Monica Mountains Conservancy Program." He explained how the program would allow for "Pre-Acquisition of Critical Parcels," and confirmed that the Conservancy's power would be limited to the acquisition of sites for which "no other agency is available as the immediate and final depository." Mr. Edmiston did not mention the Conservancy's development of property – because "development" is not authorized by the Conservancy's enabling act.

Related statutory provisions confirm that the Conservancy is not empowered to "develop" or "operate" recreation facilities. When the Legislature intends that an agency have such powers, the Legislature includes an express grant of those powers in the agency's enabling act. (See, e.g., § 5786, subd. (c) (recreation and parks districts are empowered to "[a]cquire, construct, improve, maintain, and operate recreation facilities"); Gov't. Code, § 61100, subd. (e) (community services districts are empowered to "[a]cquire, construct, improve, maintain, and operate recreation facilities"); Wat. Code, § 55337 (county waterworks districts are empowered to "maintain, improve, and operate recreational facilities in connection with any dams, reservoirs, or other works owned or controlled by the district").)[4]

The Legislature did not include the power to develop and operate recreational facilities in the Conservancy's enabling act. (§ 33000, *et seq.*.) Therefore, <u>when the Conservancy wants to develop recreation facilities, the Conservancy must seek specific authorization from the Legislature</u>. One recent example is the Legislature's authorization for the Conservancy's "trail development plan and

[4] There are also financial reasons for the requirement that the Conservancy obtain legislative approval when the Conservancy seeks to operate outside its statutory powers. With respect to recreational facilities, the Legislature included only two spending provisions for the Conservancy, each of which constitutes a limitation on the use of funds. Section 33204, subdivision c, authorizes <u>*grants to other agencies*</u> "for the purpose of "<u>*acquiring sites identified as necessary for park, recreation, or conservation purposes and for development of essential related public facilities*</u>." (Emphasis added.) Section 33204, subdivision (d) authorizes advance acquisition of sites "identified as necessary for park, recreation, or conservation purposes, when a state or local agency is unable, due to limited financial resources or other circumstances of a temporary nature, to acquire the site." However, Section 33205 provides that "the conservancy shall not hold lands acquired in accordance with subdivision (d) of Section 33204 more than 10 years from the time of acquisition. A city, county, recreation and park district, the National Park Service, or a state agency may acquire the land any time during that period for park, recreation, or resource preservation purposes. . . . If, at the expiration of the 10-year period, no agency is willing or able to acquire the lands, the conservancy shall request the Real Estate Services Division of the Department of General Services to dispose of the lands at fair market value subject to restrictions that are consistent with this division."

recreational access program for the Rim of the Valley Trail Corridor." (§ 33204.3.) The text of section 33204.3 is set forth in the footnote.[5] Please note that the content of the Conservancy's present submission reads much like the legislative authorization for the Conservancy's development of the Rim of the Valley Trail Corridor – with two critical exceptions. First, the Conservancy did not seek Legislative authorization. Second, when the Legislature authorizes the Conservancy to act beyond its traditional statutory powers, the Legislature requires the Conservancy to obtain the "voluntary cooperation of governmental jurisdictions" within the affected area to prepare a "coordinated trail development plan and recreational access program." (§ 33204.3.) The Conservancy did not seek

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[5] "**§ 33204.3. Coordinated trail development plan and recreational access program for Rim of the Valley Trail Corridor; boundary changes; public hearing; inclusion in local government plan.** (a) The Legislature finds and declares all of the following: (1) The existing parks and open space owned by federal, state, and local agencies within the Rim of the Valley Trail Corridor, as defined in Section 33105.5, are important recreational and environmental resources for the people of California, especially residents of the San Fernando, La Cresenta, and San Gabriel Valleys, and *it is in the public interest to facilitate the connection of existing parks and open-space resources and to provide for further improvement of underutilized public easements and other existing public open spaces*. (2) There is a *need for overall trail and recreational access planning and coordination* between the 11 local agencies, two joint powers park agencies, two state agencies, and three federal agencies with jurisdiction over lands in the Rim of the Valley Trail Corridor. (b) The conservancy, *using the voluntary cooperation of governmental jurisdictions within the corridor, shall prepare and adopt a coordinated trail development plan and recreational access program* for the Rim of the Valley Trail Corridor that includes, but is not necessarily limited to, all of the following: (1) *Identification of major hiking and equestrian trails and important secondary and feeder trails that cross jurisdictional lines*, and a priority program for improving those trails. (2) Identification of special purpose trails, where appropriate, for special population groups and special user groups, such as mountain bicycles where the special purpose trails will have no significant environmental impact. (3) Identification of, and a priority program for implementing, those additional recreation access needs, including *new or expanded trails* that should be added to the Rim of the Valley Trail Corridor, and *additional or upgraded facilities, parks, or open spaces that may be necessary*. (4) *Identification of underused existing public open spaces and recommendations for providing better public use and enjoyment of these areas*. (c) Notwithstanding Section 33105.5, the conservancy may make minor boundary changes to the Rim of the Valley Trail Corridor solely for the purpose of implementing the plan prepared pursuant to this section. Any boundary change shall be in the form of maps and descriptions which shall be included in the plan submitted pursuant to subdivision (d) and shall be filed with the Secretary of State not later than July 31, 1990. (d) The conservancy shall hold at least one public hearing in each city and the unincorporated area of each county within the Rim of the Valley Trail Corridor prior to the submission of the plan and program pursuant to this subdivision. The plan and program prepared under subdivision (b), and any changes to the corridor boundary, shall be coordinated with each affected jurisdiction prior to adoption by the conservancy. The plan and program shall be submitted to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Wildlife at least 30 days prior to the approval of any acquisition or improvement under the plan or program pursuant to this division, but not later than June 30, 1990. (e) Upon adoption by a local government of the plan and program prepared under this section, the plan and program shall be part of the plan that the local government implements for purposes of compliance with Section 33009." (Emphasis added.)

legislative approval for its present plan, likely because the Conservancy is attempting to avoid not only *coordination* with the City of Malibu, but *regulation* by the City of Malibu.

Accordingly, for all these reasons, even if Section 30515 could be construed in the broad manner which the Conservancy suggests, the Conservancy would not be entitled to invoke the statute.

III

The Legislative History of the Coastal Act's Public Works and Override Provisions Demonstrates that the Provisions Are Limited to Those Situations Where an Application for a Specific Public Work Requires a Specific Amendment to a LCP and the Local Government Does Not Agree to the Amendment.

The Conservancy has filed a multitude of documents with its submission to the Commission. For the purpose of this letter, the most pertinent is the Conservancy's "City of Malibu Local Coastal Program Amendment, Malibu Parks Public Access Enhancement Plan Overlay District, Land Use Plan & Local Implementation Plan Text Amendments, April 14, 2008." The text of this document is referenced below as either "SMMC/LUP" or "SMMC/LIP," followed by the section and page number.

The Conservancy states that it is preparing a Public Works Plan (PWP) which it is apparently intending to submit to the Commission.[6] However, in advance of that PWP application, the Conservancy is asking the Commission to override the Malibu LCP to pave the way, i.e., to amend the Malibu LCP to authorize the development of the anticipated PWP as "public works projects." (SMMC/LUP, § 5.66 (p. 1).) The Conservancy's attempt to use the override procedure to that end is not only outside the scope of the statutes and regulations, it is also premature. The provisions of the Coastal Act with respect to public works and overrides, and the legislative history of the implementing regulations for overrides, establish that the override procedure is only available *for an applicant who has proposed a specific public work that requires an LCP amendment*.

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[6] Materials concerning the Conservancy's Plan are posted on MRCA's web page, with the following statement: "The Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority have submitted to the California Coastal Commission a proposed amendment to the City of Malibu Local Coastal Program to incorporate a Malibu Parks Public Access Enhancement Plan Overlay. The Malibu Parks Public Access Enhancement Plan/*Public Works Plan* and *California Environmental Quality Act* document *are being prepared*." www.mrca.ca.gov/pwp.html. (Emphasis added).

A. The Context in Which the Narrow "Override" Procedure Exists and the General Requirement for Consistency Between Public Works and the Applicable LCP.

Any analysis of the purpose and intent of the Coastal Act's override procedures for "public works projects" (§ 30515) must begin with a review of the provisions of the Act which govern public works. The Commission's original jurisdiction over public works plans (§ 30321) is an exception to the general Coastal Act rule that delegates all land use regulatory power to local government once a LCP is certified (§ 30519). There are procedural and substantive aspects to PWPs – all designed by the Legislature to ensure consistency between public works and the applicable LCP and to respect and preserve local regulatory control.

From a procedural standpoint, a PWP functions as an "as an alternative to project-by-project review." (§ 30605.) Once a PWP is certified, the agency developing the PWP may pursue individual public works projects without obtaining coastal development permits. (§ 30605, see, also, 14 Cal. Code Regs., § 13353.) However, as to the substance of the plans and projects, there are two important limitations. A PWP must be consistent with the applicable LCP (§ 30605) and all projects developed under a PWP must be consistent with the PWP (§§ 30605 and 30606; see, also, 14 Cal. Code Regs., §§ 13358, 13359). That is how the Legislature mandated LCP consistency and thus preserved local land use regulatory authority.

The Commission does not have jurisdiction to process a PWP which is not consistent with the applicable LCP. (§ 30605.) Title 14, California Code of Regulations, section 13557, allows the Commission to process a PWP where it "*does not require an amendment to the local coastal program pursuant to [section] 30515*." That statement acknowledges the need for another procedure where a PWP is not consistent with the LCP. That procedure is the LCP "override." (§ 30515.)[7]

B. Override Statutes and Regulations – the Narrow Exception for Specific Public Works That Are Not Consistent with the Applicable LCP.

The title of Section 30515 reads: "Amendment for public works *project* or energy facility development." (Emphasis added.) However, the text of Section 30515 refers to the "*amendment*" and not the

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[7] There is also an ambiguity in the statutory scheme concerning whether the override procedure can be used for an entire public works plan, or whether it is limited to a specific public works project. That distinction is not at issue at this stage of the proceedings. However, we reserve the right to raise the objection in future proceedings.

"project."[8] The shift in terminology creates an ambiguity as to the meaning of the provision. Therefore, it is both necessary and appropriate to utilize extrinsic aids to determine the Legislature's intent. (*Bodega Bay Concerned Citizens v. County of Sonoma* (2005) 125 Cal.App.4th 1061, 1069.)

Section 30515 was adopted as part of the Coastal Act in 1976. There is no discussion of the statute in the legislative history of the Act. However, the express terms of the regulations which implement Section 30515, and the legislative history of those regulations, conclusively demonstrate that the only proper subject for an override is an application for a specific *project, facility* or *development.*

1. **Title 14, California Code of Regulations, Section 13666, *et seq.*:** The express terms of the regulations which implement Section 30515 demonstrate that the regulations do not allow wholesale revisions to an LCP (i.e., in the absence of an application for a specific development proposal). For example, Section 13666 authorizes the use of the override procedures for LCP amendments "provided that *the development* meets the following two requirements . . . *All other developments* requiring an amendment to the certified LCP shall follow the LCP amendment procedures of the affected local government and the Commission." (Emphasis added.) Similarly, Section 13666.2, subdivision (a), describes the application for an override as an application for a specific development: "If the Executive Director has preliminarily determined that the *development* is subject to this subchapter . . .." (Emphasis added.)

Most importantly, section 13666.4 specifically refers to the "development" when it sets forth the findings the Commission must make in order to approve an override:

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[8] Section 30515 provides: "Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.

"If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment if it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division."

(a) If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic, and environmental effects, supports the following conclusions:

(1) *development* meets a public need of a geographic area greater than that included within the certified LCP.

(2) *development* conforms with and is adequate to carry out the policies of Public Resources Code Section 30200 *et seq.*

(3) if significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the *development* will have no significant adverse environmental impact, findings shall be included which support that conclusion.

(4) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public Resources Code Section 30000 *et seq.*) and the California Coastal Management Program, if applicable.

(b) If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4." (Emphasis added.)

2. **The Legislative History of Title 14, California Code of Regulations, Section 13666, *et seq.*** The legislative history of the regulations is included on the CD submitted with this letter. References herein to "LIS" or "RMF" are to specific portions of that document. The legislative history compels the conclusion that the override procedures apply only to applications for specific public work.

a. **The Context in Which the Regulations Were Adopted**. LIS 6 explains that Subchapter 10 of the Regulations was adopted in 1978 (14 Cal. Code Regs., § 13660, *et seq.*). That subchapter sets forth the Commission Procedures for Consistency Determinations for OCS Exploration, Development or Production Plans. The 1982 Regulations amended Subchapter 10 and added Subchapter 11 (14 Cal. Code Regs., § 13666, *et seq.*) to implement Section 30515. Section 13666, *et seq*. were adopted essentially as introduced.

b. **The Commission's Characterization of Regulations**: Throughout the legislative history, the override regulations are discussed in terms of applications for specific public works or energy facility developments. See, e.g., LIS 5: "Section 30515 allows *applicants of public works* or energy facility development to petition the Commission for [LCP] amendments, subject to certain threshold requirements. For *all other types of developments*, local governments must first approve such developments . . .." (Emphasis added.) See, also, Register 82, No. 51-Z, 12-22-82 ("applicants of public works . . .."). And, see, 4/14/82 Memorandum to Commissioners from Energy Counsel and Chief Counsel: "New regulations implement Section 30515 of the Coastal Act which allows *applicants of public works* and energy facility developments to petition the Commission for LCP amendments. . .." (Emphasis added.)

c. **Informative Summary and Statement of Reasons.** For ease of reference, copies of these specific portions of the legislative history are attached as Exhibits A and B, respectively. These documents confirm that the override procedures were intended for applications for specific public works or energy facilities:

> "Section 30515 allows *applicants of public works or energy facility developments* to petition the Commission for [LCP] amendments, subject to certain threshold requirements. For all other types of developments, local governments must first approve such developments . . .."
>
> (Informative Summary, p. 1 (Exh. A to this letter), emphasis added.)
>
> "Section 30515 provides special procedures allowing *applicants* to petition the Commission for Local Coastal Program amendments. *The section only applies to public works facilities and energy facilities. For all other types of facilities, local government submits [LCP] amendments to the Commission.* The section is also extremely

> important as an implementation mechanism for the Commission's national interest responsibilities pursuant to the [CZMA], 16 USC Section 1451 *et seq.* and the approved California Coastal Management Program (CCMP).
>
> . . .
>
> "Section 13666.1 Information Requirements for Preliminary Determination. This section describes the type of information that may be submitted to the Executive Director to *determine if the proposed development is subject to this chapter*. . . .."
>
> (Statement of Reasons (Exh. B to this Letter), emphasis added.)

d. Hearing Transcripts. If these regulations were intended to give the Commission the broad power which the Conservancy suggests, that subject surely would have arisen during the Commission hearings. However, the hearing transcripts (RMF 49-56) demonstrate that the discussion focused on applications for specific public works and energy developments. Nothing in these transcripts suggests that the Committee intended the override procedures to be utilized in the absence of a specific development proposal.

e. Comments on Amendments. For one technical amendment to the wording of Section 13666.4, the Commission noted: " . . . The Commission anticipates that applicants will request plan and zoning changes in the same application. Applicants also will likely request permit approval." (RMF 115, emphasis added.) That "anticipation" recognizes the time at which, as a practical matter, the override procedure might be utilized. First, because the override is an exception to the rule that each local government determines the content of its LCP, the scope of any override must be limited to that which is absolutely necessary. Without an application for development, it is impossible to determine whether an override is required and, even if it is required, to determine the proper scope and extent of the override. Second, the Commission must make fact-specific findings in order to utilize the override procedure. For example, the Commission must find that the development meets a public need of a geographic area greater than that included within the area of the certified LCP, and that there is no feasible less environmentally damaging way to meet that need. (§ 13666.4, subd. (a).) It is not possible for the Commission to make these findings in a vacuum, i.e., without the specific information included in an application for a public work or energy facility.

The following analysis of the Conservancy's submission demonstrates why the Conservancy cannot invoke the override procedures without submitting an application for a specific public work.

C. The Conservancy's Submission

The Conservancy is **not** asking the Commission to override Malibu's decision on an application for a specific public work that might be inconsistent with certain provisions of the Malibu LCP. Instead, the Conservancy's broad and far-ranging submission appears designed to create a "shadow LCP" for the *Conservancy* – with policies that are less protective of coastal resources than the policies of the Malibu LCP.

The content of the Conservancy's submission also exceeds both the statutory and regulatory scheme for overrides. The Conservancy's submission (a) purports to regulate the use of private property, (b) re-writes general LCP policies to reduce the protection for ESHA and change the nature of the Open Space zone, (c) is drafted to read like the equivalent of permit entitlements for certain development and use, with none of the site-specific detail required to obtain entitlements, and (d) deletes all of the City's requirements for CUPs, CDPs, or review by various City Departments. Examples of these aspects of the Conservancy's submission include, but are not limited to, the following:

1. The Conservancy's Submission Seeks to Regulate the Use of Private Property. The Conservancy's submission includes at least four provisions which would regulate the use of private property within the City.

> SMMC/LIP, § 4.11, B, 1 (p. 21) states:
>
> No person shall, *outside of any park facility* mentioned herein, *on any public or private property*, permit or allow, or cause to be permitted or allowed, any open flame, fire, or other incendiary source, of any nature whatsoever, within twenty (20) feet of any flammable vegetation. *This provision shall prohibit backyard fires, barbeques, or any other flame source whatsoever.* Propane BBQs when accompanied with approved fire extinguishers shall be exempt from this policy. (Emphasis added.)

SMMC/LIP §§ 4.3, B, 1 (p. 7) and 4.12, B, 1 and 2 (p. 24) purport to allow the public use of Ramirez Canyon Road – a private roadway – and § 4.12, B, 10 (p. 26) attempts to significantly expand that use.[9]

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[9] The only access to the Conservancy's Ramirez Canyon property is Ramirez Canyon Road, a private roadway. Section 10 of the Conservancy's proposal states: "Nothing herein, including trip limitations, shall operate to limit or restrict access to Ramirez Canyon Park as sovereign property of the

SMMC/LIP § 4.3, B, 1 (p. 7), which addresses *off-site parking* for the proposed intensive use of the Ramirez Property, provides: "parking agreements and use of the parking resources secured by such agreements shall be considered permitted uses and shall not be denied or obstructed by the City."

We respectfully submit that, with or without a procedure for a LCP "override," the Conservancy is not entitled to ask the Commission to override Malibu's land use regulatory authority over property which is neither owned by or under the control of the Conservancy.

2. The Conservancy's Submission Seeks to Re-Write Extensive Portions of the Malibu LCP for Conservancy Properties. As explained above, the override procedure does not allow an agency to re-write the general provisions of an LCP to its liking. The override procedure allows an agency to seek specific LCP amendments which are required to accommodate an application for a specific public work or energy facility, provided the threshold criteria are met and the requisite findings can be made by the Commission. The Conservancy's revision of the ESHA policies of the Malibu LCP provides the best example of why the Conservancy's submission does not qualify for the procedure.

a. Expansion of Permitted Use in ESHA. Each of the properties included in the Conservancy's submission are designated ESHA by the Malibu LCP. The Malibu LIP limits use in ESHA to public accessways and trails, interpretative signage, restoration projects, and invasive plant eradication projects. (Malibu LIP, § 4.5.3.) Those use restrictions are consistent with Section 30240 of the Coastal Act, which provides: "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas."

The Conservancy's submission would essentially exempt the Conservancy from all of Malibu's use restrictions in ESHA - with the following language:

State of California at any time and by any means whatsoever, by any of the following: The governor or any civil executive officer as provided in Government Code § 1001; any member of the California National Guard or the State Militia; any firefighter of any public agency; any peace officer, any emergency medical technician or paramedic whether employed by a public agency or not, any member of the Legislature or staffs thereof, any member of the Bureau of State Audits, the Secretary for Resources or any employee thereof, any member of the California Coastal Commission or staff thereof, any person appointed pursuant to Public Resources Code Section 33200 or 33213, or person appointed pursuant to Section 5.0 of the Joint Powers Agreement between the Conejo Recreation and Parks District, the Rancho Simi Recreation and Parks District, and the Santa Monica Mountains Conservancy." (SMMC/LIP, § 4.12, B, 10.)

> "Trails, camp facilities, park uses as described in this Chapter [i.e., the regional office, event and commercial leasing of the Ramirez property], and necessary support facilities shall be considered principal permitted uses for those parkland areas subject to . . . ." the proposed override. (SMMC/LIP, § 4.7, A, 1 (p. 12).)[10]

The breadth of the Conservancy's proposal graphically demonstrates why it does not qualify for an override. The Conservancy would expand the use of ESHA to trails, camp facilities, regional office, event and commercial leasing of the Ramirez property, and broadly defined "support facilities." (See sec. c, *infra*). Yet, without the site specific proposals for those expanded uses, the Commission does not have the information required to make the findings required by 14 California Code of Regulations, § 13666.2, subd. (a)(2) (i.e., that the "development conforms with and is adequate to carry out the policies of . . . Section 30200, *et seq.*" or the findings required by Section 13666.2, subdivision (a)(4) (i.e., that "reasonable alternatives have been examined" and "there is no feasible less environmentally damaging way to meet the public need").

b. ESHA/Streambed Modifications. The Conservancy's submission also seeks to re-write the rules which would apply to future streambed modifications on the three Conservancy properties at issue. The Malibu LIP limits use in stream ESHA to necessary water supply projects, flood protection where no other measures is feasible, and restoration projects to improve fish and wildlife habitat. (Malibu LIP, § 4.5.3.) Yet, without proposing any specific stream crossing (i.e., so that the environmental impacts could be evaluated and the Commission could make the findings required by Section 13666.4), the Conservancy has included a broad proposal which allows stream crossings for vehicular and pedestrian use. (SMMC/LIP, § 4.7, B (pp. 14-15).)

In addition, the Conservancy's proposal removes the City's requirement that streambed modification proposals "are subject to a [CDP] and all other relevant permits from appropriate agencies." (See Chart on enclosed CD (p. 31), Pending Malibu LCP Amendment, sec. D, 6, b (i).) That proposal by the Conservancy would violate Section 30522: "Nothing in this chapter shall permit the commission to certify a local coastal program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency that are formally adopted by such agency, are used in the regulatory program of such agency, and are legally enforceable."

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[10] Section 4.7, quoted in subsection (a) above, would also expand the permitted use of the Conservancy's Ramirez property, which is zoned Open Space. The more significant problem with the Conservancy's submission with respect to Ramirez, however, is the Conservancy's request that the Commission insert into the Malibu LCP language which is drafted to read like an "entitlement" for the Conservancy's specific development at Ramirez. That issue is discussed in section III, C, 4, *infra*.

Moreover, the Conservancy proposes that the Malibu LCP be revised to modify the required stream ESHA buffer required for a very broad category of "support facilities" on Conservancy properties. (SMMC/LIP, § 4.5, para. 3 (p. 10) (see sec. c, *infra*).) The Malibu LIP requires a 100 foot buffer from the top of banks of streams and/or the outer edge of riparian vegetation, whichever is the most protective of the resource. (Malibu LIP, § 4.6.1(A).) The Conservancy's proposal would allow a reduction of the required setback to "25 feet from the top of the banks of all streams." (SMMC/LIP, § 4.5, para. 3.)

Finally, the Conservancy's submission is drafted to allow the Conservancy to continue to ignore the long-standing requirement by the Department of Fish & Game and by the Commission that the Conservancy apply for a CDP for the unlawful streambed modifications to Ramirez Creek which occurred prior to the Conservancy's acquisition of the property. (See § 4.7, B, 1 and 2.) [11]

c. "Support Facilities." The Conservancy would further exempt itself from the limitations on the use of ESHA set forth in the Coastal Act and the Malibu LCP, and from the limitations on the use of Open Space set forth in the Malibu LIP, by the following, extremely broad definition of the term "support facilities":

> "Existing and proposed support facilities are defined as those facilities *deemed necessary to support the primary permitted land use*, public access and recreation, research and education, and nature observation. The type of support facilities addressed at each park facility shall be based on the level and complexity of public uses and specialized programs offered at each park areas . . .." (SMMC/LIP, § 4.12 (p. 12), emphasis added.)

As noted above, the "primary permitted land uses" would be significantly expanded under the Conservancy's proposal. In addition, because the Conservancy has deleted all of the City's requirements for CUPs, CDPs, or review by various City Departments (see sec. III, C, 4, *infra*), the

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[11] Ramirez Creek is a blue-line stream that passes through the large ESHA area on the Ramirez Property. Prior owners altered the channel and made unpermitted improvements to the bed and banks. When the Conservancy acquired the Property in 1993, Fish & Game and the Commission advised the Conservancy that a CDP for the streamed alteration was required because of the significant adverse impacts to the ESHA and the substantial amount of non-native vegetation. In 1995, the Conservancy filed an application with the Commission, but quickly withdrew it, promising to file another after additional environmental analysis. That never happened. In 1998, when the question arose during the Commission proceedings on the 2000 CDP, the Conservancy promised to submit a separate, application for the streambed alteration. That separate application was submitted, but was woefully incomplete, and the Conservancy failed to respond to the Commission's request for additional information. As a result, no CDP for the streambed alteration has ever been issued.

Conservancy may argue that it alone makes all decisions about what support facilities are "deemed necessary."

3. **The Conservancy's Submission Includes Language that Reads Like Land Use Entitlements. Yet, the Conservancy Has Not Provided the Site-Specific Detail Required to Analyze and Determine the Propriety of Any Entitlements**. According to the Conservancy, "although very detailed and site-specific," the Conservancy's LCP Amendment simply "lays the policy foundation" for future approvals for Conservancy properties. (See fn. 2, *supra.*) The Conservancy's characterization of the submission is not consistent with certain language of the proposed amendment which suggests that the Conservancy is actually seeking land use entitlements, without providing any of the *site-specific detail and analysis required in the permit/entitlement process.* Two specific examples of this language appear in the Conservancy's proposals for camping and for the intensive use of the Ramirez Property:

a. **Camping**. SMMC/LIP, § 4.2, A, 1 (p. 4), provides that the camp facilities which the Conservancy proposes for Ramirez, Escondido, and Corral Canyons "*shall be provided*." (See, also, SMMC/LIP, § 4.4, B, 1 (p. 9), which states that the Conservancy "*shall implement* park improvements to provide for" camping.) SMMC/LIP, section 4.2, A, 2 (p. 5), provides that those campsites "*shall consist* of designated" camp areas (which are generally described in the "Concept Site Plans" for each property).

In addition, the Conservancy's proposal ignores the Malibu LUP requirement that "[d]evelopment of public or private trail campsites along primary trail routes shall be a conditionally permitted use, where impacts to environmentally sensitive habitat areas and visual resources are minimized and where designed to meet fire safety standards." (Malibu LUP, § 2.48.) The City's requirement for a CUP guarantees that each site will be specifically analyzed to determine whether it complies with the policy. However, SMMC/LIP, section 4.2, A, 2 (p. 5) states that the campsites "are defined as principal permitted uses in the Open Space (OS) Zone and are therefore *not subject to conditional use permits*, or any other non-appealable special use permit that may otherwise limit development and maintenance of such campsites in the Malibu Coastal Zone." (Emphasis added.)

These provisions are not drafted, as the Conservancy claims, to simply "lay the policy foundation" for future approvals. In fact, if the Commission inserted the language proposed by the Conservancy into the Malibu LCP, the Conservancy would almost assuredly argue that it was not only *entitled* to develop the campsites, it was *obligated* to develop them.

Moreover, it would turn planning law on its head to insert the language proposed by the Conservancy into the Malibu LCP in advance of any specific development proposal. For example, there is no question that the addition of camping and support facilities to ESHA has the potential to cause adverse environmental impacts (e.g., attendant grading, portable toilets, construction of facilities to provide water and manage runoff, etc.). Yet, the Conservancy uses the word "shall" and deletes the requirement for CUPs without providing, *inter alia*, an analysis of alternatives, the precise location and site-specific environmental analysis for each of the proposed sites, some estimate of the numbers of persons who will use the sites, grading plans, etc.[12] In addition, without that site-specific analysis, the Conservancy could not make at least one of the findings required by Section 13666.4 (i.e., that reasonable alternatives have been examined and that there is no feasible less environmentally damaging way to meet the public need. (*Id.*, § 13666.4, subd. (a)(3).)

In addition, there is no question that camping would increase the risk of fire in these dry coastal sage scrub ESHAs, each of which is located in the Very High Fire Hazard Severity Zone and two of which have no public vehicular access. The Conservancy's submission calls for the preparation of a "Fire Protection, Emergency Evacuation Plan" (SMMC/LIP, FPEEP, § 4.11, B (pp. 20-22)) to deal with procedures for evacuation (p. 22) and camping regulations designed to minimize the risk of fire (p. 21). However, the FPEEP has not been submitted to the Commission. The Conservancy is not entitled to any language which reads like an entitlement for campsites without the determination by a regulatory agency that camping can be operated and managed safely. Moreover, without examining the FPEEP, it is not possible for the Commission to determine whether the proposed development conforms with the policies of Section 30200 (as required by 14 Cal. Code Regs., § 13666.4(a)(2)) because there is no information upon which the Commission could find that the development "minimize[s] risks to life and property in areas of high . . . flood, and fire hazard" (§ 30253).

b. <u>Ramirez Canyon</u>. It is extremely disingenuous for the Conservancy to claim that its proposals do nothing more than lay "the policy foundation" for future approvals for the Conservancy's Ramirez property. Pages 23 through 26 of the Conservancy's submission are attached to this letter as Exhibit C. The text reads like a coastal development permit, despite the fact that the Conservancy has not submitted any of the site specific information required to obtain a permit or entitlement. Just as with camping, the Conservancy's proposal is drafted with mandatory language.

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[12] SMMC/LIP, § 4.2, A, 4 (p. 5) provides that campsites "shall be located in previously disturbed or non-sensitive areas to minimize impacts to sensitive habitat areas to the maximum extent feasible." SMMC/LIP, § 4.2, A, 6 (p. 5) provides that campsites shall be located in areas of level terrain to avoid the need for grading as much as feasible. However, there is no evidence that the locations of the camps on the Concept Site Plans meet those criteria.

See, p. 24: "[s]pecialized programs at Ramirez Canyon Park and associated support facilities ***shall consist*** *of the following uses and restrictions* . . .."

The following examples of the Conservancy's proposed use of its Ramirez property graphically demonstrate why the submission cannot be approved as an override:

i. **The Property**. The Conservancy's Ramirez property is located at the end of a box canyon, vegetated with dry coastal sage scrub ESHA. There is only one means of ingress and egress - a private, winding rural canyon road, with bridges and Arizona stream crossings – and that access way is substandard under both state and local fire codes.

ii. **Regional, Administrative Offices.** The Malibu LCP does not permit government offices on property zoned "Open Space." Yet, the Conservancy seeks to override the Malibu LCP to allow the use of all of the structures on the Ramirez property for regional administrative offices for the Conservancy and MRCA – with no information about the condition of those structures and no limitation on the extent of the proposed use.

The Ramirez property was donated to the Conservancy by Barbra Streisand in *1993 – 15 years ago*. We recently asked the Conservancy, under the Public Records Act, to produce all records concerning development on the property since it acquired title. The Conservancy provided only records concerning the bridge and wastewater system authorized by the 2000 CDP (i.e., the permit that was set aside by the Ventura Superior Court). The Conservancy's response to the PRA establishes that all of the structures on the property – which date back to the 1950's, 1960's and 1970's - have never been improved to meet state fire safety standards. Yet, the Conservancy's submission provides that the Conservancy "shall" use the structures for offices, without any further information upon which the Commission could make the findings required under Section 13666.4.[13]

iii. **Use of the Peach House, Barn, and Art Deco Facilities**. These are three of the structures discussed in the preceding paragraph. The Conservancy's submission provides that the Conservancy "shall" use these three structures for "small group gatherings and tours of up to 60 participants each" (p. 25). Without information concerning the condition of the structures, the provision is improper for the reasons discussed above.

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[13] The Commission did not review the condition of these buildings during the proceedings which led to the 2000 CDP. In 2006, when the Commission rejected the Conservancy's PWP, the Commission specifically requested that information. The information still has not been provided.

iv. **Public Outreach, Events, Gatherings, Tours and Workshops**. The Conservancy's submission also provides that the Conservancy "shall" use the Ramirez property for a specific number and type of events, with specific attendance allowances (from 60 to 200), and specific hours and conditions of operation (p. 25). On an *annual* basis, the cumulative impact would be at least *900 events per year with 44,240 participants*. On a *monthly* basis, the cumulative impact would be *76 events per month with 3,687 participants* – seven days per week,[14] with public outreach, small events, gatherings, tours and workshops during the fire season (§ B, 5, p. 24) . And, the Conservancy has included these provisions in the section entitled "Land Use and Neighborhood Compatibility" without providing any site-specific information (i.e., environmental analysis, land use compatibility with the surrounding rural residential neighborhood, fire safety and evacuation, etc.).

4. **The Conservancy's Submission Deletes All of the City's Requirements for CUPs, CDPs, and Review by Various City Departments.** The City of Malibu has submitted to the Commission an LCP amendment that deals with the same "Malibu Parks Public Access Enhancement Plan." It is plain that the Conservancy submitted its override in an attempt to avoid the City's *policy preferences*. However, the Conservancy's submission also appears designed to facilitate a future argument by the Conservancy that the City does not have any further *permitting authority* with respect to development on the three properties at issue and the proposed trail network.

The Conservancy submitted a "comparison" of its Plan with the pending Malibu LCP amendment. However, that comparison is materially misleading because it shows only the additions which the Conservancy made to the City's document – it does not show the deletions. To ensure that the Commission has the full picture, we have prepared a comparison that includes all of the changes to the Malibu LCPA suggested by the Conservancy, including both additions and deletions. The comparison is included on the CD submitted with this letter.

The most notable thing about the comparison is that, in every instance where the City of Malibu LCPA requires a CDP, CUP, or review by any City Department, the Conservancy has stricken those requirements. See the following pages on the Chart: p. 5 (§ 5.71 – deletes the requirement for CDPs); p. 9 (§ C – deletes the provision for the imposition of conditions on development); p. 13 (§ 3 – deletes the requirement that the location and design of trails and their impact on ESHA be evaluated during the CDP process); pp. 18-19 (§ A – deletes the requirement that the Conservancy participate with the City to provide public transit improvements); p. 21 (§ 4 – deletes the City's requirement that further intensified use of the Ramirez property be conditioned on the requirement of alternative vehicular

[14] This number may be low, because it assumes just two outreach events per day. In fact, the Conservancy proposes no limit on the number of "Public Outreach" events that may be held each day.

access); p. 24 (§ 5 – deletes the requirement for CDPs for support facilities); p. 24 (§ 3 – deletes review by the City biologist to determine the exact location of support facilities during the CDP process); p. 28 (§ 4 – deletes review by the City biologist to determine the location of park facilities during the CDP process); p. 31 (§ B, 1, removes streambed modifications from the CDP process and from "all other relevant permits from appropriate agencies"); p. 33-34 (§ C, 2 – removes the requirement for review of all projects by the City Environmental Review Board); p. 37 (§ B, ii – deletes the requirement for review of construction and operation of self-contained restrooms by the City Environmental Health Division); p. 42 (§ A, 2 – deletes the application of the City's Geotechnical Guidelines and Building Codes); p. 48 (§ 12 – deletes the City's requirement that development "avoid intrusive traffic circulation in residential neighborhoods"). The Conservancy has provided no explanation whatsoever for these deletions.

D. This is Not "Sand City."

In its July letter to the Commission (see fn. 2, *supra*), the Conservancy cited the "Sand City LCP Amendment" as precedent for its submission. A comparison of the Sand City amendment and the Conservancy's proposal demonstrates that Sand City does not provide any precedent for the Conservancy's overly broad submission.

In the early 1990's, Sand City designated a parcel of land between the beach and Highway 1 for "private development," with "public park" as the "final option." A regional park district sought to override that designation –to put park and open space on equal footing with every other use of property between Highway 1 and the shore. (Sand City LCP Amendment No. 1-93.) Sand City has only 1.5 miles of beachfront - none of that area was developed for public access or park use at the time and half the land designated by the City for public parks was under water.

In light of the legislative history set forth above, the invocation of the override procedures by the Sand City applicant without an application for a specific public work is questionable. However, and in any event, when the Commission approved the application, the Commission simply modified the land use designation to provide for parks and open space *as a conditional use to preserve the City's discretion*.[15] The Conservancy's submission bears no resemblance to the Sand City Amendment, in large part because *the Conservancy's proposals are drafted to require development – with no site-specific detail – and the Conservancy has deleted all of the provisions which guarantee that the City's discretion will be preserved.*

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[15] Interestingly, one of the conditions required by the Commission for park and open space use in Sand City was public access from a public right of way. As noted above, two of the properties included in the Conservancy's submission have no public access. The Conservancy's Ramirez Canyon and Escondido properties are located in box canyons at the end of private roads.

IV

The Conservancy's Submission is Overbroad. The Override Provisions Cannot Be Utilized to Amend a LCP to Authorize the Implementation of Certain Facilities as "Public Works Projects" Where, as a Matter of Law, Those Facilities Do Not Qualify as Public Works.

Even if the Conservancy could overcome all of the legal obstacles set forth above, its submission would still be overbroad. Section 30114 includes "publicly financed recreational facilities" in the definition of "public works," and the Conservancy's submission states that its anticipated future development will be accomplished as "public works projects." (SMMC/LUP, § 5.66 (p. 1).) However, the Conservancy's submission includes **regional office use** of the Ramirez Property and **commercial leasing** of the Ramirez property for special events. As a matter of law, those proposed uses do not qualify as public works for "recreational facilities." Therefore, the override procedures cannot be used to amend the Malibu LCP to authorize that development as "public works projects."

The Coastal Act does not define the terms "recreation" or "recreation facility." However, those terms are defined in analogous provisions of the California Recreation and Park District Act, at section 5780.1, subdivisions (G) and (H). Under Section 5780.1, neither regional, administrative offices nor leasing of property for private events qualifies as "recreation" or as a "recreational facility."[16]

In addition, the scope of public works for recreational facilities should be limited to those components "directly and immediately" used for the public work. In *City of Lafayette v. East Bay Municipal Utility District* (1993) 16 Cal.App.4th 1005, the appellate court defined the proper scope of public works in the context of immunity from local land use regulations.[17] The Court held that a proposed public works

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[16] Section 5780.1, subd. (G): "'Recreation' means any voluntary activity which contributes to the education, entertainment, or cultural, mental, moral, or physical development of the individual, group, or community that attends, observes, or participates. 'Recreation' includes, but is not limited to, any activity in the fields of art, athletics, drama, habitat conservation, handicrafts, literature, music, nature study, open-space conservation, science, sports, and any formal or informal play that includes these activities." *Id.*, subd. (H): 'Recreation facility' means an area, place, structure, or other facility under the jurisdiction of a public agency that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. 'Recreation facility' includes, but is not limited to, an arts and crafts room, auditorium, beach, camp, community center, golf course, gymnasium, lake, meeting place, open space, park, parkway, playground, playing court, playing field, recreational reservoir, river, and swimming pool. A recreation facility may be owned or operated jointly by a district and other public agencies."

[17] Local agencies are generally required to comply with the building and zoning ordinances of the county or city in which they are located. Some public works are exempt from these requirements – for example, facilities for the production, generation, storage, treatment or transmission of water or

water treatment project which included facilities not related to treatment of water was not exempt from local land use regulations (i.e., facilities for materials storage, warehousing, vehicle maintenance, "along with new space to house the district's administrative offices"). (*Id.*, at p. 1011.) The test for determining whether the exemption applies is whether each of the specific project components are "directly and immediately" used for the public works. In *City of Lafayette*, the public work was the production, generation, storage, and transmission of water. In this case, the public work is the development of recreational facilities. Regional, administrative office use and leasing for commercial use are not "directly and immediately" related to recreational purposes.

A limited definition of "public works" would also be consistent with analogous provisions which govern state parks. Section 33211.5, subdivision (d)(1) of the Conservancy's enabling act provides, in part, that the "types of uses and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system." Section 5019.53 defines the permissible uses of state park lands. Section 5019.53 does not include regional, administrative offices, or leasing for commercial events. (See, also, § 5080.03, subd. (b), which provides: "[c]oncessions shall not be entered into solely for their revenue producing potential.") The Conservancy's submission includes the acknowledgement that the provisions for leasing the property for special events are included for their revenue producing potential. (SMMC/LIP, § 2, A, 3 (p. 5) and § 12, B, 9 (p. 26).)

V

The Conservancy Is Not Entitled To Invoke The Override Provisions Because The Conservancy Anticipated This Plan Long Before The Malibu LCP Was Before The Commission For Certification.

Both Section 30515 and 14 California Code of Regulations, section 13666, expressly state that the override procedures are available only where, *inter alia*, the "purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program *that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification*." (See, also, Malibu LIP, p. 305, § 19.2.1, subd. (a)(4).) The purpose of the rule is to require agencies to put their plans on the table while the LCP is being drafted, so that land use designations and regulatory policies can be developed in a comprehensive manner.

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electricity (Gov't. Code, §§ 53091 and 53096). The question of immunity does not arise in this case because every person, including the state itself, is subject to local regulation under the Coastal Act. (§ 30111.)

The City of Malibu, in its letter to the Commission dated June 23, 2008, presented extensive evidence that the Conservancy has anticipated the development described in the Conservancy's override for many years. That evidence consists of numerous planning documents, several of which were submitted to the Commission in various contexts. The evidence also includes comments by the Conservancy to the Commission during the Malibu LCP certification process. A copy of the City's letter is included on the CD submitted with this letter, and we incorporate the arguments herein by reference. We respectfully submit that the evidence conclusively demonstrates that the Conservancy is not entitled to utilize the override procedure because the Conservancy cannot meet the threshold requirements of Section 30515 and 14 California Code of Regulations, Section 13666.

The Conservancy filed a response to the City's letter on July 14, 2008 – a copy of that letter is also included on the enclosed CD. The Conservancy's attempts to avoid the extensive evidence of its prior plans for the area are not convincing for the following reasons:

First, the Conservancy argues that the proposed "site specific LCP amendment" is the "direct result of recent, post-LCP certification events." (SMMC Letter, pp. 4-5.) However, most of the cited post-LCP events consist of the Conservancy's efforts to implement the park and trail plan which it had long anticipated (e.g., the purchase of open space, the acceptance of OTDs, the negotiation with property owners for specific alignments).

Second, the Conservancy dismisses the City's evidence as a "couple of documents" and attempts to differentiate them from the content of the override. (SMMC Letter, p. 5.) However, the fact that the previous documents were "planning" documents does not differentiate them from the Conservancy's submission – because the Conservancy claims that its present submission is simply a planning document. In addition, the fact that the prior documents did not specifically locate the proposed trails does not mean that those trails were not anticipated. (See, e.g., 1997 SMAART report (pp. 28-33) which includes the Winding Way Connectors, Coastal Slope Trail, and Escondido Falls Trail – the same trails which the Conservancy has included in its present submission.)

Third, the fact that the Conservancy had a CDP in place for its Ramirez operations in 2002 (i.e., when the LCP was before the Commission for certification) does not excuse the Conservancy from requesting that the Malibu LCP be drafted to accommodate that development. In 2002, there were two lawsuits pending which challenged the CDP for failure to comply with Malibu's land use regulations - one filed by the Fund (which was successful) and one by the City of Malibu (which was settled). At that same time, the question of whether the Conservancy was immune from Malibu's land use regulations was pending before the Second District Court of Appeal. Moreover, the Commission was in the

process of certifying the Malibu LCP, which would be binding on the Conservancy as a matter of law. (§ 30111.)

Yet, the Conservancy made no effort to submit its plans for Ramirez (or for any of the other elements of its current plan) during the LCP certification process. Instead, in April of 2002, the Conservancy submitted proposed LCP revisions to the Commission which would have made the Conservancy exempt from the requirement for a CDP for park management and operations and for "park events" (festivals, weddings, etc.). In May of 2002, the Court of Appeal issued its opinion in *City of Malibu v. Santa Monica Mountains Conservancy, et al.*, (2002) 98 Cal.App.4th 1379, holding that the Conservancy was subject to Malibu's land use regulations. Still, the Conservancy did not amend its proposals for the LCP so that the Commission could consider (a) the question of whether the Ramirez property should be zoned for the office, commercial and event uses which the Conservancy now proposes and (b) whether the Conservancy should be essentially exempt from the restrictions on the use of ESHA. Instead, the Conservancy simply accepted the Commission's ESHA and "Open Space" designations for the Ramirez property and – even after the CDP was set aside - continued its unlawful use of the property.

Under the circumstances, it would be not only unlawful (§ 30515; 14 Cal. Code Regs., § 13666, et seq.), it would be extremely inequitable for the Commission to allow the Conservancy to invoke the override procedures.

VI

The Constitutional Right of "Public Access" to the Sea vs. Recreation in Inland/Upland Areas.

The provisions of the Coastal Act which regulate public access derive from the Constitutional guarantee of public access to navigable waters. Accordingly, with respect to "public access," the Act was designed to protect access to the coast.[18] There is no similar Constitutional guarantee of public access to inland/upland properties. Therefore, no agency should be entitled to invoke the narrow exception provided by Section 30515 to supplant the decisions of a local government for inland/upland areas.

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[18] The legislative history of the Coastal Act confirms that these provisions set the "goal of maximum public *access to coast*." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended 8/5/76, p. 2, emphasis added.) See, also, Chap. 6, "Implementation," Art. 3, "*Coastal* Public Access Program," § 30530, *et seq.* (requiring the preparation and implementation of a "program to *maximize public access to and along the coastline.*") (Emphasis added.)

The connection between public access and the constitutional right of access to navigable waters is expressly set forth in the Act. The "Public Access" provisions are set forth in Chapter 3, "Coastal Resources Planning and Management Policies," Article 2. Section 30210 provides:

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

Section 4 of Article X of the Constitution provides:

> "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof." (Emphasis added.)

Accordingly, section 30210 and all of the statutes which follow are designed to facilitate *access to the sea*. Section 30211 provides that development "shall not interfere with the public's right of access to the sea." Section 30212, subdivision (a), states that "public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects." Section 30213 provides for lower cost visitor and recreational facilities in these areas. Section 30214, which mandates consideration of time, place and manner restrictions, repeats the policy expressed in section 30210 – the constitutional right of access to navigable waters.

The Sand City case, discussed above, demonstrates the distinction. In Sand City, the Commission found it appropriate to override the City's land use designation because the City's decision had a significant adverse impact on public access to the beach. This case does not involve public access to the beach. The properties at issue in the Conservancy's submission are inland/upland properties, to which the constitutional directive for public access does not apply. Instead, the question here involves the provisions of the Act which apply to "Recreation." Those provisions are located in Chapter 3, Article 3, "Coastal Resources Planning and Management Policies."

The legislative history of the Coastal Act confirms that, even with respect to recreation, the purpose of the Act is to "protect *shorefront property* suitable for recreation; encourage [. . .] use of private lands for recreation and recreational boating facilities in certain areas." (SB 1277, Assembly Committee on Resources, Land Use, and Energy, Bill Analysis, as amended 8/5/76, p. 2.) That is why the recreation provisions of the Act are also oriented toward the use of the shoreline. Section 30220 provides that "[c]oastal areas suited for *water-oriented recreational activities* that cannot readily be provided at inland water areas shall be protected for such uses." Section 30221 states that "*[o]ceanfront land* suitable for recreational use shall be protected for recreational use and development . . .." Section 30222 gives priority to "visitor-serving commercial recreational facilities designed to enhance public opportunities *for coastal recreation*" over other types of uses. (See, also, § 30222.5, priority for "*ocean front* land that is suitable for coastal dependent aquaculture.")

Only one provision of the Act mentions recreational use of upland areas. Section 30223 provides that "[u]pland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible." The Commission has not promulgated any regulations under section 30223, and no court has construed the statute. However, on its face, Section 30223 directs local agencies *to reserve* upland areas to support coastal recreational uses. The Malibu LCP complies with the statute. The issue raised by the Conservancy's submission does not involve the reservation of these properties. The Conservancy's submission concerns the development and use of these properties. The Act plainly delegates regulatory authority over the development and use to the City of Malibu. (§ 30519.)

For these reasons, by requesting an override for a "Malibu Parks Public Access Enhancement Plan" which involves only inland/upland property, the Conservancy would have the Commission construe not only Section 30515, but also Section 30223, as broadly as possible. We respectfully request that the Commission reject that effort.

VII

Conclusion

The analysis set forth in this letter demonstrates that the Conservancy's proposed LCP Amendment override cannot be approved because it violates numerous fundamental Coastal Act policies and legal standards. In addition, because of the manner in which the submission is drafted, it is plain that the Conservancy has still not abandoned its claim to immunity from the decision-making power of Malibu - despite the holding of two courts. (See, e.g., *City of Malibu v. Santa Monica Mountains Conservancy, et al.*, (2002) 98 Cal.App.4th 1379, which confirmed that the Conservancy is subject to Malibu's land use

regulations. See, also, Ventura Superior Court Case No. CIV199846, Order dated Feb. 4, 2005, setting aside CDP 4-98-334 because it did not take into account Malibu's land use regulations.) We respectfully submit that there is no cause for the Commission to stretch the "override" provisions beyond recognition simply to give the Conservancy more grist for its "immunity" mill.

Given the fundamental defects in the Conservancy's submission, we respectfully request that counsel advise the Commission's policy staff and the Commission itself that the Conservancy's submission may not lawfully be approved.

Thank you for considering these issues. Please contact us if we may provide any additional information.

Sincerely,

Steven A. Amerikaner

Diane M. Matsinger

Enclosures on CD:

Legislative History of Title 14, Cal. Code Regs., § 13666, *et seq.*
Comparison of Conservancy's Submission with Malibu's Pending LCP Amendment.
Letter from the Conservancy to the Commission, dated July 14, 2008
Letter from the City of Malibu to the Commission, dated June 23, 2008.

Attachments (printed)

Exhibit A: Legislative History of Title 14, Cal. Code Regs., § 13666, "Informative Summary"
Exhibit B: Legislative History of Title 14, Cal. Code Regs., § 13666, "Statement of Reasons"
Exhibit C: Pages 23-26 of the Conservancy's Proposed LIP Text Amendments (Override)

cc. Pat Veesart, California Coastal Commission, Ventura County Office (with enclosures)
Christi Hogin, Malibu City Attorney (without enclosures)
Richard Mullen, President, Ramirez Canyon Preservation Fund (without enclosures)

SB 488439 v13:011142.0001

MEMORANDUM OF UNDERSTANDING
CONCERNING DONATION OF STREISAND RANCH

WHEREAS, Barbra Streisand ("Donor") is the owner of approximately 20.53 acres of land in Malibu, California, upon which four homes have been built ("Streisand Ranch"); and

WHEREAS, Streisand Ranch is a coastal riparian property adjacent to existing wilderness parkland and contains significant natural resources, including a year-round stream near the headwaters of Malibu's scenic Ramirez Canyon; and

WHEREAS, Donor desires to make a charitable contribution of Streisand Ranch to an entity committed to protecting the environment and preserving the natural resources of the property, and desires to encourage its use as the Streisand Center for Conservancy Studies, for advanced academic and applied studies directed toward solution of the most pressing conservation and natural ecosystem management problems; and

WHEREAS, the Santa Monica Mountains Conservancy of the State of California ("Donee") is a state agency organized and operating under The Resources Agency of the State of California pursuant to California Public Resources Code Section 33000 et seq; and

WHEREAS, Donee has already acquired and operated thousands of acres of land in the Santa Monica Mountains and is well known as a preeminent expert in the management of open space and the maintenance and care of important and historic structures, and

has the ability to secure the resources necessary to further Donor's desires concerning the preservation and use of Streisand Ranch.

NOW THEREFORE, under the terms and conditions contained in this Memorandum Of Understanding, Donor hereby donates Streisand Ranch to Donee.

1. Gift of Streisand Ranch.

The Streisand Ranch property which is the subject of the gift, including all residences and structures constructed thereon, is described in Exhibit "A" to this Memorandum of Understanding and attached hereto. Conveyance of Streisand Ranch shall be made and completed by gift deed given to and accepted by the Santa Monica Mountains Conservancy by and on behalf of the State of California and shall transfer title free and clear of all financial liens and encumbrances, including but not limited to deeds of trust, bonds and/or mechanics or tax liens. Conveyance is made on an "as is" basis, and Donor makes no representations or warranties, express or implied, concerning the physical condition of the land or structures.

2. Purpose of the Gift.

Donor's intent in making this gift is to provide a location and facilities for the establishment of the Streisand Center for Conservancy Studies ("Center"). Donee and its affiliated nonprofit, the Mountains Conservancy Foundation, will plan and operate the Center as a place for advanced academic and applied studies directed toward solution of the most pressing

conservation and natural ecosystem management problems, and will carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community.

Donee commits to Donor that revenues received in connection with any and all events, programs and public or private uses held at the Streisand Ranch by the Center or any other user shall be expended solely on the on-going costs of operating and maintaining the Ranch and covering the expenses of the Center.

3. Donee's Access to the Ranch.

Upon acceptance of the gift deed, or on November 29, 1993, whichever occurs later, Donee shall have immediate unrestricted ownership, use, possession and access to the entire grounds of Streisand Ranch and to all residences, including the residence known as "Barwood." With respect to the three residences known as the "Barn," the "Peach House" and the "Deco House," Donee hereby grants Donor access to such properties until February 1, 1994, to remove personal property. Donor shall retain the keys to those three residences and hereby designates Mario Yocupicio, the current caretaker of Streisand Ranch, to be her representative and to accompany Donee's representatives whenever they need access to those structures for purposes of planning for the Center.

4. Donor's Personal Possessions and Furnishings.

Donor has until February 1, 1994 to remove her personal

possessions, including furniture and furnishings, from Streisand Ranch. Until such time, the furniture and furnishings shall be considered on loan to Donee. Donor and Donee acknowledge that they will be holding future discussions concerning the possibility of an additional donation and/or purchase of some or all of the furniture and furnishings. Donor also has until February 1, 1994 to remove for transplantation all rose bushes and vegetables from the grounds of the Ranch. Until then, Donor may have a representative cultivate the roses and harvest the vegetables as often as is required.

5. Date of Gift.

The gift of Streisand Ranch shall be considered complete as of the date the gift deed is delivered and accepted. The gift deed shall be recorded with the County Recorder for the County of Los Angeles as soon thereafter as possible.

6. Property Taxes.

Donee assumes responsibility for notifying the Office of the County Tax Assessor that title to Streisand Ranch has been transferred, that Donee is exempt from property taxes, and that taxes should therefore cease accruing. Donee will cooperate with Donor in obtaining any refund of property taxes to which Donor may be entitled.

7. Insurance.

Donor shall continue to insure her personal possessions and furnishings until such time as they are removed from the Ranch or transferred to Donee. Donee will be responsible for all

other insurance as of the date the title to the Ranch is transferred.

8. Costs of Transfer.

Donee shall bear any and all costs pertaining to its acquisition of Streisand Ranch, including but not limited to title and recordation fees and costs of inspection. Each party shall bear any professional expenses, such as fees incurred by attorneys, accountants and/or business advisors that they generate in connection with this transaction.

9. Tax Reporting.

Donee represents and warrants that it is an entity described in I.R.C. Section 170(c)(1) and that it will hold Streisand Ranch for exclusively public purposes within the meaning of such Section. Donee acknowledges that Donor intends to claim Donor's gift hereunder as a charitable contribution deduction of capital gain property on Donor's 1993 state and federal income tax returns, at the full value set forth in the appraisal attached as Exhibit B hereto. Donee shall cooperate with Donor and Donor's attorneys, accountants or other financial advisors in claiming and sustaining such deduction. Donee shall also prepare and timely file all reports, tax returns or other documents or statements required to be filed in connection with Donee's receipt of such gift, shall provide Donor with copies thereof prior to filing for review by Donor's advisors, and shall make no reports, returns, filings or statements inconsistent with Donor's tax reporting position as set forth herein or

inconsistent with Donor's advisors' requests with respect thereto.

Executed this 30 day of November, 1993.

Barbra Streisand
"Donor"

Santa Monica Mountains Conservancy
by Joseph T. Edmiston, Executive Director,
its authorized officer

Streisa6.mou
November 23, 1993

EXHIBIT "A"

In the County of Los Angeles, Malibu, California:

Assessor's Parcel No. 4465-004-067
Assessor's Parcel No. 4467-002-045
Assessor's Parcel No. 4467-002-046
Assessor's Parcel No. 4467-002-048
Assessor's Parcel No. 4467-002-049

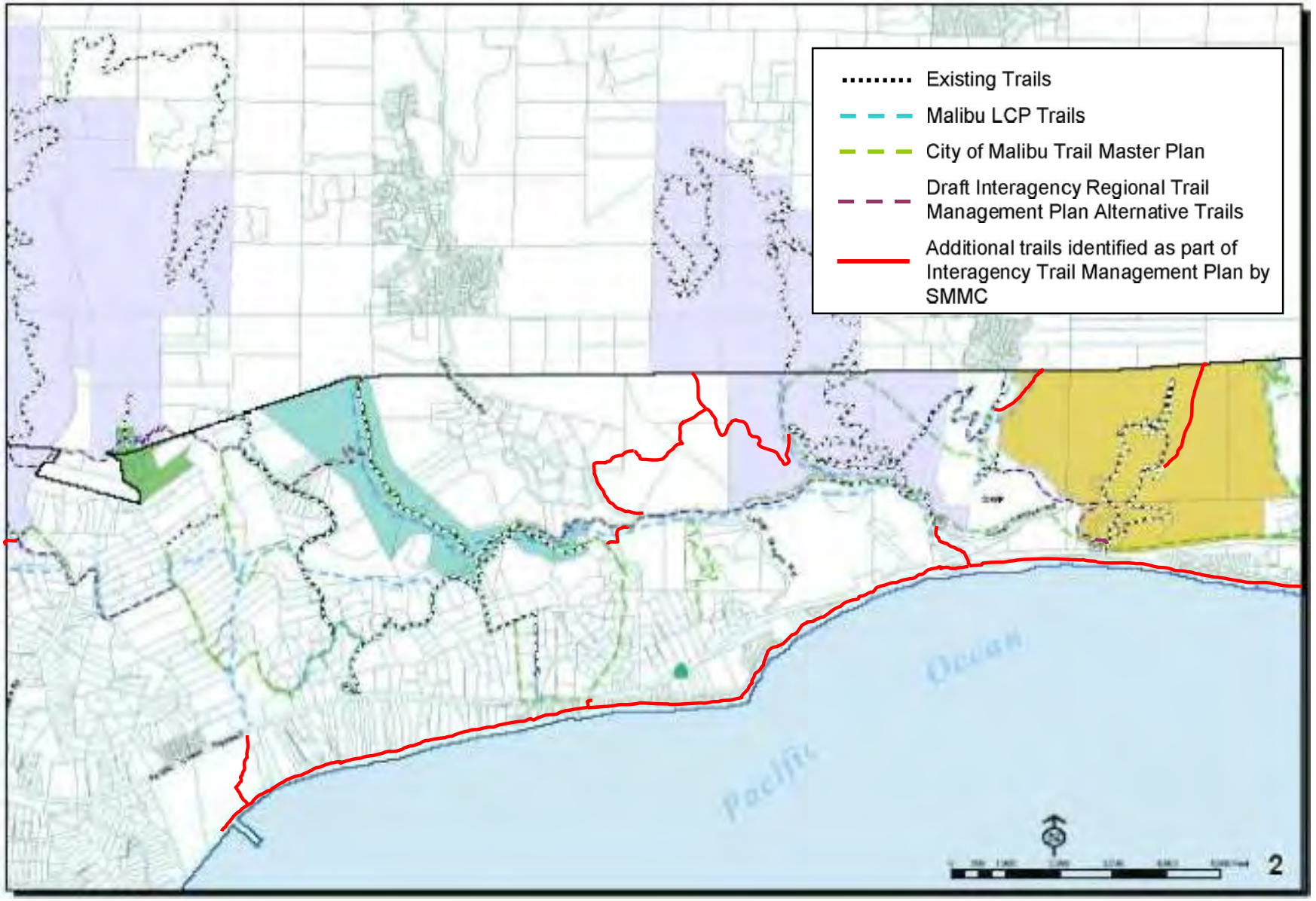
Park Agency Administrative Office Locations in the Coastal Zone*

Office	Address/Location	Nature of Work	No. of People in Office	Land Use/Zoning	Gov't/Admin Offices Allowed in Zone?
California Department of Parks and Recreation					
Malibu Creek State Park – Angeles Headquarters (and Channel Coast District)	1925 Las Virgenes Road Calabasas, CA 91302	Administration Headquarters including **Offsite** Operations	Approximately 40	Los Angeles County LU: Parks Z: Resort and Recreation (RR-10)	**CUP required**
Adamson House Museum – Office & Wedding Site	23200 Pacific Coast Highway Malibu, California	**Onsite** Operations Only	Maintenance Personnel	City of Malibu LU: Public Open Space (POS) Z: Public Open Space (POS)	No
Will Rogers State Beach Lifeguard Headquarters – Offices	17700 Pacific Coast Highway Pacific Palisades, CA	**Onsite** - Mostly Lifeguards, 1 administrative, 2 student workers	8-10, Varies Seasonally	City of Los Angeles LU: Open Space Z: Open Space (OS-1XL)	No
Will Rogers State Historic Park – District Superintendent II & Staff	1501 Will Rogers State Park Rd Pacific Palisades, CA 90272	**Onsite** Operations and Maintenance	20 Maximum	City of Los Angeles LU: Open Space Z: Open Space (OS-1XL)	No
Point Mugu State Park/Sycamore Canyon Beach – *Former* Angeles Center Dispatch Center	9000 W. Pacific Coast Hwy Malibu, CA 90265	No Office or Office Employees		Ventura County LU: Open Space Z: Coastal Open Space, Santa Monica Mountains Overlay (COS-10ac/sfd/M)	No
National Park Service					
Solstice Canyon Park – NPS facilities (SMMC headquarters 1987-95)	Corral Canyon Road, 1/4 mile north of Pacific Coast Highway	No Office or Office Employees; Overgrown and fenced off		City of Malibu LU: Public Open Space (POS) Z: Public Open Space (POS)	No

Santa Monica Mountains Conservancy					
Ramirez Canyon Park – SMMC Headquarters	5750 Ramirez Canyon Road Malibu, California	Regional, Administrative HQ for SMMC	Unknown	City of Malibu LU: Public Open Space (POS) Z: Public Open Space (POS)	**Government Offices Not Permitted**
Temescal Gateway Park – Interpretive Staff and Other Offices	15601 Sunset Blvd Pacific Palisades, CA 90272	**Onsite** Operations Only	12 staff, including naturalists	City of Los Angeles LU: Open Space Z: Open Space (OS-1XL)	No
King Gillette Ranch – Facilities and Maintenance Staff Offices, Chief Ranger Office	26800 West Mulholland Hwy Calabasas, CA 91302	**Onsite** Operations and Maintenance Currently hosting BIGGEST LOSER TV Show	Staff consists of Park Manager, 2 maintenance and 1 housekeeping staff members	Los Angeles County LU: Institutional & Public Facilities Z: Light Agriculture (A-1-20-DP)	Yes
Ramirez Canyon Park – MRCA Headquarters	5750 Ramirez Canyon Road Malibu, California	Regional, Administrative HQ for SMMC	Unknown	City of Malibu LU: Public Open Space (POS) Z: Public Open Space (POS)	**Government Offices Not Permitted**
Los Angeles County Department of Beaches and Harbors					
Marina del Rey – Administrative Headquarters	13837 Fiji Way Marina del Rey, CA 90292	Administration	Approximately 30	Los Angeles County LU: Public Facilities Z: Specific Plan	Yes

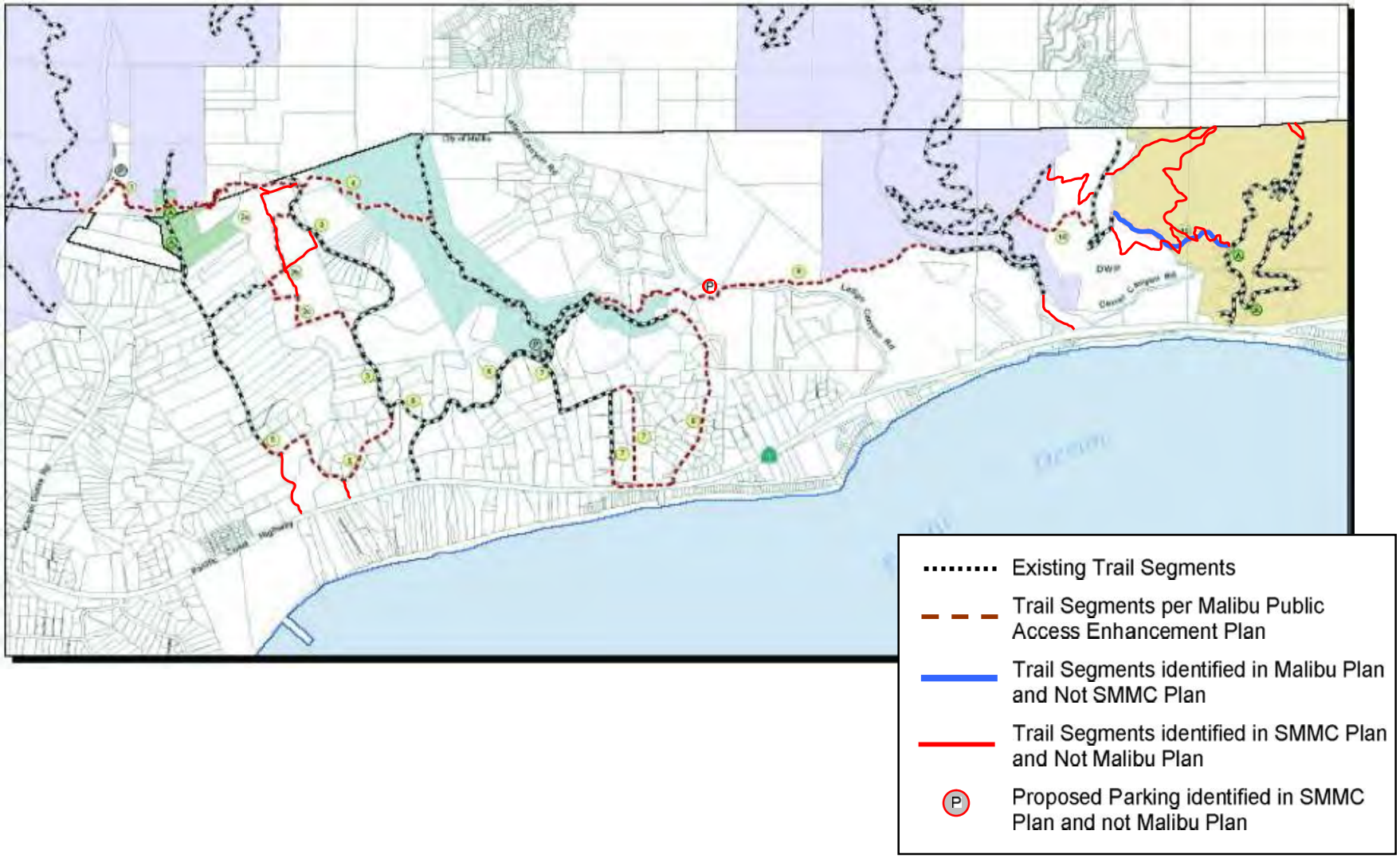
* List of Offices per SMMC LCP Override Application Policy Consistency Analysis (p. 55)

Comparison of Malibu Local Coastal Plan Amendment & SMMC Override Existing/Planned Trail Resources Maps



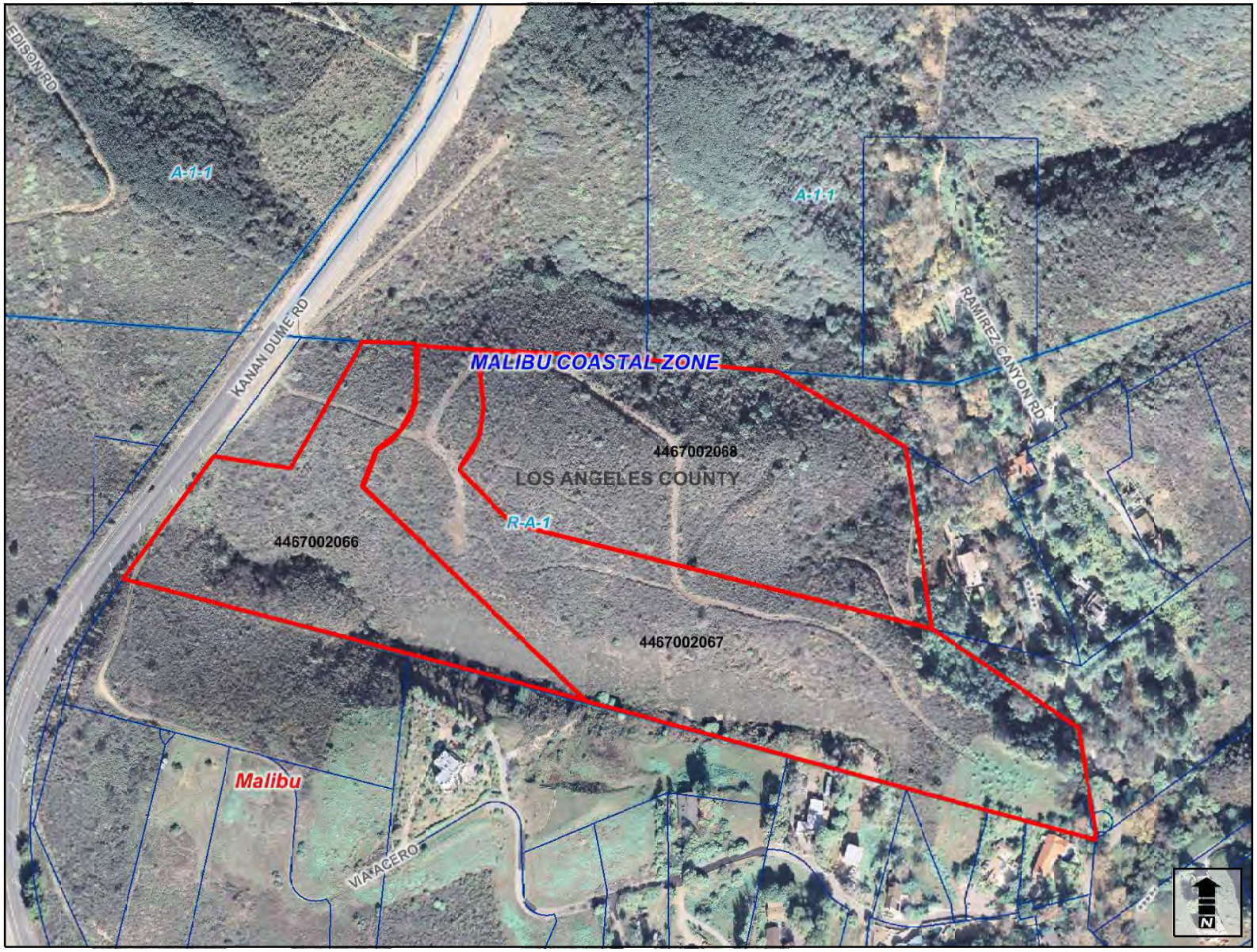
Sources: City of Malibu Local Coastal Program Amendment Existing/Planned Trail Resources, Ordinance No. 316 Exhibit B;
Santa Monica Mountains Conservancy Malibu Parks Public Access Enhancement Plan Existing/Planned Trail Resources Map, dated 4/14/08

Comparison of Malibu Local Coastal Plan Amendment & SMMC Override
Proposed Trail Segment Maps



Los Angeles County
Department *of* Regional Planning

Lauber Property





Legend

Base Layers

- LOS ANGELES COUNTY
- OTHER COUNTY
- PACIFIC OCEAN
- UNINCORPORATED AREAS
- INCORPORATED CITIES
- HYDRO - PERENNIAL
- HYDRO - INTERMITTENT
- HYDRO - DRY
- HYDRO - LINE
- FREEWAYS
- NATIONAL FOREST
- PARCEL BOUNDARY
- SUPERVISORIAL DISTRICT
- TRANSIT - RAILROAD
- TRANSIT - RAPID TRANSIT
- TRANSIT - UNDERGROUND
- SUBDIVISION ACTIVITY - APPROVED
- SUBDIVISION ACTIVITY - INACTIVE
- SUBDIVISION ACTIVITY - PENDING
- SUBDIVISION ACTIVITY - RECORDED
- AMB (ASSESSOR MAP BOOK) GRID
- SEA (SIGNIFICANT ECOLOGICAL AREA)
- CSD (COM. STANDARDS DISTRICT)
- CSD - AREA SPECIFIC
- VERY HIGH FIRE HAZARD SEVERITY
- TOD (TRANSIT ORIENTED DISTRICT)
- EQD (EQUESTRIAN DISTRICT)
- THE THOMAS GUIDE - PAGE
- THE THOMAS GUIDE - PAGE GRID
- ZD (ZONED DISTRICT)
- ZONING INDEX MAP GRID
- ZONING MAP GRID
- TOWNSHIP & RANGE GRID
- USGS QUAD SHEET GRID

Zoning

- ZONE A-1
- ZONE A-2
- ZONE B-1
- ZONE B-2
- ZONE C-1
- ZONE C-2
- ZONE C-3
- ZONE C-H
- ZONE C-M
- ZONE CPD
- ZONE C-R
- ZONE D-2
- ZONE IT
- ZONE M-1
- ZONE M-1.5
- ZONE M-2
- ZONE M-3
- ZONE MPD
- ZONE MXD
- ZONE O-S
- ZONE P-R
- ZONE R-1
- ZONE R-2
- ZONE R-3-(U)
- ZONE R-4-(U)
- ZONE R-A
- ZONE RPD
- ZONE R-R
- ZONE SP
- ZONE SR-D
- ZONE W

LOS ANGELES REGION
LAR|aC
Imagery acquisition consortium

LEGEND MAY NOT CONTAIN ALL LAYERS REPRESENTED IN THE MAP

Scale: 1:3,707
Printed On: Nov 26, 2008
GIS-NET | Public Web Mapping Application

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The map should be interpreted in accordance with the disclaimer statement of GIS-NET.

RAMIREZ CANYON ROAD TRAFFIC TRIP CALCULATIONS

(December 2008)

Monitoring Period (2008)	Per day average
September ï October 5	499.9
October 6 ï October 12	566.7
October 13 ï October 19	517.6
October 20 ï October 26	554.1
October 27 ï November 2	566.1
Average over monitoring period	540.9 (see Note 1)
Less: Trips generated from SMMC property	36.7 (see Note 2)
Equals: Trips generated from canyon homes	504.2
Divided by number of homes (= 60)	**8.4 daily trips per home**

Notes:

1. Traffic counter placed on Ramirez Canyon Road just north of intersection with Delaplane.
2. SMMC traffic generation based on counts taken from November 10, 2008 to December 7, 2008 just outside the gate to the SMMC property.
3. Traffic count records available upon request.

Analysis of Issues Relating to Application by the Santa Monica Mountains Conservancy for a Local Coastal Program Amendment Override

Proposed Development of the Conservancy's Ramirez Canyon Property and of Escondido and Corral Canyon Parks

Prepared for

Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

December 2008

Prepared by

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Carpinteria, CA 93013

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Foreword

Science Applications International Corporation (SAIC) was engaged to analyze certain issues relating to a submission from the Santa Monica Mountains Conservancy (SMMC) to the California Coastal Commission dated April 14, 2008 entitled "Proposed City of Malibu Local Coastal Program Amendment for Incorporation of the Malibu Parks Public Access Enhancement Plan Overlay District." This amendment was resubmitted on July 15, 2008.

In completing this analysis, SAIC reviewed the following documents submitted by the Santa Monica Mountains Conservancy on April 14 and July 15, 2008:

1. Cover letter to Peter Douglas, Executive Director, California Coastal Commission
2. Land Use Plan and Local Implementation Plan Text Amendments
3. Current Demand and Proposed Overlay Goals
4. Description of Plan Area
5. Description and History of SMMC/MRCA Parklands Included in the Overlay District
6. Purpose and Intent
7. Planning Considerations and Constraints
8. Standard of Review and Process
9. Policy Consistency Analysis
10. Public Participation, Agency Coordination, Alternatives and Public Comment Summary
11. Resolutions Authorizing Submittal of Proposed LCP Amendment
12. Supporting documents such as the Draft Biological Resources Letter Report, Riparian Habitat Evaluation for Ramirez Canyon, Alternatives Analysis for Ramirez Creek Habitat Enhancement, and three traffic studies.

The following analysis and report was prepared under the supervision of Rosemary Thompson, Ph.D., Senior Biologist. (805-566-6430).

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1.0 Public Need for Recreation

1.1 Introduction

Much of the report titled "Public Access and Recreation—Current Demand and Proposed Overlay Goals, Malibu Parks Public Access Enhancement Plan" dated April 14, 2008, addresses compliance with specific policies and guidelines. The following comments focus primarily on the demand aspects of the report rather than plan/policy compliance issues.

- Comparability with Coastal Camping Areas -- Because proposed plans for additional camping would not include direct beach or shore access, the list of campgrounds and beaches included in the Coastal Camping narrative, while relevant to a discussion of coastal parks and beaches, does not create a rationale to support the proposed improvements.
- Rationale for Demand -- While many popular campgrounds throughout California are likely at or near capacity during peak times, the rationale for proposing additional facilities in the Malibu area itself is not clear. Table 1 below identifies nearly 1,000 group and family camp sites within approximately one hour of the Malibu area. These camp sites are primarily located in campgrounds in the Santa Monica Mountains Sector of the State Park System and portions of the Los Padres National Forest.
- Demographics and Location of Demand -- The report does not address recreation user demographics or where users would originate. Will the improvements primarily serve a narrow population demographic, a broader range of users primarily within Metro and urban Los Angeles, or a state-wide user population?
- Accessibility Discussion -- Although we would not expect to see specific data on accessible features at this stage, some idea of the extent of camp sites, picnic areas, trails, and programs/exhibits (including those designed specifically for children), and other support facilities would establish a more clear intent about accessibility. For example, often times a small number of accessible camp sites is provided compared to the total. Will most facilities be accessible or will only a small percentage be provided to meet minimum requirements? Accessibility is discussed further in Section 1.4.

1.2 Camping

Within the project area, 23 different campgrounds are managed by federal, state, local, and private agencies and operators. These campgrounds contain both group and family campsites. There are approximately 27 group camp sites, which can accommodate 9-100 persons per site, but typically accommodate 25-50 persons. The approximately 962 family camp sites typically accommodate up to 8 persons per site (see Table 1).

The State of California Department of Parks and Recreation is the largest provider of individual camp sites in the project area, followed by the federal government. Within the Santa Monica Mountains Sector of the Angeles District, which includes the Malibu area and portions of Los Angeles and Ventura Counties, the California State Park System contains five State Parks, three State Beaches, and one State Recreation Area, each of which provide overnight camping. Table 1 lists these campgrounds. Some of the campgrounds operate seasonally or close portions of the park during certain seasons. The number of camp sites listed in Table 1 represents the fully open status. The National Park Service and the U.S. Forest Service operate 12 campgrounds within the Santa Monica Mountains National Recreation Area (1) and the Los Padres National Forest (11), respectively. Within the National Forest, developed campgrounds within approximately 40 miles of Malibu are located in the Los Padres National Forest in the Mt. Pinos, Ojai, and Santa Lucia Ranger Districts.

Table 1. Campgrounds and Accessibility

Name	*Owner/ Operator*	*Type of Camping*	*Group Camp Sites (#)*	*Family Camp Sites (#)*	*Capacity (per group site/ per family site)*	*Site Characteristics and Habitat*	*Accessibility*	*Location*
Santa Monica National Recreation Area—Circle X Ranch Campground	Federal	Group/ Family	1	0	10-75	Open grass	No; not paved, slightly sloped	Malibu
Los Padres National Forest—Campo Alto	Federal	Group/ Family	2	13	25/6	Vista, pine forest	No	Frazier Park
Los Padres National Forest—Chuchupate	Federal	Family	0	30	6	Pinyon pine forest	No	Frazier Park
Los Padres National Forest—Chula Vista	Federal	Family/ walk-in sites	0	12	6	Pine forest, lupine	No	Frazier Park
Los Padres National Forest—Halfmoon	Federal	Family	0	10	6	Pine forest, lupine	No	Frazier Park
Los Padres National Forest—McGill	Federal	Group/ Family	2	72	25/6	Mixed conifer forest	Yes (some)	Frazier Park
Los Padres National Forest—Mt. Pinos	Federal	Group/ Family	2	15	25/6	Jeffrey Pine, sloped sites	No	Frazier Park
Los Padres National Forest—Ozena	Federal	Family	0	10		Riparian, scattered cottonwood	No	Frazier Park
Los Padres National Forest—Pine Springs	Federal	Family	0	12	6	Pinyon pine	No	Frazier Park/South of Lockwood Valley
Los Padres National Forest—Wheeler Gorge	Federal	Family	1	70		Chaparral and riparian	Yes (5)	North of Ojai
Los Padres National Forest—Reyes Peak	Federal	Group/ Family	0	6		Top of ridge of Pine Mountain, conifers, with view to the ocean	No	Ojai
Los Padres National Forest—La Panza	Federal	Group/ Family	2	12		Oak Riparian	No	East of Santa Margarita; Pozo/La Panza Area
Lea Carrillo State Park	State	Group/ Family/ Hike and Bike (H+B)	1	138 /4 H+B	50/6/2	Canyon/Beach	Yes (7); picnic tables/fire grills	14 mi NW of Malibu off SR1, LA County/Ventura County
Malibu Creek State Park	State	Group/ Walk in/ Family	1	63	50/6	Oak grassland	Yes (some)	5 mi N of Malibu via CO Rd N1, LA County

Table 1. Campgrounds and Accessibility (continued)

Name	*Owner/ Operator*	*Type of Camping*	*Group Camp Sites (#)*	*Family Camp Sites (#)*	*Capacity (per group site/ per family site)*	*Site Characteristics and Habitat*	*Accessibility*	*Location*
Point Mugu State Park/Big Sycamore Canyon/ Thornhill Broom, other	State	Group/ Family/ H+B	3	138		Ocean	Yes (some)	19 mi NW of Malibu on SR1/15 mi SE of Oxnard off SR1,Ventura County
Emma Wood State Beach/ Ventura River	State	Group/ Family	4	90	30/6	Ocean/River	No	Ventura County
Topanga State Park	State	H+B	0	8	4	Chaparral	Camp sites not accessible/ picnic sites generally accessible	Santa Monica Mountains
Castaic Lake State Recreation Area	State	Group/ Family	2	60		Lake	No	Santa Clarita,Los Angeles County
Placerita Canyon State Park	State	Group	0	3	Organized youth camping only	No waterfront	No	Los Angeles County Newhall
McGrath State Beach	State	Group/ Family/ H+B	2	165/5	50/6/2	Ocean/inland lagoon	Yes (12)	Ventura County
Decker Canyon	City of Los Angeles	Group	4	0	150 total; 50 at largest site	Santa Monica Mountains	No; not paved; park car, then trails to camp sites	City of Los Angeles, Malibu
Malibu Beach RV Park	Private	Family	0	35	6	Ocean views	No; park car, walk/ haul-in not paved; terraced, sloped bluff; haul in up to 5 min	2 mi W of junction with Malibu Canyon Rd at 25801 PCH, Malibu
Total	**NA**	**NA**	**27**	**962 w/o H+B**	**NA**	**NA**	**NA**	**NA**

Source: BHFS and SAIC 2008, CSPPD 2007

The City of Los Angeles and a private operator in Malibu operate two additional campgrounds.

The City of Malibu Parks and Recreation Department operates several facilities and parks, including Malibu Bluffs Park, Charmlee Wilderness Park, Las Flores Creek Park, Trancas Canyon Park, Malibu Equestrian Park, and Papa Jack's Skate Park (City of Malibu 2008), but none of these areas provide overnight camping. Similarly, beaches in the area provide outdoor recreation opportunities and facilities, but do not provide overnight camping, including Surfriders Beach, Zuma Beach, Malibu Lagoon State Beach, and Point Dume State Beach.

1.3 Event, Catering, and Conference Facilities

Appendix A (BHFS 2008) contains a listing of 23 event, catering, and conference facilities in the Malibu area that accommodate various kinds of special events. Capacity varies from less than 100 persons to more than 500 persons. The list includes facilities such as restaurants, conference centers, museums, ranches, parks, hotels, and retreat centers. The estimated total capacity of these facilities is approximately 6,045 persons. Additional ranches and a nature preserve, each identifying a capacity of more than 2,000 persons, have also been identified as event facilities but are not included in the total count.

Event, Catering and Conference Facilities in the Malibu Area

	Maximum Capacity (persons)		
	<100	100-<300	300-500
# of facilities	3	13	7

1.4 Accessibility and Children

Several campgrounds in the project area provide at least some accessible overnight camp sites (see Table 1). The California Department of Parks and Recreation identifies four State Parks in the project area that contain "at least one camp site that should accommodate persons with disabilities" (CPRD 2008). Accessible features in State Park System campgrounds vary but may include, tent or camper space, cooking surfaces, one or more sites with parking, site surfaces and furnishings, water faucets, restroom facilities (all will have this), and showers. Leo Carrillo State Park and McGrath State Beach together provide 19 accessible camp sites. In the Los Padres National Forest, Wheeler Gorge campground has 5 accessible camp sites and McGill campground has "some" accessible camp sites. Many campgrounds also offer other accessible features such as picnic areas, trails, beach/shore access, and exhibits/programs.

Parks that do not contain campgrounds may contain one or more of the accessible features previously listed. Parks with accessible features may also be more easily used by children because the design provides for greater ease of use, maneuverability, and convenience for persons both with and without disabilities (e.g., paving, lack of slopes and barriers).

Although a full inventory of accessible parks and outdoor recreation facilities in the project area is beyond the scope of this study, accessible amenities in State Parks are listed below, including accessible picnic areas (7), accessible trails (3), accessible beach/shore access (1), and accessible exhibits/programs (5). The following accessible park features are located in Los Angeles County; some areas may be located outside the proximate coastal and mountain areas identified above for campgrounds:

- Accessible Picnic Areas: Hungry Valley, Leo Carrillo, Los Encinos, Malibu Creek, Pio Pico, Topanga, and Will Rogers State Parks;
- Accessible Trails: Malibu Creek, Malibu Canyon, and Antelope Valley California Poppy;

- Accessible Beach/Shore Access: Leo Carrillo; also Malibu Lagoon State Beach contains paths through the lagoon that are wheelchair accessible; and
- Accessible Exhibits/Programs: Antelope Valley California Poppy, Hungry Valley, Pio Pico, Topanga, and Will Rogers.

As described by the State Parks and Recreation Department for their facilities, accessible picnic sites generally include firm, level and stable surfaces with accessible tables, parking and paths of travel from parking to the picnic area, where parking is provided. If provided, water spigots and heating/cooking facilities may also be designed to be accessible. Weather conditions such as heavy rain or blown sand may influence accessibility.

Accessible hiking trails or segments of trails often lead to significant features and/or environmental experiences within an area. Such accessible trails or trail segments often have the following general characteristics: trail widths are 36" with occasional segments at 32", and surfaces are stable and firm. Tread obstacles, surface gaps, protruding objects, and other obstructing details are minimal. Weather conditions such as heavy rain or winds may affect accessibility. Accessible trails are also typically barrier free, and have slopes under 9 percent.

Beach and shore access include accessible routes to and across the surface of a beach or shore, but not necessarily to the edge of the water. Access to the water's edge is primarily by beach wheelchair. Occasionally, beach mats, boardwalks, or paved multi-use trails along the beach provide some access. However, weather conditions, such as blown sand or heavy rain, may sometimes impact accessibility. Supporting facilities such as parking, restrooms, and dressing rooms are often also accessible. Travel routes from parking areas to and along the beach access routes at the parks are typically designed to be level, firm, stable, and unobstructed.

Some State Parks offer interpretive programs and/or groups of exhibits to enhance visitors' experience. Such programs often include guided or self-guided tours or hikes to or through historic sites or natural features. They may also include formal educational exhibits and activities in visitor centers or museums. These programs and facilities may be very diverse. Routes of travel to and through the site or facility, as well as parking and restrooms, are accessible. Access to outdoor programs or remote facilities may be affected by rain, winds, or other weather conditions.

1.5 Malibu Parks and Recreation Department

Although much of the recreation activity within and near the City of Malibu takes place at non-City operated parks and facilities, the City of Malibu Parks and Recreation Department also operates a number of facilities and programs. A review of the City of Malibu Council Agenda Report regarding "First Quarter 2008-2009 Work Program Status Report – Parks and Recreation Department" dated October 3, 2008 found that the Parks and Recreation Department is responsible for 10 different program areas. The report identifies over 156,000 total units of service through program participation and facility use during the 2007-2008 fiscal year. Programs and facilities include park/facility use, youth sports, aquatics, outdoor recreation (Charmlee and Equestrian Park), community classes, special events, senior adult programs, a skate park, day camps, and teen programs. The largest attendance, over 86,000 units or 55 percent of total use, is associated with park/facility use (private rentals and community sports programs), followed by youth sports (City sponsored programs) with over 27,000 units or 17 percent of total use. Outdoor recreation at the two City parks comprises over 9,000 units or almost 6 percent of total use.

1.6 Coastal Community Recreation Visitors

Of the five coastal cities contacted through calls to city departments, local chambers of commerce, and visitor bureaus, annual visitor data were only available from the City of Santa Monica, which reported over 5.5 million visitors in Fiscal Year 2006-2007 (SMCVB 2008). These visitors are reported as either hotel/motel visitors, private residence visitors, or day visitors. LA Inc., which compiles aggregated tourism data for Los Angeles County, does not typically report city level data (LA Inc. 2007). Visitor data typically exclude overnight trips taken within Los Angeles County by residents of the County. Los Angeles County hosted a record 25.4 million visitors in 2006, of which 20.7 million were U.S. residents and 4.6 million international visitors. Four percent of domestic overnight visitors to Los Angeles County reported that the primary purpose of their trip was outdoor recreation.

Another basis of comparison for the beach cities is the number of campgrounds available per capita. Compared to other similar beach cities in Los Angeles County, Malibu has more campgrounds nearby, including three within 20 miles or less, compared to one or none for the other three cities (i.e., Santa Monica, Redondo Beach, and Manhattan Beach). When Malibu's small population is considered, the extensive availability of camping and other outdoor recreation opportunities within close proximity becomes clear. Malibu has less than 15 percent of the population of Santa Monica, 19 percent of the population of Redondo Beach, and 36 percent of the population of Manhattan Beach.

City	*Population as of July 1, 2007*	*Campgrounds within 20/40/60 miles)*
Malibu	13,041	3/6/20
Santa Monica	87,212	1/6/21
Redondo Beach	67,019	0/5/21
Manhattan Beach	36,536	0/6/22
Source: U.S. Census Bureau 2008, Reserve America 2008.		

1.7 Summary

A review of recreation data and reports on existing campgrounds, outdoor recreation, and accessible recreation features within approximately an hour of the plan area indicates that the demand basis for additional recreation improvements in the Malibu area has not been well established in existing documentation. The number of campgrounds, parks, and beaches available within and near Malibu, given the size of the community, is extensive compared to similar beach cities. In addition, the location and characteristics of recreation users have not been established with regard to the demand for the additional improvements, especially given the environmental sensitivity of the project area.

2.0 Fire Hazards

2.1 Introduction

Southern California is one of the most hazardous fire-prone areas in the country. Due to the combination of the vegetation, summer drought, rugged topography, and autumnal high winds, the area is inclined to frequent high intensity fires. As urban centers continue to encroach into these readily-combustible areas, fires have become more catastrophic. Property losses continue to climb every decade despite increased fire suppression efforts, with several fires causing losses exceeding $1 billion each (Keeley 2002, Insurance Information Institute 2007). SMMC is proposing to increase recreation and camping within several of their parks in the City of Malibu. This will in turn increase the potential for wildfires within these areas, and will bring larger numbers of visitors to these high fire areas, threatening public safety.

The following describes wildland fire conditions within and surrounding the proposed recreational areas.

2.2 Natural Factors Influencing Fire Conditions

Wildland fire conditions are affected by many natural factors that vary both geographically and throughout the seasons. These include weather, topography, and fuels.

Weather and Climate

Aspects of weather such as temperature, wind, relative humidity, and precipitation all have major influences on fire behavior and probability of ignition. Southern California has a Mediterranean climate, characterized by mild wet winters and warm dry summers. This defined wet/dry seasonal pattern is a key factor in the prevalence of wild fires in the region. Precipitation data collected at the Topanga Ranger Station from 1949 through 2007 show that on the average, 95 percent of the annual precipitation occurs from November through April (Western Regional Climate Center 2008). Precipitation averages from about 15 inches per year along the coastal portions of the project region to over 30 inches per year in the higher elevations of the Santa Monica Mountains. The annual average rainfall at the Topanga Ranger Station, about 750 feet in elevation, is 24.2 inches. Extreme annual totals recorded between 1961 and 1990 ranged from 7.4 to 57.4 inches.

Although most of the precipitation in the project region is produced by winter storm systems from the north Pacific, summer rainfall can occur on occasion. This precipitation occurs from the transport of tropical moisture into the region. However, thunderstorms and showers from these tropical air masses are infrequent and mainly affect the mountain and desert regions to the east.

Concurrent with the presence of the Eastern Pacific high pressure system west of California, a thermal low pressure system persists in the interior desert region due to intense solar heating. The resulting pressure gradient between these two systems produces an onshore air flow in the project region for most of the year. Sea breezes usually occur during the daytime and transport a relatively humid air mass into the onshore areas. During the evening hours and colder months of the year, land breezes often replace sea breezes and typically blow in the opposite direction toward the offshore waters. These land breezes continue until daytime heating reverses the flow back towards the onshore direction.

During the colder months of the year, the Eastern Pacific high often builds into the Great Basin and produces a “Santa Ana” condition in the region. Santa Ana conditions typically include low humidity, northeast winds, and warm to hot temperatures. These conditions occur as air warms adiabatically as it descends from the higher elevations of the Great Basin to the lowlands of southern California. Their

frequency of occurrence increases as Fall progresses. As a result, they often coincide with the period of driest fuel moisture at the end of the fire season. This is the reason why strong Santa Anas historically have produced the most violent and devastating fires in southern California. Fires driven by Santa Anas have been known to burn as much as 74,000 acres in a day (Sugihara et al. 2006). The winds themselves make air borne fire-fighting techniques difficult, causing problems in effectively and quickly containing the fire.

Drought can also cause a significant effect on wildland fire conditions by affecting vegetative conditions such as reducing live fuel moisture content and increasing dead fuel loadings.

Effects of Climate Change on the Occurrence of Wild Fires

Recent studies predict that based upon weather conditions for future climate scenarios, the frequency of wild fires will increase in the Western U.S. The first and most recent *Climate Action Team Report to Governor Schwarzenegger and the Legislature* (California Environmental Protection Agency 2006) concludes that wild fires will increase, especially as warming intensifies. Predictions from this report state that the risk of large wildfires in California may rise almost 35 percent by mid-century and 55 percent by the end of the century under a medium-high emissions scenario. These predictions mainly apply to grassland and shrubland fuel types (Freid et al. 2006), which are typical of the area surrounding the SMMC Ramirez Canyon property to the west, north, and east.

Topography

Characteristics of topography such as degree of slope, aspect, features such as canyons, and elevation also have a considerable effect on fire behavior. Topography dictates diurnal upslope-downslope winds, influences the type of fuels present, increases preheating of fuels, or facilitates rolling debris that can cause spot fires.

Slope is an indicator of fire potential: for every 20 percent increase in slope, the rate of spread of a fire doubles. Even very minor changes in slope have a strong effect on fire spread due to increased convection and radiation, which are the two elements of combustion (Char and Chatten 1977; Clayton et al. 1985). The aspect of a slope has several effects on fire behavior: north facing slopes typically have more biomass, and therefore a greater amount of fuel. South facing slopes receive greater incoming solar radiation, causing the fuels to be at a higher temperature and therefore ignite more easily.

Fires starting at the base of box canyons and narrow canyons create strong upslope drafts, causing fires to spread rapidly upslope, creating extreme fire behavior and dangerous conditions. Fires in narrow canyons can also spread to fuels at the opposite side through radiation and spotting (NWCG 1994). In addition, steep terrain and box canyons create extremely hazardous conditions for fire-fighting personnel, and limit the use of heavy equipment (such as bulldozers) in creating fire lines that inhibit the spread of fire. Bulldozers and fire engines cannot enter areas with rugged terrain, limiting the on-ground fire fighting personnel to hand crews.

Within the SMMC's proposed recreational areas, and specifically Ramirez and Escondido canyons, steep terrain and box canyons exist, increasing the potentially for extreme fire behavior and rapid spread, as well as dangerous fire-fighting situations.

Fuels

Aspects of fuels such as type, moisture content, size and shape, loading (amount), and arrangement (vertical and horizontal continuity) all have major influences on fire behavior and probability of ignition.

Vegetation in the undeveloped areas of the Santa Monica Mountains in the Malibu area is predominantly chaparral and coastal sage scrub with narrow riparian corridors along streams. The chaparral provides the most extensive wildland fire threat in Los Angeles County and is found on the slopes of the Santa Monica Mountains. The chaparral ecosystem has been defined by fire scientists as a crown fire regime, as opposed to a surface fire regime typically found in forests where dead brush and debris accumulate over time (Halsey 2004). Biologists estimate that a natural fire interval is anywhere between 30 and 150 years depending on the chaparral species, topography, presence of drought, and climatic conditions. In the past, scientists assumed that fire suppression within the chaparral communities led to an unnatural accumulation of brush, which in turn increased the likelihood of ignition and spread. However, more recently, studies have shown that fuel age does not significantly affect the probably of burning. Under Santa Ana winds, fire can spread rapidly through all ages of chaparral stands (Moritz et al. 2004, Zedler and Seiger 2000).

Coastal sage scrub is another common vegetative community in the area. It and the chaparral community have different potential accumulation of fuels (Cohen 1999). The coastal sage scrub ecosystem burns more frequently, carries less fuel load than chaparral, and re-vegetates at a faster rate.

The majority of the native grasslands and a good portion of native shrublands in the region have been converted to non-native annual grasses such as wild oats (*Avena fatua*), bromes (*Bromus* sp.), barleys (*Hordeum* sp.), and fescues (*Festuca* sp.) (Keeley 1993, Sugihara et al. 2006). These grasses generally germinate in the winter, curing by the summer. As a result, these mature dry grasses provide a continuous fuel that is easily ignited throughout the fire season, and often contribute to an increase in fire frequency (Bell et al. no date).

Vegetation information can in turn be translated into surface fuel models which can provide valuable data for predicting fire behavior. Using information on crown cover, tree sizes, fire history, and plant species information, the California Department of Forestry and Fire Protection (CDF) used computer modeling to convert these vegetation types into the 13 standard nationally recognized and 7 custom fire behavior models (See Table 2 and Figure 1). These fuel models are primarily separated by fuel loading (tons/acre) and fuel particle size classes. Grass fuel models, for instance, have fine continuous fuels and fires that generally ignited easier and spread faster, but have a lower intensity. Timber fuel models, on the other hand, may not ignite as easily, but the fires can be of much higher intensity under the right conditions.

Tall chaparral (Fuel Model 4) has the highest fuel loading and is one of the common fuel types between Ramirez Canyon and Charmlee Park. North of Ramirez Canyon and Escondido Canyon is primarily Intermediate Brush (Fuel Model 6) and pockets of Hardwood/Conifer Light (Fuel Model 8). The southern portion of Escondido Canyon and the majority of Corral Canyon are comprised of Light Brush (Fuel Model 5). The description of fire behavior within these fuel models is described in Table 2. It is notable that the tall chaparral common to Ramirez Canyon and Charmlee Park is extremely flammable with high fuel loadings.

Table 2. Description of Fuels Present within Los Angeles County, California

Fuels	*Fuel Model*	*Fuel Loading (Tons/acre)*	*Description*
Grass	1	0.74	Fire spreads through fine herbaceous surface fuels.
Pine/Grass	2	4.0	Fire spreads through fine herbaceous surface fuels.
Tall Chaparral	4	13.0	Fire spreads through overstory of mature shrubs 6 feet tall or greater. Foliage is flammable and there is a significant amount of dead woody material.
Light Brush	5	3.5	Fire spreads through surface fuels. Shrubs are young with little dead material and foliage contains little volatile material. Includes young stands of chaparral.
Intermediate Brush	6	6.0	Fire spreads through shrub layer. Foliage is more flammable than Fuel Model 5, but requires moderate winds for fire to carry.
Hardwood/Conifer Light	8	5.0	Fires are slow-burning ground fires with low flame lengths. Only under severe weather conditions do fuels pose a fire hazard.
Medium Conifer	9	3.5	Fire spreads through surface litter, with higher flame lengths and faster than Fuel Model 8. Only under severe weather conditions do fuels pose a fire hazard.
Heavy Conifer	10	12	Fire spreads through surface litter, with higher flame lengths and faster than Fuel Model 9. Dead-down fuels are a significant portion of the fuel loading and contribute heavily to the fire severity. Crown fires are more frequent and severe.
Source: CDF 2005a, Anderson 1982.			

2.3 Fire History

Studies show that despite suppression efforts, frequency of wildfires in southern California has not changed significantly in the last 500 years, and that large fires have always been a natural part of these ecosystems (Mensing et al. 1999). Although these large fires are a normal part of the ecology, they are catastrophic due to urban development in these areas. The Santa Monica Mountains tend to have three distinct fire seasons. The first is in early May when the grasses begin to cure. Fires during this time are usually restricted to grasslands or open shrublands with a grassy understory. The second period occurs during the summer as the weather becomes hotter and the live-fuel moisture content decreases. These fires involve chaparral and shrubland areas, but are usually small in size (less than 500 acres) (NPS 2007). The third phase in southern California is in the late summer and autumn, when large destructive fires most often occur due to Santa Ana winds. Santa Ana conditions bring low relative humidity, high temperatures, and strong northeasterly winds (Mensing et al. 1999, NPS 2007).

Figure 2 depicts the time since the last recorded burns within the Los Angeles County area. The majority of the area around Charmlee Park and to the northeast was last burned approximately 30-49 years ago. The area directly surrounding Ramirez Canyon was burned between 20-49 years ago, while the majority of the area around Escondido Canyon has not been burned for 50-74 years. Corral Canyon Park has areas that have been burned much more recently. To the west and north, some areas were burned in 2007.

While older shrublands accumulate more fuels, and burn more intensely, studies have shown that during Santa Ana conditions, fires will even burn through shrublands that burned as recently as a few years prior.

Figure 3 and Table 3 show the number of fires and number of acres burned by month in Los Angeles County within the past 20 years. The number of fires peaks in July and August; however, these fires are generally smaller and less destructive than those in the fall that are driven by the Santa Ana winds. The majority of the acres burned occur in October during the peak of the Santa Ana conditions.

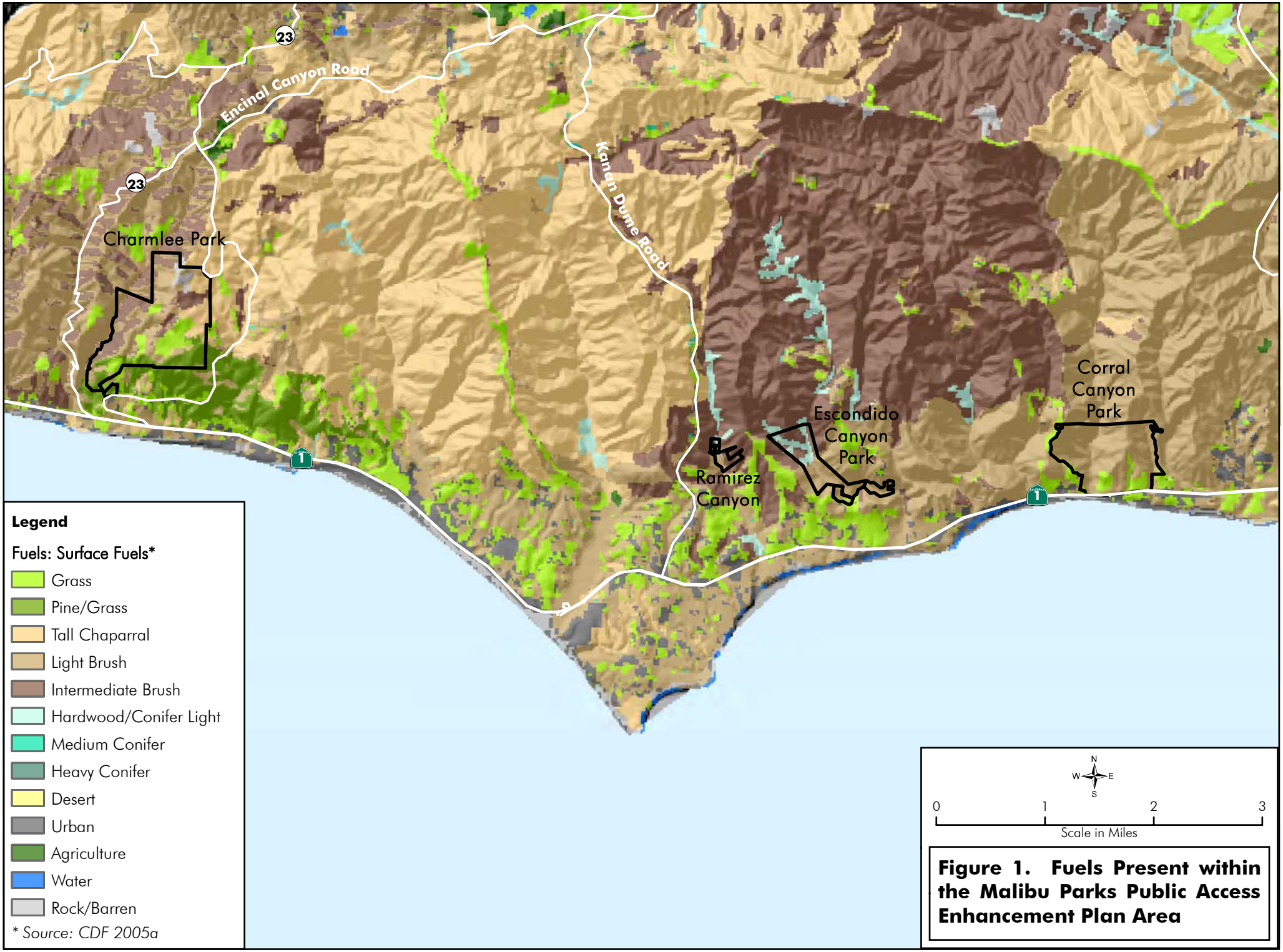


Figure 1. Fuels Present within the Malibu Parks Public Access Enhancement Plan Area

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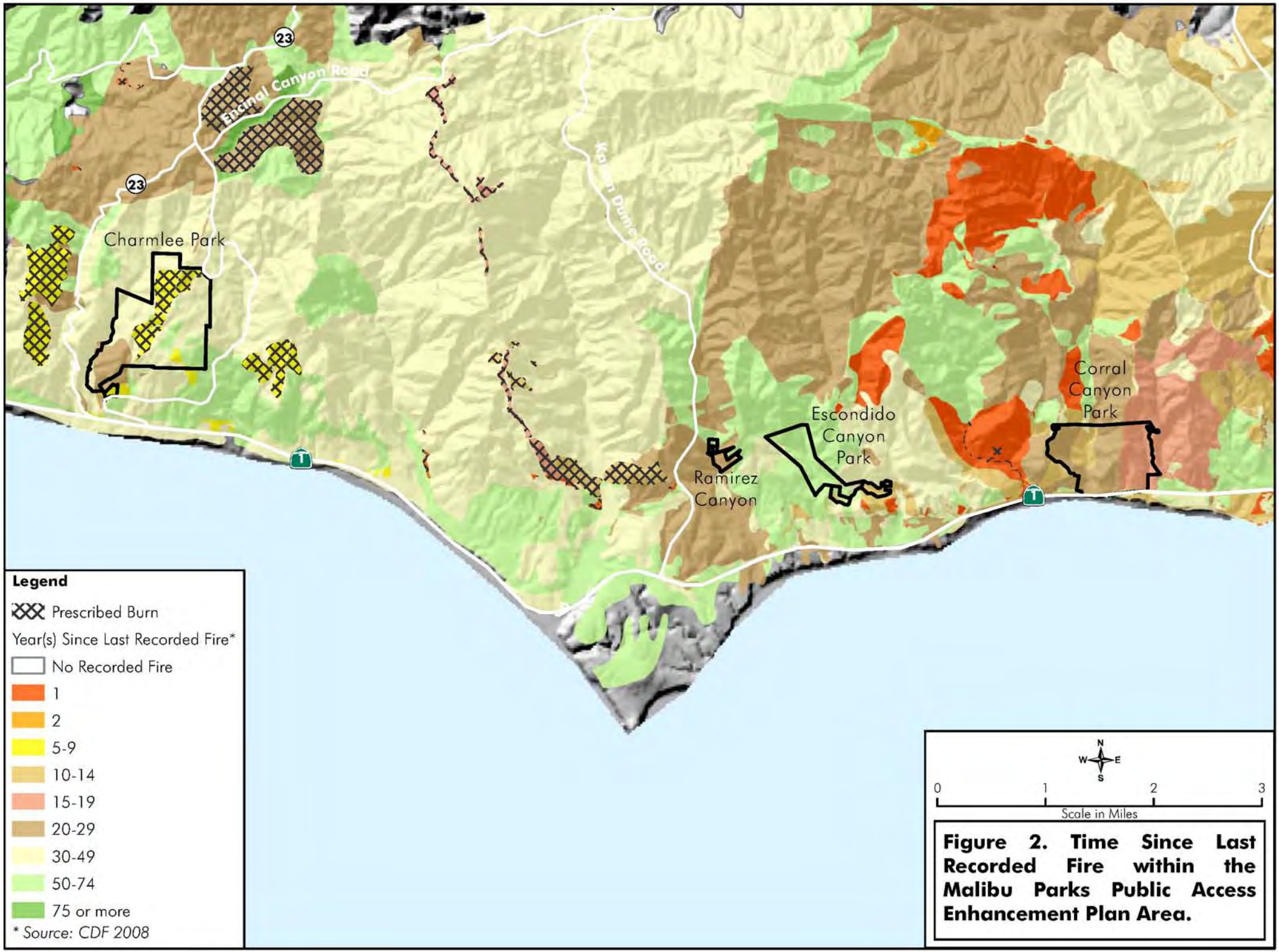


Figure 2. Time Since Last Recorded Fire within the Malibu Parks Public Access Enhancement Plan Area.

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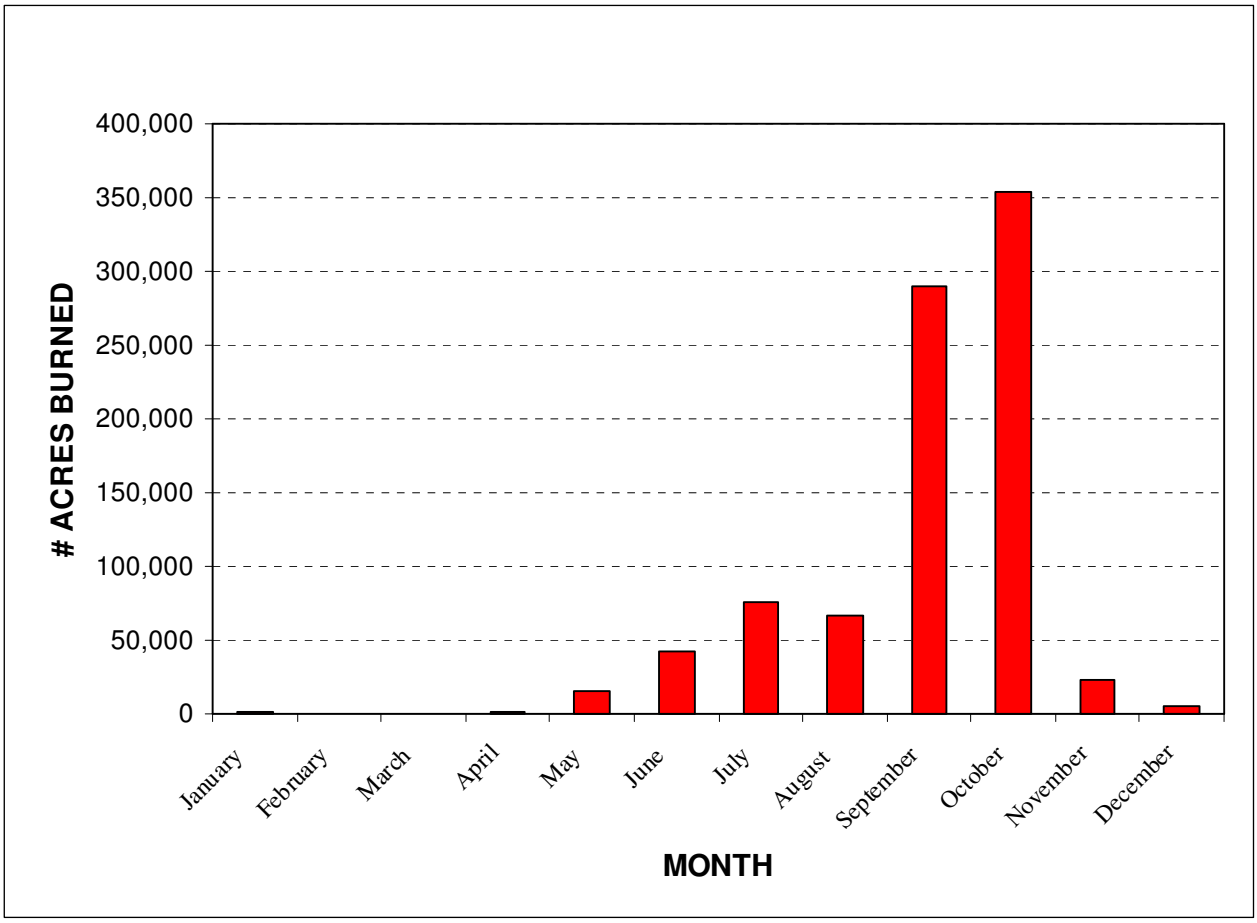


Figure 3. Number of Acres Burned in Los Angeles County by Month from 1987- 2007
Source: CDF 2008.

Table 3. Number of Fires and Acres Burned by Month from 1987 to 2007 in Los Angeles County

Month	*# Fires*	*% Fires*	*# Acres*	*% of Total Acres*
January	7	2	1,002	<1
February	3	1	278	<1
March	3	1	363	<1
April	13	3	712	<1
May	33	8	15,973	2
June	65	15	41,710	5
July	101	23	75,771	9
August	81	19	66,921	8
September	53	12	289,613	33
October	42	10	354,272	40
November	18	4	23,164	3
December	16	4	5,400	1
Total	**435**	**100**	**875,179**	**100**
Source: CDF 2008.				

2.4 Fire Causes

The majority of fires within California, and specifically within Los Angeles County have been ignited by humans. Lightning is an uncommon source in the region (Sugihara et al. 2006), with less than one

percent of the fires in LA County caused by lightning (Table 4 and Figure 4). Within the state of California, there have been 142 fires started by campfires within the last 20 years, burning over 360,000 acres and costing over 140 million dollars in suppression costs. Within the same time period, eight fires have been started by campfires in Los Angeles County alone. Campfires have been suspected but not confirmed as the ignition source of numerous other fires. These eight fires cost over 3 million dollars in suppression costs and burned over 2,220 acres.

Table 4. Number of Wildland Fires in Los Angeles County, California from 1987-2007

Cause	*# fires*	*% all fires*	*% of known caused fires*	*Acres*	*% Total Acres*	*% acres of known caused fires*
lightning	6	1	4	2,318	<1	<1
equipment use	30	7	20	94,651	11	19
smoking	5	1	3	1,457	<1	<1
campfire	8	2	5	2,235	<1	<1
debris	2	<1	1	179,975	21	36
arson	27	6	18	122,543	14	24
playing with fire	10	2	7	39,410	4	8
miscellaneous	49	11	32	44,455	5	9
vehicle	3	1	2	57	<1	<1
powerline	6	1	4	6,423	1	1
non-firefighter training	2	<1	1	948	<1	<1
aircraft	3	1	2	8,952	1	2
unknown	288	66	NA	373,163	43	NA
Total	**439**	**100**	**100**	**876,588**	**100**	**100**
Source: CDF 2008.						

Although fire department statistics demonstrate that campgrounds have very low risks for fire, opening up previously roadless areas to recreation increases fire risk by bringing populations to the fire zone. According to the National Interagency Fire Center statistics, southern California fires are on average ten times more likely to be human caused rather than ignited by natural causes (National Interagency Fire Center 2008). Arson was the leading cause of California wildland fires during the period 1984-1990. Data from the western United States regions consistently showed more fires per unit area on state and private lands than on federal lands; however, federal lands generally have fewer roads and recreational access into wildland areas. A fifteen year study also corroborated that a roadless area was less likely to have a fire outbreak than areas where new accesses and roads were built (Natural Resources Defense Council 2008). Fire fighters state that the majority of human caused wildfires ignite within a few feet of a road (Hefland 2007). However, arson can be prevented with increased patrols and enforcement of wildland recreation areas. Case studies in the eastern United States show law enforcement is linked to a reduction in wildland arson rates (Butry 2006, Prestemon and Butry 2005).

Further research has statistically linked fuels management, law enforcement, and socioeconomic variables to wildland arson areas burned and ignition probabilities. Poverty is found to be negatively related to wildfire ignitions, while the number of police patrols is correlated with fewer ignitions (Mercer and Prestemon 2005). California State Park employees at Santa Monica Mountains State Parks revealed a significant lack of funding for ranger patrols resulting in a less than desired degree of supervision and manned personnel in State Park campgrounds (California State Parks, personal communication 2008).

2.5 Housing Density

According to the most recent Census Tract Data (2000) for Los Angeles County, all four recreation areas are surrounded by relatively low density housing (1 house per 20 acres or less), or no housing at all

(Figure 5). However, this information is eight years old, and many residences have been constructed since that time. The City of Malibu Land Use Designations shows the potential housing density allowed by zoning for these areas (see Figure within the SMMC Plan). The majority of this area is designated as either 1 dwelling per 10 acres, 20 acres, or 40 acres. One exception is the SMC Ramirez Canyon property area which has land use designations of slightly higher density of 1 dwelling per 2, 5, and 10 acres to the west and north of the property. Aerial photographs show that the SMMC Corral Canyon property currently has the least amount of adjacent development; however, an RV park is located just to the east. For Ramirez Canyon, recent (2008) aerial photographs show housing development to the south and west of the property (Figure 6).

2.6 Fire Hazard and Fire Threat

In the 1980's, the CDF was directed by California Public Resources Code (PRC) 4201-4204 and Government Code 51175-89 to map significant fire hazard areas within California. These areas, called Fire Hazard Severity Zones (FHSZ), are based on fuels, terrain, weather, and other applicable factors. Mitigation measures such as defensible space and building standards are designated for each zone. In 2007, the CDF began updating these zones using updated data and recent technological advances in GIS. The data presented in this report is a result of these efforts (CDF 2007).

The FHSZ model evaluates hazard, not risk. Hazard is the likelihood of an area to burn in the future and is based on physical conditions that cause damage. Hazard does not take into account any modifications that a property owner may have done such as adding defensible space and sprinklers, while risk does. Figure 7 illustrates the fire hazard severity zones within Malibu. Charmlee Park, as well as SMMC's Corral Canyon Park, Escondido Canyon Park, and Ramirez Canyon property are located within Very High Fire Hazard Severity Zones.

The FHSZ model incorporates data from the Fire Threat model and the Communities at Risk listing developed by the CDF's Fire and Resource Assessment Program (FRAP). The Fire Threat Model creates four threat classes ranging from moderate to extreme, developed using fire frequency and the potential fire behavior. The higher the threat class, the more likely it is that vulnerable assets will be impacted. Fire Threat incorporates both fire frequency and the potential fire behavior. Potential fire behavior is estimated using current vegetative fuels, topography, and potential severe weather parameters (high winds, low relative humidity, high temperature, and low fuels moistures). The fuels, topography, and weather in this area, as previously described, all contribute to creating a Very High Threat.

Figure 8 depicts the Fire Threat within LA County and Malibu. The majority of the SMMC Corral Canyon Park and Escondido Canyon Park are within High Fire Threat Areas, and border Very High Threat areas to the north. The north part of Ramirez Canyon, in which SMMC has proposed "trail camps," is in Very High Fire Threat areas, while the lower portion is considered High. The northern part of Charmlee Park falls within both Extreme and Very High Fire Threat areas, while the northern portion falls primarily within High Fire Threat.

2.7 Fuel Modifications

2.7.1 Brush Clearance

The SMMC property has been identified by the State and by the County of Los Angeles Fire Department as a Very High Fire Hazard Severity Zone (VHFHSZ) in Government Code Sections 51175 through 51189 and *(Ord. 2007-0108 § 3 (part), 2007.)* This designation calls for more stringent brush clearance standards of up to a 200-foot fire break around structures. The brush clearance and fire break policy,

referred to as a property's *defensible space* for the County of Los Angeles in the California Public Resources Code 4291& 4292, are bulleted in Santa Monica Mountains Conservancy Research *Week 5: Brush Clearance Policy* document and is as follows.

> *All trees and shrubs should be limbed up one-third of their height, up to 20 feet. Highly flammable, small-leaved shrubs such as Buckwheat, Chamise, and Sage should be removed completely within 50 feet of any structure unless their removal creates an erosion hazard. Horizontal separation should be at least three times the crown diameter of the larger tree specimens from other native shrubs or 30 feet from the nearest structure. Remove or trim all vegetation a minimum of ten feet from chimneys or stovepipes. Maintain around and adjacent to such building or structure a firebreak made by removing and clearing away, for a distance of not less than 30 feet on each side thereof or to the property line, whichever is nearer, all flammable vegetation or combustible growth. Maintain around and adjacent to any such building or structure additional fire protection of firebreak made by removing all brush, flammable vegetation or combustible growth which is located 30-100 feet from such building or structure or to the property line whichever is nearer, as may be required by the State Forester when he finds that, because of extra hazardous conditions, a firebreak of only 30 feet is not sufficient to provide reasonable fire safety. Grass and other vegetation located more than 30 feet from such building or structure and less than 18 inches in height above the ground may be maintained where necessary to stabilize the soil and prevent erosion. Clear all hazardous flammable vegetation to mineral soil for a distance of 30 feet from any structure. Cut flammable vegetation to a height of 18 inches for another 70 feet. Maintain any tree adjacent to or overhanging any building, free of dead wood. Remove all flammable vegetation or other combustible growth. This does not apply to single specimen trees, ornamental shrubbery, or cultivated ground covers, provided they do not readily transmit fire. Additional clearance can be required if conditions warrant, up to 200 feet. Legal Brush Clearance Requirements Los Angeles County Fire Code 11.702b, 11.703 requires clearance of flammable vegetation for a minimum distance of 30 to 100 feet or a maximum distance of 50 to 200 feet around any structure located in a fire prone area. The clearance distance is subject to local enforcement, and in extremely hazardous areas, local fire authorities may require clearance beyond 100 feet. Remove and clear within 10 feet on each side of every roadway all flammable vegetation or other combustible growth.*[1]

The International Urban-Wildland Interface Code (IUWIC) has not been adopted into the County of Los Angeles Fire Department Fire Code. However, the IUWIC sets higher fire policy standards in regards to urban-wildland areas than the County of Los Angeles Fire Code. The IUWIC suggests the following policies regarding access roads and driveways.

> *Driveways shall be provided when any portion of an exterior wall of the first story of a building is located more than 150 feet from a fire apparatus access road. Driveways shall provide a minimum unobstructed width of 12 feet and a minimum unobstructed height of 13 feet 6 inches. Driveways in excess of 150 feet shall be provided with turnarounds. Driveways in excess of 200 feet in length and less than 20 feet in width shall be provided with turnouts in addition to turnarounds. A driveway shall not serve in excess of five dwelling units.*[2]

Field research and case studies show that all fuel sources removed in a 30-foot zone around homes greatly reduce the risk for structure loss (Cohen and Saveland 1977). Further studies confirm the importance of extending this distance another 70 feet in high hazard zones to a 100-foot clearance (although the accumulation of non-native ladder fuels and erosion increases drastically if clearance areas are allowed to

[1] State of California Public Resources Code 4291. Minimum Statewide Clearance of Brush; Los Angeles County Fire Code F.C. 1117.2.5, 1117.2.4, 1117.2.2, 1117.2.3, 1117.10; County of Los Angeles Fire Department "Fuel Modification Guidelines."
[2] International Urban-wildland Interface Code 403.2.

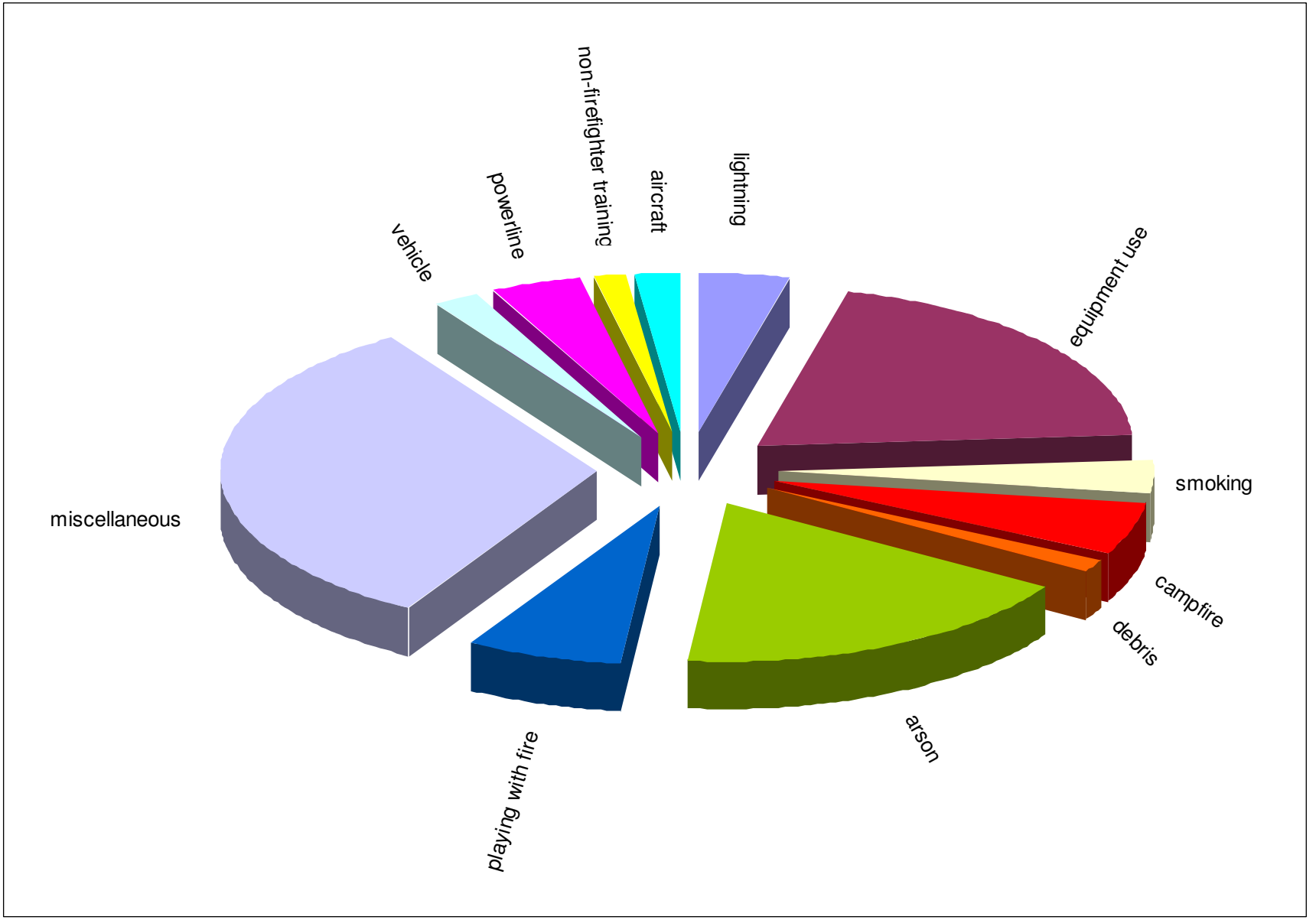


Figure 4. Number of Fires by Known Cause in Los Angeles County, California from 1987-2007. (*Source: CDF 2008*)

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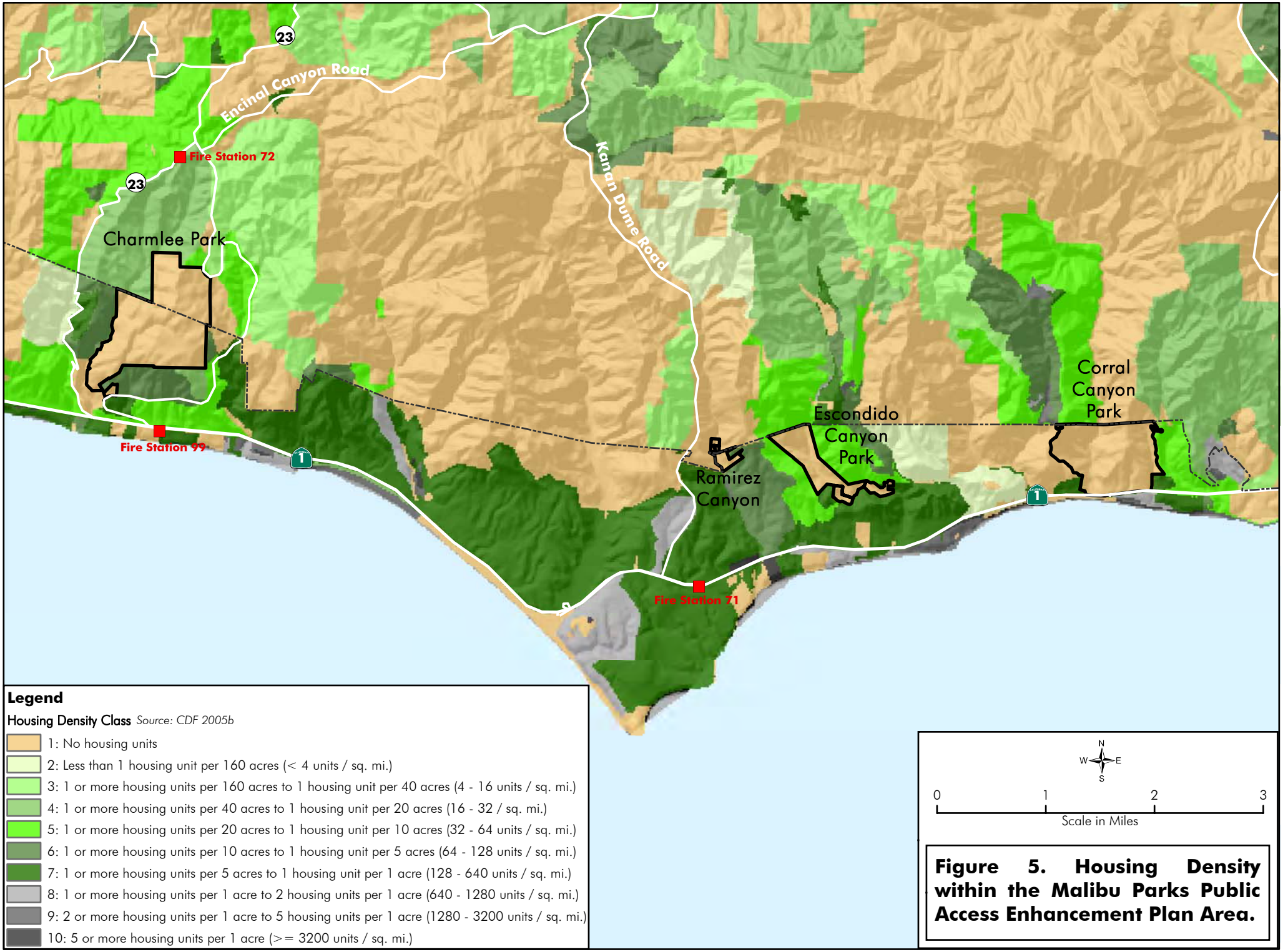


Figure 5. Housing Density within the Malibu Parks Public Access Enhancement Plan Area.

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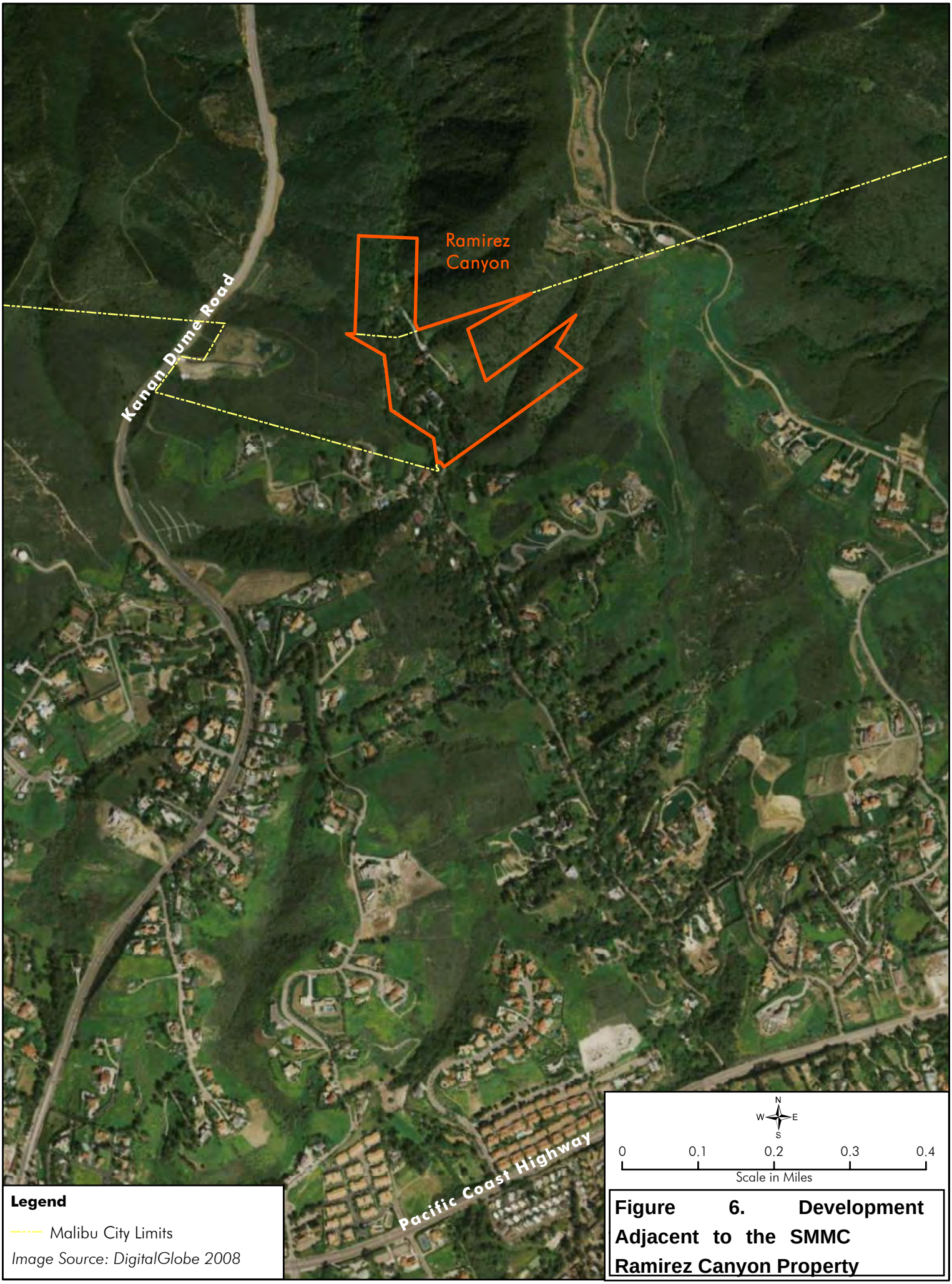


Figure 6. Development Adjacent to the SMMC Ramirez Canyon Property

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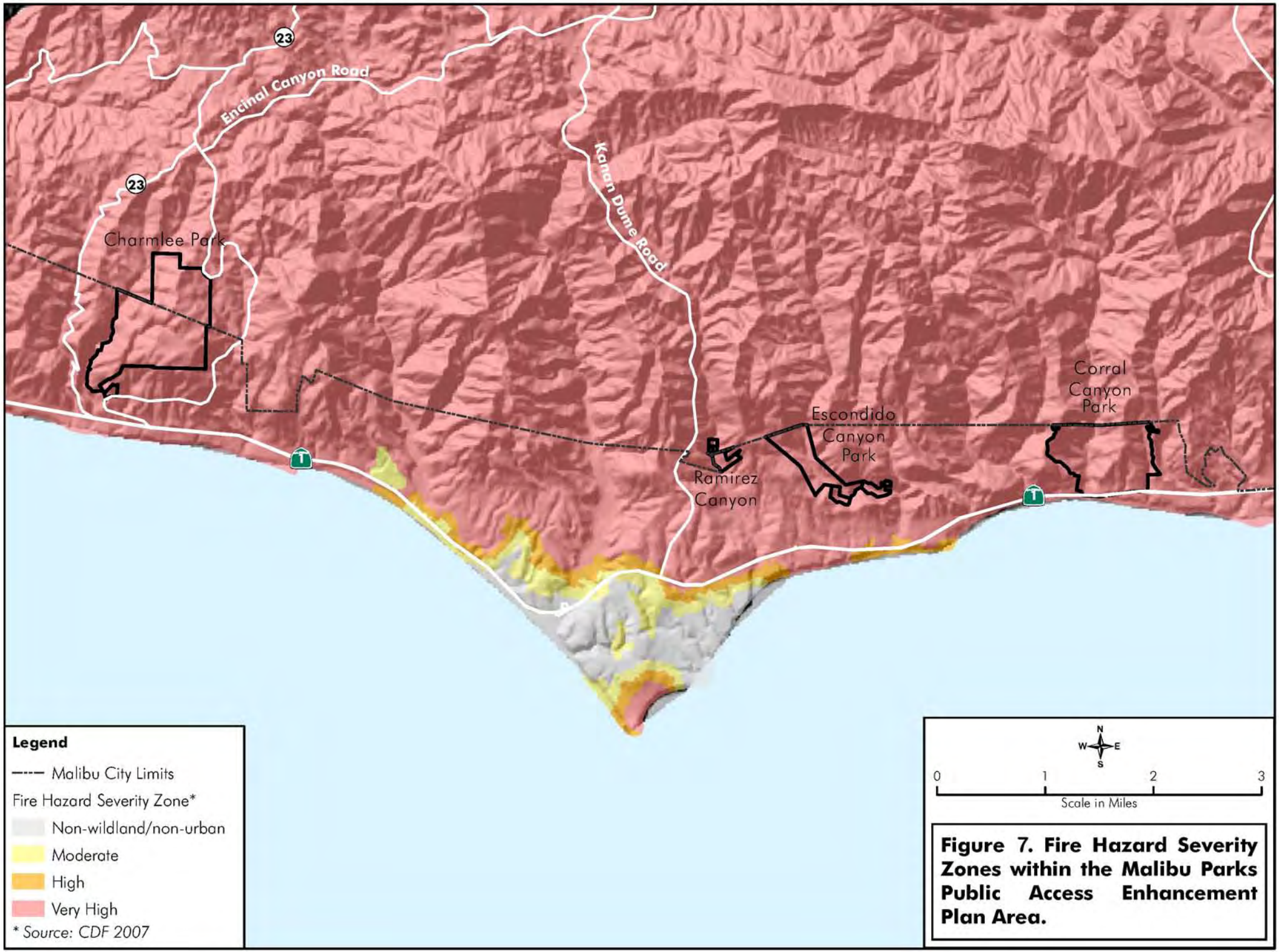


Figure 7. Fire Hazard Severity Zones within the Malibu Parks Public Access Enhancement Plan Area.

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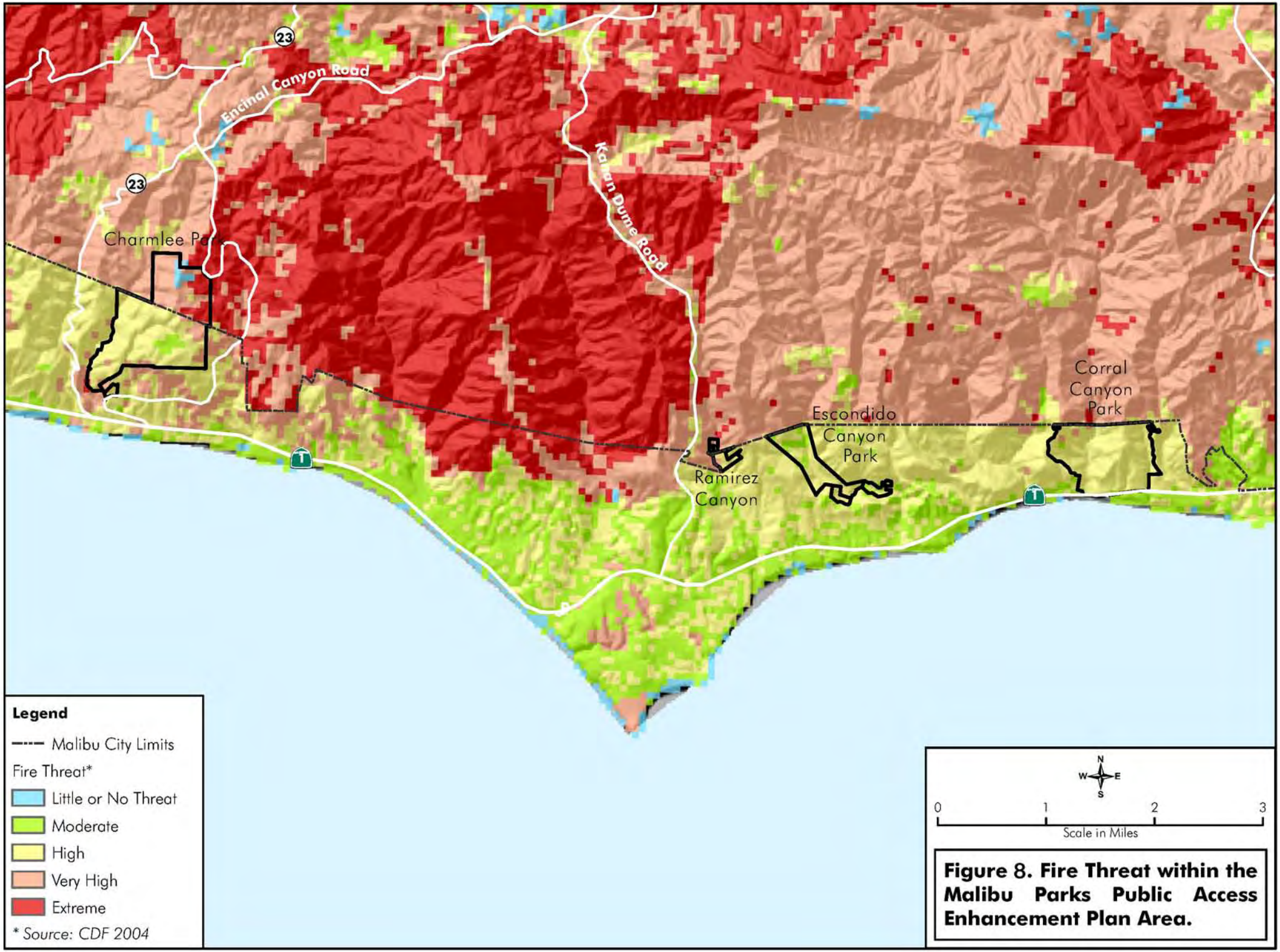


Figure 8. Fire Threat within the Malibu Parks Public Access Enhancement Plan Area.

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re-vegetate) (Halsey 2004). The additional 100 feet of brush clearance for a sum of 200 feet of fire break around structures, mandated by the County of Los Angeles Fire Department in the VHFHSZ, has not been proven to alone decrease the potential for structure loss. Although fuel reduction 200 feet from structures has shown promise in U.S. urban-wildland conifer forests, 200-foot brush clearance standards in the chaparral ecosystem have not demonstrated a means for stopping a fire (Ibid). While there is a lack of research documenting that a 200-foot clearance in chaparral ecosystems alone decreases the risk of structure loss, a correlation exists for reduction in fire intensity, and fire speed. Fire fighters generally will not enter a property that is not properly cleared due to the lack of defensible space, and therefore, evidence substantiates an increased risk for the loss of properties that do not abide by the brush clearance fire code (Keeley et al.1999). The Fair Plan group made up of California insurance agencies mandates a 200-400-foot clearance for insuring homeowners in VHFHSZ (Fair Plan 2008).

2.7.2 Non-compliance with Brush Clearance Policy

Studies repeatedly have concluded that fuels of native chaparral have not increased to unnaturally high levels in contrast to popular belief (Conard and Weise 1998; Keeley et al. 1999; Keeley and Fotheringham 2003; Moritz 2003). Of the total chaparral in the Santa Monica Mountains, only 1.6 percent has been present for more than 77 years (Halsey 2004). However, there has been an increased hazardous fuel risk and poor fuel management along with non-compliance with fire code in the Santa Monica Mountains for non-native vegetation. Necessary clearing of non-native fuels outlined in the Los Angeles pre-fire management plan, at even reasonable fire breaks of 30-100 feet around structures, is lacking on an estimated 30 percent of private properties (LA County 2004). Non-native brush has also congested state and city owned property in southern California that Caltrans manages (Helfand 2007). Another concern is that property owners with land designated by the Coastal Commission as ESHA may find that adhering to the California Coastal Act clearance limitations within ESHA is in conflict with the County Fire Code (San Francisco Chronicle January 10, 2007). Areas burned in January 2007 along Malibu bluffs were fueled by coastal sage scrub; however, review of the fire found that extreme wind conditions existed during the fire and according to previous case studies, increased fire breaks likely would not have stopped the fire (Moritz et al. 2004).

2.7.3 Prescribed Burns

A pre-fire management strategy, beyond brush clearance mandated by the federal government and imposed by CDF and the National Forest Service, is prescribed burns (United States Government Accountability Office 2006). Prescribed burns have focused on fuel manipulation as a means to prevent large fires. Although this strategy has been shown to be an appropriate fire management strategy for fires that ignite under calm wind conditions, large scale catastrophic fires fueled by high winds do not respond to fuel breaks or young fuels as a means for a barrier for the fire to spread (Witter and Taylor 2008; Keeley 2004). Although fire breaks may not prevent the fire from spreading, younger fuels and fuel breaks have been shown to decrease the fire intensity and may provide defensible space for fire suppression crews (Halsey 2004). Prescribed burns generally do not prevent structure loss because treatments are often remote and far from development due to the danger of a fire escape (Witter and Taylor 2008).

2.8 Recommendations

Recommendation No. 1: No camping in any of the three canyons (except for accessible camping at Ramirez provided there is close supervision of such activities) and no special events in Ramirez.

Given the very high wildland fire risk within the SMMC proposed recreational areas, we recommend that additional camping not be approved. Within the SMMC's proposed recreational areas, and specifically

Ramirez and Escondido canyons, steep terrain and box canyons exist, increasing the potential for extreme fire behavior and rapid spread, as well as dangerous fire-fighting situations. In addition, access for fire equipment and for evacuation of people in the SMMC Ramirez Canyon property is inadequate, thereby increasing the risk to people using the property. The only access road is narrow with pavement 13 to 20 feet wide with numerous speed bumps, two Arizona-type crossings of Ramirez Creek, and a narrow (less than 12 feet wide) wooden bridge over the creek. Increased human use, particularly the proposed camping and special events, increases the risk of destructive wildland fires in what is already a hazardous fire-prone urban interface and exposes a larger segment of the public to these fire risks.

Recommendation No. 2: No trail camping in Ramirez and Escondido canyons.

Trail camps are inherently unsafe in terms of fire ignition risk. These camps are located in or adjacent to flammable brush and grasses, and are difficult for rangers to monitor. The proposed trail camps in Ramirez Canyon are placed a significant distance from vehicular access. Additional clearing of a buffer around the camps to reduce such risks would result in a greater removal of vegetation (some of which would be ESHA) than that needed for the camp spaces alone, thereby increasing the potential for invasion of weedy species and soil erosion. Furthermore, unless clearly marked and patrolled, the cleared buffer could be used by campers, negating the effectiveness of the buffer.

In Escondido Canyon Park, the area proposed for trail camps is located within designated ESHA, and most of the camps are within 100 feet of the creek. The camp sites would need to be cleared of coastal sage scrub vegetation and graded to form level pads. The nearest house is about 725 feet to the northeast and numerous houses are present within 0.5 mile upslope from the proposed camp sites. As noted above, fire can move rapidly up steep slopes and would endanger those homes.

Recommendation No. 3: If camping is allowed in any of the three canyons, or special events and/or offices are allowed in Ramirez Canyon, additional precautions must be taken.

If any camping is permitted, the following measures should be required to reduce the risk of fires from camping activities:

- All camping facilities should require a conditional use permit to ensure that safety and proposed operation of each campsite will be evaluated on a case by case basis.
- In addition to suspending camping during red flag days, camping should also be suspended in the late summer and fall when Santa Ana winds are prevalent (August – November). Provisions need to be included to make sure that all campers leave the property on red flag days.
- In addition to a no campfire policy, all camping stoves and lanterns with open flames should be prohibited. Registration of all campers shall also be required as well as an on-site ranger (24/7) whenever campsites are in use.
- All Park Rangers at all camping areas will patrol with a fire vehicle at all times (vehicle equipped with a 100-gallon water tank with a 50-gallon-per-minute pump or greater).
- Firefighters should be on duty or at least on call when campers are present. The number of firefighters and equipment available should be scaled according to the current fire danger. The schedule for the SMMC firefighters and where they and their equipment will be stationed is not provided. This information should be included in the proposal.
- The locations of the helicopter landing zones on SMMC property are not provided. It is recommended that this be included in the proposal and that helicopter landing zones are located at or near each of the recreational sites that allow camping.

- Increase the number of firefighting personnel employed by the SMMC.
- Given SMMC's poor compliance history with regard to brush clearance policies, no camping should be allowed until SMMC comes into compliance, and all proposed recreational uses of a site should be suspended any time the agency is found non-compliant.
- If the Coastal Commission allows overnight camping in any of these canyons, SMMC should be required to submit to the Commission and the City annual performance reports indicating the level of staffing provided at each facility to ensure compliance with all terms and conditions of any permits.

2.9 SMMC Fire Management and Prevention

The following information comes from the SMMC website describing their Fire Prevention Program (SMMC 2008). SMMC/MRCA state that they:

- Have a policy stating that no smoking or open fire of any kind is allowed in SMMC or MRCA parkland. Smoking or open fire is punishable by a $541 fine. This policy and sanction is not mentioned within the Override Plan, and should be added.
- Spend over $1.2 million each year on brush clearance and fire prevention on their properties. However, SMMC owns many thousands of acres of open space, and the amount spent at the Ramirez Canyon, Escondido Canyon, and Corral Canyon properties is not specified.
- Maintain constant communication with the Los Angeles County Fire Department, the Los Angeles City Fire Department, the Ventura County Fire Department, California State Parks and the National Park Service to promote cooperative efforts to prevent--and if necessary defend against--wildfire.
- Employ 45 trained wildland fire fighting personnel certified to the same training standards as the U.S. Forest Service and provide continuous training in wildland fire behavior and urban interface fire fighting. However, as noted above, SMMC owns many thousands of acres of open space, and there is no evidence that 45 fire fighting personnel is adequate to reduce the risk.
- Deploy their own fire-fighting equipment including one four-wheel drive type 2 fire engine, one type 3 engine, one water tender, two mobile command units, 30+ chainsaws, and eight fire patrol vehicles equipped with a minimum of 200 gallons of water. In addition, many of the parks store water for fire-fighting purposes.
- Patrol their parklands and the Mulholland Scenic Corridor with fire-equipped vehicles.
- House a remote automated weather service (RAS) station for the Los Angeles County Fire Department at Ed Edelman Park in Topanga Canyon.
- Provide helicopter landing zones on their property for Ventura County Fire Department, Los Angeles County Fire Department, and Los Angeles City Fire Department helicopters.

2.10 Inadequate Fire Access

The only vehicular access to the SMMC Ramirez Canyon property is by Ramirez Canyon Road. Access to this road from Pacific Coast Highway (PCH) southbound is via a locked gate and concrete box tunnel (Photo 1) under PCH that is approximately 10 feet wide. Access from southbound and northbound PCH is also via Winding Way and Delaplane. Winding Way and the first about 525 feet of Delaplane (Photo 2) are 20-24 feet wide, but Delaplane rapidly narrows to about 14 feet and passes through a gate that is 16

feet wide (Photo 3). The gate is locked on weekends. Two speed bumps are present on Delaplane between the gate and Ramirez Canyon Road. Delaplane slopes steeply to Ramirez Canyon Road and has a closed canopy of trees over the road (Photo 4).

Ramirez Canyon Road is a private, rural, narrow roadway, with pavement that is generally 16 to 20 feet wide. The end of the road (i.e., at the SMMC property) is a loop so cars can turn around. At this turnaround loop, however, the pavement narrows to 13 feet (Photo 5). The road is approximately one mile long, with two speed bumps between PCH and the intersection with Delaplane and another nine speed bumps from Delaplane to the end of the road at the SMMC Ramirez Canyon property. The road also has two Arizona-type crossings of Ramirez Creek between PCH and Delaplane and two more from there to the end (Photo 6). Just south of the turnaround loop the road crosses Ramirez Creek via a narrow wooden bridge (11 feet 8 inches drivable width) (Photo 7). Parked cars as well as trash/recycle/green waste bins also restrict the usable the roadway width at times (Photo 8).

2.11 Alternative Access

Alternative access to the SMMC Ramirez Canyon property (via Kanan Dume Road) would provide dedicated access to the SMMC Ramirez Canyon property, and Ramirez Canyon Road should then become an alternative emergency access route. An existing 30-foot dirt road is present from the SMMC Ramirez Canyon property westward across parcel APN 4467-002-068 . That road ends near the northern boundary of the parcel just south of the National Park Service (NPS) property. A 13-foot dirt road extends westward from the 30-foot dirt road along the northern boundaries of APN's 4467-002-068, 4467-002-067, and 4467-002-066 to the western boundary of the latter parcel, which is adjacent to property currently being sold by Los Angeles County to MRCA. This property is contiguous to Kanan Dume Road. This dirt road has been cleared in the past, but native coastal sage scrub vegetation has completely grown over about 700 feet of the eastern portion (Photo 9). Approximately 450 feet of the dirt road to the west has scattered native plants such as giant wild rye and purple sage as well as non-native species such as mustards within the previously cleared area that is about 12 feet wide (Photo 10). The density of native plants is low compared to that of undisturbed adjacent habitat. Continuing westward, the cleared track extends another 245 feet (Photo 11). The distance from the end of the cleared track to an existing short access track (Photo 12) from Kanan Dume Road (going around the edge of parcel APN 4467-002-066), that is not currently cleared, is 385 feet. However, the western portion of this area is dominated by coyote brush, a native species that colonized disturbed areas (Photos 13 and 14) and the eastern part is coastal sage scrub (Photo 15).

In addition, two tracks have been recently cleared down the ridgeline along and near the property line between parcels 4467-002-068 and 4467-002-067 to the end of Ramirez Canyon Road, in the area of the 13-foot dirt road (Photos 16 and 17). These tracks are approximately 6 to 10 feet wide and are dominated by non-native mustard (Photo 18). The adjacent vegetation is coastal sage scrub that is dominated by purple sage, California sagebrush, and giant wild rye.

Construction of a new road from Kanan Dume Road to the SMMC Ramirez Canyon property would affect coastal sage scrub in an area that has been previously disturbed so that less of this plant community would be affected than if the road were placed through undisturbed coastal sage scrub. This plant community is designated ESHA within the coastal zone as described above.

Although such a road appears to be feasible, a number of issues would need to be resolved before it could be built. These include:

1. Property would need to be purchased or an easement obtained for the road.

2. A water line pump station proposed for bringing water from Ramirez Canyon Road to the building sites on the Lauber property may be located within the existing dirt road.
3. Engineering feasibility of the road, including potential geologic constraints.
4. Permitting for a road through ESHA.

2.12 Summary

Weather, climate, topography, and fuels all influence the frequency and severity of fires. The SMMC Ramirez Canyon property and Escondido Canyon, Corral Canyon, and Charmlee parks are all located in a Very High Fire Hazard Severity Zone. Overnight camping, and particularly trail camps, should not be allowed on any of the properties due to the fire risk. Only one substandard private road provides access to SMMC Ramirez Canyon property. If any intensified use of the Ramirez property is to occur, an alternative access road should be constructed westward from the property to Kanan Dume Road.

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3.0 Environmentally Sensitive Habitat Areas (ESHA)

3.1 Introduction

The habitat of Ramirez Canyon consists mostly of native vegetation on the slopes, primarily coastal sage scrub and chaparral, and tree-dominated habitats along the creek channel (Dudek 2007). Natural habitats in the Santa Monica Mountains, particularly coastal sage scrub, chaparral, and riparian areas is defined as ESHA by the California Coastal Commission (Dixon 2003).

The basic purpose of the Coastal Act is to protect natural resources, enhance, and restore natural resources where feasible, and provide for public access and public recreation. However, public access and recreation must be balanced with sound resource conservation (section 30001.5). The Coastal Act (section 30240) prohibits development in ESHA, except where the development is dependent on the resources that make up the ESHA. The Bolsa Chica decision (Bolsa Chica Land Trust v. Superior Court 71 Cal. Ap.4th 493, 507) confirmed that the Coastal Act requires that ESHA be avoided and buffered from development impacts and that providing mitigation is not sufficient justification for allowing development with avoidable impacts to ESHA.

The Coastal Act (section 30212.5) states that "public recreation facilities shall be distributed throughout an area so as to mitigate impacts, social and otherwise, of overcrowding or overuse of any single area." However, this is preceded by "wherever appropriate and feasible." The Coastal Act (section 30250) states that "new residential, commercial, or industrial development, … 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."

The City of Malibu Local Coastal Plan (LCP) states that natural vegetation buffers are required to protect the ESHA resources from being degraded, and this element specifically applies to fire clearance. Where new development will occur, the following additional requirements apply:

1. New development is to be sited and designed to minimize impacts to ESHA by minimizing grading, limiting the removal of natural vegetation.
2. Grading during the rainy season is prohibited.
3. Graded and other disturbed areas must be landscaped or revegetated with primarily native, drought resistant plants at the completion of grading.
4. Measures to restore disturbed or degraded habitat on the project site shall be included as mitigation, if feasible.
5. Fencing must be limited, and in or adjacent to ESHA, must be sited and designed to allow wildlife to pass through.
6. Exterior lighting must be limited in intensity and shielded to minimize impacts on wildlife.
7. New development must be sited and designed to minimize required fuel modification.

The City of Malibu LCP further states that while public recreation, including relatively low cost accommodations are encouraged, they must be sited to minimize impacts to ESHA and visual resources in addition to being designed to meet fire safety standards.

3.2 ESHA in the SMMC Ramirez Canyon Property

The SMMC properties subject to the Plan are within ESHA as designated in the Malibu LCP. Therefore, the above requirements would apply to further developments on these properties, including the areas proposed as part of the development planned for the SMMC Rameriz Canyon property for accessible overnight camping activities, tours, gatherings, trail camps, special events, and offices. None of these activities are allowed in ESHA. The proximity of some residential structures to flammable vegetation has resulted in extensive clearing to reduce fire risk, some of which removed coastal scrub ESHA. In addition, fire protection clearing results in degradation of the habitat by opening up areas to weed infestation and erosion.

The development planned for the SMMC Ramirez Canyon property would result in several potential impacts related to increased human presence for camping and special event activities that could further degrade the ESHA. Possible impacts include: degradation/removal of ESHA to construct camp grounds and fire clearance areas around them, increased fire risk, increased presence of non-native animals, the potential to introduce and/or spread infestations of non-native invasive species, increased night lighting, presence of pets that could injure wildlife, erosion along trails and in sloped areas, and trash blowing from camping and day use areas into adjacent natural habitat. These impacts are discussed in more detail below.

The increased human presence on site would increase the presence of propagules (e.g., seeds) of non-native invasive species. Propagules of non-native plants can be imported onto the site on spread within the site (along trails and roads) on a person's boots, clothing, backpack, pets (primarily dogs), car tires, or the undercarriage of a car. As non-native invasive species spread along trail corridors, they establish footholds that allow them to spread into the native scrub when openings appear, such as shortly after fire or erosion along trails. Hence, an active and adaptive weed management plan should be integrated into the project design. The weed management plan should address weedy species that are currently present on site (to prevent them from spreading), monitoring of the project site for new weed infestations, and an aggressive treatment and removal program for the life of the project.

The construction of proposed trails could lead to erosion either along trails or leading downslope from them particularly on steep slopes. Erosion could lead to losses of surface material (topsoil), increases in weed infestations, and sedimentation of the creek. These risks should be controlled by establishing a fully-funded trail inspection and maintenance program.

Litter and trash from camping and day use areas would be expected to periodically blow into adjacent habitats. This could result in visual impacts, nuisance, and mortality or stress to animals that ingest or become entangled the refuse. This risk should be minimized by having a trash removal program that would remove all wind blown trash from the camping and day use areas on a regular basis.

4.0 Stream ESHA

As noted in Section 3.0, natural habitats along streams (termed riparian areas) are considered ESHA. Riparian habitats consist of coast live oak-dominated areas and sycamore-willow woodlands, focused along the creek channel and floodplain (LSA Associates, Inc 2002). The natural plant communities in the developed portion of the canyon, concentrated along the floodplain area of the property, have been degraded. This area contains mostly non-native vegetation that has been planted or naturalized in the area. The condition of the riparian habitat, particularly on the east side of the creek in the lower reaches of the property, have been degraded by residential development and associated landscaping within the riparian zone starting in 1953 (LSA Associates, Inc 2002).

Proposed development and use of existing facilities in the SMMC Ramirez Canyon property include construction of bridges or low water creek crossings and removal or pruning of native vegetation along the creek. Existing bridges and low water crossings, as applicable, may need to be improved, widened, and/or replaced for access and to provide adequate escape routes in the event of a fire or other emergency. Work in the creek bed could result in degredation of waters of the U.S. and wetlands, removal of riparian and/or wetland vegetation, sedimentation of downstream aquatic habitats, and mortality or stress to aquatic wildlife.

The increased human presence resulting from the project could result in impacts to the riparian habitat. Nighttime lighting in the canyon, and particularly in or adjacent to the riparian corridor, would increase as campers light their surroundings. This could interfere with movement of wildlife that use riparian corridors at night. Noise associated with the campers could also interfere with wildlife movement at night as well as in the daytime, thereby reducing the quality of the habitat for these animals or the quantity of the habitat if the animals avoid use of the area once camping begins. Human presence would likely attract non-native species and well as some native species that are adapted to human activities (e.g., English sparrow, American crow). An increase in these species could displace native species present before the camps were developed.

Establishing new campgrounds would lead to an increase in the presence of pets on site. This could potentially impact wildlife by 1) direct mortality when pets capture or harass wildlife, or 2) by causing animals to leave the area due to harassment.

As described in Section 3.2, erosion from trails in upland areas could affect creek habitats, and trash from camping and day use areas could blow into the riparian corridor.

Under Section 404 of the Clean Water Act (CWA), the U.S. Army Corps of Engineers has jurisdiction over activities within the ordinary high water mark of streams; the Regional Water Quality Control Board has jurisdiction under Section 401 of the CWA. Under Section 1600 of the Fish and Game Code the California Department of Fish and Game has jurisdiction over developments that could affect the bed and banks of a stream and its associated riparian corridor. Developments (including repairs and habitat enhancement) within their jurisdiction require a Streambed Alteration Agreement. Typical conditions of such a permit are:

Native Vegetation Protection

- Restoration shall include the revegetation of stripped or exposed work and/or mitigation areas with vegetation **native** to the area.
- No **native** vegetation with a diameter at breast height (DBH) in excess of **3** inches shall be removed or damaged without prior consultation and approval of a Department representative.

- In **areas of temporary disturbance**, where vegetation must be removed, native trees and shrubs with DBHs of **3** inches or less shall be cut to ground level with hand operated power tools rather than by grading.
- Vegetation removed from the stream shall not be stockpiled in the stream bed or on its bank. The sites selected on which to push this material out of the stream should be selected in compliance with the other provisions of this Agreement. Where possible, brush piles shall be left outside the channel in upland areas to provide wildlife habitat.
- No living native vegetation shall be removed from the channel, bed, or banks of the stream, except as otherwise provided for in this agreement.
- No equipment shall be operated or parked within the dripline of oaks. Protective fencing shall be placed outside the dripline of oaks to prevent compaction of the root zone.
- Any oaks, California black walnuts, and sycamores that are damaged or removed during construction operations shall be replaced in kind at a 10:1 ratio. Valley oaks shall be replaced in kind at a 15:1 ratio. Elderberry, cottonwood, and willows shall be replaced at 5:1.

Removing Non-native Vegetation

- The Operator shall remove any non-native vegetation (tree tobacco, castor bean, giant cane, etc.) from the work area and shall dispose of it in a manner and a location that prevent its reestablishment. Removal shall be done at least twice annually during the spring/summer season, as needed, through the term of restoration.
- Giant Cane, if present, shall be cut to a height of 6 inches or less, and the stumps painted with an herbicide approved for aquatic use within 5 minutes of cutting. Herbicides shall be applied at least three times during the period from May 1 to October 1 to eradicate these plants. Where proposed methods for removing giant cane deviate from this procedure, the Operator shall present the alternate methods, in writing, to the Department for review and approval, prior to construction.
- Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Operator shall employ only those herbicides, such as Rodeo/Aqua-Master (Glyphosate), that are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, that are approved for aquatic use.
- The Operator shall apply any herbicides in accordance with state and federal law. No herbicides shall be used where Threatened or Endangered species occur. No herbicides shall be used when wind velocities are above 5 miles per hour.
- No herbicides shall be used on native vegetation unless specifically authorized, in writing, by the Department.
- Staging/storage areas for equipment and materials shall be located outside of the stream/lake.

Project Conditions

- The Operator shall only use unconcreted rock rip-rap.
- Bottoms of temporary culverts shall be placed at or below stream channel grade. Bottoms of permanent culverts shall be placed below stream channel grade deep enough so that sediments

accumulate at the bottom to mimic a natural bottom. **If any structure is cast in place, the area poured shall be completely bermed and isolated to contain all and any wet cement, even if water is not present. The pH of hot concrete may be as high as 13, a level that is toxic to wildlife**.

- Storm drain lines/culverts shall be adequately sized to carry peak storm flows for the drainage to a single outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout. They will also be resistant to erosion of the stream bed, stream banks and/or fill. To reduce erosion, water velocity shall be dissipated at the outfall.
- An oil/water/trash separation and removal system shall be installed at all storm drains and street runoff structures prior to the water flowing into the creek channel. This system shall function as designed and shall be maintained on a regular basis by the landowner(s).

Cleanup

- Structures and associated materials not designed to withstand high water flows shall be moved to areas above high water before such flows occur.
- Any materials placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.
- Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential. Planting, seeding, and mulching is conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials, such as coconut fiber matting, shall be used for such stabilization. Any installation of non-erodible materials not described in the original project description shall be coordinated with the Department. Coordination may include the negotiation of additional Agreement provisions for this activity.
- If vacuum trucks or pumps are used to clean up any contamination, or for any other use, the vacuum hose shall be placed in a 3- to 4-square foot area and protected on all sides by exclusionary fencing to lower velocities and prevent the uptake of any aquatic life.

Pollution, Sedimentation, and Litter

- No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake. Fish and Game Code Sections 5650 and 5652 prohibit any waste from being deposited within 150 feet of any waters of the State, at any time, even after this Agreement has expired.
- No concrete or concrete type material shall be poured for any structure if rain is forecasted within 15 days.
- The Operator shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall obey these laws and it shall be the responsibility of the Operator to ensure compliance.
- The Operator shall mark, sign, or stencil all storm drains warning that dumping is illegal and that all storm drains drain to creeks, rivers or the ocean.

- Any equipment or vehicles driven and/or operated within or adjacent to the stream or lake shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic life.
- Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans.
- No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- The clean-up of all spills shall begin immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding cleanup procedures.
- Raw cement/concrete or washings thereof, asphalt, paint, construction waste, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the State. Any of these materials, placed within or where they may enter a stream or lake, by the Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
- Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing, or wetland areas) without the prior written approval of the Department.
- No equipment shall be operated within the stream.
- Precautions to minimize turbidity/siltation shall be taken into account during project planning and shall be installed **prior** to construction. This shall require that the worksite be isolated and that water be diverted around the work area by means of a barrier, temporary culvert, new channel, or other means approved by the Department. **A row of straw bales or silt fencing shall be placed across the channel, prior to, and immediately downstream of, any work done within the creek.** Precautions shall also include placement of silt fencing, straw bales, sand bags, and/or the construction of silt catchment basins, so that silt, or other deleterious materials are not allowed to pass to downstream reaches. The method used to prevent siltation shall be monitored and cleaned/repaired weekly. The placement of any structure or materials in the stream for this purpose, not included in the original project description, or Department approved water pollution/water diversion plan shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.
- Silty/turbid water from dewatering or other activities shall not be discharged into the stream. Such water shall be settled, filtered, or otherwise treated prior to discharge. The Operator's ability to minimize turbidity/siltation shall be the subject of pre-construction planning and feature implementation.
- Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
- Rock, gravel, and/or other materials shall not be imported to, taken from, or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement. Water shall not be pumped from the channel and used for dust control or any other use in the project.

Protection For Wildlife and Aquatic Species

- The Operator shall not remove or otherwise disturb vegetation or conduct any other project activities on the project site from **March 1 to September 15** to avoid impacts to breeding/nesting birds. OR, Prior to construction or site preparation activities, the Operator shall have a qualified

biologist survey all breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds. If listed species are present, surveys shall begin no later than June 1. Surveys shall be conducted every 7 days for 8 consecutive weeks until at least July 1. Documentation of findings, including a negative finding must be submitted to the Department for review and concurrence. If no breeding/nesting birds are observed and concurrence has been received from the Department, site preparation and construction activities may begin. If breeding activities and/or an active bird nest is located and concurrence has been received from the Department, the breeding habitat/nest site shall be fenced a minimum of 300 feet (500 feet for raptors) in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.

- If threatened or endangered species are observed in the area, no work shall occur during the breeding season (March 1 through September 15) to avoid direct or indirect (noise) take of listed species and State and/or Federal threatened/endangered species permits may be required prior to commencing project activities. This Agreement does not authorize take of species listed as Threatened and/or Endangered.
- Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). This Agreement does not allow the Operator, any employees, or agents to destroy or disturb any active bird nest (Section 3503 Fish and Game Code) or any raptor nest (Section 3503.5) at any time of the year.
- The Operator's activities within the stream course shall be limited to the dry period of the year from May 1 to December 1 **and** when the stream is not actively flowing and no measurable rain is forecasted within 72 hours. If measurable rain is predicted within 72 hours during construction, all activities shall cease for the season, and protective measures to prevent siltation/erosion shall be implemented/maintained.
- If Least Bell's Vireo (LBV), willow flycatcher, red-legged frog, steelhead, tiger salamander, Lyon's pentachaeta, southwestern pond turtle, CA horned lizard, or any other T/E species or species of concern, are found within 500 feet of the work area, the Operator shall contact the Department immediately of the sighting and shall request an onsite inspection by Department representatives (to be done at the discretion of the Department) to determine if work shall begin/proceed. If work is in progress when sightings are made, the Operator shall cease all work within 500 feet of the area in which the sighting(s) occurred and shall contact the Department immediately, to determine if work shall recommence. Should these, or any other rare, threatened or endangered species, or species of concern, occur in the area, the Operator shall submit, for Department review and approval, a plan to ensure that no rare, threatened or endangered species are disturbed during project implementation. The plan shall be approved by the Department prior to initiation of any work.

Administrative

- The Operator shall provide a copy of these conditions, to all contractors, subcontractors, and the Operator's project supervisors. Copies of this Agreement and all required permits and supporting documents, shall be readily available at worksites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand. All contractors shall read and become familiar with the contents of this Agreement.

- A pre-construction meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement.
- The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Avenue, San Diego 92123, Attn: ES. FAX Number (858) 467-4299.
- The Operator herein grants to Department employees and/or their consultants (accompanied by a Department employee) the right to enter the project site at any time, to ensure compliance with the terms and conditions of this Agreement and/or to determine the impacts of the project on wildlife and aquatic resources and/or their habitats.

5.0 Water Quality

In addition to the requirements of PRC 30231, the Plan area includes an Area of Special Biological Significance (ASBS). The State has implemented policies and procedures to protect the water quality in ASBS. Also, the Malibu LCP mandates protection and enhancement of water quality. Thus, requirements and expectations that proposed projects would enhance rather than impact water quality already exists.

The description of the Access Enhancement Plan provided at the SMMC website (http://smmc.ca.gov/) acknowledges that the project would involve hydromodification. The SMMC's document "Planning Considerations and Constraints" (4/14/08, posted on their website http://mrca.ca.gov/pwp.html) claims the "overlay includes water quality policies that reflect water quality protection provisions of the LCP specifically applicable to the proposed trail and park improvements." Regardless, the Plan proposed by the SMMC and MRCA has the potential to impact the quality of local surface waters and marine waters due to the following:

- Increased turbidity levels and siltation in creeks from erosion of soils from grading, vegetation removal, car traffic, hiking, and horseback riding;
- Increased bacterial and nutrient levels in creeks from runoff carrying horse manure and leaching or runoff from poorly-maintained restrooms;
- Modified flows in creeks causing stream channel scour and erosion due to increased flows related to impermeable surfaces;
- Higher property visitation is likely to contribute to higher trash and debris loadings to the creeks, as well as coastal waters that receive the creek drainage;
- Earthmoving equipment is a potential source for petroleum spills which, if not contained and cleaned up, could be carried by stormwater runoff into creeks and the ocean;
- Increased bacterial loadings in creeks would contribute to higher bacterial levels in shoreline areas adjacent to the mouths of coastal creeks;
- It is not possible to classify the significance of potential water quality impacts associated with the Plan without more information on the project components and plans for incorporating mitigation measures and BMPs (http://mrca.ca.gov/pwp.html). Assuming that appropriate BMPs are incorporated and adequately maintained, it is unlikely that the proposed project would have significant direct impacts on surface or marine water quality;
- However, it could be argued that the project would lead to significant indirect and/or cumulative impacts. If, for example, the proposed project contributes to increased risk of fires, it is likely that the loss of vegetative cover in the watershed would result in greater potentials for erosion of soils into the creek, which would cause siltation in the creeks, as well as temporary accumulation of creek sediments in the nearshore zones of local beaches. Subsequent runoff also could transport fire retardant chemicals into the creek and eventually to the ocean, which would have implications for the toxicity of the runoff to organisms in the receiving waters.

The nearshore waters of the Malibu shoreline area of Santa Monica Bay consistently contain bacterial levels that exceed the AB411 guidelines (minimum microbiological contaminant standards for protection of public health). (AB411 requires testing of waters adjacent to public beaches and public notification of health hazards.) Beaches near the mouths of Escondido and Ramirez Creeks have had elevated levels of indicator bacteria during three of the past four years. Various studies to identify and assess the possible source(s) of the bacteria have been conducted or planned. For example, the County of Los Angeles

Department of Public Works (2007) authorized a study for evaluating bacterial sources in the Ramirez and Escondido Creeks watersheds. The study would be performed by the Southern California Coastal Water Research Project (SCCWRP). According to the SCCWRP website (www.sccwrp.org/view.php?id=406), the study is scheduled to be completed in 2009. The City of Malibu initiated a Clean Water Program in 2001 that has provided $35 million in funding for a variety of strategic action plans to improve water quality at city beaches. As part of this program, the City sponsored a study by URS Griener in 2000 to evaluate potential contributions from leaking septic systems (onsite wastewater treatment systems) to nearshore bacterial levels. The study concluded that local septic systems did not appear to be a primary source for bacteria (City of Malibu 2006).

The City of Malibu, along with EPA and the Regional Water Quality Control Board, believe that multiple sources, including urban runoff, wildlife, equestrian and domestic animals, and humans, contribute to the bacterial contamination of local beaches (City of Malibu 2006). The total maximum daily load (TMDL) for bacteria at Santa Monica Bay Beaches, adopted by EPA and the RWQCB, identified urban runoff as a primary source of bacterial contamination of beaches, whereas contributions from septic systems were not considered a significant source.

A Bacterial TMDL Implementation Plan was developed for the City of Malibu and County of Los Angeles. The Implementation Plan contains measures for reducing the sources of bacterial contamination to local beaches. The City of Malibu authorized construction of a stormwater treatment facility at Paradise Cove (Council Agenda Report, 4/26/07). The new treatment facility is intended to provide a permanent system that would replace the existing "experimental" facility that utilizes rented equipment and has limited capacity. The City believes that a properly designed and sized facility will improve the quality of dry weather and first flush flows from the Ramirez Watershed into the ocean. As part of the professional services agreement with the design contractor, the City is requiring the contractor to collect and analyze available data on Solstice Creek flows, tides, rainfall amounts, treated effluent quality, and Creek water quality. The contractor is also responsible for calculating average dry weather flows and estimate first flush flow rates. Also, as part of the Malibu Civic Center Integrated Water Quality Management Plan, the City has acquired land for stormwater detention and treatment wetlands to filter and disinfect flows from three storm drain systems that reach Malibu Creek and Lagoon.

So, it could be argued, the area of the proposed project has an existing condition of poor water quality, related primarily to elevated bacterial levels in coastal waters. The City of Malibu, along with the County of Los Angeles and other state and federal agencies, has recognized the problem, prepared a TMDL, and authorized funding for infrastructure improvements to address the issue. Thus, the project proposed by the SMMC and MRCA, if not carefully implemented, maintained, and monitored, could exacerbate existing conditions, undermine ongoing efforts to improve water quality conditions in the area, and be inconsistent with the LCP and with protection afforded to the ASBS.

6.0 Traffic

The following are comments/comparisons of SMMC related traffic studies.

6.1 Studies Reviewed

- Crain - Trip Generation Estate Homes Study (1999)
- Crain - Traffic Analysis for Streisand Center Conversion (1999)
- Crain - SMMC Traffic/Parking Analysis (2006)
- ATE - SMMC Traffic/Parking Analysis & Appendix (2008)

6.2 Initial Comments/Comparisons of Studies

6.2.1 Summary of Studies

Crain Trip Generation Estate Homes Study (1999). A "baseline" trip generation for the SMMC Ramirez property was established assuming six "estate homes" and using the estate home trip rate of 76 per weekday and 80 per weekend day.

Crain SMMC Traffic/Parking Analysis (2006). Project impacts were analyzed based on acreage for a Regional Park land use from the ITE 7th Edition and San Diego Traffic Generators manual. Average Daily Trip (ADT) volume data were collected for Winding Way east of Porterdale Drive and for Kanan Dume Road north of Cavalleris Road. An appendix summary of a trip management plan for SMMC activities was included.

ATE SMMC Traffic/Parking Analysis & Appendix (2008). Project impacts were analyzed based on available/provided parking spaces from the San Diego Traffic Generators manual. The baseline number of vehicle trips for the Ramirez property was based on the *Crain Trip Generation Estate Homes Study* (1999). ADT volume data were collected during a peak summer month (i.e., the time of highest beach traffic) at the two gates into Ramirez Canyon, one on Ramirez Canyon Road on the south side of Pacific Coast Highway (PCH) and the other on Delaplane Road north of PCH.

6.2.2 Comparison of Studies

In the SMMC traffic impact analyses, the proposed uses of the Ramirez property are consistently compared against a "baseline" land use of six "estate homes." However, according to information obtained from longtime residents of the area, the historical use of the property was as a single estate used for vacations and occasional weekends. There have never been six "estate homes" on the property. At most, the property has been operated as a multi-purpose facility, which would have a different trip generation. Furthermore, there is no evidence in the SMMC submittals that six legal parcels are present on the SMMC Ramirez Canyon property that can be separately developed with single family homes and sold as such. Therefore, using this theoretical but non-existent land use as a "baseline" for traffic generation purposes is not appropriate or consistent with standard traffic engineering practices. In addition, the Crain study uses an "inflator" for the traffic generation factor, without explaining the factual basis for doing so. In fact, the SMMC property was historically used less frequently than the typical single family house, and is in a neighborhood with other homes that serve as weekend or vacation homes. Thus, instead of using an "inflator," Crain should have used a "deflator" for trip generation purposes. Had Crain done so, the number of trips generated by 6 single family homes would have been less than 58.

The two most recent studies offered by the SMMC (Crain 2006, ATE 2008) project the number of traffic trips generated by the proposed uses of the Ramirez property based on the number of proposed parking spaces. The resultant trip generation is compared against the "baseline" number of trips (described above) to determine whether the proposed project exceeds that baseline and would therefore have impacts on the residents along Ramirez Canyon Road. This analysis is fundamentally flawed since 1) the baseline is inappropriate for the reasons explained above, and 2) each parking space may be used multiple times during a day and parking on the SMMC Ramirez property may occur in parking spaces or on other portions of the property. **These two studies also analyze the traffic impacts of the proposed use of the SMMC Ramirez property assuming the existence of a 2-lane undivided roadway.** However, neither study takes into account the effect/impact of the unique characteristics of Ramirez Canyon Road (i.e., the roadway narrows to one lane in a number of locations, lack of curbs/gutters, the one-lane tunnel which is the only way to leave the Canyon heading east on PCH, roadside parking, etc.), all of which affect the capacity of the roadway to handle the traffic load. Both of the most recent studies imply a 'zero' increase to traffic on Ramirez Canyon Road from the proposed project (no analysis section is provided in the 2006 Crain study, but a conclusory statement indicates the project will comply with the existing trip limitations). This conclusion appears unsupported by the data.

Based on the methodology used in the *ATE SMMC Traffic/Parking Analysis* (parking spaces), we conclude that the number of trips generated from the proposed uses of the Ramirez property would be **much higher** than the trips generated prior to the SMMC's use of the property, and higher than the "80 trip" baseline used in the analyses.

In addition, the 2006 Crain study set forth a calculation of vehicle trips based on the number of acres of a proposed park site. Applying that methodology to the SMMC Ramirez Canyon property, a "park" use generates 9-14 trips (weekdays), 13-16 trips (Saturdays), and 24 trips (Sundays).

6.3 Additional Questions

- Will alternate vehicular access routes be constructed?
- Why does the *ATE SMMC Traffic/Parking Analysis* conclude these roadways operate at LOS A:
    - Kanan Dume Road north of Cavalleri Road
    - Ramirez Canyon south of entrance gate
    - Delaplane Road south of entrance gate

  while the *Crain SMMC Traffic/Parking Analysis* (2006), concludes that Winding Way east of Porterdale Drive operates at LOS F?
- Why are the ADT volumes for Winding Way in the *Crain SMMC Traffic/Parking Analysis* (2006) the same as the ADT volumes shown in the *ATE SMMC Traffic/Parking Analysis* (2008) for Kanan Dume Road north of Cavalleri Road?

6.4 Alternative Land Use

If the six parcels within the SMMC Ramirez Canyon property were sold and developed as individual home sites, the traffic generated would be 58 per weekday and 61 per weekend day. This is less than the 76 per weekday and 80 per weekend day in the *Crain Trip Generation Estate Homes Study* (1999). Fewer trips were calculated for the residential use because the "adjustment" factors of 2.90 for weekday and 3.06 for weekend trips based on Federal Highway Administration criteria were not included. These factors were used in the 1999 Crain study and justified based on house size, price, and demographics.

7.0 Noise

7.1 Effects of SMMC Ramirez Canyon Property Traffic Noise

Noise resulting from vehicular traffic along access roads serving the SMMC Ramirez Canyon property could cause a substantial increase in noise at residences located along the access Ramirez Canyon Road resulting in a significant environmental impact upon area residents at the northern end of Ramirez Canyon Road. Given the topographical conditions and the relationships between the receiving properties and the roadways, there may not be any reasonable or feasible measures to mitigate such an impact.

The only access to the site is via Ramirez Canyon Road. Residences adjoin this rural, low volume roadway. The primary source of noise affecting this area is vehicular traffic on Pacific Coast Highway. Residences along Ramirez Canyon Road are located up to approximately 4,500 feet from PCH. The Noise Element of the Malibu General Plan provides information on noise level from the Pacific Coast Highway. Table 6-2 of that plan shows that the Community Noise Equivalent Level (CNEL) is about 55 dB at distances of 550-600 feet from the roadway. By extrapolating to a distance of 4,500 feet, using standard traffic noise modeling methods, the noise level from PCH traffic is calculated to be about 40 dB CNEL or less, which is a very quiet setting.

Vehicular traffic associated with the proposed uses of the SMMC Ramirez Canyon property would cause a significant noise impact if the traffic resulted in a substantial increase in noise at these residences, either on a 24-hour average basis (e.g., CNEL) or from intermittent noise. SMMC projects that daily traffic will be 80 trips per day. Hourly average noise levels throughout the day could reach about 40 dBA L_{eq} 50 feet from the roadway. Each individual car would probably be noticeable. SMMC states that special event patrons would use 15-passenger vans. Up to 200 people are expected at special events, necessitating about 15 one-way trips, assuming 90 percent occupancy in the vans. Peak hour average traffic noise resulting from the vans is calculated to be 54 dBA L_{eq} 50 feet from the roadway. This could be up to 10-15 dBA above existing levels causing a substantial increase in noise resulting in a significant noise impact in this quiet rural area. This is not consistent with Noise Policy 1.1.1 of the *Malibu General Plan* that states, "The City shall protect residences, parks, and recreational areas from excessive noise to permit the enjoyment of activities." Furthermore, Noise Implementation Measure 6 states the following, "Require an acoustical analysis as part of proposed development to ensure that noise mitigation is included in the project where activities associated with proposed uses are likely to produce noise levels exceeding the adopted city noise level standards [50 dBA CNEL], at existing or planned noise sensitive uses, including but not limited to, residences, schools, hospitals, long-term in-patient medical treatment and care facilities, churches, and libraries."

7.2 Effects of SMMC Ramirez Canyon Property Use Noise

Activities and events on the property would generate noise levels that would substantially exceed existing ambient noise levels and the "maximum exterior noise limits non-transportation sources" set forth in the Malibu General Plan.

The SMMC proposal provides insufficient information to conduct a thorough and quantitative analysis of community noise that could result from activities and events on the property. The numbers of people participating in such activities and events and the presence or absence of sound amplification equipment need to be clarified. Property infrastructure is clustered in the southern portion of the property in areas near the Art Deco House and the Barwood House near existing residents. The Art Deco House is located approximately 260 feet to the nearest residential property line and 450 feet to the nearest residence. The

Barwood House is located approximately 450 feet from the nearest residential property line and 530 feet to the nearest residence.

The level of amplified music varies depending upon the event. Concerts would be expected to generate the highest noise levels. Other events, such as weddings or receptions, would generate lower noise levels depending upon whether amplified or un-amplified music, live bands, or pre-recorded music was played. Sound levels from this wide range of events would be expected to range from 75 dBA to 95 dBA at a distance of 50 feet from the source of the music. At the nearest residences, noise levels would be reduced about 20 dBA from this range as a result of the intervening distance. The level of noise from music could, therefore, be expected to range from about 55 to 75 dBA at the nearest neighboring properties. Table 6-4 of the Noise Element of the General Plan sets maximum exterior levels for non-transportation sources. The noise limits are 55 dBA L_{eq} and 75 dBA L_{max} from 7:00 AM to 7:00 PM; 50 dBA L_{eq} and 60 dBA L_{max} from 7:00 PM to 10:00 PM; and 40 dBA L_{eq} and 55 dBA L_{max} from 10:00 PM to 7:00 AM. The noise level from music typically does not have a very large dynamic range with maximum levels only about 5 dBA above average levels. Average noise levels resulting from all sources of musical events could, therefore, exceed the day, evening, and night L_{eq} noise limits. The maximum intermittent noise level limits may also be exceeded by the louder musical events, such as concerts. Furthermore, as noted previously, existing ambient noise levels at residences in the area are expected to be quite low. Other possible noise sources resulting from activities on the property would include car stereos and boom boxes that are operated by campers, the sound of raised voices, and sounds from loud motorized vehicles such as motorcycles operating within the property. There is, therefore, the strong probability that the noise level from events on the property would substantially exceed local noise limits and existing ambient noise levels at the residences in the area, resulting in a significant noise impact upon area residents.

8.0 Alternatives

8.1 Alternative Locations

Alternative locations for events, accessible overnight camping, trail camps, and office space were evaluated. SMMC, MRCA, and Mountains Restoration Trust own 554 parcels within 20 miles of Ramirez Canyon, and SMMC and MRCA are part owners of the King Gillette Ranch, also within 20 miles of Ramirez Canyon. These parcels range in size from less than 0.1 acre to 634.3 acres. The 554 parcels were mapped (Figure 9), and a subset of 92 parcels located near roads (Figure 10) were mapped on aerial photographs. These parcels were assessed for vegetation (fire risk and ESHA issues), topography, public road access, presence of disturbed areas where parking, buildings, or camp sites could be constructed with minimal environmental damage, and proximity to urban or commercial areas for compatibility.

Direct access to a public road is available for 60 of the 92 parcels, although there may or may not be roads within the parcels themselves. Several have questionable road access that would need further investigation. Vegetation on the parcels is predominantly chaparral and/or coastal sage scrub (73 of 92 parcels). Oak woodland, grassland, riparian corridor, and disturbed (barren, landscaped, or agriculture) are also present on some parcels.

Table 5 summarized the information obtained from the aerial photographs as well as an assessment of suitability for office buildings, events, accessible overnight camps, and trail camps. Criteria used in this evaluation are:

1. Office Buildings. Existing buildings present on the parcel in or adjacent to a commercial area.
2. Special Events. Highly disturbed or other open areas with low fire risk and road access where events could be held in a park-like setting, but not in close proximity to residential areas.
3. Accessible Overnight Camps. Disturbed areas present with road access where such camp sites and parking could be built with minimal environmental damage and fire risk (i.e., open space with bare ground or grassland).
4. Trail Camps. Parcel is large enough for a trail and camps or contiguous with other open space for trails, and areas of grassland or oak savannah where camps could be placed without native brush clearing for fire safety.

King Gillette Ranch. The 588-acre King Gillette Ranch was purchased as parkland by a partnership of SMMC, MRCA, National Park Service, California State Parks, and several other state and local agencies (http://smmc.ca.gov/KGRP/guide.html, http://www.nps.gov/samo/planyourvisit/kinggilletteranch.htm). The most recent use of the property was as a private university. Suitability of the King Gillette Ranch for all four of the uses proposed at Ramirez Canyon was evaluated using information on these websites. Plans are being developed for use of the property, located 6.7 miles northeast of the SMMC Ramirez Canyon property, and a Draft Design Concept Plan has been written (October 2008 project description on the SMMC website). The primary management objectives include preservation, conservation, and restoration of habitats; protection of cultural resources; and provision of public access for nature education and recreation uses. Existing site improvements provide facilities for public access and recreation (e.g., parking, restrooms, picnic areas), public programs, and administration and management offices. A total of 21 structures with a combined 109,000 square feet of space are present and include dorm, classroom, administrative, maintenance, and parking facilities. All but two structures are proposed to be adaptively re-used.

Table 5. Alternatives Analysis Parcels

County	Parcel No.	Address	AIN	Owner	Size (acres)	Road Access?	Vegetation Type	Offices?	Special Events?	Overnight camps?	Trail Camps?
Los Angeles	2052-009-900	Vacant Land or N/A	2052009900	MRCA	320.6	Y	CH/CSS/G/OW	N	N	?	?
Los Angeles	2052-013-902	Vacant Land or N/A	2052013902	MRCA	5.0	Y	CSS/G/RW	N?	N	?	N
Los Angeles	2057-015-902	Vacant Land or N/A	2057015902	MRCA	128.4	Y	CH/CSS/G/OW	N	N	?	?
Los Angeles	2058-010-906	Vacant Land or N/A	2058010906	Mountains Restoration Trust	11.3	Y	CH/RW	N	N	N	N
Los Angeles	2058-017-024	Vacant Land or N/A	2058017024	Mountains Restoration Trust	38.7	Y	CH/CSS	N	N	N	N
Los Angeles	2058-018-903	Vacant Land or N/A	2058018903	MRCA	10.1	Y(SR23)	CH/CSS/OW	N	N	N	N
Los Angeles	2059-025-907	Vacant Land or N/A	2059025907	MRCA	41.4	Y	CH/CSS/G	Y?	N	?	?
Los Angeles	2059-025-909	Vacant Land or N/A	2059025909	MRCA	17.8	Y(SR23)	CH/CSS	N	N	N	N
Los Angeles	2061-033-905	Vacant Land or N/A	2061033905	MRCA	116.5	Y	CH/CSS/G/RW	N	N	?	?
Los Angeles	2063-008-907	Vacant Land or N/A	2063008907	MRCA	106.7	Y	CH/CSS/G/OW	N?	N	?	?
Los Angeles	2064-006-900	Vacant Land or N/A	2064006900	SMMC	2.7	Y	CSS/G/RW	N	N	?	N
Los Angeles	2064-006-901	Vacant Land or N/A	2064006901	MRCA	0.2	?	RW/G	N	N	N	N
Los Angeles	2064-006-902	Vacant Land or N/A	2064006902	MRCA	0.2	?	D/G	N	N	N	N
Los Angeles	2064-006-903	Vacant Land or N/A	2064006903	MRCA	0.2	?	D/G	N	N	N	N
Los Angeles	2064-006-904	Vacant Land or N/A	2064006904	MRCA	0.2	Y	L/G	N	N	N	N
Los Angeles	2064-006-905	Vacant Land or N/A	2064006905	MRCA	0.2	Y	RW/G	N	N	N	N
Los Angeles	2064-006-906	Vacant Land or N/A	2064006906	MRCA	0.2	Y	RW/G	N	N	N	N
Los Angeles	2064-006-907	Vacant Land or N/A	2064006907	MRCA	0.9	Y	G	N?	N	N	N
Los Angeles	2069-010-900	Vacant Land or N/A	2069010900	Mountains Restoration Trust	14.4	Y?	G/CSS/OW	N	N	N	N
Los Angeles	2069-078-901	Vacant Land or N/A	2069078901	MRCA	214.4	Y?	G/CSS/OW/RW	N	N	N	?
Los Angeles	2069-078-902	Vacant Land or N/A	2069078902	MRCA	74.4	N	G/SS/OW	N	N	N	?
Los Angeles	2072-002-900	Vacant Land or N/A	2072002900	MRCA	0.9	Y	G/shrub or oak	N	N	N	N
Los Angeles	2072-018-900	Vacant Land or N/A	2072018900	SMMC	0.1	Y	CH	N	N	N	N
Los Angeles	2072-021-900	Vacant Land or N/A	2072021900	MRCA	1.1	Y	CH/D	N	N	N	N
Los Angeles	2072-021-901	Vacant Land or N/A	2072021901	MRCA	0.9	N	CH/D	N	N	N	N
Los Angeles	2072-022-900	Vacant Land or N/A	2072022900	MRCA	0.9	Y	CH/D	N	N	N	N
Los Angeles	2072-022-901	Vacant Land or N/A	2072022901	MRCA	1.1	N	CSS/CH	N	N	N	N
Los Angeles	2080-014-901	Vacant Land or N/A	2080014901	MRCA	56.3	Y	CSS/CH/OW	N	N	N	?
Los Angeles	2173-007-906	Vacant Land or N/A	2173007906	MRCA	62.6	Y?	CSS/OW/G/CH	N	N	N	?
Los Angeles	2177-031-901	Vacant Land or N/A	2177031901	MRCA	1.3	Y	CH	N	N	N	N
Los Angeles	2177-033-901	Vacant Land or N/A	2177033901	MRCA	299.4	Y	CH/G/CSS/OW/D	N	N	?	?

Table 5. Alternatives Analysis Parcels (continued)

County	Parcel No.	Address	AIN	Owner	Size (acres)	Road Access?	Vegetation Type	Offices?	Special Events?	Overnight camps?	Trail Camps?
Los Angeles	2177-033-906	Vacant Land or N/A	2177033906	MRCA	35.0	Y	CH/CSS/OWG/ RW	N	N	?	?
Los Angeles	2178-009-901	Vacant Land or N/A	2178009901	MRCA	1.3	N	CH	N	N	N	N
Los Angeles	2178-010-900	Vacant Land or N/A	2178010900	MRCA	4.3	N	G/OW/CSS	N	N	N	N
Los Angeles	2178-010-901	Vacant Land or N/A	2178010901	MRCA	3.8	N	OW/G/CSS	N	N	N	N
Los Angeles	2178-010-902	Vacant Land or N/A	2178010902	MRCA	4.1	Y	CSS/CH	N	N	N	N
Los Angeles	2180-025-903	Vacant Land or N/A	2180025903	MRCA	90.5	Y	CH/CSS/OW	N	N	N	N
Los Angeles	2723-003-900	Vacant Land or N/A	2723003900	MRCA	15.5	Y	CSS/OW/RW	N	N	?	?
Los Angeles	2723-004-905	Vacant Land or N/A	2723004905	MRCA	0.4	Y	G	N	N	N	N
Los Angeles	2723-004-907	Vacant Land or N/A	2723004907	MRCA	39.2	Y	CSS/OW/G	N	N	?	?
Los Angeles	2723-021-900	Vacant Land or N/A	2723021900	MRCA	14.5	Y	CSS/CH/OW	N	N	N	N
Los Angeles	2723-022-900	Vacant Land or N/A	2723022900	MRCA	12.8	Y	CSS/CH/OW	N	N	N	N
Los Angeles	2818-021-902	Vacant Land or N/A	2818021902	MRCA	14.4	Y	CSS/CH/G/RW?	N	N	?	N
Los Angeles	2821-012-905	Vacant Land or N/A	2821012905	MRCA	9.7	N	G/CSS	N	N	N	N
Los Angeles	4377-001-901	Vacant Land or N/A	4377001901	State of Calif Santa Monica	172.4	Y	CH/CSS	N	N	N	?
Los Angeles	4378-001-903	Vacant Land or N/A	4378001903	State of Calif Santa Monica	93.9	Y	CH/CSS/G/D/ OW	N	N	?	?
Los Angeles	4416-008-901	Vacant Land or N/A	4416008901	MRCA	0.1	Y	L	N	N	N	N
Los Angeles	4416-021-901	Vacant Land or N/A	4416021901	MRCA	0.1	?	CSS?	N	N	N	N
Los Angeles	4416-021-902	Vacant Land or N/A	4416021902	MRCA	0.1	?	CSS?	N	N	N	N
Los Angeles	4416-021-903	Vacant Land or N/A	4416021903	MRCA	0.1	?	CSS?	N	N	N	N
Los Angeles	4434-003-901	Vacant Land or N/A	4434003901	State of Calif Santa Monica	48.1	Y	CH/CSS/G	N	N	?	?
Los Angeles	4434-003-902	Vacant Land or N/A	4434003902	State of Calif Santa Monica	49.7	Y	CH/CSS/G	N	N	N	?
Los Angeles	4434-004-902	Vacant Land or N/A	4434004902	State of Calif Santa Monica	34.1	Y	OW/CSS/G/CH	N	N	N	
Los Angeles	4434-004-903	Vacant Land or N/A	4434004903	State of Calif Santa Monica	4.3	Y	OW/CSS	N	N	N	?
Los Angeles	4434-004-904	Vacant Land or N/A	4434004904	MRCA	17.9	Y	CSS/CH	N	N	N	N
Los Angeles	4434-004-905	Vacant Land or N/A	4434004905	MRCA	57.4	Y	G/OW/CSS/CH	N	N	N	?
Los Angeles	4434-004-906	Vacant Land or N/A	4434004906	MRCA	113.3	Y	CSS/CH/G/OW		N	N	?
Los Angeles	4434-009-902	Vacant Land or N/A	4434009902	MRCA	137.6	?	CH/CSS/G/OW	N	N	N	?
Los Angeles	4434-037-901	Vacant Land or N/A	4434037901	MRCA	6.3	?	CH	N	N	N	N

Table 5. Alternatives Analysis Parcels (continued)

County	Parcel No.	Address	AIN	Owner	Size (acres)	Road Access?	Vegetation Type	Offices?	Special Events?	Overnight camps?	Trail Camps?
Los Angeles	4434-037-902	Vacant Land or N/A	4434037902	MRCA	0.3	N	CH	N	N	N	N
Los Angeles	4440-012-901	Vacant Land or N/A	4440012901	MRCA	0.2	N	CH	N	N	N	N
Los Angeles	4440-015-006	Vacant Land or N/A	4440015006	Mountains Restoration Trust	0.1	N	CH/OW	N	N	N	N
Los Angeles	4440-015-007	Vacant Land or N/A	4440015007	Mountains Restoration Trust	0.1	N	CH/OW	N	N	N	N
Los Angeles	4440-015-008	Vacant Land or N/A	4440015008	Mountains Restoration Trust	0.1	N	CH/OW	N	N	N	N
Los Angeles	4449-011-900	Vacant Land or N/A	4449011900	MRCA	142.8	Y	CH/CSS/OW	N	N	N	?
Los Angeles	4452-020-086	Vacant Land or N/A	4452020086	Mountains Restoration Trust	1.9	Y	TREES	N	N	N	N
Los Angeles	4452-020-098	Vacant Land or N/A	4452020098	Mountains Restoration Trust	2.4	Y	D/RW/CSS	N	N	?	N
Los Angeles	4452-020-099	Vacant Land or N/A	4452020099	Mountains Restoration Trust	0.6	Y	D/RW/G	N	N	?	N
Los Angeles	4455-015-900	Vacant Land or N/A	4455015900	MRCA	78.0	N	G/CSS/CH	N	N	N	?
Los Angeles	4455-016-902	Vacant Land or N/A	4455016902	MRCA	76.0	Y	D/CH/CSS/OW	N	N	N	?
Los Angeles	4455-028-905	Vacant Land or N/A	4455028905	MRCA	49.5	Y	G/CSS/CH/OW	N	N	N	N
Los Angeles	4455-033-909	Vacant Land or N/A	4455033909	MRCA (On King Gillette)	28.2	Y	AG/OW/CH	N	N	N	N
Los Angeles	4455-033-915	Vacant Land or N/A	4455033915	MRCA (On King Gillette)	3.1	Y	G/OW	N	N	N	N
Los Angeles	4455-040-902	Vacant Land or N/A	4455040902	MRCA (On King Gillette)	0.6	Y	CSS/OW	N	N	N	N
Los Angeles	4455-040-903	Vacant Land or N/A	4455040903	MRCA (On King Gillette)	0.3	Y	OW/L	N	N	N	N
Los Angeles	4455-040-904	Vacant Land or N/A	4455040904	MRCA (On King Gillette)	37.6	?	CH/CSS/G	N	N	N	?
Los Angeles	4455-040-905	Vacant Land or N/A	4455040905	MRCA	0.7	N	G/OW/L	N	N	N	N
Los Angeles	4462-030-903	Vacant Land or N/A	4462030903	State of Calif Santa Monica	7.1	Y	CSS/CH/OW	N	N	N	?
Los Angeles	4472-006-901	Vacant Land or N/A	4472006901	MRCA	37.2	Y	CSS/CH	N	N	N	N
Los Angeles	4472-008-904	Vacant Land or N/A	4472008904	MRCA	19.7						
Los Angeles	4472-008-905	Vacant Land or N/A	4472008905	MRCA	34.5	Y	CH	N	N	N	N
Ventura	615-0-280-150	Vacant Land or N/A	615028015	MRCA	8.3	N	G	N	N	N	N

Table 5. Alternatives Analysis Parcels (continued)

County	*Parcel No.*	*Address*	*AIN*	*Owner*	*Size (acres)*	*Road Access?*	*Vegetation Type*	*Offices?*	*Special Events?*	*Overnight camps?*	*Trail Camps?*
Ventura	615-0-300-150	Vacant Land or N/A	615030015	MRCA	506.5	Y (SR118)	CSS	N	N	N	?
Ventura	685-0-060-350	Vacant Land or N/A	685006035	MRCA	208.5	Y	CSS/CH/G/OW/ RW	N	N	N	?
Ventura	685-0-070-110	Vacant Land or N/A	685007011	MRCA	65.8	N	G/CSS/OW/RW	N	N	N	?
Ventura	685-0-070-130	Vacant Land or N/A	685007013	MRCA	36.7	?	G/CSS/OW/RW	N	N	N	?
Ventura	685-0-070-150	Vacant Land or N/A	685007015	MRCA	63.0	?	G/CSS/OW/RW	N	N	N	?
Ventura	685-0-080-020	Vacant Land or N/A	685008002	MRCA	624.8	N	CSS/CH/G/OW/ RW	N	N	N	?
Ventura	685-0-080-060	Vacant Land or N/A	685008006	MRCA	525.0	?	CSS/G/OW	N	N	N	?
Ventura	694-0-060-285	Vacant Land or N/A	694006028	MRCA	180.0	Y	D/G/CSS/CH/ OW/RW	2000X 350'	N	?	?
Ventura	694-0-060-305	Vacant Land or N/A	694006030	MRCA	143.3	Y	G/CSS/CH/OW	N	N	?	?
Ventura	519-0-082-165	Vacant Land or N/A	519008216	MRCA	24.1	N	CSS/OW?	N	N	N	N

Notes:

CH = chaparral; CSS = coastal sage scrub; G = grassland; OW = oak woodland; RW = riparian woodland; D = disturbed; AG = agriculture; L = landscaped; ? = uncertain type based on aerial photo

Road Access: Y = access at least to edge of parcel by apparently paved public road (based on aerial photos)

Office & Events: N = no existing buildings that could be used for office space; ? = potential to build such facilities on the parcel

Overnight Camping: N = no disturbed or open areas where such camping facilities could be built; ? = potential that facilities could be built on the parcel

Trail Camp: N = No existing trails and dense vegetation that would have to be cleared, also fire hazard; ? = potential to develop trail camps with more review

The ranch has been divided into three management areas (see map on SMMC website): existing disturbed areas for moderate intensity use, existing developed areas for high intensity uses, and existing/proposed low intensity use areas. Of these, the latter covers the largest area, with the high intensity use areas around the existing structures. Most of the property (322 acres) is open space where habitat conservation and restoration can occur as well as passive recreational activities such as hiking, nature study, and other compatible uses. MRCA offers half-day, full-day, and overnight (5 days/4 nights) outdoor education programs for students and their teachers.

Potential uses of the existing buildings include a visitor center, environmental education facilities, agency administration offices, and events such as weddings and parties (Los Angeles Outdoor Recreation Examiner 16 November 2008). The existing facilities can support indoor and outdoor events. According to the proposed Design Concept Plan, special events will be allowed all year and could include weddings, retreats, workshops, conferences, and company picnics. Five areas can accommodate events for 100 to 350 guests: four are outside areas (tennis courts, lawn, and two courtyards) and the other is the dormitory with a large meeting room (150 seats) and an auditorium (350 seats).

The King Gillette Ranch web site includes a more detailed description of the existing facilities and potential future uses as well as maps showing vegetation, management areas, and existing/planned uses.

8.1.1 Offices

Public agencies, including park and recreation districts, generally have their offices in buildings within a commercial area. For example, the following agency offices are located in city commercial areas and not in the lands that these agencies manage.

Agency	*Office Location*
Los Angeles County Parks and Recreation Department	433 South Vermont Avenue, Los Angeles, CA
Baldwin Hills Conservancy	3578-C Eastham Drive, Culver City, CA 90232
National Park Service, Santa Monica Mountains National Recreation Area	401 West Hillcrest Drive, Thousand Oaks, CA 91360
San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy	900 S. Fremont Ave., Annex Building, Alhambra, CA 91802
The Nature Conservancy	523 W. 6th St #1216, Los Angeles, CA 90014

SMMC currently has regional administrative offices in their Ramirez Canyon property for SMMC and MRCA, and proposes to continue to do so. This is not typical for the location of administrative offices for park and conservation agencies as shown above. Alternative locations for these offices are available in existing commercial buildings or could be constructed on commercial properties. None of the 92 parcels evaluated have existing buildings that appear suitable for offices, and only one parcel has a large disturbed area (about 2,000 ft by 350 ft) adjacent to West Potrero Road where offices and parking could be constructed. The parcel is 6940-060-285, and the total area of the parcel is 180 acres. A small drainage along the south side of the disturbed area separates it from the rest of the parcel. The King Gillette Ranch has existing buildings that could be used for offices as described above. Thus, alternative locations for the offices currently in the SMMC Ramirez Canyon property are available.

8.1.2 Special Events

Special events, particularly those with amplified sound, have been held on the SMMC Ramirez Canyon property in the past and caused considerable disturbance for the nearby residents. Section 7.0, Noise, shows that noise from such events would likely exceed the maximum exterior noise level set forth in the

Figure 9. Alternatives Analysis Parcels

LA/Ventura Co. Boundary
Ventura County Parcels
LA County Parcels
State Park
Santa Monica Mtns NRA

Fairview
Epworth
Moorpark
Virginia Colony
Strathearn
Lagol
Moorpark Home Acres
Somis
Simi Valley
Santa Susana
La Quinta
Twin Lakes
Santa Susana Pass SHP
Chatsworth
Granada Hills
San Fernando
Sylmar
Chatsworth Lake Manor
Lakeside Park
Mountclef Village
Camarillo
Northridge
Sepulveda
Panorama City
Raymer
Winnetka
Gemco
Canoga Park
Reseda
North Sherman Way
Newbury Park
Casa Conejo
Greenwich Village
Van Nuys
Oak Park
Thousand Oaks
Tarzana
Hidden Hills
Woodland Hills
Encino
Triunfo Corner
Calabasas
Westlake Village
Agoura Hills
Agoura
Brents Junction
Sherman Oaks
Calabasas Highlands
Santa Maria
Point Mugu SP
Glenview
Cornell
Beverly Glen
Malibu Creek SP
Topanga
Topanga SP
Malibu Creek SP
Wildwood
Monte Nido
Bel Air
Sycamore Cove
Charmlee
Leo Carrillo SP
Oak Hill
Riviera
Solromar
Malibu Hills
Malibu Vista
Brentwood
Pacific Palisades
Escondido Canyon
Corral Canyon
West Los Angeles
Malibu West
Ramirez
Trancas
Las Flores
Topanga Beach
Inceville
Malibu Beach
Sawtelle
Santa Monica
Point Dume
Malibu

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Figure 10. Selected Parcels Mapped on Aerial Photographs for More Detailed Analysis

LA/Ventura Co. Boundary
Ventura County Parcels
LA County Parcels
State Park
Santa Monica Mtns NRA

Fairview
Epworth
Moorpark
Virginia Colony
Strathearn
Lagol
Moorpark Home Acres
Somis
Simi Valley
Santa Susana
La Quinta
Twin Lakes
San Fernando
Santa Susana Pass SHP
Granada Hills
Chatsworth
Chatsworth Lake Manor
Mountclef Village
Lakeside Park
Northridge
Sepulveda
Panorama City
Camarillo
Winnetka
Raymer
Gemco
Canoga Park
Reseda
North Sherman Way
Newbury Park
Casa Conejo
Greenwich Village
Van Nuys
Oak Park
Thousand Oaks
Tarzana
Hidden Hills
Woodland Hills
Encino
Triunfo Corner
Calabasas
Westlake Village
Agoura Hills
Agoura
Brents Junction
Sherman Oaks
Calabasas Highlands
Santa Maria
Point Mugu SP
Glenview
Cornell
Beverly Glen
Malibu Creek SP
Topanga
Topanga SP
Wildwood
Malibu Creek SP
Monte Nido
Bel Air
Sycamore Cove
Charmlee
Leo Carrillo SP
Oak Hill
Riviera
Malibu Hills
Solromar
Malibu Vista
Brentwood
Escondido Canyon
Corral Canyon
Pacific Palisades
Malibu West
Ramirez
Trancas
Las Flores
Topanga Beach
Inceville
West Los Angeles
Malibu Beach
Sawtelle
Santa Monica
Point Dume
Malibu

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Malibu General Plan. Holding such events in a box canyon with a substandard access road would cause traffic problems for the local residents, limit rapid response by emergency personnel in the case of a wildfire or a medical emergency, and interfere with evacuation of both event participants and local residents in the case of a wildfire. Section 1.3 above shows that numerous facilities for events are available in the region, some of which can handle more than 500 people at a time. None of the 92 parcels evaluated have good road access, previously disturbed areas that could be used for parking, and open areas (lacking dense brush) that could provide space for outdoor events in a park-like setting at a distance from urban development that would preclude noise issues. The King Gillette Ranch, however, has facilities that could accommodate such events as described above. In addition, the SMMC Franklin Canyon Park has facilities for special events (http://www.lamountains.com/planning_franklin.html). The park is 605 acres with chaparral, grassland, and oak woodland as well as a 3-acre lake. Facilities include an auditorium that opens to a courtyard that can be rented for events such as meetings, parties, or weddings. Picnic areas, open amphitheaters, and large lawns with oak trees provide space for outdoor events such as weddings, company picnics, and reunions. Therefore, events planned for the SMMC Ramirez Canyon property could be held in other locations.

8.1.3 Overnight Camping

Development of facilities for overnight camping is proposed by SMMC for their Ramirez Canyon property, potentially at the location of the existing tennis courts. Operation of such facilities at this site would increase traffic on Ramirez Canyon Road and would require parking onsite. Shuttling the participants in would reduce but not eliminate additional traffic and the need for parking. Furthermore, shuttles would need to be present whenever campers are present to provide emergency evacuation in case of wildfire in the area. Evacuation traffic could interfere with local resident evacuation and with fire equipment access.

Alternative locations for overnight camps are available in the area as described above in Section 1.4. The King Gillette Ranch also has the needed access, parking, and facilities for such camping. Seventeen of 92 parcels evaluated with good road access have at least some potential for overnight camping, but a more thorough evaluation and site visits would be needed to determine actual suitability. No facilities are currently present at any of these sites nor is established parking. The following is a description of four parcels that have the potential for construction of overnight campgrounds, including accessible facilities.

Parcel 2057-015-902, located in Los Angeles County, south of Westlake Village at the end of Lindero Canyon Road and east of Las Virgenes Reservoir. Paved road access to the parcel is present via Lindero Canyon Road and another road. The parcel is 128.4 acres, and a potential overnight camping facility site (which would be accessible) is located just off the paved road in an area of grassland with a few scattered oak trees. Adjacent areas are coastal sage scrub and chaparral. The area appears to be relatively flat, and both parking and facilities could be built with minimal disturbance to native vegetation.

Parcel 2069-078-901, located in Los Angeles County, near Brents Junction. This parcel extends east from Las Virgenes Road along the southern edge of the Ventura Freeway (101). Access is via a frontage road parallel to U.S. Highway 101. At the apparent end of the pavement, a dirt road continues, and an opening in the trees leads to a grassland/weedy area that could be used for accessible overnight camping facilities. Scattered oak trees are present on the north side of this area, and a small drainage with a narrow riparian corridor borders the southeast side of the area. The parcel is 214.4 acres.

Parcel 2052-013-902, located in Los Angeles County, near Agoura. This parcel extends north of the Ventura Freeway (101) between Chesebro Road and Canwood Street. This parcel has access from U.S. Highway 101 and other roads on the south side of the freeway. The parcel is 5 acres with a north-south dirt road. The vegetation is grassland with a narrow riparian corridor parallel to the dirt road. One oak

tree is present just outside the parcel to the east. Landscaping would improve the aesthetics of the parcel for accessible overnight facilities.

Parcel 2177-033-901, located in Los Angeles County, near Santa Maria (east of Glenview). This parcel extends north from the northern boundary of Topanga State Park. Access is via Reseda Boulevard, near its southern end. The parcel is 299.4 acres, and much of it is chaparral. In the southwest part of the parcel is an area that appears to have been disturbed in the past with one tree (possibly an oak) in an area of grassland. The adjacent vegetation is coastal sage scrub that changes to chaparral to the south and east. Access from Reseda Boulevard and topography would need to be evaluated.

8.1.4 Trail Camps

Five trail camps are proposed for the northern portion of the SMMC Ramirez Canyon property based on conceptual site plans. These are all located within Los Angeles County based on maps showing the Malibu City boundary and conceptual site plans for the camp sites. All but one of these would be within 100 feet of the creek, and the one farther away would be near chaparral. Although they are located in areas that have been previously disturbed, the weedy vegetation that is likely to have colonized the disturbed areas could carry a fire into the adjacent coastal sage scrub and chaparral of the canyon. In Escondido Canyon Park, the eight proposed trail camps would be located on a slope covered with coastal sage scrub that would need to be cleared and graded. Allowing trail camps in or adjacent to highly flammable vegetation, particularly in Ramirez Canyon where access is limited to one substandard road, would greatly increase the risk of fire and its impacts on the campers as well as local residents.

For trail camps, 36 of the 92 parcels evaluated have at least a low potential for development of trail camps (see Table 5). These parcels have road access and some already have trails or old dirt roads that could be used as trails. Thus, other locations for trail camps may be available within the region with a lower risk of fire and impacts to residential structures. But as described in the above discussion relative to overnight camping facilities, a more thorough evaluation is needed to determine actual suitability. The following summarizes the potential locations for trail camps on several parcels.

Parcel 6150-300-150, located in Ventura County, near the eastern side of Simi Valley and Santa Susana. This 506.5-acre parcel is on the north side of State Highway 118E across from Corriganville Regional Park. The terrain appears to be bedrock outcrops with scattered vegetation (grassland and coastal sage scrub). A dirt road traverses the eastern part of the parcel from south to north with access from the highway off ramps. Other smaller dirt tracks/trails are present. Trail camps could be built in many locations where vegetation is sparse. No water appears to be present for most to all of the year.

Parcel 6850-080-060, located in Ventura County, north of Brents Junction. This parcel is bordered by Las Virgenes Road on the east and the boundary of the Santa Monica Mountains National Recreation Area on the west. This parcel is 525 acres and has areas of grassland, oak woodland, coastal sage scrub, and chaparral. One east-west dirt road crosses near the center of the parcel. Two adjacent parcels (6850-070-130 and 6850-070-150) on the east have similar vegetation. Another large parcel to the north has grassland with scattered oaks in the south with chaparral, coastal sage scrub, and oaks to the north. Trail camps could be established near oak trees in areas with grassland. The small drainages on the parcel appear to have ephemeral flow. A larger drainage is located on the east side of the two adjacent parcels and could have water at least part of the year.

Parcel 2052-009-900, located in Los Angeles County, near the Agoura. This parcel extends north of U.S. Highway 101 between Chesebro Road and Canwood Street. Access appears to be from a road (may not be paved) at the northwest corner of the parcel. Several dirt roads/tracks are present in the 320.6-acre parcel. Vegetation is a mix of oak woodland, grassland, coastal sage scrub, and chaparral. Trail camps

could be built at several locations, particularly in the oak woodland in the northern part of the parcel. No water appears to be present on the parcel.

Parcel 2061-033-905, located in Los Angeles County, near the City of Agoura Hills. This parcel extends south of Agoura Road and west of Kanan Road. Access to this 116.5-acre parcel is via County Highway N9 on the eastern side of the parcel. Vegetation is grassland, coastal sage scrub, and chaparral. A riparian corridor crosses the eastern tip of the parcel. Dirt tracks are present on the northeast side of the parcel with some extending into the parcel. Trail camps could be developed in grassland areas near shrub areas. No water appears to be present on the parcel, except potentially in the short stream segment in the east.

8.2 Summary

Based on the evaluation of existing facilities in the area and many parcels already owned by MRCA, SMMC, and other entities, most if not all the uses proposed for the SMMC Ramirez Canyon property could be better accommodated at other locations with fewer impacts on the environment and with less risk to the public and to the surrounding neighborhoods. In particular, King Gillette Ranch could provide facilities for offices and events as could existing facilities and buildings. As described above, numerous facilities are available in the area that could be used for events. Accessible overnight camping facilities could be built in the SMMC Ramirez Canyon property within previously disturbed areas (e.g., tennis courts), but other locations with existing facilities are available within 20 miles of the SMMC Ramirez Canyon property. Trail camps could be located at several properties with less environmental damage and fire risk to adjacent residential areas than at the SMMC Ramirez Canyon property.

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Appendix A

Malibu Event Facilities Capacity

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Table 1. Malibu Event Facilities Capacity

Name	*Address*	*City*	*State*	*Zip*	*Email*	*URL*	*Phone*	*Fax*	*Event Spaces*	*Max. Capacity*	*Sq. Footage*	*Notes*
Adamson House and Malibu Lagoon Museum	23200 Pacific Coast Highway P. O. Box 291	Malibu	CA	90265		www.adamsonhouse.org	310-456-8432	818-880-6165	2	200		
Allegria	22821 Pacific Coast Highway	Malibu	CA			www.allegriamalibu.com/	(310) 456-3132		1	82		
Beau Rivage Restaurant	26025 Pacific Coast Highway	Malibu	CA	90265	beaurivagemalibu@aol.com	www.beaurivagerestaurant.com/client/beaurivage/homepage.htm	310-456-5733	310-317-1589	10	200		
Bony Pony Ranch	12555 Yerba Buena Rd	Malibu	CA	90265	nileprods@yahoo.com	www.bonyponyranch.com	310-275-1075		1	100,000+	26 acre ranch	
Calamigos Ranch & Malibu Conference Center	327 South Latigo Canyon Rd	Malibu	CA	90265		www.calamigos.com/	800-821-2097		14?	500+		
Charmlee Wilderness Park	2577 Encinal Canyon Rd	Malibu	CA	90265		www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3801	310-457-7247	**events** 310-317-1364	1	Not Available		
Duke's Malibu Restaurant	21150 Pacific Coast Hwy	Malibu	CA	90265		www.dukesmalibu.com/	310-317-0777			250 banquet 176 dining room		
Four Seasons Hotel	2 Dole Drive	Westlake Village	CA	91362		http://www.fourseasons.com/westlakevillage/	818-575-3000	818-575-3100	3	Not Available		WestlakeFourSeasons.pdf
Geoffry's Malibu	27400 Pacific Coast Highway	Malibu	CA	90265	gmalibu@earthlink.net	www.geoffreysmalibu.com	310-457-1519	310-457-7885	8	300		
Inn of the Seventh Ray	128 Old Topanga Canyon Road	Topanga	CA	90290		www.innoftheseventhray.com/specialevents.htm	(310) 455-1311	**events** 310-408-8142		230		
Las Flores Creek Park	3805 Las Flores Canyon Rd	Malibu	CA			www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3881						
Lazy 'J' Ranch Camp	12220 Cotharin Rd	Malibu	CA	90265	crazzycraig@earthlink.net	www.lazyjranchcamp.com	310-457-5572	310-457-8882	1	125		Sleepover camp typically for kids
Leo Carrillo State Park	Pacific Coast Highway	Malibu	CA	90263	access@parks.ca.gov	www.parks.ca.gov/default.asp?page_id=616	818-880-0350		1	Not Available		
Malibu Beach Inn	22878 Pacific Hwy	Malibu	CA		reservations@malibubeachinn.com	www.malibubeachinn.com	310-456-6444		3?	16?		
Malibu Bluffs Park	24250 Pacific Coast Highway	Malibu	CA			www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3826	310-456-2489 ext 350			Not Available	6 acres	Sports field/park/community center
Malibu Colony Plaza	23841 Malibu Rd	Malibu	CA	90265		www.seeing-stars.com/Shop/MalibuPlaza.shtml	310-456-1269		1	Not Available		Shopping Center, no listed phone number, this number is to a dry cleaners
Malibu Community Pool	30215 Morning View Dr	Malibu	CA	90265		www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3754	310-589-1933	310-589-0683	1	Not Available		
Malibu Country Inn	6506 Westward Beach Rd	Malibu	CA	90265		www.malibucountryinn.com/	(310) 457-9622			100		
Malibu Equestrian Park	6225 Merritt Dr	Malibu	CA	90265	dayelech@ci.malibu.ca.us	www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3825	310-317-1364		1	Not Available		
Malibu Family Wines	32111 Mulholland Highway	Malibu	CA	90265	weddings@malibufamilywines.com	www.malibufamilywines.com/default.aspx	818-889-0120	818-889-5349	6	5000		
Malibu Lagoon State Beach	23200 Pacific Coast Hwy	Malibu	CA	90265	access@parks.ca.gov	www.parks.ca.gov/default.asp?page_id=835	310-457-8185		1	Not Available		
Malibu Library	23519 West Civic Center Way	Malibu	CA	90265	colapl@lhqsmtp.colapl.org	www.colapublib.org/libs/malibu/			1	125		
Malibu Nature Preserve	33905 Pacific Coast Hwy	Malibu	CA	90265	naturetrust@earthlink.net	www.naturetrust.net	310-457-9783	310-457-9744	2	2000		Weddings only, capacity depends on the season
Malibu Phoenix Retreat	26860 Mellus Dr	Malibu	CA	90265		www.malibuphoenix.com	310-457-5119		2	Not Available		
Malibu Presbyterian	3324 Malibu Canyon Rd	Malibu	CA	90265	mpc@malibupres.org	www.malibupres.org	310-456-1611	310-456-7018	4	N/A		Church burned down, no events

Table 1. Malibu Event Facilities Capacity

Name	*Address*	*City*	*State*	*Zip*	*Email*	*URL*	*Phone*	*Fax*	*Event Spaces*	*Max. Capacity*	*Sq. Footage*	*Notes*
Malibu Weddings Events	29575 Pacific Coast Hwy, Suite E	Malibu	CA	90265		www.malibuweddingsevents.com/	(310) 457 3926			N/A		Wedding/event coordinators, no actual facility
Malibu West Beach Club	30756 West Pacific Coast Highway	Malibu	CA	90265	eventsmwsc@charter.net	www.malibuwestbeachclub.com	310-457-7725	310-457-0862	7	300		
Moonshadows Restaurant in Malibu	20356 Pacific Coast Hwy	Malibu	CA	90265		www.moonshadowsmalibu.com/restaurant/	(310) 456-3010			45 inside; 120 outside		
Nobu Malibu	3835 Cross Creek Road	Malibu	CA	90265	mikahoriike2003@yahoo.com	www.nobumatsuhisa.com/	310-317-9140	310-317-9136	1	96		
Papa Jack's Skate Park	23415 Civic Center Way	Malibu	CA	90265	padams@ci.malibu.ca.us	www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=3827	**310-456-1441**	310-456-0539	1	200		
Paradise Cove	28128 West Pacific Coast Highway	Malibu	CA	90265		www.paradisecove.org/	(310) 869-0576			Not Available		
Point Mugu State Park	9000 Pacific Coast Hwy	Malibu	CA	90265	access@parks.ca.gov	www.parks.ca.gov/default.asp?page_id=630	818-880-0350	**events** 310-457-8185	1	Not Available		
Ramirez Canyon Park	5750 Ramirez Canyon Road	Malibu	CA	90265	info@smmc.ca.gov	www.lamountains.com/planning_Ramirez.html , www.seeing-stars.com/	310-589-2850	310-589-2561	6	200		
Rancho Chiquita						www.ranchochiquita.com/	(310) 456-7429		2	500		
Rancho del Cielo in Malibu						www.ranchodelcielomalibu.com/index.html				250 seated 500 standing		
Rancho Sol Del Pacifico						www.ranchosoldelpacifico.com/tour1.htm	310-457-9295					Private estate, owners on vacation, will call back
Robert H. Meyer Memorial State Beach	Highway 1	Malibu	CA	90263	access@parks.ca.gov	www.parks.ca.gov/default.asp?page_id=633	818-880-0350		1	Not Available		
Saddle Peak Lodge	419 Cold Canyon Road	Calabasas	CA	91302		www.saddlepeaklodge.com/	(818) 222-3888		7	12-200		Wedding site = up to 200, dining room = up to 75, patio = 100, etc
Saddlerock Ranch - Malibu Family Wines	32111 Mulholland Hwy	Malibu	CA	90265		www.malibufamilywines.com/	(818) 889-0008			5,000+		
Serra Retreat Center	23847 Stuart Ranch Road Malibu/3401 Serra Road???	Malibu	CA			www.thegodmother.com/weddings.htm	310-456-3254		2	400		
Sunset Restaurant	6800 Westward Beach Road	Malibu	CA	90265		www.thesunsetrestaurant.com/	(310) 589-2027			120		Can add tents if desired
Taverna Tony	23410 Civic Center Way	Malibu	CA	90265	info@tavernatony.com	www.tavernatony.com	310-317-9667	310-317-9991	1	150		Patio available upon request
The Beachcomber Cafe at Malibu Pier	23000 Pacific Coast Highway	Malibu	CA	90265		www.thebeachcombercafe.com/	310-456-9800			100+		
Topanga State Park	20825 Entrada Road	Malibu	CA	90263	msandoval@parks.ca.gov	www.parks.ca.gov/default.asp?page_id=629	310-454-8212	310-459-2031	1	Not Available		
Trancas Canyon Park	6050 Trancas Canyon Rd	Malibu	CA			www.ci.malibu.ca.us/index.cfm?fuseaction=detailgroup&navid=174&cid=10526				N/A		This park is not yet constructed
Villa Graziadio Executive Conference Center	24255 Pacific Coast Highway	Malibu	CA	90263					39?	260?		

Source: BHFS 2008

Appendix B

Photographs

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Ramirez Canyon Road Photos



Photo 1. Looking south on Ramirez Canyon Road at the undercrossing of Pacific Coast Highway. The tunnel is about 10 feet wide. 4 November 2008



Photo 2. Delaplane looking northward from Winding Way. Pavement is 24 feet wide, but parked cars narrow the accessible width. 4 November 2008



Photo 3. Gate on Delaplane. Roadway is approximately 14 feet wide before the gate, and the gate opening is 16 feet wide. 4 November 2008



Photo 4. Looking eastward up Delaplane from its intersection with Ramirez Canyon Road. Tree canopy completely covers the road. 4 November 2008



Photo 5. Turnaround at the north end of Ramirez Canyon Road. Pavement on the right side is about 13 feet wide. The SMMC Ramirez Canyon property is at the top of the curve. 4 November 2008



Photo 6. One of the low water (Arizona type) crossings of Ramirez Creek on Ramirez Canyon Road. 4 November 2008



Photo 7. Ramirez Canyon Road bridge over Ramirez Creek at north end of road. Bridge bed is 11 feet 8 inches wide. 4 November 2008



Photo 8. Ramirez Canyon Road looking north with trash/recycle/green waste bins and a parked car on the roadway. A speed bump is present just before the bins. 4 November 2008

Potential Alternative Access from Kanan Dume Road to the SMMC Ramirez Canyon Property



Photo 9. Looking east to the overgrown access road (flat area) in center of photo. Buildings in SMMC Ramirez Canyon property are visible in the background. 4 November 2008



Photo 10. Looking southward along the previously cleared access road. Native plant species are beginning to colonize the cleared area. 4 November 2008



Photo 11. Looking east from near Kanan Dume Road. Cleared maintenance road along north side of Lauber property is visible just beyond utility poles. 4 November 2008



Photo 12. Looking east from Kanan Dume Road with old access across National Park Service property to Lauber property in the foreground (rocks in roadway). 4 November 2008



Photo 13. Looking north along the western boundary of the Lauber property (right of fence posts) with the National Park Service property on the left of the fence. 4 November 2008



Photo 14. Looking west at the northwest corner of the Lauber property (stake with flagging). Vegetation on the National Park Service property is dominated by coyote brush. 4 November 2008



Photo 15. Looking east along the northern boundary of the Lauber property (right of stake) where access road could be built. Vegetation is coastal sage scrub dominated by purple sage in foreground. 4 November 2008



Photo 16. Looking southeast from dirt road to ridge on Lauber property. Parallel cleared tracks are visible along the ridge. The large toyon at the right edge of the photo is on the southeast corner of the access road curve to the northeast. 4 November 2008



Photo 17. Looking east along the proposed water line route in the area cleared for fire protection. Cars parked at the end of Ramirez Canyon Road are visible in the trees. 4 November 2008



Photo 18. Looking eastward down ridge on Lauber property. Orange flagging on stakes (in right of photo) marks a proposed water line route from Ramirez Canyon Road to the building pads on the Lauber property. The cleared pathway is overgrown with non-native mustard. Adjacent coastal sage scrub is dominated by purple sage and California sagebrush. 4 November 2008

Appendix C

SAIC Statement of Qualifications

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SAIC Environmental Capabilities

SAIC provides our clients an in-house staff that encompasses the full range of disciplinary expertise to support an environmental project's needs. SAIC's Environmental Program in the western United States serves a broad spectrum of federal, state, and local government agencies, and residential, commercial, industrial, institutional, and telecommunications clients in the following areas of expertise: .

- Air Quality Studies and Management.
- Biological Resource Studies and Management.
- Cultural Resource Management.
- Environmental Land Use Planning.
- Environmental Justice.
- Information Management/Geographic Information Sciences (GIS).
- Remediation and Site Characterization Investigations.
- Transportation Analyses.
- Water Resource Planning and Management.
- Watershed Planning and Management

Founded in 1969 to provide scientific and engineering services to private industry and federal government, SAIC is now a Fortune 500 company with annual revenues of $7.8 billion and 43,000 employees worldwide. SAIC's environmental consulting practice ranks us as one of the nation's largest environmental consulting firms. SAIC's environmental staff are highly qualified professionals who are proficient at successfully guiding projects to completion in accordance with complex federal and state regulatory requirements, including the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and individual state environmental guidelines. Staff specialists in the environmental, biological, physical and social sciences are experienced in preparing technical environmental documents that meet federal, state and local regulatory requirements governing air and water quality, as well as cultural, biological, and other environmental resources. With offices throughout the western United States offering environmental and engineering support services, SAIC is able to provide comprehensive, multidisciplinary environmental and engineering planning capabilities for projects of any size.

BIOLOGICAL RESOURCE MANAGEMENT

SAIC's biological sciences team has extensive experience in environmental analysis and regulatory compliance at federal, state, and local levels. SAIC biological resource staff includes wildlife biologists, botanists, aquatic biologists, and wetland ecologists with expertise in freshwater, estuarine, and terrestrial environments. SAIC is proud of its effective working relationships with key agencies involved in environmental review, permitting, and resource management.

Habitat Evaluation and Vegetation Mapping. SAIC biologists perform habitat evaluations to identify potential for sensitive species presence or absence, plant community surveys, and detailed vegetation analyses throughout the western United States. In addition to providing supporting documentation for land acquisition, due diligence, and CEQA and NEPA compliance, SAIC has prepared independent environmental assessments, technical reports, and scientific publications on such topics as the distribution, abundance, and value of plant species and communities. Additionally, SAIC cartographers and GIS specialists prepare resource distribution maps that aid analysis and presentation.

Regulatory Compliance and Mitigation Effectiveness Monitoring. SAIC biologists have extensive experience performing monitoring of permit compliance and mitigation effectiveness on a large variety of construction and habitat restoration projects.

Revegetation and Habitat Restoration. SAIC biologists, working closely with physical scientists and have provided consultation to clients across the country in the fields of reclamation and revegetation. This work has included the production of long-range, comprehensive plans for revegetation and monitoring the recovery of vegetation following project disturbances in a variety of sensitive environments.

Threatened and Endangered Species Surveys. SAIC biologists perform focused surveys to determine presence and abundance of sensitive species integrated with data from resource databases and scientific publications. Key SAIC staff members have the requisite approvals from federal and state wildlife agencies to perform protocol surveys for a wide variety of species protected under state and federal endangered species acts.

Data Collection and Field Experience. SAIC biologists are experienced in the collection and integration of field data into environmental documents in support of CEQA and NEPA compliance.

Wetland Delineation and Restoration. SAIC employs the accepted federal methodology for identification and delineation of jurisdictional wetlands and is also experienced in delineations to meet state criteria. SAIC wetland ecologists perform wetlands mapping, functional assessment, delineation, permitting, and restoration/creation and assist with the establishment of wetland mitigation banks.

Permit Acquisition and Agency Consultation. We provide professional permit support services for Sections 404/401; Sections 600/2081; Section 7/10 consultation; and HCP preparation. Staff biologists routinely perform both formal and informal consultation with local, state, or federal officials regarding sensitive species and other resources.

CULTURAL RESOURCE MANAGEMENT

The SAIC team of historians, architectural historians, archaeologists, and anthropologists offers an interdisciplinary approach to cultural resource management. SAIC enjoys an excellent reputation for credibility with government agencies, and has successfully consulted with the Advisory Council on Historic Preservation, the State Historic Preservation Officers (SHPOs) of several states, and numerous local government entities.

Historic and Architectural Resources Surveys and Evaluations. SAIC staff have designed and implemented numerous historic resources surveys, ranging in scope from a single property to an entire city or military base and performed either as stand-alone studies or in support of NEPA or related state documentation.

Archaeological Surveys, Resource Evaluations, and Mitigation Excavations. SAIC's highly trained archaeologists are a quick response team, able to rapidly and accurately locate and assess the significance of prehistoric and historic archaeological resources affected by a project.

ENVIRONMENTAL AND LAND USE PLANNING

SAIC's environmental planning professionals and analysts provide you with the full spectrum of support for every phase of project development, from site selection to permit acquisition.

NEPA Compliance. SAIC has extensive experience preparing National Environmental Policy Act (NEPA) and related state-level documentation for both public and private sector projects. Clients include the military, other federal and state regulatory and resource agencies, and commercial entities. We are proud of our longstanding relationships with U.S. Department of Defense (all branches) and other federal agency clients (bureaus of Land Management and Reclamation, U.S. Forest Service).

Land Use Analyses. SAIC offers a range of services essential to planning of large-scale, complex projects. Capabilities include land use due diligence analyses, land use surveys, land use policy analyses, and opportunity and constraints analyses related to natural resources, community infrastructure, scenic resources, noise, and land use.

Community Services and Environmental Justice. SAIC has developed a series of computer-based socio-demographic impact models with the primary function of predicting changes in the local or regional demographic profiles potentially resulting from economic changes. The community services and infrastructure model (CSIM) is a set of formal mathematical models designed to provide quantitative projections of project-related impacts on communities and regions for housing, community land use and infrastructure, and community services and facilities.

Transportation Analyses. SAIC has extensive experience working closely with traffic and civil engineers to support preparation of comprehensive traffic studies and mitigation plans for project traffic and transportation impacts. SAIC's transportation planning services include policy analysis; traffic impact analysis; traffic forecasting; parking supply and demand studies; public transportation requirements and impacts; and pedestrian, bicycle, and equestrian circulation studies, as well as the determination of related air quality and environmental noise impacts.

Facility Siting. SAIC studies inform project site selection decisionmakers with credible, comprehensive environmental constraints analyses and feasibility studies. SAIC integrates socioeconomic research, political considerations, policy analysis, and physical resource analysis to facilitate project siting and land acquisition decisions.

Land Acquisition and Due Diligence Investigations. SAIC can determine entitlement status/potential and prepare customized highest and best use analyses, policy analyses, land use and other environmental due diligence investigations, opportunity and constraints analyses, market feasibility studies, and community outreach programs.

Entitlement Permitting. We can assist clients with all federal, state, and local permitting needs, including determination of entitlement potential and processing of tentative tract maps, General Plan amendments, zone changes, conditional use permits, building permits and other standard entitlements, as well as specialized permitting related to technical disciplines such as air quality, water quality, cultural resources, and biological resources.

Public Involvement. SAIC's environmental specialists and graphic designers are experts at public outreach and agency coordination, organizing local community meetings, workshops, and seminars, and giving hearing presentations.

WATER RESOURCE ENGINEERING AND PLANNING

SAIC's engineers and scientists are experienced in all aspects of water supply and water quality planning and management. Our services include surface and groundwater hydrologic assessments and investigations, engineering analyses, stream restoration planning and design, estimates of technical and economic feasibility of development projects, evaluation of water rights, litigation support, and expert testimony.

Water Resources Planning and Management. SAIC staff direct and participate in projects designed to increase the reliability and quality of available local and imported water supplies through a combination of structural and nonstructural (institutional) approaches.

Watershed Assessments. SAIC applies a multidisciplinary team approach to watershed management. We evaluate and inventory water availability (quantity), water quality, water use, water supply, and surface runoff contamination – including establishing estimates of Total Maximum Daily Loads (TMDLs). We

work with regulatory authorities to develop mitigation measures. SAIC engineers, hydrologists, and scientists have analyzed the impact on surface waters of manmade contaminants introduced through storm drain and sewer systems. Our stakeholder participation experts actively guide communities through the planning process. SAIC staff has developed successful monitoring programs, environmental documentation, and specific watershed plans.

Flood Studies. SAIC engineers and scientists evaluate flood control measures based on analyses of flood events using HEC-RAS and statistical approaches. SAIC has developed floodplain mapping and modeling of flood flows for various return periods, and applied our skills to floodplain management planning.

Water Resources Monitoring. SAIC engineers have experience designing hydrometric monitoring networks.

Stream Restoration Design. SAIC's staff is experienced in urban and rural stream restoration design. Our staff scientists and engineers have applied their expertise in fluvial geomorphology, fisheries, riparian ecology, hydrology, and hydraulics to provide our clients with stream restoration planning and design services that meet the unique needs of the regulatory and stakeholder community.

Expert Testimony. SAIC engineers and scientists have presented expert witness testimony before the California Energy Commission, the California State Water Resources Control Board, Regional Water Quality Control Boards, a Special Master appointed by the U.S. Supreme Court, and several Superior Courts.

TRANSPORTATION PLANNING AND ENVIRONMENTAL SERVICES

SAIC provides planning and environmental studies for a wide range of transportation projects throughout the West.

NEPA Processing Support, Compliance, and Documentation. SAIC has performed over 50 recent environmental reviews of Western United States (U.S.) transportation projects pursuant to the National Environmental Policy Act (NEPA), as well as state and local requirements.

State Transportation Department Environmental Scans. SAIC scientists conduct natural and cultural resource scans for highway corridors, city historic districts, and road improvements.

AIR QUALITY MANAGEMENT AND COMPLIANCE

SAIC has an air quality team of meteorology, air pollution and engineering specialists, as well as field and laboratory technicians. Our expertise extends from reducing fossil-fueled power plant emissions to minimizing toxic emissions from industrial operations, promoting clean transportation technologies, and supporting the development of workable clean air strategies.

Permitting Support. Our engineers and air quality specialists have supported DoD and major industries such as oil and gas exploration, petroleum refining, organic chemical manufacturing, landfills, mining, pulp and paper, textile manufacturing, marine terminal operations, shipbuilding and shipyard operations, electric utilities, food processing, aerospace, incineration, power generation, and other industries in assessing emissions, control technologies, and environmental impacts.

Air Quality Impact Assessments. SAIC has performed air quality impact assessments related to NEPA and state environmental review requirements, facility siting and compliance studies, monitoring and analysis of ambient pollutant levels, and air quality attainment plans.

Air Pollution Planning and Modeling Studies. We are experienced with dispersion models, modeling techniques, emission factors recommended by the U.S. Environmental Protection Agency (EPA), state air

agencies (e.g., California Air Resources Board [CARB]), and local air pollution control districts throughout the western U.S. for purposes of evaluating all types of emission sources.

Air Pollution Monitoring. Our air quality and meteorological monitoring programs include short-term single-pollutant studies, as well as multi-year baseline characterizations using data from aircraft and balloon soundings, visibility measurements, and continuous analyzers for all criteria air pollutants.

Health Risk Assessments. SAIC has prepared health risk assessments for routine releases of air toxic contaminants, such as diesel particulates, and risk assessments for accidental releases of acutely hazardous materials.

INFORMATION MANAGEMENT/GIS

SAIC maintains a state-of-the-art GIS laboratory, staffed by highly qualified specialists experienced in communicating with project engineers, architects, and other professionals. GIS supports a variety of planning processes, including environmental compliance, watershed management, facilities siting, and modeling, and allows for output to a variety of dynamic multimedia presentation packages. SAIC utilizes raster- and vector-based software packages, depending on a project's needs. These include ESRI's Arc Info, ArcView, Spatial Analyst, 3d Analyst, Tracking Analyst as well as GRASS, Map Info, AutoCAD, Leica GIS DataPRO, and Tralaine.

Custom Applications. Specialized procedures and interfaces can be customized for your project by using command scripts, FORTRAN programming, and macros under a GIS framework. For example, we have successfully integrated the output from a noise contouring program into a digital base map produced via GIS, allowing quantification of noise impacts on particular resources and land uses. We also offer our clients the ability to view and query their data using various web technologies.

Differential Global Positioning Systems (DGPS). With the addition of DGPS technology, GIS maps are no longer static but can be updated virtually in real time to represent the fluctuations in an ever changing environment. DGPS can provide submeter accuracy for mapping environmental resources, such as critical habitats, and the resulting information can be used to resolve land ownership or water rights issues. SAIC staff has extensive experience in the evaluation, utilization, training, and integration of DGPS technology into real-world field applications for both mapping and GIS coverage development.

Rosemary A. Thompson

Ph.D., Marine Biology, Scripps Institution of Oceanography, 1972
B.A., Zoology, University of Missouri, 1967

WORK SUMMARY

Dr. Thompson has over 30 years of experience in studying aquatic (both marine and freshwater) ecology, with extensive experience in aquatic habitats and endemic fishes of the arid west (California, Nevada, New Mexico, Arizona, Texas, Idaho, and Washington). She has completed training by the American Fisheries Society and the Wetland Training Institute in wetlands delineation as applicable to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. She has expertise in assessing barriers to fish passage in streams and also has a federal permit to sample for the tidewater goby, unarmored threespine stickleback, California red-legged frog, and California tiger salamander, and a state collecting permit for aquatic species.

She has conducted environmental studies for a wide variety of projects throughout the United States, including urban development, golf courses, wastewater treatment plants/pipelines and discharges, reservoir enlargement and dam repair (strengthening), cloud seeding, power plants, missile-system testing and deployment, artificial reef feasibility and design, harbor dredge and landfill, oil and gas developments (onshore and offshore), urban lake restoration and management, water and gas delivery pipelines, debris and water diversion basins, flood control maintenance in streams and sloughs, aquatic habitat restoration, bridge replacement or repair, stream bank repair or stabilization, harbor water quality, vineyard/winery development, and a management plan for petroleum development to minimize impacts on biological resources. These studies have included surveys for and analysis of impacts to species listed as threatened or endangered under the Endangered Species Act.

Dr. Thompson has prepared environmental reports for the above-mentioned projects complying with a wide range of regulatory requirements. These include numerous joint federal/state environmental impact statements/reports (EIS/EIRs) and other documentation under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) (e.g., environmental assessments and reports, negative declarations, and initial studies), Endangered Species Act Section 7 biological assessments and Section 10 permits (including Habitat Conservation Plans), listed species protection plans, and mitigation plans for biological resources. She has prepared environmental mitigation specifications and drawings for construction contract bid documents as well as revegetation plans and specifications. She has also provided information for waterfront development permits, including U.S. Army Corps of Engineers Sections 10 and 404, Coast Guard requirements, and the California Coastal Commission, and has obtained U.S. Army Corps of Engineers Nationwide Permits (with approved mitigation plans) and individual permits, California Department of Fish and Game Streambed Alteration Agreements, and Regional Water Quality Control Board Section 401 Certifications for a variety of projects in streams and rivers.

PROFESSIONAL EXPERIENCE

Science Applications International Corporation, Environmental Program Manager/Senior Biologist (1989 to Present)

NEPA/CEQA

Pacific Marine Terminal Crude Oil Terminal SEIS/SEIR for Port of Los Angeles. (2005-present). Prepared biological resources section of the SEIS/SEIR and managed preparation of the water quality

section. The biological section included a detailed analysis of impacts to the California least tern and other special status species and a biological assessment for Section 7 consultation under the Endangered Species Act.

Middle Harbor Redevelopment Project EIR for Port of Long Beach. (2006-present). Prepared the biological resources and water quality sections of the EIR.

Berths 136-147 Terminal EIS/EIR for Port of Los Angeles. (2003-2007). Prepared biological resources and water quality sections of the EIS/EIR that included analysis of impacts to Essential Fish Habitat, threatened and endangered species, and marine mammals. Dredge and fill impacts to water quality were also addressed, and a Section 404(1)(b) analysis was prepared for the Corps of Engineers.

South Coast Conduit Upper Reach Reliability Project EIS/EIR for the Cachuma Operation and Maintenance Board. (2006-present). Managing preparation of the EIS/EIR. This includes coordination with the client and design engineers, planning field surveys, and document QA/QC.

Santa Ana River Water Right Applications for Supplemental Water Supply EIR. San Bernardino Valley Municipal Water District and Western Water District through Downey-Brand. 2003-2007. Acted as principal investigator for aquatic biological resources, and particularly the Santa Ana sucker, in the Santa Ana River.

Port of Los Angeles Channel Deepening Project. For U.S. Army Corps of Engineers through Aspen Environmental Group. (2005-present). Acting as Principal investigator for biological resources for a second SEIS/SEIR on this project. Sensitive species and essential fish habitat are key components of the analysis.

Colorado River Shortage Guidelines EIS. For U.S. Bureau of Reclamation through Brown and Caldwell. (2006-2007). Acted as principal investigator for threatened and endangered fish. Wrote setting and impact analysis based on modeling of flow and temperature changes under different releases from Lake Powell.

Managed or participated in thirty three other CEQA and NEPA projects.

Habitat Assessments and General Surveys

Managed fish salinity tolerance data collection for the Salton Sea Ecosystem Restoration Project.

Managed a biological evaluation of Basin 1 in Carpinteria Salt Marsh that included wetland delineations (Corps of Engineers and Coastal Commission methods), bird surveys, small mammal trapping, a butterfly survey, and recommendations for habitat restoration in the basin.

Managed air quality, water quality, and biological resources special studies for the Marina One and Marina Four expansion project in Santa Barbara Harbor. Conducted a field survey in harbor waters and prepared the biological resources study.

Conducted field surveys and literature searches to document the environmental resources present and prepared an environmental assessment that addressed impacts of development in the Cuixmala Reserve (Jalisco, Mexico), including a discussion of alternatives and mitigation measures.

Other projects include water quality sampling in Santa Barbara Harbor, wetland delineations on the Naval Petroleum Reserve Number 2, rare plant and animal surveys at Lawrence Livermore National Laboratory

Site 300, Bird Aircraft Strike Hazard (BASH) plans for Fallon and Lemoore Naval Air Stations, biological surveys for sensitive resources and species along the Atascadero Creek sewer trunk line corridor and along a proposed Pershing Park bike path, monitoring emergency repairs of a wastewater discharge pipeline in Goleta Slough, biological survey for the Rivenrock Mutual Water Company diversion, and wetland delineations in Anisqu'oyo Park in Isla Vista.

Sensitive Species Surveys, Biological Assessments, and Habitat Conservation Plans

State Water Project Pipeline for the Central Coast Water Authority. (1990-present). Developed environmental mitigation specifications and drawings as part of the engineering plans for portions of the California Aqueduct and local pipelines, managed preconstruction field surveys, prepared a sensitive species protection plan, performed quality assurance field inspections for compliance with environmental specifications, assisted the client in all environmental issue areas including Section 7 consultation, and prepared a habitat management plan for off-site mitigation areas. Currently preparing a Habitat Conservation Plan for operation of 131 miles of pipeline.

Wastewater Treatment Plant Siting Constraints Analysis for the Goleta West Sanitary District. (2003-2004). Managed the environmental constraints analysis for siting a new wastewater treatment facility. This included coordination with design engineers as well as field surveys to assess habitats, evaluate the potential for presence of sensitive species, and identify wetlands.

Assisting in the preparation of a Low Effect Habitat Conservation Plan for vineyard development near known breeding ponds for the California tiger salamander and California red-legged frog.

Managed a monitoring program for the western snowy plover and California grunion during dredging activities and beach restoration at the Santa Barbara Harbor.

Prepared Biological Assessments for two listed species, California red-legged frog and steelhead, as part of the permitting of the Lopez Dam seismic remediation project. Assisted in construction monitoring and implementation of terms and conditions in the two project Biological Opinions. Construction monitoring included capture and relocation of steelhead.

Managed preparation of a species protection plan for the endangered tidewater goby, threatened California red-legged frog, and proposed endangered southern steelhead (listed during project) in support of permit applications for the Santa Barbara Club Resort and Spa. Also prepared a marine habitat public display.

Additional projects include preparing a Habitat Conservation Plan and Environmental Assessment for two federally listed species for the Dos Pueblos Golf Links project; preparing a management plan for California tiger salamanders on property being developed into a vineyard; developing a tidewater goby protection plan for bridge repair work in Sycamore Creek; performing field surveys and reporting on California red-legged frogs and tidewater gobies in Laguna Channel, Eagle Canyon Creek Lauro Debris Basin, and The Ranches at Figueroa Canyon project, tidewater gobies in Arroyo Burro Creek plus red-legged frogs, red-legged frogs in an irrigation drainage adjacent to the Santa Maria River, red-legged frogs in the Santa Ynez River and at a golf course in Goleta, red-legged frogs in San Bernardo Creek, California tiger salamanders and red-legged frogs for two vineyard developments and the Santa Maria Public Airport Master Plan update, and steelhead in Santa Monica and Franklin creeks. Directed field surveys related to the Bradbury Dam safety improvements project and Rancho Canada project in Carmel. Monitored for and relocated red-legged frogs and tidewater gobies at an emergency bridge repair site on Vandenberg Air Force Base. Also conducted monarch butterfly surveys on two parcels in Santa Barbara

and monitored a pipeline replacement project in Gaviota Creek for steelhead and tidewater gobies in compliance with biological opinions.

Restoration Planning Implementation and Monitoring

Managed the biological portions of a salt marsh enhancement plan that included restoration of tidal flows, identification of areas for enhancement, development of a planting plan and construction specifications for planting, and development of a monitoring plan to ensure that enhancement is successful. Managed environmental monitoring during implementation of the enhancement plan.

Managed and conducted surveys of Devereux Creek on Ocean Meadows Golf Course in Goleta, CA for sensitive species (red-legged frog) and wetlands to support a Santa Barbara County Flood Control habitat enhancement project. Wetlands (both Corps of Engineers and Coastal Commission jurisdiction) were mapped using DGPS and GIS. Habitat enhancement areas were identified in the field and mapped.

Developed restoration and habitat enhancement plans for the Garrett van Horne reservoir site and mitigation area. Also developed habitat enhancement plans for the area adjacent to a creek on Santa Barbara City College where maintenance will occur to prevent flooding. Monitoring is ongoing at both locations to determine when performance criteria are met.

Managed preparation of the revegetation plan for the Lopez Dam seismic remediation project and managed implementation of that plan.

Managed the 5-year revegetation monitoring program for the State Water Project pipeline and mitigation areas to offset Burton Mesa chaparral and sensitive species impacts that resulted from construction activities.

Monitored construction of the Atascadero Creek sewer project, developed a restoration plan, and planted willows after construction with monitoring of willow survival and growth to meet performance criteria.

Permit Support

The Ranches at Figueroa Canyon. (2007-present). Conducted field surveys, performed agency coordination, and prepared California Department of Fish and Game permit applications for eleven ranch road stream crossing upgrades.

San Jose Creek Flood Control Project. (2007-present). Managed preparation of permit applications for creek channel modifications from the U.S. Army Corps of Engineers, California Department of Fish and Game, and Regional Water Control Board.

Developed a creek maintenance plan for Santa Barbara City College to prevent flooding of adjacent property. Obtained permits/certifications for implementation of the plan from the California Department of Fish and Game, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Coastal Commission. Monitored to ensure compliance with permit conditions.

Obtained permits/certifications for construction of the Lopez Dan seismic remediation project from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Game. Coordinated with those agencies throughout construction in compliance with permit conditions.

Provided permit support on nine additional projects.

URS Consultants, Inc., Senior Biologist (1984 to 1989)

Managed or acted as principal investigator for numerous projects that included the preparation of two U.S. Air Force environmental assessments for Strategic Air Command low-altitude flight operations, the U.S. Air Force Relay Mirror Experiment Environmental Assessment, providing expert testimony for the U.S. Air Force in a court hearing for the Relay Mirror Experiment Project, preparation of a U.S. Air Force environmental assessment for the National Test Facility, marine mammal monitoring program for the installation of a Chevron pipeline, site surveys and impact analyses for federally listed or candidate species at several potential Ground Wave Emergency Network (GWEN), a tidewater goby sampling program, and the feasibility and design studies for as artificial reef.

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Pister, E.P., ed. 1981. General Characteristics of Springs in Nevada and Utah. *Proceedings of the Desert Fishes Council*, vol. XII:49-52.

Davies, R.M., and R.A. Thompson. 1977. Impacts of Sludge Disposal from Hyperion Treatment Plant into Santa Monica Bay. Abstract.

Klug, T., R. A. Thompson, and T.W. Mulroy. 2007. Facilitating recovery of a long-disturbed maritime chaparral site in Santa Barbara County. Presentation made at the 2007 National Meeting of the Ecological Society of America, San Jose, California (Abstract PS 68-202).

CONFERENCE PRESENTATIONS AND WORKSHOPS

Workshop on Implementation of 316(b) Legislation in California. Scripps Institution of Oceanography, University of California, San Diego, sponsored by the State Water Quality Control Board. March 1977.

Tidewater Goby Monitoring for the Point Arguello Project Onshore Pipeline. Poster presented at Riparian Systems Conference, Davis, California. 1988.

Facilitating Recovery of a Long-Disturbed Maritime Chaparral Site in Santa Barbara County. Presented at the Maritime Chaparral Workshop, Moss Landing, California. 2005.

December 23, 2008

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BY FEDERAL EXPRESS

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

RE: LCP Override Application by Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority (LCP Amendment 1-08).

Dear Chair Neely and Members of the Commission:

Brownstein Hyatt Farber Schreck and Diane M. Matsinger, Esq. represent the Ramirez Canyon Preservation Fund ("RCPF"), residents of Ramirez Canyon who have been dealing with the unlawful use by the Santa Monica Mountains Conservancy of property in Ramirez Canyon since 1993.[1] Our clients are concerned about the Conservancy's request for a LCP "override" (Pub. Res. Code, § 30515),[2] scheduled for hearing in February of 2009.

The purpose of this letter is to provide information to assist staff and the Commissioners in determining whether the findings required for a LCP override can be made by the Commission. The findings and the evidence are discussed at length below, and in the report of Science Applications International Corporation ("SAIC Report") and other materials submitted herewith. We respectfully submit that the Conservancy's submission does not meet the threshold requirements of Section 30515 and Title 14, California Code of Regulations, Section 13666 or the fact-specific requirements of Section 13666.4. Before examining the substantive elements of the Conservancy's Plan, we respectfully request that staff and the Commission consider the fundamental legal defects in the Conservancy's submission. As we demonstrate below, the Conservancy's submission does not meet the statutory criteria for an "override."

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[1] The Mountains Recreation and Conservation Authority, a joint powers agency of which the Conservancy is a member, is named as co-applicant. For ease of reference, the agencies are collectively referred to in this letter as "the Conservancy."

[2] All statutory references herein are to this Code unless otherwise indicated.

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I

A BRIEF EXPLANATION OF WHY THE COMMISSION HAS PENDING BEFORE IT TWO LCPAs FOR THE SAME "PLAN" AND A SUMMARY OF THE FUNDAMENTAL LEGAL PROBLEMS WITH THE CONSERVANCY'S ATTEMPT TO UTILIZE THE OVERRIDE PROCEDURES OF THE COASTAL ACT.

There are two Local Coastal Plan Amendments (LCPAs) before the Commission for essentially the same Plan. To understand how that highly unusual situation came about, it is necessary to go back a year or so.

In 2007, the Conservancy applied to the City of Malibu for a LCPA for a "Malibu Parks Public Access Enhancement Plan." In December of 2007, the City granted the Conservancy's application as modified, and forwarded the LCPA to the Commission for certification. (City of Malibu LCP Amendment No. 007-002; Commission No. MAL-MAJ-03-07.)

The Conservancy was unhappy with the City's modifications to the Plan, and submitted its own LCPA, attempting to utilize the "LCP override" procedures of the Coastal Act (MAL-MAJ-1-08). The Conservancy's LCPA override is essentially the Plan which the Conservancy initially submitted to the City (i.e., without the City's modifications). In certain areas, however, the Conservancy's LCP override proposes development more intense than that which the Conservancy requested from the City. [3]

On November 24, 2008, we submitted a legal analysis to Commission Chief Counsel Hope Schmeltzer, explaining why the Conservancy's application for a LCPA is not authorized by the Coastal Act. A copy of that letter is enclosed for your convenience (Attachment B). The legal arguments are briefly summarized as follows:

The Commission must certify any LCPA before it becomes effective. During the Commission's review of the City's pending LCPA, the Commission may make suggestions to the City, which the City may either accept or reject (§§ 30512, 30512.2, 30513). If the City rejects the suggestions,

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[3] The Conservancy submitted a "comparison" of its Plan with its proposed Malibu LCP amendment. However, that comparison is materially misleading because it shows only the additions which the Conservancy made to the City's document – it does not show the deletions. To ensure that staff and the Commissioners have the full picture, we have prepared a comparison that includes all of the changes to the Malibu LCPA suggested by the Conservancy, including both additions and deletions (see Attachment D).

the Commission is not required to certify the LCP Amendment (§ 30513). However, as a practical matter, the City and the Commission engage in discussion and negotiation during this process.

The LCP override procedure which the Conservancy is attempting to utilize is very different (§ 30515). The override procedure is a **narrow exception** to the Legislature's requirement that local governments have the final say over land use decisions after the certification of a LCP. Under the narrow override procedure, the Commission can "override" the decision of the local government **only** if (a) an applicant proposes a specific public work which is not consistent with a LCP, (b) the local government will not amend the LCP to accommodate the applicant's proposal, and (c) the Commission can make the numerous findings discussed in this letter. However, in the absence of an application for a specific public work, it is not possible for the Commission to either (a) determine the precise scope and manner in which it might be necessary for the Commission to override the decision of a local government, or (b) permit the Commission to make the fact-specific findings necessary for the application of the override procedure.

The Conservancy has not submitted an application for a specific public work. Instead, the Conservancy has taken extensive provisions of the Malibu LCP and simply rewritten them to the Conservancy's liking. The Conservancy's proposed policies are **far less protective of natural resources** than the Malibu LCP and are apparently designed to **pave the way** for the Conservancy's future public works plan. There is no question that the Conservancy is asking the Commission to stretch the override procedure beyond all recognition.

Moreover, without providing any of the site-specific information required to analyze any specific development, the Conservancy has utilized mandatory language in its submission (i.e., the Conservancy "shall" develop camping on all three of its Malibu canyon properties and "shall" develop the intensive use of the Ramirez property for regional offices and events). We suspect that, if the Commission were to approve that language, the Conservancy would claim an entitlement for the development because the Conservancy has taken Malibu's LCPA and deleted all of the requirements for CUPs, CDPs, or review by various City Departments.

Finally, even if the Coastal Act allowed the Conservancy to submit what is essentially an "alternative" to Malibu's LCPA, we respectfully submit that the Commission should defer to Malibu's discretionary decisions on broad policy issues (see Section IV, below). That is the only manner by which (a) the fundamental policy of the Coastal Act can be preserved (i.e., that land use decisions are delegated to local governments after the certification of a LCP) and (b) the

override procedures can be kept within the narrow confines drawn by the Legislature (i.e., for use only in the context of specific development proposals).

The Conservancy's submission is extensive, and the administrative review and public hearing process will consume much time and energy. We respectfully submit that that time and energy should not be expended on an application which is not authorized by the Coastal Act.

II

THE HISTORY OF THIS PLAN VIS-À-VIS THE CONSERVANCY'S UNLAWFUL USE OF THE RAMIREZ CANYON PROPERTY.

The Conservancy's submission involves three properties in Malibu - in Ramirez, Escondido and Corral Canyons. A very significant part of the Conservancy's proposal has its roots in 1993, when the Conservancy received the 22-acre Ramirez property as a donation from Barbra Streisand. It is essential that staff and the Commissioners have a comprehensive understanding of what has happened in Ramirez Canyon since 1993. This background shows, among other things, that the Ramirez Canyon property was not acquired, was not intended, and is not allowed to be used as a "public park," and that the Conservancy is torturing the LCP override process to attempt to validate its unlawful and inappropriate use of the property. This background also shows why the Conservancy has included language in its override that reads like a coastal development permit for the Ramirez property, but without the site-specific detail required for such an entitlement.[4]

A. The Conservancy's "History" is Woefully Incomplete. In the Conservancy's "Description and History of Conservancy/MRCA Parklands," the Conservancy emphasizes the "developed nature" of the Ramirez property. There is no mention of the fact that there are no permits for most of that development, or of the fact that the Conservancy deleted all of the City's requirements that it procure those permits. Moreover, the Conservancy has ignored the fact that there is no public access to the property. There is only one way in and one way out – a narrow, winding, private road that does not comply with state or local fire codes.

[4] The Conservancy is asking the Commission to approve a LCPA which provides that the Conservancy **"shall"** provide **camping, regional administrative offices** for an unlimited number of Conservancy and MRCA personnel, and "tours," "gatherings" and "events" which include leasing the property for revenue raising purposes. The Conservancy's Plan would generate at least **900 events with 44,240 participants annually and 76 events with 3,687 participants monthly** – 7 days a week, most days from dawn to dusk, and some weekends until 11 p.m. (SMMC/LUP/LIP/Text Amendments, Section 4.12; see Attachment D, pp. 46-54.)

To support its proposed intensive use of the property, the Conservancy places great reliance on a CDP which the Commission issued for the Ramirez property (CDP 4-98-334). However, in 2005, the Ventura Superior Court declared CDP 4-98-334 to be **void**. That means that, despite the fact that the Conservancy operated under CDP 4-98-334 for a few years, **the Conservancy acquired no rights** whatsoever under that permit. The 2007 proceedings on the Conservancy's request for a LCPA from Malibu was the first time the City ever considered the Conservancy's use of the Ramirez property. The pending Malibu LCPA and the Conservancy's proposed override will be the first time the Commission considers the Conservancy's use of the Ramirez property within the context of the Malibu LCP. Therefore, there are no inferences to be drawn from CDP 4-98-334 — the Conservancy's submission must be considered anew.

The bottom line is this: For **15 years** now, the Conservancy has developed and used the Ramirez property with no regard for Malibu's land use regulations or for the residents of Ramirez Canyon. Instead, the Conservancy has waged a legal battle with the City and with the RCPF to avoid any regulation by Malibu. In the process, the Conservancy has not only ignored public safety and the site constraints of the Ramirez property, the Conservancy has violated the fundamental policy issue of land use compatibility with its neighbors. It has harassed the Canyon residents with traffic and noise for a regional office and commercial event center at the end of a box canyon in a residential neighborhood – and it now seeks to intensify that use. There is no cause for a Commission "override" to allow the Conservancy's abuse to continue.

B. The Site Constraints. The Conservancy's Ramirez property is located at the top of a rural, residential box canyon on the north edge of the City of Malibu, at the very end of Ramirez Canyon Road – which provides the only means of access. All of the other properties that use Ramirez Canyon Road for access (i.e., to the south) are zoned Rural-Residential. On the north, east and west, the Ramirez property is generally surrounded by National Park Service property and other open space.

From Delaplane Road at the bottom of Ramirez Canyon, Ramirez Canyon "Road" is actually a private, winding, one-mile lane, less than the 20 feet minimum width required by state and local fire regulations in numerous places. (SAIC Report, pp. 31-32 and Appendix B, Photos 1-8.) The Road repeatedly crosses Ramirez Creek over and through Arizona crossings and over a narrow bridge. Two gates control access into the Canyon. For the most part, the homes are older; the front yard setbacks are narrow and some structures are located very near the road.

Ramirez Creek is a spring-fed, blue-line stream that runs down from National Park Service lands, through the Conservancy's Ramirez property, and then down the Canyon to the ocean at Paradise Cove. In times of significant rainfall, Ramirez Canyon Road is completely impassable. Residents are forced to leave their cars and access their homes on foot.

C. The Conservancy's Acquisition and the Conservancy's Promises. In December of 1993, Barbra Streisand donated the Ramirez property to the Conservancy. Before the donation, Ms. Streisand and the Conservancy executed a Memorandum of Understanding (MOU) which expressly provided that the property would be used "as a retreat and research center for advanced academic and applied studies directed toward solution of the most pressing conservation and natural ecosystem management problems." The MOU includes the following *covenant* by the Conservancy:

> "Donor's intent in making this gift is to provide a location and facilities for the establishment of the Streisand Center for Conservancy Studies ("Center"). *Donee* [the Conservancy] and its affiliated nonprofit, the Mountains Conservancy Foundation, will plan and operate the Center as a place for advanced academic and applied studies directed toward solution of the most pressing conservation and natural ecosystem management problems, and will carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community." (MOU, Attachment C, pp. 2-3, emphasis added.)

Dedications from the public are broadly construed, but dedications by individuals are strictly construed. (*Slavich v. Hamilton* (1927) 201 Cal. 299, 303.) When an individual has donated land for a specific public purpose, it cannot be diverted to another purpose. (*Harter v. City of San Jose* (1904) 141 Cal. 659, 661; see, e.g., *Mulvey v. Wangenheim* (1904) 23 Cal.App. 268 (extension of a street for commercial purposes would violate the grant of the property for park purposes); *Spires v. City of Los Angeles* (1906) 150 Cal. 64, 70-71 (building on park property could be used for public library purposes, but not for municipal offices).) Therefore, the Conservancy did not acquire any right to expand the use of the Ramirez Canyon property beyond the purpose of Ms. Streisand's gift, and the Executive Director of the Conservancy acknowledged that fact when he discussed the acquisition with the Ramirez Canyon residents in 1993:

> "The Streisand Center property is a donation and therefore **it will never have to be and will never be dedicated to park purposes**. We are realists enough to realize **this is not a place that lends itself to public use or access**, and certainly we have a **long road of Ramirez that is narrow, and does not lend itself to safe access**, and in fact, with the stream coming through, it may be washed out a good portion of the year. The type of program we want to put on would not be conducive to having a bunch of people running through saying, 'Oh, look at Barbra Streisand's houses' etc., or even ardent hikers on a power hike up the canyon. This is not to

> be. Honest. That is not the feeling. It is not the play, it's not the event, it's not the way it's going to be used." (Emphasis added.)

The Conservancy did not follow the law, and it did not keep its promise. Despite the MOU, and despite the fact that the property was then zoned residential, the Conservancy moved its offices onto the premises, conducted tours, and offered the site for hire for weddings, fundraising events, and similar events which included large groups of participants.

D. The Conservancy's Promise to Construct Alternate Vehicular Access and the Conservancy's First, Aborted Application for a CDP. The Conservancy's excessive and unlawful use of the Ramirez property drew objection from the City of Malibu and from the residents of the Canyon, who ultimately joined together as the Ramirez Canyon Preservation Fund. In January of 1994, the City indicated that it would support a CDP application (a) if primary access were provided from Kanan Dume Road, rather than Ramirez Canyon Road (the alternate access which is at issue in the present proceedings), and (b) if the Conservancy agreed not to lease the property for private, commercial events (weddings, filming or other uses not consistent with Conservancy studies). In response, the Conservancy promised the Commission that it would acquire the property between Ramirez and Kanan Dume Road to facilitate access other than by Ramirez Canyon Road. The Conservancy ignored that promise as well.

In March 1995, faced with continuing objections from the City and RCPF, the Conservancy filed an application for a CDP with the Commission. Two months later, in May 1995, the Conservancy withdrew its application and issued a press release stating that it would resubmit the application after it prepared an environmental analysis, which would include an "analysis of the environmental impacts on the surrounding neighborhood."[5] The Conservancy did not do so. Instead, the Conservancy continued its excessive and unlawful use of the property without a permit.

E. Efforts by RCPF to Procure Enforcement by the Commission. Between 1995 and 1998, RCPF made repeated requests of the Commission for enforcement. In 1998, the Commission's Executive Director advised RCPF that, although the activities at the Streisand Center had been of concern to the Commission for some time, the Commission's enforcement efforts were directed elsewhere due to staffing limitations.

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[5] Please note that the present submission by the Conservancy does not include this information either.

F. The Conservancy's Continuing Unlawful Use and RCPF's First Lawsuit. At that point, RCPF had no choice but to initiate litigation (RCPF v. Santa Monica Mountains Conservancy, L.A. Superior Court No. SC 054425). For procedural reasons, the trial court ruled that it could not give the Canyon residents the relief they sought. However, as a result of the lawsuit, the Conservancy agreed to re-submit its CDP application.

G. The Conservancy's Second Application for a CDP and the City's First Lawsuit. In December of 1998, the Conservancy submitted a second application for a CDP (4-98-334). That is the CDP to which the Conservancy refers in its Plan and which the Ventura Superior Court set aside in 2005. The application requested a permit for the intensive use which the Conservancy was then making of the property and the use which the Conservancy seeks to intensify by its proposed LCP override. The original Commission staff report acknowledged the problems that exist today as much, if not more, than when the report was issued:

> "The applicant proposes to attract dense populations of commercial visitors to a site located at the dead end of a relatively narrow, winding road that has been determined substandard for purposes of emergency vehicle access and for the evacuation of the canyon's occupants in the event of a flood or wildfire emergency . . . . The substandard road is the only way in and out of the canyon." (10/14/99, Coastal Commission Staff Report, pp. 3-4.)
>
> "In addition, several Arizona stream crossings and narrow wooden bridges – the narrowest (twelve feet in width) being immediately adjacent to the project site – present obstacles to emergency access vehicles and to occupants of the canyon seeking to evacuate during flooding or wildfires." (*Id.*, p. 11.)
>
> Siting of new development: **"Siting an intensive commercial land use at the end of a substandard road in an area otherwise designated for public parklands and open spaces and for residential uses raises a number of issues under the Coastal Act regarding the appropriate siting of such development."** (*Id.*, pp. 3-4, emphasis added.)

After the report was issued, the Conservancy hired a lobbyist and the hearing was postponed to January of 2000.

In the meantime, because the Conservancy had consistently denied Malibu's request that the Conservancy's development be evaluated for compliance with Malibu's zoning regulations, the City of Malibu sought a judicial determination that the Conservancy was subject to Malibu's regulations (City of Malibu v. Santa Monica Mountains Conservancy, et al., Ventura Superior Court Case No. 193900).

In December of 1999, the Conservancy amended its CDP application and extensively revised its project description to include "public access programs." That is the theme of the Conservancy's present submission as well. However, the "public access" component of the CDP was directly at odds with the Conservancy's agreement with Ms. Streisand and its promise to the Canyon residents. Thus, it came as no surprise when, in 2000, Ms. Streisand objected to the continued use of her name. In response, the Conservancy began to refer to the property as "Ramirez Canyon Park."

There was extensive opposition to the Conservancy's CDP application by the City Attorney for Malibu, members of the Malibu City Council, and many Ramirez Canyon residents. Nevertheless, it was apparently the "public access" component of the CDP which ultimately led the Commission to approve the project. The "hazards" discussion quoted above simply disappeared from the next Staff Report. The Commission approved the project, and CDP 4-98-334 was issued in February 2001.

H. The Court of Appeal Holds that the Conservancy is Subject to Malibu's Land Use Regulations and the CDP is Set Aside. On May 24, 2001, RCPF filed an action to set aside the CDP because it did not comply with Malibu's land use regulations. At the same time, the City of Malibu filed its second lawsuit, challenging the CDP on the same grounds.

On June 20, 2001, in Malibu's first lawsuit, the trial court found that the Conservancy was immune from Malibu's land use regulations. The City appealed, and the two lawsuits challenging the CDP were put on hold until that appeal was resolved. On May 14, 2002, the Court of Appeal issued its opinion, reversing the trial court and holding that the Conservancy is not immune. In other words, this issue is now settled: the Conservancy is subject to Malibu's land use regulations (*City of Malibu v. Santa Monica Mountains Conservancy, et al.* (2002) 98 Cal.App.4th 1379).

Ignoring the Court of Appeal's holding, and despite the Conservancy's ultimate admission that CDP 4-98-334 had been issued with no consideration of Malibu's land use regulations, the Conservancy forced the RCPF to prosecute the lawsuit about the validity of the CDP. In 2005, the Ventura Superior Court declared CDP 4-98-334 void. Twelve years had passed since the conflict began – and still the Conservancy had not ceased its unlawful use of the property.

I. The Conservancy's First Attempt at Changing the Malibu LCP so as to Avoid Regulation by Malibu. In early 2002, while the Coastal Commission was drafting Malibu's LCP, the Conservancy sought amendments to exclude "park management and operations" and

"park events" (e.g., festivals and weddings) from the requirement for a CDP. The Commission rejected the proposals. Later in 2002, the Commission certified the Malibu LCP. This should have put an end to the Conservancy's legal maneuverings — because every person in the State of California, including the State itself, is subject to the Coastal Act (§ 30111). Instead, the Conservancy continued the litigation over the CDP – to forestall the ultimate day of reckoning — and began to scour the Coastal Act to find other procedures by which it might gain the functional equivalent of immunity from Malibu's land use regulations.

J. The Conservancy's Continuing Efforts to Gain Immunity – the "Public Works Plan" and More Litigation. In 2006, the Conservancy tried an imaginative new strategy. It filed an application directly with the Commission for a "Public Works Plan" (PWP) which essentially proposed to make the Conservancy immune from Malibu's land use regulations not only on Conservancy properties, but over a vast "planning area," encompassing 15,800 acres of private and public land. Commission staff declined to accept the application and requested more information. The Conservancy modified the Plan and held public hearings. Protests from the City of Malibu and many City residents fell on deaf ears.

In November of 2006, the Conservancy approved the PWP and threatened to bring it back to the Commission. And, with an audacity that was nearly breathtaking, the Conservancy filed a lawsuit, once again claiming "immunity" from Malibu's land use regulations. The City counter-sued to enjoin the Conservancy's violation of the Malibu LCP on the Ramirez property. Ultimately, even though the Conservancy would not dismiss its claim of immunity, the City and the Conservancy agreed that the Conservancy would submit a LCPA to the City. The Conservancy agreed that the LCPA would generally describe its Plan and would require the Conservancy to obtain CDPs for each of its proposed developments.

K. The Conservancy's Application to Malibu for a LCPA. Once again, the Conservancy ignored its promises. The Conservancy did not draft its LCPA to require individual coastal development permits. Instead, the Conservancy drafted the LCPA so as to lock in, among other things, all of its existing operations at Ramirez, including those to which the City and RCPF had long objected.

After several well attended public hearings, the City Council approved most of the Conservancy's proposals. However, the City made two decisions about which the Conservancy was unhappy and which apparently prompted the Conservancy's unprecedented invocation of the override procedures of the Coastal Act. First, for public safety reasons, the City decided to prohibit any

further camping in the City except for disabled-accessible camping at Ramirez (to which there was no objection). Second, the City sanctioned the Conservancy's unlawful office use of the Ramirez property, but conditioned use of the property for events on the construction of alternate access from Kanan Dume Road. As further explained in Section IV, below, the Coastal Act plainly delegates these broad policy decisions to the City.

L. The Conservancy's Application to the Commission for a LCPA "Override."

In December of 2007, the City sent the LCPA to the Commission for certification. In April 2008, the Conservancy submitted its own LCPA directly to the Commission. The Conservancy's proposed override includes the provisions for an office park, camping, large commercial events, and leasing the Ramirez property for private, commercial use – but deletes the City's requirement for alternative access. The City of Malibu declined to adopt the Conservancy's proposed override plan and, on July 29, 2008, the Commission staff deemed the Conservancy's application "properly submitted and complete."

III

RCPF SEEKS A RESULT CONSISTENT WITH THE COASTAL ACT AND FAIR TO THE CITY, THE CONSERVANCY, AND THE RESIDENTS OF RAMIREZ CANYON.

The City's LCP Amendment considers the totality of the circumstances and proposes a reasonable manner by which the Conservancy can increase public access and, at the same time, safely use its properties. By separate comment letter, we will submit proposed minor revisions to the Malibu LCPA, which we request that both the City and the Commission consider and adopt in order to make the Conservancy's development more compatible with the rural, residential nature of Ramirez Canyon. We respectfully submit that the Malibu LCPA, modified as RCPF requests, is the most equitable result for the City, for the residents of Ramirez Canyon, and for the Conservancy – for the following reasons:

The Conservancy acquired a property in Ramirez Canyon which was never intended – and which the Conservancy acknowledged is not suitable -- for use as a public park, regional office complex or commercial event center. Therefore, if the Conservancy wants to continue to use this ESHA/Open Space property for regional administrative offices (to which no agency would be entitled), and to expand from passive to active recreation, the Conservancy should construct alternate access to protect the safety of those who use the property as well as the Canyon residents, and to minimize traffic and noise throughout the Canyon. Moreover, the Conservancy

should seek site-specific approvals from the City with respect to each proposed development; there should be no language in the LCPA which suggests a guarantee of development. Finally, except for supervised disabled-accessible camping at Ramirez, no camping should be allowed in the Plan Area. Southern California is being ravaged by fire, resources for fire suppression are strained and/or non-existent, and the Conservancy properties are vegetated with dry ESHA containing chaparral and located immediately adjacent to residential neighborhoods.

IV

EVEN IF THE COMMISSION CONSIDERS THE CONSERVANCY'S "ALTERNATE" LCPA, THE CITY'S LCPA SHOULD BE GIVEN GREAT DEFERENCE AND THE CITY'S CUSTOMARY LAND USE AUTHORITY AND DISCRETION SHOULD BE RESPECTED.

This is an important issue because of the unprecedented manner in which the Conservancy is attempting to utilize the override provisions of the Coastal Act. It does not appear that the Conservancy is attempting to override the **existing** Malibu LCP – because the Conservancy's Plan is inconsistent with the existing LCP in significant respects and the Conservancy's "Policy Consistency Analysis" does not address any of those conflicts. Instead, it appears that the Conservancy is attempting to utilize the override procedures to offer **an alternative to the pending Malibu LCPA.**[6] As we explained in our November 24, 2008 letter to Commission Counsel, the override provisions were not designed for that purpose (Attachment B, Section I).

However, and in any event, if the Commission decides to consider the Conservancy's alternative proposals, we respectfully request that the Commission do so with deference to the City's decisions on broad policy issues and with respect for the City's customary land use authority and discretion. A comparison of the Malibu LCPA with the Conservancy's Plan demonstrates the following primary areas of conflict:

A. It Is Poor Planning to Propose Campgrounds And Numerous Large Special Events In Dry Chaparral ESHA Located In Box Canyons Adjacent To And Surrounding Residential Neighborhoods, With Only One Means Of Ingress and Egress. Given the

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[6] In this respect, the Conservancy's statement of "Purpose and Intent" is very telling. According to the Conservancy, it seeks to increase public access, create an inter-linking network of trails, etc. However, the Malibu LCP, which the Commission drafted for Malibu, includes extensive provisions for that same purpose. There is no precedent which would allow the Conservancy to substitute its judgment for that of the City.

onslaught of fires in Southern California during the past several years, it is difficult to believe that the Conservancy is proposing to develop camping in the dry canyons of Malibu, adjacent to and surrounded by residences, and to lease the Ramirez property for numerous "special events" for 200 persons. These activities are not appropriate for this urban/wildland interface. They create unnecessary risks, particularly where there is only one means of ingress and egress, as in Ramirez and Escondido Canyons.

There are 272 federally-owned, 678 state-owned, and four City of Los Angeles-owned campsites in and around Malibu. (SAIC Report, pp. 1-4 and Table 1.) Most are along the beach, outside of the high fire hazard zone. All are close to Pacific Coast Highway or adjacent to a major cross-mountain highway for easy access (Leo Carrillo State Park, Pt. Mugu State Park (Big Sycamore Canyon and Thornhill Broome), Malibu Creek State Park). There are two backcountry sites with hike-in access and nine tent spaces. There are 35 privately-owned tent spaces on Pacific Coast Highway. (SAIC Report, Table 1.) There are also numerous sites which offer facilities for large events. (See Section VII, E, below.) Most of these are also outside the Very High Fire Hazard Severity Zone, and have safe and sufficient public access in the event of an emergency.

Throughout the proceedings on this "Plan" (i.e., the PWP, the Conservancy's application to Malibu for the LCPA, and the present application for LCP Override), **the Conservancy has never offered an analysis of alternatives**. Nonetheless, during several well-attended public hearings, the City carefully considered the Conservancy's proposals and ultimately determined that, except for supervised disabled-accessible camping at Ramirez property (to which no one objected), the risk posed by the existing camping and event facilities in the City should not be increased. In addition, the City agreed to legalize the Conservancy's regional administrative office use of the Ramirez property, despite the fact that the current LCP does not allow those uses in ESHA or Open Space. At the same time, the City determined that the Conservancy's proposal for extensive tours, gatherings, small groups and special events, warranted "additional development controls" (Malibu LIP, Hazards, § 9.2) in the form of alternate access (see Section VII, F, 4, below).

There is overwhelming evidence to support the City's decision. The City's first job is to keep its residents safe. Malibu's hillsides are covered with dry coastal sage scrub ESHA, and Malibu has suffered devastating wildfires. In 2007 alone – while the Conservancy's Plan was pending before the City – there were two catastrophic fires in Malibu. In the second, 63 homes were destroyed and 54 damaged, along with the Malibu Presbyterian Church, Our Lady of Malibu and Webster Elementary School. Six firefighters were injured, including one who suffered second-degree

burns to his face. And, Malibu is not alone. The entire State has been burning -- fifteen of the twenty largest wildfires in California history have occurred since 1985.[7] Nearly 1.2 million acres burned during the record-setting 2008 fire season (*id.*).

In addition, the number, intensity and scope of wildfires throughout the western states have grown dramatically in recent years. The number of wildfires between 1987 and 2003 was **four times** the number between 1970 and 1986.[8] The total area burned increased more than **six and a half times** in the Western States (*id*).

> "In recent years, both the number of acres burned by wildland fires and the costs to suppress fires has been increasing. From 1995 to 1999, wildland fires burned an average of 4.1 million acres each year. From 2000 to 2004, the fires burned an average of 6.1 acres per year, an increase of almost 50 percent. During the same periods, the costs incurred by federal firefighting entities to suppress wildland fires more than doubled, from an average of $500 million annually to about $1.3 billion annually. Although efforts to fight these larger, more severe fires have accounted for much of the increase in suppression costs, the continuing development of homes and communities in areas at risk from wildland fires and the efforts to protect these structures also contribute to the increasing costs. Forest Service and university researchers estimate that about 44 million homes in the lower 48 states are located in the wildland-urban interface."[9]

The increased risk of wildfires cannot be managed by fire suppression strategies alone.[10]

The California Department of Forestry and Fire Protection's fire protection expenditures grew from $475 million in 1996-97 to $869 million in 2006-07 – an **83% increase**.[11] The state's fiscal resources are not keeping pace with this demand. And, recent studies predict that, based upon weather conditions for future climate scenarios, the frequency of wildfires will increase in the

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7 Associated Press, *Report: Climate Change to Fuel Wildfires in West,* August 15, 2008.

8 A.L. Westerling, *et al.*, "Warming and Earlier Spring Increase Western U.S. Forest Wildfire Activity," *Science* 313, 940 (2006), published online 6 July 2006 (10.1126/science.1128834).

9 U.S. Government Accountability Office, *Wildland Fire Suppression: Better Guidance Needed to Clarify Sharing of Costs between Federal and Nonfederal Entities* (hereafter "USGAO Report"), July 2006, pp. 3-4.

10 National Wildlife Federation, "Increased Risk of Catastrophic Wildfires: Global Warming's Wake-Up Call for the Western United States," August 14, 2008.

11 California Legislative Analyst's Office, "California Department of Forestry and Fire Protection: State's Wildland Firefighting Costs Continue to Escalate," presented to the Senate Budget Subcommittee No. 2 on Resources, Environmental Protection and Energy, March 26, 2007.

Western U.S. as warming intensifies, particularly in areas with the type of vegetation which surrounds the Conservancy properties. (SAIC Report, Section 2.0, pp. 7-29.) Therefore, the "most effective way to limit damage and loss due to wildfire is to prevent all but the most blatant ignitions due to arson or other unforeseeable circumstances."[12]

Additional material is presented in the discussion of Hazards (Section VII, F, below) and in the SAIC Report. We respectfully request that the Commission respect the City's policy decision to reduce the risk of fire by prohibiting additional campsites in the City.

B. The City's Decision to Restrict the Conservancy's Unfettered Expansion of Allowable Uses in ESHA is Based on the Prime Directive of the Coastal Act. It is also difficult to believe that the Conservancy – whose mission is to protect and preserve natural resources – is asking to grade away ESHA, insert chemical toilets for campsites, build vehicular crossings across streambeds, construct broadly defined "support facilities," and lease out ESHA for private, commercial, events for 200 people at a time.

Under the Malibu LCP, land use in ESHA is restricted to public accessways and trails, interpretative signage, restoration projects, and invasive plant eradication projects. (Malibu LIP, Section 4.5.3.) Yet, based on its stated desire to provide "public access," the Conservancy is seeking almost wholesale exemption from these restrictions. The Conservancy proposes to expand the use of ESHA as follows: "Trails, camp facilities, park uses as described in this Chapter [the regional office, tours, gatherings, events, and commercial leasing of the Ramirez property for private events], and necessary support facilities shall be considered principal permitted uses for those parkland areas subject to . . . ." the proposed override. (SMMC/LIP Text Amendments, Section 4.7.A.1; see Attachment D, p. 27; emphasis added.)

In addition, the Malibu LCP provides for limited support facilities in Open Space –*not in ESHA*– picnic areas, restrooms, trash receptacles, parking and construction of access improvements for trails (Malibu LUP, Chapter 2, A, 2 and Policies 2.4, 2.7 and 2.16).) The Conservancy's proposal allows support facilities as a principal permitted use in ESHA and defines them as "those facilities *deemed necessary to support the primary permitted land use*, public access and recreation, research and education, and nature observation. The type of support facilities addressed at each park facility shall be based on the level and complexity of public uses and specialized programs

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12 County of Los Angeles Fire Department, *Pre-Fire Management Plan,* June 2004, p. 9.

offered at each park areas . . .." (SMMC/LIP Text Amendments, Section 4.12; see Attachment D, pp. 46-47; emphasis added.)

As more fully explained in Section VII, D, below, the primary purpose of the Coastal Act is to protect and preserve coastal resources. **Where there is a conflict, resource protection overrides all other policies**. That is why, like the LCPs of surrounding jurisdictions,[13] Malibu's LCP requires that activities in ESHA be restricted to resource dependent uses. Therefore, we submit that the Commission should respect the City's policies with respect to activities in ESHA.

C. There is No Explanation, and No Precedent, for the Conservancy's Deletion of All Requirements For City Discretionary Review and Permitting of the Conservancy's Future Development. The City's LCPA provides for CDPs, CUPs and review by various City departments and City officials of the Conservancy's eventual site-specific development plans. These provisions are designed to ensure review of the site-specific impacts of every development proposal. For example, information concerning the precise location of development and the proposed intensity of use are essential for an analysis of the impact on ESHA and on the neighborhood, and construction detail is required to analyze hazards and public safety. In addition, if the Commission were to seriously consider the Conservancy's proposals for camping, site-specific review during the permitting process would be essential.

As discussed below, this is apparently the first time the Commission will consider a proposal for camping in ESHA in the dry, urban/wildland interface of Southern California. Our research indicates that camping is rarely permitted in this fire-prone area. Further, even in the Southern California jurisdictions that still allow camping, no jurisdiction allows camping as a principal permitted use – with no CDP, CUP or site-specific review.[14] Yet, the Conservancy's Plan deletes

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[13] See, e.g., Monterey County LCP, secs. 20.144.040, 20.145.040, 20.146.040, 20.147.040, 20.147.090 – use of ESHA limited to resource dependent uses, recreational uses are limited to "passive and low intensity," where public access is permitted, a "condition of project approval shall be that the access be strictly managed, controlled and confined to designated trails and paths." See, also, Ventura LCP (p. 19) and Ventura Coastal Zoning Ordinance, sec. 8174-9; Santa Barbara LCP, p. 116; San Luis Obispo LCP (p. 91).)

[14] See, e.g., Los Angeles County CZO, secs. 22.28.290, 22.40.410, 22.40.420-430 (campgrounds permitted with CUP or CDP in OS or CR); Monterey County Coastal Implementation Plan, Chaps. 20.18, 20.22, 20.36, 20.38, pp. 78, 96, 138, 144-145 (campgrounds permitted in certain zones with CDP and CUP; for public access to open space, Monterey County also requires an Access Management Plan which must incorporate an analysis and discussion of "impacts regarding ESHA, adjacent land uses, neighborhood privacy, noise, fire hazard, public safety . . .." (Monterey LCP, § 20.144.150).) See, also, Ventura County CZO (campgrounds are permitted in Coastal Open Space and Coastal Rural Zones, "camps" are permitted only in CR and

every one of the requirements for permits and review which are set forth in the Malibu LCPA (see Attachment D).[15] The Conservancy's proposal is not only dangerous, it is unprecedented.

The Conservancy is also attempting to exempt itself from certain requirements of the Malibu Municipal Code (MMC). The MMC allows for "joint use" of off-site parking facilities only under certain conditions and only if the proposed joint use agreement includes the City as a party (MMC, § 17.48.040). Yet, Section 4.3, B, 1 of the Conservancy's proposed LIP text additions (see Attachment D, pp. 18-19), provides that "parking agreements and use of the parking resources secured by such agreements shall be considered permitted uses and shall not be denied or obstructed by the City."

Moreover, the Conservancy's submission attempts to change Malibu's regulations for the use of private property. SMMC/LIP Text Amendments, Section 4.11.B.1 (Attachment D, pp. 43-44) states:

> No person shall, *outside of any park facility* mentioned herein, *on any public or private property*, permit or allow, or cause to be permitted or allowed, any open flame, fire, or other incendiary source, of any nature whatsoever, within twenty (20) feet of any flammable vegetation. *This provision shall prohibit backyard fires,*

Coastal Rural Exclusive Zones (Article IV, pp. 30-37); LCP specifically defines campgrounds in terms of size, maximum density, etc. (LCP, § 8175-5.3).) And, see, Santa Barbara County LCP and CZO (camping permitted with CUP or CDP in AG II, CV (Resort/Visitor Serving Commercial); REC (Recreational); RES (Resource Management Zoning District) (Santa Barbara LCP, p. B-2, and CZO pp. 53, 113).

[15] See Attachment D, Comparison Chart. In every instance where the City of Malibu LCPA requires a CDP, CUP, or review by any City Department, the Conservancy has stricken those requirements. See the following pages in the right-hand column of the Chart: p. 4 (Policy 5.71 – deletes the requirement for CDPs); pp. 8-9 (§ C – deletes the provision for the imposition of conditions on development); p. 12 (§ 3 – deletes the requirement that the location and design of trails and their impact on ESHA be evaluated during the CDP process); pp. 17-18 (§ A – deletes the requirement that the Conservancy participate with the City to provide public transit improvements); pp. 20-21 (§ 4 – deletes the City's requirement that further intensified use of the Ramirez property be conditioned on the requirement of alternative vehicular access); pp. 23-24 (§ 5 – deletes the requirement for CDPs for support facilities); p. 24 (§ 3 – deletes review by the City biologist to determine the exact location of support facilities during the CDP process); p. 28 (§ 4 – deletes review by the City biologist to determine the location of park facilities during the CDP process); p. 30 (§ B, 1, removes streambed modifications from the CDP process and from "all other relevant permits from appropriate agencies"); pp. 32-33 (§ C, 2 – removes the requirement for review of all projects by the City Environmental Review Board); p. 36 (§ B, ii – deletes the requirement for review of construction and operation of self-contained restrooms by the City Environmental Health Division); pp. 41-42 (§ A, 2 – deletes the application of the City's Geotechnical Guidelines and Building Codes); pp. 46-47 (§ 12 – deletes the City's requirement that development "avoid intrusive traffic circulation in residential neighborhoods"). The Conservancy has provided no explanation for these deletions.

> *barbeques, or any other flame source whatsoever*. Propane BBQs when accompanied with approved fire extinguishers shall be exempt from this policy. (Emphasis added.)

There is no precedent, "override" or otherwise, by which the Conservancy can supplant Malibu's decisions with respect to the regulation of private property.

Therefore, even if the Commission determines that the Conservancy is entitled to utilize the override procedure, and even if the Commission makes the findings required for an override, we respectfully submit that (i) no LCPA should be certified unless the Commission ensures that Malibu's traditional permitting discretion and authority is preserved, and that City agencies have an opportunity to review specific uses on specific sites and to exercise their customary discretion to issue permits; (ii) no requirements of the MMC should be modified unless the City consents, and (iii) none of the Conservancy's suggestions for the regulation of private property should be adopted.

D. The Malibu LCP Gives the City the Power to Require Alternate Access as a Condition of the Conservancy's Proposed Intensive Development of the Ramirez Property. The question of intensified use of the Conservancy's Ramirez property for tours, gatherings, small groups and "special events" cannot be considered in a vacuum. This property is designated ESHA and Open Space. Government offices are not permitted in either zone (Malibu LIP, § 4.5.3 and Table B (Permitted Uses)). Despite that fact, since the Conservancy first acquired the property, the Conservancy has insisted on using the structures on the property for regional administrative offices for itself and MRCA.

The City's LCPA allows the Conservancy to continue the office and other limited uses of the property. However, Ramirez Canyon Road is too narrow to meet the requirements of either state or local fire codes, and the office use is one of the primary incompatibilities between the Conservancy's use and this rural, residential neighborhood. Therefore, to resolve the issues of hazards, public safety, traffic, noise and neighborhood compatibility, the City required alternate access for the Conservancy's proposed tours, gatherings and "special events." Because the property is in a Very High Fire Hazard Severity Zone, the condition is expressly authorized by the Malibu LCP as an "additional development control" (Malibu LIP, Hazards, § 9.2).[16] The evidence which supports the City's decision, and which compels the inclusion of this condition in any LCPA

[16] In addition, lawful access is an essential component of any development plan and, as discussed below, the Conservancy does not have the legal right to use Ramirez Canyon Road for public or commercial use.

which authorizes intensified use of the Ramirez property, is set forth in Section VII, F (Hazards), 4, below.

The City's requirement for alternate access is also consistent with zoning law. The properties over which Ramirez Canyon Road passes are zoned by the Malibu LCP as rural-residential (RR). The Conservancy's Ramirez property is zoned open space (OS). Active recreation, camping, office and commercial uses are not allowed in the RR zone (Malibu LIP, Table B (Permitted Uses)). "Parks" are allowed in RR zones only with a conditional use permit (*Id.*). The general rule is that the use of land in one zoning district (e.g., Ramirez Canyon Road, RR) for ingress and egress to land in another zoning district (e.g., the Conservancy's open space property, OS) must not exceed the use allowed in the first district.[17] That means that, even if Ramirez Canyon Road were not substandard under the fire code, the Conservancy would have no right to use the road for access for active recreation, camping, office or commercial use.

The Conservancy has submitted a list of "Park Agency Administrative Office Locations in the Coastal Zone" (see Conservancy "Policy Consistency Analysis," dated April 14, 2008, p. 55), in an apparent effort to justify the Conservancy's claim that office facilities like those at Ramirez are an appropriate use of Open Space. However, an examination of the actual use of the properties on the Conservancy's list, and the land use designation of each, proves the contrary. Attachment E demonstrates that many of the sites do not house offices at all. Other sites are used for **onsite administration** – which is generally permitted as an "ancillary" use to the management of the specific property. The sites that house regional offices either require a CUP or are located in zoning designations that allow the use (e.g., Institutional and Public Facilities). Because of the site constraints at the Ramirez property, the property would never qualify for the latter type of zoning designation.

The Conservancy's Ramirez property is zoned Open Space, and the Conservancy's "Policy Consistency Analysis" explains that the Conservancy uses the offices at Ramirez to **"conduct the administrative responsibilities associated with open space acquisitions, planning, research, the management of conservation and recreation activities <u>at Conservancy holdings</u>** . . .." (Conservancy "Policy Consistency Analysis," p. 52). There is no precedent for that use – it is plainly unlawful.

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[17] Am. Jur., Zoning, sec. 167. California Courts follow the rule. Miller & Starr, California Real Estate, sec. 15:54. See, also, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487 and *City & Co. of S.F. v. Safeway Stores, Inc.* (1957) 150 Cal.App.2d 327.

In addition, there is no question that the City's requirement for alternate access is justified by the public safety concerns inherent in the Conservancy's proposal to bring large groups of visitors to a property at the top of a dry box canyon in a Very High Fire Hazard Severity Zone (see Section VII, F, (Hazards), below). Under the circumstances, the City's decision to add alternate access as a condition to any intensification of use is a sound policy decision:

> "Passive Protection. When the inevitable wildfire does occur, the primary protection of life, property and the environment will come from passive protection such as defensible space (fuel reduction/brush clearance), fire resistive landscaping, fire-resistive construction and good housekeeping. Sufficient firefighting water sources must be on site for use by the property owner and/or the fire department. Moreover, residents must have the means of self-evacuating and escaping danger through safe and sufficient egress routes while maintaining appropriate ingress routes for responding fire equipment. The sum effect of passive protection is a force multiplier for active firefighting resources."[18]

Finally, the City's requirement for alternate access was not a surprise. The Conservancy has been promising to build an alternate access since 1993. Late last year, during City proceedings on the LCPA, the Conservancy made a grant of $7 million to MRCA to fund the necessary acquisition. However, when the City added the condition, the Conservancy balked and has deleted the condition from its proposed LCP override. We respectfully request that the Commission defer to the City with respect to the question of alternate access and, as explained in the RCPF Comment Letter on the City's LCPA, require that the new road provide dedicated access and that Ramirez Canyon Road be used for emergency ingress and egress only.

E. The City Has the Power to Determine the "Plan" or "Overlay" Area and the Location of Trails. The Conservancy's attempt to supplant the City's discretionary decisions about the nature and extent of the Plan or Overlay area, and the precise location of the trail system should also be rejected.

1. The Plan or Overlay Area. The City's LCPA includes Charmlee Park, as well as the Conservancy's properties in Escondido, Corral and Ramirez Canyons. The Conservancy deleted Charmlee, apparently because the Conservancy does not own that property. However, if the Conservancy's motivation were truly to increase public access — rather than to create a shadow LCP for its own properties – the Conservancy would not have deleted Charmlee.

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[18] County of Los Angeles Fire Department, *Pre-Fire Management Plan,* June 2004, p. 11 (emphasis added).

In addition, the Conservancy's "Description of the Plan Area" is both vague and inconsistent – and the text is not consistent with the maps. At one point, the Conservancy states that the "Overlay District" applies only to properties shown on the "Public Parkland Map" that are located within the City of Malibu. That Map illustrates four properties owned by the Conservancy, one property owned by the National Park Service, and one miscellaneous holding. No private property is shown on the map. However, in the following paragraph, the Conservancy states that there is "private property" that is "addressed" by the Plan, mostly OTD's or those identified on the Commission's Work Program. However, those properties are not shown on the Public Parkland Map. Apparently, some of the properties are not identified because they have not yet been acquired. We respectfully submit that a precisely defined "Plan" or "Overlay" area is an essential element to any submission – and the Conservancy's submission should be rejected on that ground alone. (SMMC/LIP Text Amendments, Section 2; see Attachment D, pp. 7-8.)

2. The Trail System. There are also conflicts between the trail plans submitted with the City's LCPA and the Conservancy's override. The City's LCPA describes ". . . .existing and proposed trail corridors as identified in the City's Trail Master Plan, Local Coastal Program, and Draft Interagency Regional Trail Management Plan, Exhibit B" (Malibu LCPA, Section 3.4.2.B; see Attachment D, pp. 7-8). The Conservancy's submission describes ". . . public recreation areas (parklands and trails) as illustrated on the Malibu Parks Public Access Enhancement Plan Overlay Public Parkland Map and Proposed Trail Resources Map. . . . ." Two maps showing the differences between the City's trails proposal and the Conservancy's trails proposal are attached (see Attachment F).

We respectfully submit that the Conservancy should not be permitted to supplant the City's decisions with respect to trail planning – a process which has been underway for years. The City has not only its LCP-mapped trails, but trails identified by the Malibu Trails Commission. Those maps combine to create a significant trail network across the City, with existing alternative alignments for various trails. For example, the City has already proposed an alternative to the historic Coastal Slope Trail - the "Pacific Trail." The Conservancy's proposed Amendment would add yet another alternative to the Coastal Slope Trail, and move it up-canyon to pass through the Ramirez property.

For these reasons, we respectfully request that the Commission not override Malibu's planned trail network with that of the Conservancy, but that the Conservancy be required instead to cooperate with the City of Malibu if it desires modifications to Malibu's trail plan.

F. The City's Policy Decisions Should be Given Great Weight During the Commission Evaluation of the Findings Required by Public Resource Code, Section 30515 and Title 14, California Code of Regulations, Section 13666.4. It would be one thing if the Conservancy had submitted a specific development proposal, as required by the override provisions of the Coastal Act. Then, the Commission could review the details of the proposal and determine whether the City's policy decisions should be supplanted. However, the Conservancy has not properly followed the override procedure. Instead, the Conservancy is attempting to substitute its judgment for that of the City – something which the Coastal Act does not allow under any procedure. Therefore, we respectfully request that the Commission give the City's policy decisions great weight when the Commission considers the specific override findings discussed below.

V

IT IS NOT POSSIBLE TO DETERMINE WHETHER THE CONSERVANCY'S SUBMISSION COMPLIES WITH CEQA.

Compliance with CEQA is an issue for two reasons. The first involves the manner in which the Conservancy is attempting to stretch the override procedures, and the second involves the language used by the Conservancy in its submission.

The Commission reviews LCPA overrides in the same manner in which it reviews LCPs and there is a certified regulatory program in place for LCP review and certification. (14 Cal. Code Regs., § 15251, subd. (f).) Therefore, formal CEQA requirements would not ordinarily apply, and the Commission could use less formal procedures (i.e., the "functional equivalent" of CEQA review). (Pub. Res. Code, § 21080.5.) However, as we demonstrated in our November 24 letter to Commission Counsel (Attachment B), and in Section I above, a properly submitted override requires a proposal for a specific public work or energy development. That proposal would include sufficient detail to allow the Commission to conduct the functional equivalent of environmental review under CEQA, and also to make the findings required by 14 California Code of Regulations, section 13666.4, subdivision (c): that there are feasible, less environmentally damaging alternative methods by which to fulfill the same goals. Therefore, absent a proposal for a specific public work, the Conservancy should not be entitled to bootstrap its application for override into the Commission's certified regulatory program for LCPAs.

Second, there is also a certified regulatory program in place for CDPs (14 Cal. Code Regs., § 15251, subd. (c)), and the Conservancy has drafted certain provisions of its override – particularly those that involve the intensified use of its Ramirez Canyon property – to read like a CDP. However, the Conservancy has deleted all of the provisions of the pending Malibu LCPA which require CDPs, CUPs, or review by any City official or City department (SMMC/LIP Text Amendments, see Attachment D). If, by those revisions, the Conservancy is attempting to obtain an "entitlement for use," the Conservancy has muddled the CEQA compliance issue even more. If the Conservancy is actually attempting to gain entitlements for camping and special events (i.e., the developments which appear to be *mandated* by the Conservancy's override), then the Conservancy must provide the site-specific detail of each development, so that the Commission can conduct the functional equivalent of CEQA review.

In sum, whether the Conservancy is required to conduct formal CEQA review or whether the Commission is required to conduct the functional equivalent of CEQA review, the Conservancy has offered no evidence by which the Commission could make any findings with respect to the environmental impact of the proposed development. In fact, the evidence submitted in and with this letter proves without a doubt that the development proposed by the Conservancy will have a substantial adverse impact on the environment. Therefore, the Commission cannot make the findings required by CEQA.

VI

STANDARD OF REVIEW AND PROCESS FOR A LCP OVERRIDE

Once again, we respectfully refer staff and the Commissioners to our letter to Commission Counsel, dated November 24, 2008 (Attachment B), which explains the many legal reasons why the Conservancy is not entitled to invoke the override procedures of the Coastal Act for its present submission. However, even if the Commission considers the Conservancy's submission on the merits, the Conservancy's statement of "Standard of Review and Process" is not accurate.

According to the Conservancy, its present submission is neither a "public works plan" nor a "public works project." Therefore, the statutes cited by the Conservancy with respect to specific public works plans and projects do not apply (see, Conservancy "Standard of Review and Process," dated April 14, 2008).[19] The question of whether a submission qualifies for a LCP

[19] This document also states that the "plan" encompasses land area and recreational improvements within "three jurisdictions – the City of Malibu, unincorporated Los Angeles County,

override is governed by Section 30515 and Title 14, California Code of Regulations, section 13666, et seq. – statutes and regulations which the Conservancy has cited only in passing. There are substantial, fact-specific findings required by Section 30515 and Title 14, California Code of Regulations, section 13666.4 – very few of which the Conservancy has addressed. Therefore, we respectfully submit the following analysis and evidence under the override statute and regulations. The analysis and evidence conclusively demonstrate that there is no evidence upon which the Commission could make the findings required for a LCP override.

VII

THERE IS NO EVIDENCE UPON WHICH THE COMMISSION COULD MAKE THE FINDINGS REQUIRED BY PUBLIC RESOURCES CODE SECTION 30515 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 13666.4.

As explained in our November 24 letter to Commission Counsel (Attachment B), the Coastal Act does not allow a state agency to run roughshod over a local government by using the "override" provisions of the Coastal Act. The architecture of the Coastal Act is meant to preserve the balance between local government's traditional control over land use and the goals and objectives of various state agencies or regional utilities. This architecture is reflected in the specific procedures and findings which govern an "override" proposal by a state agency or regional utility. Those findings and procedures make it clear that the "override" provisions are to be invoked sparingly and carefully. For example, it is not difficult to imagine some projects proposed for the Coastal Zone – e.g., a regional electrical generation facility – that might encounter local opposition and yet should be considered because of compelling regional or statewide needs. However, even projects for which there is a compelling regional public need can be approved under the override procedures only if there is evidence to support a rigorous set of factual findings.

In this section, we demonstrate that none of the required findings can be made for approval of the Conservancy's proposal. Specifically:

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and the National Park Service" (Conservancy Standard of Review and Process, p. 1). That was the case with the Conservancy's previously submitted "public works plan," which Commission staff declined to receive for processing. However, by definition, the Conservancy's present submission can involve only property within the City of Malibu.

A. The override procedures are not available to the Conservancy because the development proposed by the Conservancy was anticipated at the time the Malibu LCP was before the Commission for certification.

B. An Override Plan cannot include regional offices or leasing of public property for private commercial events, because neither use is a "public work."

C. The Conservancy's submission does not include the level of project-specific detail required for an Override Plan.

D. The Conservancy's submission violates the Coastal Act's prime directive to protect coastal resources.

E. The available evidence demonstrates that there is no "public need" for the facilities proposed by the Conservancy.

F. The Conservancy's proposal cannot be approved because it fails to minimize risks to the public due to fire hazards.

G. The Conservancy's proposal cannot be approved because it does not comply with the Coastal Act policies that give the highest priority to protection of ESHA.

H. The Conservancy's proposal cannot be approved because it does not comply with the Coastal Act policies that give the highest priority to protection of stream ESHA.

I. The Conservancy's proposal cannot be approved because it does not comply with the Coastal Act policies that give a high priority to promotion of water quality.

J. The Conservancy's proposal cannot be approved because it is inconsistent with the Coastal Act Policy that requires neighborhood compatibility.

K. The Conservancy's proposal cannot be approved because significant adverse environmental impacts have been identified and there are feasible, less environmentally damaging alternative ways to meet any identified needs and reduce the risk.

L. Disapproval of the Conservancy's proposal would not adversely affect public welfare as identified in the Coastal Act.

We believe a close examination of the facts proves beyond doubt that the Conservancy is not entitled to use the Coastal Act's override procedures, and that there is no evidence upon which the Commission could make the findings required by Section 30515 and Title 14, California Code of Regulations, section 13666.4.

A. The Threshold Requirements of Section 30515. The override procedures may not be invoked for a LCP Amendment which is proposed to meet needs which were "anticipated" at the time the LCP was before the Commission for certification (§ 30515.) Numerous public documents, including the Conservancy's comments on the Malibu LCP during the Commission's certification process, establish that the Conservancy has anticipated the development proposed by its present submission for many years. (See Attachment B, Section V.) Therefore, the Conservancy's submission does not meet the threshold requirement of Section 30515, and the proposed override should be rejected on that basis alone.

B. Regional Office Use and Leasing for Private Commercial Events Cannot be Included in an Override. The override procedure is available for "public works" (§ 30515) and the Conservancy's submission expressly states that it proposes to implement its plan through the development of "public works projects." (SMMC/LUP Text Amendments, Policy 5.66; see Attachment D, p. 2.) The definition of public works upon which the Conservancy relies is set forth in Section 30114, which includes "publicly financed recreational facilities." However, two of the uses proposed by the Conservancy for the Ramirez property are not "recreational facilities" — regional administrative office use and leasing the property for private, commercial events.[20] Therefore, those two elements cannot be approved using the override procedure. (See Attachment B, Section IV.)

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[20] The Coastal Act does not define the terms "recreation" or "recreation facility." However, those terms are defined in analogous provisions of the California Recreation and Park District Act, at Public Resources Code section 5780.1, subdivisions (G) and (H). Under Section 5780.1, neither regional, administrative offices nor leasing of property for private events qualifies as "recreation" or as a "recreational facility." In addition, Section 33211.5, subdivision (d)(1) of the Conservancy's enabling act provides, in part, that the "types of uses and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system." Section 5019.53 defines the permissible uses of state park lands. Section 5019.53 does not include regional, administrative offices, or leasing for commercial events. (See, also, § 5080.03, subd. (b), which provides: "[c]oncessions shall not be entered into solely for their revenue producing potential.") The Conservancy's submission states that the purpose of leasing the property for private, commercial events is to raise revenue. (SMMC/LIP Text Amendments, Sections 4.2.A.3 and 4.12.B.9; see Attachment D, pp. 14 and 53, respectively.)

C. Title 14, California Code of Regulations, Section 13666.4: The Specific Findings Required for an Override. As explained in Section I, above, the override is an exception to the Legislature's requirement that local governments control land use decisions once their LCP's are certified. That is why the procedure is narrowly drawn, to require not only a proposal for a specific public work, but to describe the Commission's findings in terms which require an analysis of that specific public work (see Attachment B).

Title 14, California Code of Regulations, Section 13666.4 provides that the Commission may, after public hearing, approve and certify the proposed amendment if, after a careful balancing of social, economic, and environmental effects, the Commission makes the following specific findings:

(a) a public need of an area greater than that included within the certified local coastal program would be met,

(b) *development* conforms with and is adequate to carry out the policies of Public Resources Code section 30200, *et seq.*,

(c) if significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging alternative way to meet such need, and

(d) disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public Resources Code Section 30000, *et seq.*) and the California Coastal Management Program, if applicable.

(14 Cal. Code Regs., § 13666.4, emphasis added.)

The language of Section 13666.4 demonstrates that the required findings cannot be made in a vacuum. They require that the Commission examine a specific development to determine, for example, whether that development conforms to the policies of Section 30000 (14 Cal. Code Regs., § 13666.4, subd. (b)), and, if there are adverse environmental impacts, whether reasonable alternatives have been examined and adequate mitigation measures adopted (*id.*, § 13666.4, subd. (c)). The Conservancy's proposals for sweeping revisions to the policies set forth in the Malibu LCP do not allow the Commission to make those specific factual findings. For example, there is no description of the minimum and maximum intensity of the proposed uses

(e.g., number of park and trail users, numbers of campers, etc.). There are no detailed site and facility plans, for either existing or proposed development, and there is no site-specific detail of the existing unauthorized development at Ramirez. There are no plans for grading or drainage systems. There are no biological resources maps, depicting the location of existing and proposed development in relation to those resources. We respectfully submit that, absent the site-specific detail for a specific public work, the findings required by Section 13666.4 cannot be made, and the Commission should reject the Conservancy's submission on that basis alone.

D. The Conservancy Has Ignored the Prime Directive of the Coastal Act: "Resource Protection." Each of the properties which the Conservancy has included in its submission is designated ESHA. The Coastal Act and the Malibu LCP restrict the use of ESHA to resource-dependent uses. Yet, under the guise of "public access," the Conservancy would eliminate all of those restrictions for its own properties.

The Conservancy proposes, as "principal permitted uses," in ESHA: "trails, camp facilities, park uses as described in this Chapter [the use of Ramirez for regional offices, tours, gatherings, leasing for private commercial events], and necessary support facilities." (SMMC/LIP Text Amendments, Section 4.7.A.1; see Attachment D, p. 27.) In addition, the Conservancy broadly defines "support facilities" as "those facilities deemed necessary to support the primary permitted land use, public access and recreation, research and education, and nature observation. The type of support facilities addressed at each park facility shall be based on the level and complexity of public uses and specialized programs offered at each park areas . . .." (SMMC/LIP Text Amendments, Section 4.12; see Attachment D, p. 47; emphasis added.)

The combination of the two provisions would virtually obliterate the protection of ESHA on Conservancy properties. Even though the detail is lacking, it is plain that the Conservancy would sacrifice ESHA to grading and brush clearance, portable toilets, increased equestrian use, vehicular crossings of streambeds, 200 person "special events," etc. The Conservancy attempts to justify this extreme departure from the mandate of the Coastal Act by first addressing "Coastal Access and Recreation" and only then discussing "Resource Protection" (Conservancy "Policy Consistency Analysis," dated April 14, 2008). However, that is not how the Legislature designed the Coastal Act. The Legislature placed "Resource Protection" first and expressly provided that, in the event of a policy conflict, "Resource Protection" governs. [21]

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[21] As we explained in our November 24, 2008 letter to Commission Counsel, the "Public Access" provisions of the Coastal Act do not apply to the properties at issue because they are

The legislative mandate is set forth in Section 30200, which is one of the required findings for an override (see 14 Cal. Code Regs., § 13666.4, subd. (b): the "development conforms with and is adequate to carry out the policies of Public Resources Code section 30200, *et seq.*"). Section 30200 provides:

> **"Policies as standards; resolution of policy conflicts.** (a) Consistent with the coastal zone values cited in Section 30001 and the basic goals set forth in Section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with Section 30500), and the permissibility of proposed developments subject to the provisions of this division are determined. All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.
>
> (b) Where the commission or any local government in implementing the provisions of this division identifies a **conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict** and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts." (Emphasis added.)

The Conservancy's "Policy Consistency Analysis" does not mention Section 30007.5 – perhaps because the statute would defeat the Conservancy's submission:

> "Section 30007.5. Legislative findings and declarations; resolution of policy conflicts. The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. **The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources**. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies." (Emphasis added.)

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upland/inland properties (see Attachment B, Section VI). Staff and the Commissioners may recall Sand City LCP Amendment No. 1-93, which the Conservancy has cited as precedent for its submission. The case is very different. In Sand City, the City designated a parcel of land between the beach and Highway 1 for "private development," with "public park" as the "final option." Sand City has only 1.5 miles of beachfront - none of the area was developed for public access or park use at the time and half the land designated by the City for public parks was under water. The Commission approved an override, and modified the land use designation to provide for parks and open space as a conditional use to preserve the City's discretion. Interestingly, one of the conditions required by the Commission for park and open space use in Sand City was public access from a public right of way. As noted above, two of the properties included in the Conservancy's submission have no public access. The Conservancy's Ramirez Canyon and Escondido properties are located in box canyons at the end of private roads.

There is no question that the Conservancy's proposals would cause adverse impacts to ESHA (see Sections F, G and H, below). That would not only violate the express provisions of the Coastal Act, it would require the Commission to override one of the fundamental policies of the Malibu LCP, i.e., that public access shall not be required where it is inconsistent with the "protection of fragile coastal resources" (Malibu LIP, § 12.6). For all these reasons, the Conservancy is not entitled to a wholesale exemption from restrictions on the use of property that is designated ESHA.

E. There Is No "Public Need" For The Conservancy's Proposed Development. (14 Cal. Code Regs., § 13666.4, subd. (a).) The first finding required for an override is that "a public need of an area greater than that included within the certified local coastal program would be met" (14 Cal. Code Regs., § 13666.4, subd. (a)). RCPF agrees that there is a public need for additional programs for seniors, children and the disabled, and does not object to the Conservancy's proposals for those activities, as long as they are subject to permit requirements and properly conditioned so as to be compatible with the neighborhood (see RCPF Comment Letter re Malibu LCPA). However, the arguments which follow, and the evidence submitted in and with the SAIC Report, demonstrate that there is no public need for regional administrative offices or special events at the Ramirez Property, and no public need for camping in the Conservancy's Plan Area.

1. There is No Public Need for Regional Administrative Offices for the Conservancy and MRCA at the Ramirez Property. There is no public need to locate regional administrative offices for two public agencies in a Very High Fire Hazard Severity Zone, in ESHA and Open Space, at the end of a box canyon, accessed by a single private road that is too narrow to meet state and local fire codes. Moreover, these offices are "private" – they are not open to the public – and the Conservancy has acknowledged that the majority of the vehicle trips up Ramirez Canyon Road are used to accommodate this office use. The number of vehicle trips is one of the primary incompatibilities between the rural, residential neighborhood and the Conservancy's proposed use. (See Section J, Neighborhood Compatibility below.) The Alternatives Analysis included in the SAIC Report (Section 8.0) demonstrates that the Conservancy and MRCA own numerous properties and office facilities throughout Los Angeles County. Therefore, there is no cause for an "override" for regional administrative offices. The Conservancy should locate its offices in a traditional office building, just like every other public agency.

2. There is No Public Need for an Event Center at the Ramirez Property. The most serious issues with respect to the Conservancy's proposal for a private, commercial, event center at the Ramirez property involve Hazards (see Section F, below). As explained in the SAIC Report, there is no public need for an event center at this remote Canyon property. There are already 23 event, catering, and conference facilities in the Malibu area that accommodate various kinds of special events. Capacity varies from less than 100 persons to more than 500 persons. The facilities include restaurants, conference centers, museums, ranches, parks, hotels, retreat centers, etc.. The estimated total capacity of these facilities is approximately 6,045 persons. There are numerous other ranches and a nature preserve in the vicinity, each capable of holding more than 2,000 persons, which are not included in this total count. (SAIC Report, p. 4 and Appendix A).

3. There is No Public Need for Overnight Camping in the Plan Area. The SAIC Report demonstrates that the City of Malibu offers a broad variety of recreational activities, and many thousands of people come to Malibu each year to participate in those activities. There are 23 different campgrounds within the vicinity of the plan area, managed by federal, state, local, and private agencies and operators. These campgrounds offer both group and family campsites. There are approximately 27 group camp sites, which can accommodate 9 to 100 persons per site, typically 25 to 50 persons, and approximately 962 family camp sites which typically accommodate up to 8 persons per site (SAIC Report, pp. 1-4, and Table 1).

SAIC prepared a comparison of camping opportunities available near Malibu to opportunities near other coastal cities (Santa Monica, Redondo Beach, Manhattan Beach) and found:

> Compared to other similar beach cities in Los Angeles County, Malibu has more campgrounds nearby than any of the other cities, three within 20 miles or less, compared to one or none for the other cities. When Malibu's small population is considered, camping and other outdoor recreation opportunities available within close proximity are even more striking. (SAIC Report, p. 6.)

SAIC found "close to 1000 group and family campsites within approximately one hour of the Malibu area." (SAIC Report, Table 1.)

The fact that there is no public campground "within the City limits" (Conservancy "Current Demand and Proposed Overlay Goals," dated April 14, 2008, pp. 1-2) does not translate into a "public need" for one. To the contrary, the only evidence offered by the Conservancy to support its claim of need is a statement that, in three peak summer months at four Malibu campgrounds,

the demand was 107.4% (*Id.*). That evidence does not demonstrate public need for the camping proposed by the Conservancy's Plan.

Finally, if there is any public need for more camping in Malibu, it must be offered in an alternate location (i.e., non-ESHA open spaces with public vehicular access).[22] The hazards of upland/inland camping cannot be justified because of the risk (see Section F (Hazards), below).

For all these reasons, there is no evidence to support a finding by the Commission that there is a public need for regional offices at Ramirez, special events at Ramirez, or camping at Ramirez, Escondido or Corral Canyon, and the finding required by Title 14, California Code of Regulations, Section 13666.4, subdivision (a), cannot be made.

F. HAZARDS: There is No Evidence to Support a Finding that the Conservancy's Proposal Conforms to and is Adequate to Carry Out the Policies Set Forth In Public Resources Code Section 30253 *et seq.* (14 Cal. Code Regs., § 13666.4, subd. (b)).

1. Introduction. Public Resources Code Section 30253 provides:

> "New development shall do all of the following: (a) Minimize risks to life and property in areas of high... flood, and fire hazard..."

The Malibu LCP specifically provides that public access shall not be required where "inconsistent with the public safety . . ." (Malibu LIP, § 12.6).

The Conservancy proposes to bring an unspecified number of overnight campers into the Plan area. In addition, despite the fact that the only means of access to the Ramirez property is a narrow, winding canyon road, substandard under state and local fire codes, the Conservancy seeks a mandate to conduct at least **900 events with 44,240 participants annually and 76 events with 3,687 participants monthly** at that property – with no alternate means of access. We respectfully submit that there is no manner by which to make those proposals consistent with Section 30253.

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[22] Section 30213 provides that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." However, Section 30108 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. As this section demonstrates, camping in the areas proposed by the Conservancy is not feasible.

2. A Gaping Hole in the Evidence – the Conservancy Has Not Submitted a "Fire Protection, Emergency Evacuation Plan." The risk of fire as a result of the activities proposed by the Conservancy is extreme (see discussion below, and SAIC Report). Yes, with no analysis of the risk, the Conservancy has proposed camping at three properties and large commercial events at the Ramirez property. The Conservancy apparently has plans to prepare a "Fire Protection, Emergency Evacuation Plan" (FPEEP) which will deal with procedures for evacuation and camping regulations designed to minimize the risk of fire (SMMC/LIP Text Amendments, Section 4.11.B; see Attachment D, pp. 42-46).[23] We respectfully submit that, without that FPEEP, it is not possible to determine whether any of the Conservancy's proposals can be accommodated in a manner which does not present a significant risk to Conservancy visitors and to the residents of Malibu. Therefore, it is not possible for the Commission to make a finding that the Conservancy's proposed development conforms to the policies of Section 30253.

3. Regional, Administrative Offices and Special Events at the Ramirez Property – the Condition of the Structures. The Ramirez property was donated to the Conservancy by Barbra Streisand in *1993 – 15 years ago*. We recently submitted a Public Records Act (PRA) request to the Conservancy, which asked for all records concerning development on the property by the Conservancy. The Conservancy provided only records concerning the bridge and wastewater system authorized by the now-defunct 2000 CDP. That limited response establishes that **all of the structures on the property – which date back to the 1950's, 1960's and 1970's - have never been improved to meet state fire safety standards**. Yet, the Conservancy's submission provides that the Conservancy "shall" use the structures for offices and for certain special events.

As a state agency (§ 33200), the Conservancy must comply with fire safety standards adopted by the State Fire Marshal with regard to state-owned or state-occupied buildings. (Health & Saf. Code § 13108(a); 19 Cal. Code Regs., § 1.03(b)). There are special restrictions which apply to buildings in Very High Fire Hazard Severity Zones and in urban/wildland interface communities

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[23] The Fire Protection and Emergency Evacuation Plan which the Conservancy submitted to the Commission in 2006 with the PWP (App. II) and to the City in 2007 with its Application for a LCPA was woefully inadequate. It was obviously not prepared by a fire expert and did not meet the minimum requirements for such a plan. There was no mention of the fact that there is only one means of ingress and egress to the Ramirez property, i.e., a narrow canyon road which is too narrow to qualify as legal access under state and local fire codes. There was no specific consideration of the numbers of Canyon residents and persons utilizing the Conservancy property who might require evacuation, or of the manner in which they might be evacuated safely.

(Health and Saf. Code, § 13108.5). The regulations are extensive and detailed. (See, e.g., 19 Cal. Code Regs., § 2.01, *et seq.*)

Prior to the Conservancy's acquisition, Ms. Streisand used the property as a single-family residence with multiple structures. In 1993, the Conservancy moved its regional administrative staff onto the premises and began to use some of the buildings for revenue-raising purposes, bringing in large groups for weddings, parties and the like. That change in use amounted to a "change in occupancy" under the Uniform Fire Code (24 Cal. Code Regs., § 202) and required that the structures be brought up to Code:[24]

> Change of use or occupancy. No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the California Building Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the California Building Code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use. (24 Cal. Code Regs., § 102.3, emphasis added.)

We have been unable to find any authorization from state fire officials for the Conservancy's change of use, and the 2000 CDP issued by the Commission did not include either that authorization or permits to improve the structures. For all these reasons, there is no evidence upon which the Commission could find that the Conservancy's proposed use of these structures for offices and events "minimize[s] risks to life and property in areas of high . . . fire hazard" (§ 30253; 14 Cal. Code Regs., § 13666.4, subd. (b)).

4. There is No Manner by Which the Conservancy's Proposals for the Ramirez Property Can Conform to the Policy Set Forth in Section 30253 Without the Construction of an Alternate Access Road. As explained in Section II, above, the Conservancy promised in 1993 to build an alternate access road into the Ramirez Canyon property. During the proceedings on the Malibu LCP, the Conservancy raised that issue again – and made a $7 million grant to MRCA to fund the necessary acquisition (the "Lauber Property"). Yet, when the City required the alternate access as a condition of intensified development, the

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[24] 24 Cal. Code Regs., section 202 provides: "A change in the purpose or level of activity within a building that involves a change in application of this code." The same language appeared in the 1992 Uniform Fire Code, at section 2.206, which applied at the time the Conservancy acquired the property.

Conservancy balked. We respectfully request that the Commission defer to the City's judgment on this important policy issue for the following reasons:

a. Ramirez Canyon Road. There is only one way in and one way out of Ramirez Canyon - Ramirez Canyon Road, a narrow, winding **private** roadway. The Conservancy's property sits in the most inland portion of the Canyon – almost a mile up that road. To appreciate the constraints on access, it is important to view the photographs submitted with the SAIC Report. Access to Ramirez Canyon Road from Pacific Coast Highway (PCH) southbound is via a locked gate and 10-foot wide concrete box tunnel under PCH (SAIC Report, Appendix B, Photo 1). Access from southbound and northbound PCH is also via Winding Way and Delaplane. Winding Way and the first segment (about 525) feet of Delaplane are 20-24 feet wide (*id.*, Photo 2). However, Delaplane rapidly narrows to about 14 feet and passes through a gate that is 16 feet wide (*id.*, Photo 3). The gate is locked on weekends. Two speed bumps are present on Delaplane between the gate and Ramirez Canyon Road. Delaplane slopes steeply and ends at Ramirez Canyon Road – there is a closed canopy of trees over the road (*id.*, Photo 4).

From that point up the Canyon, according to the SAIC Report (p. 32):

> "Ramirez Canyon Road is a private, rural, narrow roadway, with pavement that is generally 16 to 20 feet wide. The end of the road is a loop so cars can turn around. At this turnaround loop, the pavement narrows to 13 feet (Photo 5). The road is approximately one mile long, with nine speed bumps from Delaplane to the end of the road at [the Ramirez Canyon Property]. The road also has two Arizona-type crossings of Ramirez Creek between PCH and Delaplane and two more to the point at which it accesses the Conservancy's property (Photo 6). Just south of the turnaround loop at the Conservancy property, the road crosses Ramirez Creek via a narrow wooden bridge (11 feet 8 inches drivable width) (Photo 7). Parked cars as well as trash/recycle/green waste bins also restrict the usable roadway width at times (Photos 8)."

b. The Requirements of State and Local Fire Codes.[25] The State Fire Marshal's regulations require a "right-of-way not less than 20 feet in width" for access roads from public buildings to public streets.

> "Specifications. Fire apparatus access roads shall be installed in accordance with Sections 503.2.1 through 503.2.7." 24 Cal. Code Regs., § 503.2.

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[25] We address both state and local codes because Ramirez Canyon Road is located on private property up to the point at the top of the Canyon at which it accesses the Conservancy's property.

> "Dimensions. Fire apparatus access roads **shall have an unobstructed width of not less than 20 feet** (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm)." *Id.*, § 503.2.1, emphasis added.[26]

There is no authority which allows any fire official to reduce the required 20-foot width. There is, however, a provision which allows the fire official to increase the width if the circumstances warrant:

> "Authority. The fire code official shall have the authority to require an **increase in the minimum access widths** where they are inadequate for fire or rescue operations." *Id.*, § 503.2.2, emphasis added.

The purpose of the regulation is to provide for safe evacuation and to ensure that fire equipment can reach all properties served by the road.

The same fire safety standard is promulgated and enforced by the Los Angeles County Fire Department.[27] Under the Los Angeles County Fire Code, each "fire apparatus access road" must have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance to the sky (Los Angeles County Fire Code, § 503.2.1). The required width of a fire apparatus access road may not be obstructed in any manner, including parked vehicles, and minimum width and clearance requirements must be maintained at all times (*id.*, § 503.4). The definition of "fire apparatus access road" specifically includes a "private street" (*Id.* § 502.1, Definitions), and thus applies to Ramirez Canyon Road.

Finally, both state and Los Angeles County regulations give fire officials **authority to require secondary access** where necessary for fire safety purposes:

> "Additional access. The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access. Additional access must comply with Title 21 of the Los Angeles Fire Code.) LAFC § 503.1.2.

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[26] The 20 foot requirement is repeated in Title 19, Cal. Code Regs., section 3.05(a), which governs structures. "Required access roads from every building to a public street shall be all-weather hard-surfaced (suitable for use by fire apparatus) right-of-way not less than 20 feet in width. Such right-of-way shall be unobstructed and maintained only as access to the public street." Since the nearest "public road" to the Conservancy's Ramirez property is Pacific Coast Highway, the state standard requiring 20 feet in width is applicable.

[27] Since incorporation of the City of Malibu, the LACFD has continued to provide fire services to properties within the City.

We respectfully submit that the policy set forth in Section 30253 — that "[n]ew development shall . . . [m]inimize risks to life and property in areas of high... fire hazard" — cannot be met unless the Conservancy constructs an alternate access. In addition, for the reasons set forth in Section J, below (Neighborhood Compatibility), and as further discussed in the RCPF Comments on the Malibu LCPA, the new road should provide **dedicated access** to the Conservancy property, and Ramirez Canyon Road should be used by the Conservancy for emergency access only.

c. The Issue of Road Width Was Not Resolved During the 2000 Commission Proceedings. As noted above, CDP 4-98-334 has been set aside, and it has no relevance to the present proceedings. At the same time, it is important that staff and the Commissioners be aware that the question of road width was not resolved during that proceeding.

Throughout the Commission's proceedings on the 2000 CDP, state and local fire officials confirmed that 20-foot road width was mandatory and that dip crossings were not allowed for commercial properties (see, e.g., 1999 Staff Report, CDP 4-98-334, Exh. 12). The 1999 Commission staff report acknowledged that the road was "substandard" (*id.*, pp. 3-4). During the Commission's review process, the Commission expressly required review by the State Fire Marshal and compliance with all applicable "regulations concerning fire, emergency accessibility of the site, and life safety." On November 22, 1999, Patricia Sanchez, Deputy State Fire Marshal III, Supervisor, Sierra South Region, wrote to the Conservancy's Executive Director, citing various regulations, including the 20 foot access requirement. The inspection form provided by Los Angeles County Fire Captain Jordan also required that the Conservancy "provide 20' wide minimum access."

For some inexplicable reason, after these reports were issued, the requirement for 20-foot road width was not enforced. There is some suggestion in the record that Captain Jordan "waived" the requirement. However, the statutes cited in the previous section establish that there is no authority for any such waiver.

d. Feasibility of Alternate Access. Alternate access to the Conservancy's property can be provided from Kanan Dume Road over three privately-owned parcels referred to as the "Lauber Property." That property is currently on the market and, as indicated above, the Conservancy granted MRCA $7 million to buy it. We have enclosed an aerial photograph showing the three Lauber parcels and the Conservancy's Ramirez Canyon property (Attachment G).

SAIC examined the Lauber Property, and found two cleared tracks which could provide alternative access to the Conservancy property from Kanan Dume Road. The first potential access is a 30-foot dirt road from the Conservancy's Ramirez Canyon property, westward across APN 4467-002-068. The dirt road ends near the northern boundary of the parcel just south of the National Park Service (NPS) property. A 13-foot cleared track extends westward from the 30-foot dirt roadalong the northern boundaries of APN's 4467-002-068, 4467-002-067, and 4467-002-066 to the western boundary of the latter parcel, which is adjacent to property currently being sold by Los Angeles County to MRCA. This property is contiguous to Kanan Dume Road. (SAIC Report, p. 32.)

A second potential access is a 20-foot wide cleared track which extends westward from the Conservancy's Ramirez Canyon property along the northern boundary of APN 4467-002-067 where it intersects with an approved cul-de-sac connecting to Kanan Dume Road.

The 30-foot dirt road has been cleared in the past, but native coastal sage scrub vegetation has grown over about 700 feet of the eastern portion (SAIC Report, Appendix B, Photo 9). Approximately 450 feet of the western portion has scattered native and non-native plants within the previously cleared area approximately 12 feet wide. (*Id.*, Photo 10.) The density of native plants is low compared to that of undisturbed adjacent habitat. Continuing westward from the end of the dirt road, the cleared track extends another 245 feet. (*Id.*, Photo 11.) The distance from the end of the cleared track to an existing short access track (*id.*, Photo 12) from Kanan Dume Road (going around the edge of parcel 4467-002-066), that is not currently cleared, is 385 feet. However, the western portion of this area is dominated by coyote brush, a native species that colonized disturbed areas (*id.*, Photos 13 and 14) and the eastern portion is coastal sage scrub (*id.*, Photo 15).

In addition, two tracks have been recently cleared down the ridgeline along and near the property line between parcels 4467-002-068 and 4467-002-067 to the end of Ramirez Canyon Road, in the area of the 13-foot road easement (*id.*, Photos 16 and 17). These tracks are approximately 6 to 10 feet wide and are dominated by non-native mustard (*id.*, Photo 18). The adjacent vegetation is coastal sage scrub that is dominated by purple sage, California sagebrush, and giant wild rye. Construction of a new access road from Kanan Dume Road to the Conservancy's property in either of these previously disturbed areas appears feasible and would disturb less coastal sage scrub than if the road were placed through undisturbed coastal sage scrub.

5. Pedestrian Use of Ramirez Canyon Road. The Conservancy's trail map includes a trail up Ramirez Canyon Road. That trail should not be approved for at least three reasons: First, the Conservancy does not have a pedestrian or equestrian easement over Ramirez Canyon Road. Second, because Ramirez Canyon Road is so narrow, it is not safe for pedestrian traffic. Third, the Malibu LIP defines "trail access" as providing "public access (hiking and equestrian) along a coastal or *mountain recreational path*, including to and along canyons, rivers, streams, wetlands, lagoons, freshwater marshes, significant habitat and open space areas or similar resource areas, and which also may link inland trails or recreational facilities to the shoreline" (Malibu LIP, § 12.2(D)). Trail access does not include public access up a road.

6. Camping, Special Events, People and Fires. Over the years, the Commission has reviewed developments which include camping on beach properties and east of Highway 1 in Northern California. However, this appears to be the first time the Commission will consider camping in dry box canyons of Southern California, in a Very High Fire Hazard Severity Zone (the most severe hazard category), in ESHA, vegetated with coastal sage scrub and chaparral, and in the urban/wildland interface. This also appears to be the first time the Commission has considered any camping proposal since the State of California began to suffer drought, devastating wildfires, and a substantial reduction in available funds for fire suppression (see Section IV, A, above). We respectfully submit that camping is not safe in any of the Conservancy's Canyon properties, particularly the box canyons of Ramirez and Escondido, and that Ramirez Canyon is not an appropriate site for large events. The risk to Conservancy guests and residents of the adjacent neighborhoods cannot be justified. In fact, there is no manner by which these activities can conform to the policies set forth in Section 30253 for the following reasons:

a. Natural Factors Influencing Fire Conditions. Southern California is one of the most hazardous fire-prone areas in the country, inclined to high intensity and frequent fires due to the combination of the vegetation, drought, rugged topography, autumnal high winds, and "Santa Ana" conditions. As the urban centers continue to encroach into these readily-combustible areas, fires have become more catastrophic.

Wildland fire conditions are affected by weather, topography and fuels. (SAIC Report, Section 2.0, p. 7.) Southern California's Mediterranean climate pattern is a key factor in the prevalence of wild fires in the region. (*Id.*, p. 7.) Vegetation grows well in the mild wet winters – and becomes fuel in the warm dry summers. Vegetation in the undeveloped areas of the Santa Monica Mountains in Malibu is predominantly chaparral and coastal sage scrub with narrow riparian

corridors along streams. (*Id.*, p. 9, Figure 1 and Table 2.) **This chaparral, which is most common in Ramirez Canyon, provides the most substantial wildland fire threat in Los Angeles County.**

Characteristics of topography also have a considerable effect on fire behavior. (*Id.*, p. 8.) Fires starting at the base of box canyons and narrow canyons create strong upslope drafts, causing them to spread rapidly upslope and create extreme fire behavior and dangerous conditions. Steep terrain also creates extremely hazardous conditions for fire-fighting personnel and limits the use of heavy equipment, such as bulldozers, to create fire lines. Ramirez and Escondido Canyons are prime examples of this dangerous scenario.

Recent studies predict that based upon weather conditions for future climate scenarios (including the intensification of warming), the frequency of wildfires will increase in the Western U.S. – perhaps as much as 35 percent by mid-century and 55 percent by the end of the century. (*Id.*, p. 8.)

b. Fire History in the Plan Area. Despite suppression efforts, frequency of wildfires in southern California has not changed significantly in the last 500 years. Although these large fires are a normal part of the ecology, they are catastrophic because of urban development in these areas. The SAIC Report describes the three fire seasons in the Santa Monica Mountains, and the fire history of the area. (*Id.*, p. 10, Figures 2 and 3, Table 3.) That history includes the devastating Corral Canyon fire in Malibu last year, which ignited as a result of an unlawful campfire on unsupervised State Park property.

c. People Cause Fires. The majority of fires within California, and specifically within Los Angeles County, are caused by humans. (*Id.*, pp. 15-16, Table 4 and Figure 4.) According to the National Interagency Fire Center statistics, southern California fires are on average ten times more likely to be caused by people rather than natural causes. During the last 20 years in California, 142 fires were started by campfires; they burned more than 360,000 acres and cost more than $140 million to suppress. (*Id.*, p. 15.)

d. High Fire Threat Areas. The SAIC report discusses the Fire Hazard Safety Zone model, which creates four threat classes, ranging from moderate to extreme. The higher the threat class, the more likely it is that vulnerable assets will be impacted. The majority of the Conservancy's properties in Corral Canyon and Escondido Canyon are within High Fire Threat Areas, and border Very High Threat areas to the north. The up-canyon portion of the

Conservancy's Ramirez property – where the Conservancy proposes trail camps - is designated a Very High Fire Threat area. (*Id.*, p. 17, Figure 8.)

e. **Fuel Modification and Brush Clearance**. The Conservancy properties have also been identified by the State as located in a Very High Fire Hazard Severity Zone. Therefore, they are subject to more stringent brush clearance standards than other properties. (*Id.*, pp. 17-18 and Figure 7.) In Ramirez Canyon, the steep hillsides surrounding the property are thick with brush. The National Park Service does little or nothing to prevent brush accumulation on its property. And, recent Congressional testimony indicates that the Conservancy does not have a good record for keeping up with the requirements for brush clearance.[28]

Last October, the Conservancy made a grant of $950,000 to MRCA for removal of hazardous fuel-loads, restoration of native plant communities, and other wildfire prevention efforts (Conservancy Agenda, October 20, 2008, Item No. 19). However, the grant application states that the MRCA owns "thousands of acres of open space," and the estimated completion date for the project is not until June of 2010.

f. **There Should be No Camping in Any of the Three Canyons (Except for Closely-Supervised Accessible Camping at Ramirez) and No "Special Events" at Ramirez (SAIC Report, Section 2.8, Recommendation No. 1, pp. 29-30).** In light of the fire threat and conditions in the Plan Area, camping and special events for large numbers of persons cannot be made safe because these activities increase the risk of destructive wildland fires in what is already a hazardous fire-prone urban/wildland interface. Camping within Ramirez and Escondido Canyons is of greatest concern since these are both box canyons, with steep terrain, upslope of more populated areas. The risks of camping and large events in Ramirez Canyon is aggravated by the fact that Ramirez Canyon Road does not meet the standards set by state or local fire codes. And, the proposed trail camps in Escondido Park are within 725 feet of the nearest house, and numerous houses are present within 0.5 mile upslope. As noted above, fire can move rapidly up steep slopes and would endanger those homes. Therefore, except for supervised disabled-accessible camping at the Ramirez property with a CUP, we respectfully request that the Commission reject the Conservancy's proposals to allow camping and special events in the Plan area.

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[28] Testimony of Carl Olson before the Subcommittee on National Parks, Forests and Public Lands of the House Natural Resources Committee, June 14, 2007.

g. There Should be No "Trail Camping" Allowed in Any of the Three Canyons (SAIC Report, Section 2.8, Recommendation No. 2, p. 30). By definition, "trail camps" are located in or adjacent to flammable brush and grasses. It would be difficult, if not impossible, to monitor these sites for compliance with "no fire" policies. (*Id.*, p. 30.) Therefore, even if the Commission allows limited overnight camping, we respectfully request that the Commission not allow trail camps in this Very High Fire Hazard Severity Zone. In the event that the Commission considers trail camping, we respectfully respect that the Commission retain the City's requirement for a CUP (Malibu LUP, Policy 2.48) and impose additional requirements as set forth below.

h. If Camping is Allowed in Any of the Three Canyons, or if Special Events are Allowed at the Ramirez Property, Additional Precautions Must Be Taken (SAIC Report, Section 2.8, Recommendation No. 3, pp. 30-31). While the Conservancy's proposal includes some standards relative to development and operation of camping and special events, the Conservancy has not adequately addressed the risks associated with this development. If camping is allowed in any of the three canyons, or if special events are allowed at the Ramirez property, we respectfully request the Commission take the most conservative approach and require the following additional precautions:

(1) Additional Measures for Camping and Special Events:

(a) Fire Protection and Emergency Evacuation Plan. Without a detailed plan describing how camping and/or special events will be developed and operated, the Commission cannot evaluate whether the proposal conforms to the policies of Section 30253. Therefore, if the Commission considers these proposals, the Conservancy must be required to submit a Fire Protection and Emergency Evacuation Plan (FPEEP) for all properties where camping is to be allowed and for special events at the Ramirez Canyon property. Among other things, the Plan should:

- Describe staffing and scheduling of Conservancy firefighters.
- Identify location(s) where personnel and equipment will be stationed.

- Identify location of helicopter landing zones on Conservancy property. It is recommended that helicopter landing zones be located at or near each of the recreational sites that allow camping.

- Demonstrate how supervision and fire suppression required under the FPEEP will be funded.

- Describe how uses will be curtailed or suspended if the mitigation measures are not implemented due to funding shortfalls or other reasons.

Because of the extreme hazards inherent in the Conservancy's proposals, the Commission should also require that the State Fire Marshal and Los Angeles County Fire Department approve the FPEEP before any LCPA is certified which allows those uses.

(b) Fuel Modification. The first priority of all public agencies should be public safety. Following this principle, public agencies that own undeveloped property should manage those properties with public safety in mind. Too few public agencies do so.[29] The Conservancy should be required to demonstrate that it has the resources and willingness to strictly comply with all applicable brush clearance requirements before being permitted to intensify the use of its properties. In addition, the Conservancy should annually submit a vegetation removal/fuel modification plan to both the State Fire Marshal and the Los Angeles County Fire Department for review and approval. All proposed recreation and special events should be delayed and/or suspended at any time the Conservancy is found to be out of compliance with brush clearance requirements.

(c) Regulations and Enforcement. Smoking and open flames should be prohibited on all Conservancy properties. Violators should be immediately removed from the property and subject to a $500 fine and/or six months in County jail.

(2) Additional Measures for Camping. If camping is allowed, we respectfully request that the Commission establish specific standards for campsite development and ongoing operations to ensure the safety of park visitors and local residents to the greatest extent feasible. Proof and guarantee of funding for additional rangers, monitors and firefighting personnel should be required prior to any approvals. In addition, all camping should

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29 Helfand, D., "L.A. Sees Fire Hazard By Freeways," Los Angeles Times, April 23, 2007.

require a conditional use permit to ensure that safety and proposed operation of each campsite will be evaluated on a case-by-case basis and to ensure there will be ongoing monitoring of fire safety measures. At a minimum, the following standards should apply:

(a) Park Closure. In addition to suspending camping during Red Flag Days, camping should also be suspended in the late summer and fall when Santa Ana winds are prevalent (August – November). The properties should be closed, and all campers and visitors removed, when any Red Flag condition arises.

(b) No Campfires/Cold Camping Policy. In addition to a no-campfire policy, all camping stoves and lanterns with open flames should be prohibited. The Conservancy's proposal to allow self-contained propane stoves and lanterns should be rejected.

(c) Reservations. Camping should be allowed only by advance reservation so that adequate staffing can be scheduled for patrols and monitoring, and so that campers can be held accountable in the event of a fire. All campers should be required to register when they arrive and leave. Campers should be notified in writing of the no campfire/cold camping policy when they make their reservations and again when they arrive at the property.

(d) Fire Protection Staffing and Equipment.

- A water storage tank and water delivery system should be installed at each campsite.
- A portable and air-powered quick attack firefighting system should be housed at each camp cluster or group of campsites for ready deployment by trained Camp Host, Ranger, or Conservancy personnel in the event of a fire.
- The Camp Host, staff maintenance person and Ranger should be wildland fire-trained.
- An on-site Ranger should be present at each site at all times whenever overnight camps are in use and should conduct frequent patrols day and night.

- All Rangers at all camping areas should patrol with a fire vehicle equipped with a 100-gallon water tank with a 50-gallon-per-minute pump or greater at all times.
- Firefighters should be on duty or at least on call when campers are present.
- The number of firefighters and equipment available should be scaled according to the current fire danger.

(3) Limitation on Special Events. For the reasons described in Section F, 4, above, special events at the Ramirez property must be conditioned on the construction of alternate access. In addition, all of the structures on the property must be brought into compliance with the Uniform Fire Code. Even then, however, the Conservancy's proposal for 32 special events per year is excessive and creates an unnecessary risk. Under the Malibu Municipal Code, every property owner is entitled to apply for four temporary events per year (Malibu LIP, p. 28 and § 13.4.9).[30] There is no reason to create a special rule for this **private, commercial use** by the Conservancy, particularly where – as here - allowing more than four events per year increases the fire danger in the Canyon to an intolerable degree, and poses an unnecessary risk to Canyon residents and Conservancy guests.

Moreover, if special events are allowed, additional precautions must be taken to minimize the risk of fire. These should include, but not be limited to:

(a) Permit Requirements. Temporary use permits, issued by the City of Malibu, should be required for each event to allow for specific analysis of the risks posed by the specific event and the addition of appropriate precautions. This could include restrictions on cooking methods or the location of cooking equipment and temporary structures.

(b) Standard Conditions. Some standard conditions should apply to all events, including but not limited to:

- No special events should be allowed from August to November, when Santa Ana winds are prevalent.

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30 The fact that Conservancy owns five contiguous parcels within the City (and one outside the City) does not entitle it to 20 events per year under Malibu's zoning ordinance, because Malibu's Temporary Use Permit provisions treat all parcels under contiguous ownership as one parcel (Malibu Mun. Code, Chap. 17.68).

- The FPEEP should identify the maximum number of guests, catering and service staff, who can be safely evacuated, along with the Canyon residents, in the event of a fire and event attendance should be restricted accordingly.

- The No Smoking policy must be strictly enforced. Anyone caught smoking should be immediately cited and removed from the premises.

- Candles, open barbeques, propane heaters and any other open flames should be prohibited.

- Fire extinguishers should be required for all cooking events.

- All temporary structures, including tents or other fabric enclosures used for special events, should comply with the applicable fire code.

(c) Event Staffing & Fire Protection Equipment.

The Conservancy must ensure that adequate supervision and equipment is present at all times during special events, and its operating protocols should be reviewed and approved by the State Fire Marshal. This should include, but not be limited to, the following:

- At least three staff members with wildland fire training should serve as event monitors for the entirety of each event.

- Rangers should be present at each event at a rate of one ranger for less than 100 people and two rangers for 100 or more people, with a higher number if either weather conditions or the nature of the activity warrants. The specific number of rangers should be determined as part of the City's permitting for each site, based on site-specific physical and operational factors.

- A fire vehicle equipped with a 100-gallon water tank with a 50-gallon per minute pump or greater should be present at all times during special events.

- The water storage tank and water delivery system serving special event area(s) should have the capacity to serve not only the existing permanent structures but any temporary structures that may be installed for special events.

For all the reasons discussed in this section, we respectfully submit that there is no manner by which the Conservancy can safely develop or operate camping facilities in any of these canyons or large special events in Ramirez Canyon. Therefore, as to these proposals, the Commission cannot make the findings required by Section 30253.

G. ESHA: There is No Evidence to Support a Finding that the Conservancy's Proposal Conforms to or is Adequate to Carry Out the Policies Set Forth in Public Resources Code Section 30240 *et seq.* (14 Cal. Code Regs., § 13666.4, subd. (b)). The primary purpose of the Coastal Act is to protect coastal resources (see Section IV, B, above). Public access and recreation may be provided only where it is consistent with the "need to . . . protect . . . natural resource areas from overuse" (§ 30210). To that end, the Act limits the use of ESHA to resource dependent uses:

> "(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
>
> "(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas." (§ 30240, emphasis added.)

There is no evidence upon which the Commission could make the finding that the Conservancy's proposal conforms to the policy set forth in Section 30240 for the following reasons:

Under the Malibu LCP, land use in ESHA is restricted to resource dependent uses: public accessways and trails, interpretative signage, restoration projects, and invasive plant eradication projects. (Malibu LIP, Section 4.5.3.) The Conservancy is seeking a wholesale exemption from these restrictions. The Conservancy proposes to allow camping (with attendant grading, brush clearance, chemical toilets, water supply facilities, etc.) in the ESHA in Ramirez, Escondido and Corral Canyons. The Conservancy is also asking to define, as principal permitted uses in the Ramirez Canyon ESHA, regional offices for two agencies, event and commercial leasing of the Ramirez property which would generate 906 events per year (with 44,240 participants) (i.e., 76 events per month with 3,687 participants).[31] (SMMC/LIP Text Amendments, Section 4.7.A.1; see Attachment D, p. 27).

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[31] Commercial development is not only prohibited **in** ESHA, it is prohibited **near** ESHA if it will have a significant adverse impact. "(a) New . . . commercial development . . . shall be located within, contiguous with, or in close proximity to, existing developed areas able to

In addition, the Malibu LCP provides for support facilities in Open Space — not in ESHA — and limits those facilities to picnic areas, restrooms, trash receptacles, parking and construction of access improvements for trails (Malibu LUP, Chapter 2, A, 2 and Policies 2.4, 2.7 and 2.16). The Conservancy's proposal broadly defines the support facilities allowed *in ESHA* as "those facilities *deemed necessary to support the primary permitted land use*, public access and recreation, research and education, and nature observation. The type of support facilities addressed at each park facility shall be based on the level and complexity of public uses and specialized programs offered at each park areas . . .." (SMMC/LIP Text Amendments, Section 4.12; see Attachment D, pp. 46-54; emphasis added.)

All of the Ramirez Property is designated ESHA (Malibu LCP, ESHA Map) and the Conservancy has acknowledged that the primary habitat consists of native vegetation, coastal sage scrub and chaparral, and tree-dominated habitats along the creek channel (Dudek 2007). Therefore, neither the development which the Conservancy proposes as "principal permitted uses," nor the broadly defined "support facilities" are allowed in ESHA.

Moreover, the Conservancy's proposal is not limited to expanding the permissible uses in ESHA. The Conservancy also proposes to reduce the protections required for the use of ESHA. The Conservancy's proposal would, among other things: (a) create a new exception for hike-in campsites and broadly defined "support facilities" from the requirement of a 100-foot setback from the top of the bank or outer edge of riparian vegetation (SMMC/LIP Text Amendments, Sections 4.2.A.5, 4.5.3, 4.7.A.3; see Attachment D, pp. 14, 24 and 27-28, respectively); (b) change the City's requirement for the smallest "feasible" development envelope to the smallest envelope determined to be "necessary" (SMMC/LIP Text Amendments, Section 4.7.A.6; see Attachment D, p. 28); and (c) allow motor vehicles in ESHA, not only to conduct maintenance and provide emergency services, but to provide broadly defined "park services" (SMMC/LIP Text Amendments, Section 4.7.A.5; see Attachment D, p. 28).

The SAIC report identifies numerous adverse impacts from the Conservancy's proposed development in the Ramirez ESHA. The primary impacts would be:

1. **Grading and Brush Clearance.** Even though the Conservancy has not provided any specific information (e.g., the quantity of grading or the extent of brush clearance for

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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. . . .." (§ 30250.)

each part of the development), it is plain that the Conservancy's plans cannot be accomplished without a significant amount of grading and brush clearance. Those activities not only destroy the graded ESHA, they open up the remainder of the ESHA to weed infestation and erosion. (SAIC Report, Section 3.2, p. 36.) Additional clearing of buffers around the camps to reduce such risks would result in a greater removal of ESHA vegetation than that needed for the camp spaces alone, thereby increasing the potential for invasion of weedy species and soil erosion. Furthermore, unless clearly marked and patrolled, the cleared buffer could be used by campers, negating the effectiveness of the buffer. (*Id.*, Section 2.8, p. 50.)

2. **Increased Human Presence**. The proposal to greatly increase the human presence on the Ramirez property for camping and events, increases the risk of fire, the presence of non-native animals, the introduction and/or spread non-native invasive species, and trash blowing from camping and day use areas into adjacent natural habitat. (*Id.*, Section 3.2, p. 36.)

3. **Construction.** Ramirez and Escondido are steep, box canyons. Therefore, the construction of trails could lead to erosion either along trails or leading downslope from them. Erosion could cause the loss of surface material (topsoil), and increase weed infestation and sedimentation of Ramirez Creek. (*Id.*, Section 3.2, p. 30.)

For all these reasons, there is no evidence upon which the Commission could find that the Conservancy's proposal is consistent with Section 30210, and the finding required by Title 14, California Code of Regulations, Section 13666.4, subdivision (b), cannot be made.

H. STREAM ESHA: There is No Evidence to Support a Finding that the Conservancy's Proposal Conforms to or is Adequate to Carry Out the Policies Set Forth in Public Resources Code Section 30236 *et seq.* (14 Cal. Code Regs., § 13666.4, subd. (b)).

The Conservancy's proposals with respect to stream ESHA are unprecedented. The Coastal Act provides:

> " . . . substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat." (§ 30236.)

> "Nothing in this chapter shall permit the commission to certify a local coastal program which provides for a lesser degree of environmental protection than that

> provided by the plans and policies of any state regulatory agency that are formally adopted by such agency, are used in the regulatory program of such agency, and are legally enforceable." (§ 30522.)

(See, also, Malibu LIP, Section 4.4.1, which mandates that applications for "development on sites containing or adjacent to a stream . . . shall include evidence of preliminary approval from the California Department of Fish & Game.")

Despite these regulatory mandates, and absent any proposal for specific stream modifications (i.e., so that the environmental impacts could be evaluated, the permits could be obtained, and the Commission could make the findings required by Section 13666.4), the Conservancy proposes the following extensive modifications to the provisions of the Malibu LCP which govern stream ESHA:

1. **Streambed Modifications**. There are streams on each of the properties at issue in the Conservancy's plan. Consistent with Section 30236, the Malibu LIP limits use in stream ESHA to necessary water supply projects, flood protection where no other measures are feasible, and restoration projects to improve fish and wildlife habitat (Malibu LIP, § 4.5.3). The Conservancy's proposal would allow streambed modifications for vehicular and pedestrian use. (SMMC/LIP Text Amendments, Section 4.7.B; see Attachment D, pp. 30-32.)

In addition, the Conservancy proposes that the Malibu LCP be revised to modify the required stream ESHA buffer for a very broad category of "support facilities" on Conservancy properties. (SMMC/LIP Text Amendments, Section 4.5.3; see Attachment D, p. 24.) The Malibu LIP requires a 100 foot buffer from the top of banks of streams and/or the outer edge of riparian vegetation, whichever is the most protective of the resource. (Malibu LIP, Section 4.6.1(A).) The Conservancy's proposal would allow a reduction of the required setback to "25 feet from the top of the banks of all streams," *not* if the reduction is "feasible," but simply if the reduction is "necessary." (SMMC/LIP Text Amendments, Section 4.5.3; see Attachment D, p. 24.)

The SAIC Report identifies riparian habitats in the creek channels and floodplains. The Report explains that the Conservancy's proposed development would include degradation of streambeds for the construction of bridges or low water creek crossings and removal or pruning of native vegetation along the creek. Existing bridges and low water crossings, as applicable, may need to be improved, widened, and/or replaced for access and to provide adequate escape routes in the event of a fire or other emergency. Work in the creek bed could result in removal of riparian

vegetation, sedimentation of downstream aquatic habitats, and mortality or stress to aquatic wildlife. (SAIC Report, Section 4.0, p. 37.)

In addition, the proposals for camping and large events could interfere with the movement of wildlife that uses riparian corridors at night. And, as with the chaparral ESHA, human presence would likely attract non-native species and well as some native species that are adapted to human activities (e.g., English sparrow, American crow). (*Id.*, Section 4.0, p. 37.)

2. Permits from Other Agencies. Consistent with Section 30522, the Malibu LCP confirms the jurisdiction of other agencies over streambed modifications (Malibu LIP, Section 4.4.1). In contrast, the Conservancy's proposal removes the City's requirement that streambed modification proposals "are subject to a [CDP] and all other relevant permits from appropriate agencies." (See Attachment D, p. 30.)

The SAIC Report identifies at least three agencies which may have jurisdiction over streambed modifications in Ramirez Canyon: the United States Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Game (SAIC Report, Section 4.0, p. 37). The Report also sets forth the extensive conditions generally imposed on streambed modifications (*id.*). The Conservancy is not immune from the jurisdiction of these agencies, nor is the Conservancy entitled to write its own, less protective, conditions for streambed modifications (SMMC/LIP Text Amendments, Section 4.7.B; see Attachment D, pp. 30-32).

3. The Permit for the Unlawful Streambed Modification at the Ramirez Property. The Conservancy's submission is also drafted to allow the Conservancy to continue to ignore the long-standing requirement by the Coastal Commission and by the Department of Fish and Game that the Conservancy apply for a CDP for the unlawful streambed modifications to Ramirez Creek which occurred prior to the Conservancy's acquisition of the property. (SMMC/LIP Text Amendments, Section 4.7.B; see Attachment D, pp. 30-32.) The Conservancy's proposal is improper.

Ramirez Creek is a blue-line stream that passes through the Ramirez ESHA. Prior owners altered the channel and made unpermitted improvements to the bed and banks. When the Conservancy acquired the property in 1993, Fish and Game and the Commission advised the Conservancy that a CDP for the streamed alteration was required because of the significant adverse impacts to the ESHA and the substantial amount of non-native vegetation. In 1995, the

Conservancy filed an application with the Commission, but quickly withdrew it, promising to file another after additional environmental analysis. That never happened. In 1998, when the question arose during the Commission proceedings on CDP 4-98-334, the Conservancy promised to submit a separate, application for the streambed alteration. That separate application was submitted, but was woefully incomplete, and the Conservancy failed to respond to the Commission's request for additional information. As a result, no CDP for the streambed alteration has ever been issued.

We respectfully submit that, under the circumstances, it would not be proper for the Commission to utilize the LCP override process to excuse the Conservancy from its failure to comply with the permit requirement.

For all these reasons, there is no evidence upon which the Commission could find that the Conservancy's proposal is consistent with Sections 30236 and 30522, and the finding required by Title 14, California Code of Regulations, Section 13666.4, subdivision (b), cannot be made.

I. **WATER QUALITY: There is No Evidence to Support a Finding that the Conservancy's Proposal Conforms to or is Adequate to Carry Out the Policies Set Forth In Public Resources Code Section 30231 (14 Cal. Code Regs., § 13666.4, subd. (b)).** The Conservancy's proposal would also impact coastal waters in violation of Section 30231, which provides:

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

The SAIC Report explains that the near-shore waters of the Malibu shoreline area of Santa Monica Bay consistently contain bacterial levels that exceed AB 411 guidelines. Beaches near the mouths of Escondido and Ramirez Creeks have had elevated levels of indicator bacteria during three of the past four years. Studies are underway to identify and assess the possible source(s) of the bacteria, including a Bacterial TMDL Implementation Plan for the City of Malibu and the County of Los Angeles. In addition, the City recently authorized construction of a new storm water treatment facility at Paradise Cove, downstream from the Ramirez property. The City, the County, the EPA and the Regional Water Quality Control Board, believe that multiple sources,

including urban runoff, wildlife, equestrian and domestic animals, and humans, contribute to the bacterial contamination of local beaches. (SAIC Report, Section 5.0, pp. 43-44.)

The SAIC Report explains that the Conservancy's proposal could impact the quality of local surface waters and marine waters in the following respects:

- Increased turbidity levels and siltation in creeks, from erosion of soils from grading, vegetation removal, car traffic, hiking, and horseback riding;
- Increased bacterial and nutrient levels in creeks from runoff carrying horse manure, leaching or runoff from poorly-maintained restrooms;
- Modified flows in creeks, causing stream channel scour and erosion, due to increased flows related to impermeable surfaces;[32]
- Higher trash and debris loadings to the creeks and to coastal waters that receive the creek drainage, from higher park visitation;
- Petroleum spills from earthmoving equipment which, if not contained and cleaned up, could be carried by storm water runoff into creeks and the ocean;
- Higher bacterial levels in shoreline areas adjacent to the mouths of coastal creeks, from increased bacterial loadings in creeks;
- Loss of vegetative cover in the watershed from the increased risk of fires, which could result in greater potential for erosion of soils into the creek, siltation in the creeks, and temporary accumulation of creek sediments in the near-shore zones of local beaches. Subsequent runoff could also transport fire retardant chemicals into the creek and eventually to the ocean, which would have implications for the toxicity of the runoff to organisms in the receiving waters. (SAIC Report, Section 5.0, p. 43.)

[32] For some inexplicable reason, the Conservancy deleted the City's pending LCPA requirement that new parking facilities be paved with permeable materials (see Attachment D, p. 34).

The Conservancy proposed regulations for water quality are also far less protective than those of the Malibu LCP. The Malibu LCP includes an exhaustive Water Quality Protection Ordinance (Malibu LIP, Chapter 17), under which "recreational facilities" are treated as "commercial development" and are subject to extensive and strict regulation (Malibu LUP, Chapter 3). The Malibu LCP also includes an Onsite Wastewater Treatment System Standards Ordinance (Malibu LIP, Chapter 18). The Conservancy's submission essentially relies on the water quality/wastewater treatment plan that was submitted in 2000 with the now-defunct CDP. (SMMC/LIP Text Amendments, Section 4.8; see Attachment D, pp. 33-38.) As noted above, that CDP has been set aside and the Conservancy's submission does not include sufficient information to evaluate whether the proposals are consistent with the commercial development standards of the LCP. The need for consistency with Malibu's local regulations is particularly important in this area. Under CDP 4-98-334, the Conservancy was required to conduct quarterly monitoring to determine whether the septic system was impacting water quality in Ramirez Creek. The Conservancy later admitted that it never conducted that monitoring.

For all these reasons, there is no evidence upon which the Commission could find that the Conservancy's proposal is consistent with Section 30231, and the finding required by Title 14, California Code of Regulations, Section 13666.4, subdivision (b) cannot be made.

J. NEIGHBORHOOD COMPATIBILITY – RAMIREZ CANYON: There is No Evidence to Support a Finding that the Conservancy's Proposal Conforms to or is Adequate to Carry Out the Policies Set Forth In Public Resources Code Sections 30214 and 30253 (14 Cal. Code Regs., § 13666.4, subd. (b)). For the reasons explained in our November 24 letter to Commission Counsel, the public access provisions of the Coastal Act do not apply to the Conservancy's upland/inland properties (Attachment B, Section VI). Moreover, even if they did, the Conservancy's proposals for camping at all three properties, and offices and special events at the Ramirez property, would not conform to the following policies:

> Public Resources Code Section 30214: "Implementation of public access policies; legislative intent.
>
> (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
>
> (1) Topographic and geologic site characteristics.
>
> (2) The capacity of the site to sustain use and at what level of intensity.

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

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

(Emphasis added.)

Public Resources Code Section 30253: Public access must be provided "consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (Emphasis added.)

1. **Introduction.** In the Memorandum of Understanding by which Ms. Streisand donated the Ramirez property to the Conservancy, the Conservancy promised to use the property "as a retreat and research center for advanced academic and applied studies directed toward solution of the most pressing conservation and natural ecosystem management problems" and to "carefully evaluate all relevant issues related to its use, including vehicular access and impact on the neighboring community." (Attachment C, pp. 2-3.) The promise was broken as soon as it was made. The Conservancy's use of the property and its current proposals are incompatible with the neighborhood for the following reasons:

2. **Rural, Residential Ramirez Canyon is Not a Suitable Location for the Extraordinary Amount of Activity Proposed by the Conservancy.** As explained above (see, e.g., Hazards, Section F), the Conservancy's Ramirez property is ESHA, Open Space (which is limited to passive recreation), and located at the end of a box canyon in a rural, residential neighborhood with only one means of ingress and egress – a narrow road which is substandard under state and local fire codes. Yet, in addition to nightly camping and daily use of the Ramirez property as a regional office complex for two agencies, the Conservancy's override provides that the Conservancy "shall" bring substantial numbers of people to the property: outreach, tours and small events (all year long, even during fire season), seven days per week from 8 a.m. to dusk, and "special events" for 200 people, from March to October, one day each week from 8 a.m. to 11 p.m.. The total activity that would be generated by the Conservancy's proposals is staggering:

Activity	Participants/Event	Events/Year	Participants
Special Events	200	32	6,400
Tours/Small Events	60	144	8,640
"Public Outreach"	40	730[33]	29,200
Total (annual)		**906**	**44,240**

On a **monthly** basis, the proposal would generate **76 events per month with 3,687 participants.**

The sheer numbers are not the only thing that evidences the Conservancy's disregard for the neighborhood. In the Conservancy's "revisions" to the pending Malibu LCPA, the Conservancy deleted the City's requirement that the Conservancy avoid intrusive traffic circulation in residential neighborhoods (see Attachment D, p. 47).

Given the site constraints of the Ramirez property, there is no manner by which this level of activity could ever comply with Sections 30214 and 30253. Therefore, the Commission cannot make the findings required by 14 California Code of Regulations, section 13666.4, subdivision (b).

3. Noise Resulting from Traffic, Events and Amplification. Ramirez Canyon is a narrow box canyon, up and down which sound travels freely (SAIC Report, p. 47). Therefore, the Ramirez Canyon residents consider their neighbors and keep noise to a minimum. The peace and quiet of the Canyon has been much disturbed by the Conservancy's use since 1993 – that disturbance would be magnified by the Conservancy's proposals. The SAIC Report identifies three types of noise impacts.

First, noise will be generated by traffic to and from the Conservancy's property. SAIC has quantified that noise to the extent possible given the limited information provided by the Conservancy, which omitted plans and specifications for the "vans" and "shuttles" with which it proposes to transport the many people it proposes to bring into the Canyon. (SAIC Report, Section 7.1, p. 47.)

[33] ~~This number may be low, because it assumes just two outreach events per day. In fact,~~ the Conservancy proposes no limit on the number of "Public Outreach" events that may be held each day.

Second, activities and events at the Conservancy's property would generate noise levels that would substantially exceed existing ambient noise levels. (SAIC Report, Section 7.2, pp. 47-48.) And, the Conservancy proposes to conduct some of these events in "Barwood" and the "Art Deco House," which are closest to the surrounding residences. (*Id.*)

Third, the Conservancy proposes amplified music, apparently at any and all times, not to exceed a reading of 65 dBA at the southern boundary of the property (SMMC/LIP Text Amendments, Section 4.12.B.4; see Attachment D, p. 50). Amplified music is not consistent with ESHA, Open Space, or this rural, residential neighborhood and would have a significant impact on the Canyon.

The Conservancy's proposal for amplification also exceeds the decibel levels set forth in the Malibu General Plan and, by limiting the site of the measurement to the southern boundary of the property, does not account for the narrow, box nature of the Canyon. The City's LCPA limits the use of amplified music to six events per year, only in the meadow and garden area near the Barn – which is the most up-canyon structure (Malibu LCPA, Section 3.4.2, D, 12, b, iv; see Attachment D, p. 50). Under the City's LCPA, the amplification would be governed by the decibel limits set forth in the General Plan (SAIC Report, Section 7.0, pp. 47-48). We respectfully submit that, because of the site constraints, the City's proposal minimizes the conflict between the Conservancy's use and the residential nature of the Canyon.

4. The Conservancy's Use of Ramirez Canyon Road – The Need for Alternate Access and the Myth of "80 Vehicle Trips Per Day." Ramirez Canyon Road is constructed on a private road easement, which was created to provide residential access to the properties in Ramirez Canyon. Despite that fact, the Conservancy proposes 80 vehicle trips per day for public use.[34] That is why – in addition to the fire and safety concerns – it is imperative that the Conservancy construct alternate access.

At the same time, we respectfully submit that, if the Commission allows the Conservancy to use Ramirez Canyon Road for any public use, the *number of vehicle trips should be determined during the permit process*, i.e., when the decision-makers can examine the specific development or use, the need for a particular number of trips to support that development or use, the impact on

[34] The Conservancy does not have a right to use Ramirez Canyon Road for public access because the easement was created for residential use. A change in the character of the use of a private easement is not authorized because, as a matter of law, the change in use adds a "new and additional burden," not contemplated when the easement was created. See, e.g., *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 686; *Gaither v. Gaither* (1958) 165 Cal.App.2d 782; *Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 976.

the neighborhood, and the alternatives. The permitting process will also allow for specific notice to and full participation by the owners of the private property over which this commonly-held easement passes.

For present purposes, it is also important that staff and the Commissioners understand RCPF's continuing objection to "80 vehicle trips per day" – a number which the Conservancy tirelessly asserts is necessary and appropriate for its proposed uses. The Conservancy claims a "right" to generate 80 trips a day using the following flawed logic: (i) the Ramirez property consists of six legal lots; (ii) the six lots could be separately sold and each developed with a single family home; (iii) a typical single family home produces 9.57 trips/weekday and 10.09 trips/weekend day (57 to 61 trips), and (iv) these houses will generate 20 more trips because of their lot size.[35] Since 1999, the Conservancy has insisted that 80 trips per day should be the "baseline" against which the traffic impacts of its proposed uses should be analyzed.

The SAIC Report points out the flaws in this analysis. First, the Ramirez property is not being used as a residence. Second, it has **never** been used by six separate owners occupying six separate houses on six parcels. Until the Conservancy acquired the property in 1993, it had always been a single residential estate, under one ownership, and used only on occasional weekends. Third, there is no evidence that the Coastal Commission has ever determined that there are six legal parcels which are capable of separate development and sale as single family lots. Fourth, even if there were six lots that could be separately developed and occupied by six owners, those six lots would only generate – at most — 58 trips per weekday (SAIC Report, Section 6.0, pp. 45-46). Ramirez Canyon is in a location where many people own second homes, which are used far less frequently than a "typical" single family home. Indeed, the Ramirez Canyon property was a second home for Barbra Streisand during the time she owned it. The Crain analysis fails to consider this salient factor, and thus its trip generation analysis is flawed. (*Id.*)

The errors in the Crain report are clearly demonstrated by examining actual traffic levels on Ramirez Canyon Road. Between September 29 and November 2, traffic was counted at the "bottom" of Ramirez Canyon (so that all trips up and down the Canyon would be recorded). The analysis shows that the houses on Ramirez Canyon Road generate an average of 8.4 trips per day over a seven-day week. (See Attachment H.) Therefore, even if there were six separate

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35 This analysis was documented in a 1999 report prepared by Crain & Associates, titled "Trip Generation Estate Homes Study."

homes on six lots on the Conservancy property, those homes would generate at most an average of 50 trips per day over a seven-day week.

For these reasons, if "residential use" is to provide any baseline whatsoever, that baseline should be the single residential ownership use that existed prior to the Conservancy's acquisition and the typical traffic generated by such a use in Ramirez Canyon: 8.4 per day.

The next step in the analysis requires calculating the number of trips generated by the proposed uses, and the number of trips resulting from the feasible alternatives. The Conservancy has previously acknowledged that its office use **alone** will generate 68-72 trips per day (although our traffic counts indicate that the existing uses of the Ramirez property generate an average of 33 trips per day over a seven day week and 41 trips per day Monday through Friday). How many additional trips will be created by the special events, tours, camping and other activities? The 1999 Crain Report indicates that just one "Special Event" with 200 people brought to the property in 15-person vans will produce 28 van trips. If a "Small Group Gathering" with 40 people is held on the same day, and visitors arrive four people per car, that event generates another 20 vehicle trips. Those two events alone will produce 48 trips in a single day. When added to the number of trips the Conservancy claims are needed for office uses, the total is 116 trips.

Using the correct baseline (a single family use), it is clear that the Conservancy's proposals to intensify the use of Ramirez Canyon would generate a significant traffic impact. In this simple example, the traffic would increase from 8 trips per day (baseline) to 116 trips per day (Conservancy's uses).

The Conservancy's answer? It proposes a limit of 80 trips per day, a limit which apparently is based on the hypothetical six-house "baseline" described above. There are a number of fatal defects with this "solution."

First, the Conservancy's proposal is **bad practice**. In order to minimize the neighborhood or environmental impacts of a project, land use regulatory agencies typically place restrictions on **uses** by limiting the type of use, square footage, number of occupants or other features of the use. Permitting agencies do not typically attempt to regulate the secondary impacts (such as traffic generation) by limiting the number of trips because monitoring and enforcement can be so difficult to achieve.

Second, the Conservancy's proposal will greatly **exacerbate the danger** of a wildfire to the visiting public. To illustrate using the above example: If the Ramirez property is used for a

wedding with 200 guests, they must be brought to the property in 15-person vans from a remote parking facility. That will require 14 separate vans each making one trip to drop off and one trip to pick up (28 trips total). Is it realistic to expect that the wedding organizer will rent 14 vans? No. More likely, two vans will be rented, with each making 7 trips to drop off and 7 trips to pick up. If there are only two vans, how will the 200 people be quickly evacuated in the event of a wildfire? And, even if there are 14 vans in use, what will be the impact on the ability of the Canyon residents to evacuate and the fire trucks to access the Canyon for fire suppression and rescue purposes?[36]

Third, even if limiting traffic trips made sense from an enforcement perspective, the Conservancy's proposed trip limit of 80 trips per day is **far too high** given (i) the low-intensity historical use of the property, (ii) the location of the property in a rural, residential neighborhood; (iii) the fact that the property is in a Very High Fire Hazard Severity Zone with a **single means of ingress and egress**, and (iv) the fact that the access road does not comply with fire standards.

Fourth, there is no compelling need to create these fire safety risks and traffic impacts because there are feasible and environmentally superior alternative locations for the Conservancy's proposed uses of the Ramirez property. (See SAIC Report, Section 8.0, pp. 49-61.)

Three additional points regarding traffic must be made. First, the Ramirez property could be used as a passive recreation park, with no management-level offices, camping or special events. The Conservancy's traffic study prepared by Crain & Associates (2006) provided a method by which to calculate vehicle trips based on the number of acres of a proposed park site. When that methodology is applied to the Ramirez property, "park" use of Ramirez would result in only 9-14 trips on weekdays, 13-16 trip on Saturdays, and 24 trips on Sundays. That passive park use would be consistent with the "baseline" use of the property.[37]

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[36] "Most people who die in wildland fires do so while evacuating. Evacuation operations require large commitments of firefighters who could be better utilized on the fire, and impairs traffic, affecting the response of firefighters." Hunt, J., "Listen to Experts Concerning Fire Protection," Santa Barbara News Press, December 21, 2008. Mr. Hunt is a former county fire department captain and a wildland urban interface fire protection consultant for the past 29 years.

[37] The Conservancy has also presented a second traffic study, by Associated Transportation Engineers, dated August 20, 2007. With no mention of the earlier calculations by Crain & Associates for proper park use, ATE switched to a different reference book -- the "San Diego Traffic Manual" -- for its calculations, and concluded that the daily trips for park use would be 126-186 (ATE, 8/20/07, p. 16). If that calculation is accurate, then a "passive park use" would

Second, even if the Conservancy's proposal for a daily trip limit made sense, there is no reason to accede to the Conservancy's suggestion that it be allowed to "bank" unused trips for later use (see SMMC/LIP Text Amendments, Sections 4.3.B.1 and 4.12.B.2; see Attachment D, pp. 18-19 and 49-50, respectively). "Banking" simply becomes a loophole through which the traffic impacts would be exacerbated and the fire risk worsened by "spending" trips from the bank during times of intense use of the property.

Third, there is no reason to accept the Conservancy's attempt to exempt an additional, undetermined number of vehicle trips by means of Proposed LIP Text Amendment, Section 4.12.B.10:

> "Nothing herein, including trip limitations, shall operate to limit or restrict access to Ramirez Canyon Park as sovereign property of the State of California at any time and by any means whatsoever, by any of the following: The governor or any civil executive officer as provided in Government Code § 1001; any member of the California National Guard or the State Militia; any firefighter of any public agency; any peace officer, any emergency medical technician or paramedic whether employed by a public agency or not, any member of the Legislature or staffs thereof, any member of the Bureau of State Audits, the Secretary for Resources or any employee thereof, any member of the California Coastal Commission or staff thereof, any person appointed pursuant to Public Resources Code Section 33200 or 33213, or person appointed pursuant to Section 5.0 of the Joint Powers Agreement between the Conejo Recreation and Parks District, the Rancho Simi Recreation and Parks District, and the Santa Monica Mountains Conservancy." (SMMC/LIP Text Amendments, § #.4.12.B.10; see Attachment D, p. 54; emphasis added.)

The potential impacts of this provision are significant. At a minimum, it appears to create a **major loophole** for all of the trips generated by the Conservancy's management employees who are currently housed at Ramirez, all of whom could claim to be "employees of the Secretary for Resources." (As noted above, the Conservancy has previously acknowledged that 68-72 trips per day are required for its office use.)

For all of these reasons, we urge the Commission to require the Conservancy to construct alternate access to its Ramirez Canyon property and – once that access is constructed – to use Ramirez Canyon Road only for emergency ingress and egress. (See RCPF Comment Letter re City LCPA.) In any event, we respectfully request that the Commission require the Conservancy to provide a proper environmental analysis of its proposed Ramirez Canyon uses, including an

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cause traffic and fire safety impacts comparable to the Conservancy's proposed uses, and would be equally inappropriate for this property given the access constraints.

appropriate baseline and consideration of all feasible alternatives. Further, if the Commission considers any intensified development of the Ramirez property by the Conservancy without requiring alternate access, we ask that the maximum number of allowable trips be determined during the permit process and be set at the minimum necessary in order to ensure that the fire safety and traffic impacts are kept as low as possible.

K. ALTERNATIVES. Significant Adverse Environmental Impacts Have Been Identified. There Are Feasible, Less Environmentally Damaging Alternative Ways To Meet Any Identified Needs And Reduce The Risk. (14 Cal. Code. Regs., § 13666.4, subd. (c)). The third finding required for an override involves the identification of environmental impacts and the evaluation of less environmentally damaging alternative ways to reduce those impacts (14 Cal. Code Regs., § 13666.4, subd. (c)). The express terms of section 13666.4, subdivision (c), explain why the Legislature required a proposal for a specific public work. Without site-specific detail, it is impossible to fully evaluate the environmental impact, or to conduct a comprehensive alternatives analysis.

However, even with the generality of the Conservancy's proposal, it is plain that there are significant adverse environmental impacts associated with the development of offices, camping, intensive events, and broadly defined "support facilities" in ESHA (see Sections G, H and I (ESHA, Stream ESHA, and Water Quality), above). Yet, the Conservancy has offered no alternatives analysis whatsoever. On that basis alone, the Commission should deny the override.

To demonstrate why an alternatives analysis is so critical, we asked SAIC to conduct a high-level alternatives study. (SAIC Report, Section 8.0, pp. 49-61.) That study revealed that the Conservancy and/or MRCA own *554 parcels within 20 miles of Ramirez Canyon*. The most notable is King Gillette Ranch, which is 6.7 miles northeast of the Conservancy's Ramirez property, at the intersection of Mulholland Highway and Malibu Canyon Road. A long-range plan for this 588-acre property is currently being prepared (http://www.lamountains.com). The property was the former site of SOKA University, and there are buildings suitable for extensive office and indoor/outdoor event use (Los Angeles Outdoor Recreation Examiner, 16 November 2008).

While we do not believe that camping is an appropriate use of any property in the dry Santa Monica Mountains, camping would certainly be less risky at the King Gillette Property, which is located at the intersection of two major thoroughfares and which has an extensive internal road system as well. The King Gillette property is also more accessible to the people who the Conservancy proposes to bring to the Ramirez Canyon property from the inner-city area, which is

more in keeping with the policy set forth in Public Resources Code section 30253, subd. (4) (i.e., that new development "shall: minimize energy consumption and vehicle miles traveled").

SAIC found other properties more suitable for overnight camping than Ramirez Canyon, including a 128-acre parcel owned by the Conservancy at the end of Lindero Canyon Road and east of Las Virgenes Reservoir in Westlake Village. Three other suitable properties were also identified by SAIC (SAIC Report, Section 8.1.3, pp. 59-60 and Table 5). Similarly, SAIC found other locations more appropriate for trail camps (*id.*, Section 8.1.4, pp. 60-61 and Table 5).

King Gillette is also an environmentally superior location for environmental education programs, agency administrative offices, and special events such as large parties (*id.*, Section 8.1, pp. 49-58). The property has 21 structures with 109,000 square feet of space suitable for classrooms, administrative offices, and other functions.

The SAIC Report also points out that most public agencies – including those which own or control parkland -- have management-level offices in office buildings located in commercial areas, rather than in park properties zoned as Open Space. Examples of such agencies are: Los Angeles County Parks and Recreation Department, Baldwin Hills Conservancy, National Park Service/Santa Monica Mountains National Recreation Area, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, and the Nature Conservancy.

Similarly, there are alternative locations for special events that are environmentally superior to the Ramirez Canyon property. As noted above, King Gillette Ranch is one such location. The SAIC Report also finds that another Conservancy property, at Franklin Canyon Park, has facilities that can readily accommodate special events, including an auditorium that opens to a courtyard, picnic area, open amphitheatres and large lawns with oak trees. The property also has a 3-acre lake. (*Id.*, Section 8.1.2, pp. 54-59.)

SAIC's high-level alternatives analysis concludes with the following:

> Based on the evaluation of existing facilities in the area and many parcels already owned by MRCA, SMMC and other entities, most if not all of the uses proposed for the SMMC Ramirez Canyon property could be better accommodated at other locations with fewer environmental impacts. In particular, King Gillette Ranch could provide facilities for offices and events as could existing facilities and buildings. As described above, numerous facilities are available in the area that could be used for events. Accessible overnight camping facilities could be built in the SMMC Ramirez Canyon property within previously disturbed areas (e.g., tennis courts), but other locations with existing facilities are available within 20 miles of the SMMC Ramirez Canyon property.

> Trail camps could be located at several properties with less environmental damage and fire risk to adjacent resident areas than at the SMMC Ramirez Canyon property. (*Id.*, Section 8.2, p. 61.)

Based on SAIC's alternatives study, we respectfully submit that there is no evidence upon which the Commission could make the finding required by 14 California Code of Regulations, section 13666.4, subdivision (c).

L. Disapproval Would Not Adversely Affect the Public Welfare as Identified in the Findings, Declarations, and General Provisions of the Coastal Act (Public Resources Code Section 30000, *et seq.*) and the California Coastal Management Program, If Applicable (14 Cal. Code Regs., Sec. 13666.4, Subd. (d)). This is the fourth and final finding the Commission must make in order to approve an override. Please note that the finding is *not* that "approval would enhance the public welfare." Instead, the required finding is that "disapproval would not adversely affect the public welfare." The double negative makes the language somewhat confusing. However, we respectfully submit that the most direct way to address the finding is to focus on the definition of "public welfare" in the Findings, Declarations, and General Provisions of the Coastal Act (i.e., Section 30000, *et seq.*). That is so because, in Section 30000, *et seq.*, the Legislature defined the "public welfare" as **coastal resource protection**.

The evidence shows that disapproval of the Conservancy's plan would not adversely affect coastal resource protection – because the Conservancy's plan has an adverse impact on coastal resources (see Sections G, H and I, above).

In Section 30000, *et seq.*, the Legislature set forth the primary purpose of the Coastal Act. The Legislature did not define that purpose in terms of "public access," or "recreation." Instead, the Legislature defined the "public welfare" as "resource protection."

Section 30001 is entitled "Legislative findings and declarations; ecological balance." The statute provides:

> The Legislature hereby finds and declares:
>
> (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.
>
> (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

> (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.
>
> (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.
>
> (Emphasis added.)

Resource protection is so important that, in Section 30007.5, the Legislature expressly provided:

> The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies. (Emphasis added.)

Accordingly, even though the Legislature included public access in its findings, it did not view public access as "public welfare." Instead, the Legislature plainly defined public access as subordinate to resource protection.[38]

> § 30001.5. Legislative findings and declarations; goals.
>
> The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:
>
> (a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
>
> (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
>
> (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
>
> (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

---

[38] The "Public Access" provisions of the Coastal Act do not include the concept of "public welfare." (See, e.g., § 30210, *et seq.*) The "Recreation" provisions of the Act (§ 30220, *et seq.*) are not defined in terms of "public welfare" either.

> (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Legislature also stressed the importance of relying on local governments to make land use planning decisions, and to encourage maximum public participation.

> § 30004. Legislative findings and declarations; necessity of continued planning and management.
>
> The Legislature further finds and declares that: (a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement. . . . (Emphasis added.)
>
> § 30006. Legislative findings and declarations; public participation. The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation. (Emphasis added.)

These Legislative findings would be difficult to comply with in any LCP override procedure. That is so because of the nature of the procedure itself, i.e., the decision of the local government – which provided the widest opportunity for public participation by the people affected – is set aside.

Because the Legislature defined public welfare in terms of resource protection, there is no question that disapproval of the Conservancy's plan would not adversely affect the public welfare. The plan as proposed (i.e., allowing offices, camping facilities, portable toilets, grading of streambeds for vehicular crossings, special events of up to 200 persons, etc. in ESHA) would have a significant impact on natural resources. Therefore, the Conservancy's LCP override does not qualify for the finding set forth in Section 13666.4, subdivision (d).

VIII

CONCLUSION.

We recognize that this letter is long, as are the extensive reports and analyses we have submitted to support our arguments. And, we appreciate the time and attention required to consider this information. At the same time, we are submitting this lengthy analysis and substantial evidence because we sincerely believe the Commission is facing a very important issue:

Should Malibu's carefully crafted LCP be swept aside because a state agency – the Santa Monica Mountains Conservancy – wants to do whatever it wants on its property?

We respectfully submit that the answer must be NO.

This letter demonstrates that the Conservancy's objectives can be accommodated without ignoring Malibu's Coastal policies or the City's authority and discretion to control local land use. It shows that offices can be established in office buildings, campgrounds can be established in places that do not create unreasonable fire risks to the public, and special events can be held in places that can safely hold large numbers of people and from which people can be safely evacuated in the event of an emergency.

Based on all of this information, the Ramirez Canyon Preservation Fund respectfully urges the Coastal Commission to reject the Conservancy's override application in its entirety, and to approve Malibu's Local Coastal Plan Amendment, with the modifications suggested in our separate Comment Letter on the Malibu LCPA.

Thank you for your kind attention.

Sincerely,

Steven A. Amerikaner

Diane M. Matsinger

Attachments:

A. Analysis of Issues Relating to Application by the Santa Monica Mountains Conservancy for a Local Coastal Program Amendment Override, prepared by Sciences Applications International Corporation, December 2008.
B. Letter to Ms. Hope Schmeltzer, Commission Counsel, November 24, 2008
C. Memorandum of Understanding Between Ms. Streisand and the Conservancy
D. Chart: Comparing Conservancy LCP Override with Malibu LCPA
E. Chart: Administrative Offices in Parks
F. Maps: Comparing Conservancy and Malibu's Trail Plans
G. Aerial Photo: Showing Lot Lines of Lauber Property
H. Ramirez Canyon Road Traffic Calculations

cc (w/attachments) (by Federal Express)

Jack Ainsworth, Deputy Director, South Central District Office, Coastal Commission
Pat Veesart, Coastal Commission Staff, South Central District Office (by hand delivery)
Ms. Hope Schmeltzer, Coastal Commission Chief Counsel
Stacey Rice, Malibu Planning Manager
Christi Hogin, Malibu City Attorney

SB 492080 v25:011142.0001

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

June 30, 2006

Santa Monica Mountains Conservancy
Attn: Joseph Edmiston
Los Angeles River Center & Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, CA 90065

Mountains Recreation & Conservation Authority
Attn: Laurie Collins
570 West Avenue 26, Suite 100
Los Angeles, CA 90065

SUBJECT: Malibu Parks Public Access Enhancement Plan, Public Works Plan

Dear Applicants,

We have reviewed the Draft Malibu Parks Public Access Enhancement Plan Public Works Plan (PWP) submittal, received by the Coastal Commission on June 9, 2006. As submitted, the PWP is described as a "Draft" document and has not been formally adopted by resolution of the SMMC and/or MRCA. Therefore, the submittal cannot be accepted, as the proposed public works plan has not been adopted by the submitting agencies pursuant to the requirements of Sections 30605 and 30510 of the Coastal Act. Although the plan cannot be considered a formal submittal at this time we offer the following comments, intended to serve as guidance for your future submittal of an adopted, final public works plan.

1. As per Section 13353.5 of the Coastal Act regarding Commission filing of PWP's, a public hearing on the proposed PWP must be held at the local level within a reasonable time prior to submission of the plan. Given the location of the PWP plan area, a public hearing in or near the City of Malibu, as feasible, would be appropriate to constitute a local level hearing. Also, the public (i.e. affected local governments, neighborhoods, interested parties, etc.) should receive written notification by mail at least a week before any PWP public hearing. In addition, evidence should be provided to the Commission demonstrating that the public was afforded an adequate and timely comment period on the proposed plan at the local level, including detailed information regarding meeting noticing and mailing lists, meeting agenda and minutes, and list of speakers.

2. The proposed PWP plan area has been broadly defined and includes a large geographic area. The PWP plan area should be refined to include only areas in which public works projects are proposed. Anticipated future land and easement acquisition areas may be included, but should be described in detail in the PWP,

including method, means, and timeline of acquisition. Future planned trail alignments and easements should be delineated on topographic maps with parcel boundaries at a scale that is adequate to illustrate the general location of the trail and/or easement.

3. Local government jurisdictional boundaries of the plan area should be clarified in maps and narrative, including a detailed identification of which portions of the plan are located within City of Malibu and which are located within Los Angeles County. Also, clarify whether "plan area", as referenced in the PWP, is intended to represent the "service area" as provided in CCR Section 13353(4).

4. Consistent with CCR Section 13357, for the portions or aspects of the PWP that are within the City of Malibu's certified LCP jurisdiction an analysis of consistency with the LCP must be included in the proposed PWP. For the portions or aspects of the PWP that are within the uncertified LCP area of Los Angeles County, an analysis should be provided that demonstrates that the PWP conforms with the Chapter 3 policies of the Coastal Act.

5. CCR Section 13353 provides that "any plan submitted pursuant to this subchapter shall contain sufficient information . . . to determine consistency with the policies of Chapter 3 . . ." or, pursuant to CCR section 13357, the City of Malibu's certified Local Coastal Program..." CCR Section 13355 requires the provision to the public of "detailed environmental information on the plan sufficient to enable the Commission to determine the consistency of the plan with the policies of the Coastal Act" or, in this case, pursuant to CCR Section 13357, the Malibu LCP. The proposed PWP states that an Environmental Impact Report will be prepared, however no other information is provided as to when, by whom, and how the environmental review process will be implemented for the PWP. If an Environmental Impact Report is required for the proposed PWP, the EIR would likely provide much of the environmental information necessary to determine consistency with Chapter 3 or the Malibu LCP. The EIR process would also ensure that such information has been provided to the public. Further, the EIR process could result in changes to the PWP. Therefore, the EIR process must be completed and the result submitted to Commission staff prior to Commission filing of the PWP.

6. Further, pursuant to CCR Sections 13353 and 13355 and regarding physical development of the PWP areas, the following information should be part of the PWP submittal:

   a. Biological resource map and delineation of Environmentally Sensitive Habitat Areas (ESHA).

   b. Detailed site and facility plans, drawn to scale with dimensions shown, of existing and proposed structures and facilities, including existing, unauthorized development. The site and facility plans should include the details regarding the height, footprint, and square footage of existing and proposed structures and facilities. In addition, all existing and proposed roads, public trails (including existing offers to dedicate trails), parking areas, fire & emergency vehicle turn around areas, septic systems, water tanks and water

systems, drainage systems and structures (including any unpermitted stream channelization), hardscape areas, landscaped areas and Fire Department required fuel modification areas should be illustrated on the site and facility plans. Furthermore, all oak trees and riparian vegetation (canopy), streams and drainages, stream crossings, wetlands, easements, ESHA, and public-serving utilities must be identified on site plans.

c. Detailed description of existing and proposed development in each park area. Include clarification regarding existing, unauthorized development.

d. Alternatives analysis for all development that may result in resource impacts.

e. Proposed timetable of all proposed projects and anticipated development phasing.

f. Detailed grading plans, where applicable, with cross-sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.

g. Detailed hydrological analysis and alternatives analysis regarding the existing, unauthorized streambed modifications in Ramirez Canyon Park.

h. Restoration and revegetation plans, where applicable.

7. Regarding proposed uses and management of the PWP areas, the following should be provided:

   a. Quantification of existing and proposed public use levels for each public use area.

   b. Maximum and minimum intensity of activity or activities proposed.

   c. Alternatives analysis.

   d. Clarify existing, unauthorized park uses.

8. In addition, all supplemental plans, guidelines, analyses, and assessments concerning the PWP should be incorporated in the document as appendices.

Please contact me if you have any questions.

Sincerely,

Deanna Phelps
Coastal Program Analyst

cc: April Verbanac, Dudek & Associates, Inc.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
MAR 08 2007
John A. Clarke, Executive Officer/Clerk
By E. Mora, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – WEST DISTRICT

SANTA MONICA MOUNTAINS CONSERVANCY; MOUNTAINS RECREATION AND CONSERVATION AUTHORITY, Plaintiffs, v. CITY OF MALIBU, Defendant. AND RELATED CROSS-ACTION.	**CASE NO. SC092212** **STIPULATION FOR ENTRY OF PRELIMINARY INJUNCTION, STAY OF LITIGATION AND CONTINUANCE OF INITIAL STATUS CONFERENCE; [PROPOSED] PRELIMINARY INJUNCTION, STAY OF LITIGATION AND ORDER CONTINUING INITIAL STATUS CONFERENCE** Action Filed: December 22, 2006 Trial: None Set (Hon. John L. Segal, Dept. M)

STIPULATION

WHEREAS, plaintiff and cross-defendant Santa Monica Mountains Conservancy, a California State agency formed and existing pursuant to the Santa Monica Mountains Conservancy Act ("SMMC"), plaintiff and cross-defendant Mountains Recreation and Conservation Authority, a joint powers authority created pursuant to the Joint Exercise of Power Act ("MRCA"), (collectively, "plaintiffs") and defendant and cross-complainant City of Malibu, a California municipal corporation ("City"), have met and discussed a

process that may lead to a resolution of the matters raised in this case without further litigation, and have entered into a Memorandum of Understanding dated January 23, 2007 ("MOU") setting forth their agreement, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein;

WHEREAS, that process requires a series of duly noticed public hearings that are anticipated to occur in the next six to twelve months;

WHEREAS, while these administrative procedures are pending, the parties wish to stay this action in its entirety ("Pending Action") and preserve the *status quo* as provided in this Stipulation for Entry of Preliminary Injunction and Stay of Litigation;

WHEREAS, the parties agree that, during the pendency of the preliminary injunction and stay of litigation sought to be entered through this Stipulation ("Preliminary Injunction and Stay"), plaintiffs' ongoing activities identified below will be treated as if they are in compliance with the City's Local Coastal Plan ("LCP"), the California Coastal Act (Public Resources Code section 30000, *et seq.*) ("Coastal Act"), and other City ordinances;

WHEREAS, the parties believe that the interests of justice will be advanced, and that good cause exists for entry of the Preliminary Injunction and Stay, as stipulated below;

WHEREAS, the parties have agreed, without waiving any of their respective rights and positions, including, without limitation, those each has asserted in the Pending Action, to stipulate to the entry of Preliminary Injunction and Stay, and have executed this Stipulation on the condition that these be approved by this Court;

WHEREFORE, the parties hereby stipulate, through their respective counsel of record, and respectfully request the Court to issue the Preliminary Injunction and Stay, as follows:

1. That the Pending Action be stayed pending final action on plaintiffs' application for an amendment to the Malibu Local Coastal Program ("LCP") as set forth in the MOU, or until the MOU is terminated, whichever occurs first (the "Stay").

2. That a preliminary injunction ("Preliminary Injunction") shall issue enjoining and restraining plaintiffs from using the property known as Ramirez Canyon Park, located at 5750 Ramirez Canyon Road ("Ramirez Canyon Park"), other than for the following ongoing activities (and necessary associated activities) (collectively, "Agreed Activities"), which specifically do not include renting out Ramirez Canyon Park for private events and/or parties:

A. Administrative and government offices for up to 15 employees.

B. A residential caretaker and his family.

C. Two special programs a week for disabled youth and/or for seniors.

D. Occasional employee training programs.

E. On-going property maintenance.

3. That the Preliminary Injunction shall also enjoin and restrain the City from taking any enforcement action or proceeding against plaintiffs, or either of them, other than this Pending Action, on or with respect to the Agreed Activities, or any of them, whether under the LCP, the Coastal Act or City ordinances, except that any of the parties hereto may seek to enforce this stipulated Preliminary Injunction.

4. That the Preliminary Injunction shall be dissolved upon the occurrence of the earlier of any of the following events:

A. The entry of final judgment in the Pending Action.

B. The dismissal of the Pending Action in its entirety by the parties or this Court.

C. The approval of plaintiffs' activities at Ramirez Canyon Park by the California Coastal Commission or the City.

D. Plaintiffs' delivery to the City of a written notice that they have abandoned the administrative process through which they were seeking approval by the City of their activities at Ramirez Canyon Park.

E. The filing with this Court of a written declaration by the City stating that (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the

administrative process through which they sought approval by the City of their activities at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the notice of abandonment, during which the MOU requires the parties to participate in voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

5. That no undertaking shall be required of any party in connection with the Stay and Preliminary Injunction, and that during the pendency of the Stay and Preliminary Injunction, no party shall seek to require any other party to provide any such undertaking.

6. That the status conference currently set for April 11, 2007, shall be continued to August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court, or to such other date and time as may be convenient to this Court.

Dated: February 8, 2007

RICHARDS, WATSON & GERSHON

By: _____
Steven R. Orr
Attorneys for SANTA MONICA MOUNTAINS CONSERVANCY

Dated: February 8, 2007

PAUL, HASTINGS, JANOFSKY & WALKER, LLP

By: _____
A. Catherine Norian
Attorneys for MOUNTAINS RECREATION & CONSERVATION AUTHORITY

Dated: February 9, 2007

CITY OF MALIBU

By: _____
Christi Hogin
City Attorney

[PROPOSED] ORDER

Upon the Stipulation of the parties, set forth above, and for good cause shown, IT IS HEREBY ORDERED:

1. This action is stayed in its entirety ("Pending Action") pending final action on the application submitted by plaintiffs and cross-defendants (collectively, "plaintiffs") to defendant and cross-complainant ("City") for an amendment to the Malibu Local Coastal Program ("LCP") as set forth in the Memorandum of Understanding attached as Exhibit A hereto ("MOU"), or until the MOU is terminated, whichever occurs first.

2. Plaintiffs are hereby enjoined and restrained during the pendency of the Pending Action from using the property located at 5750 Ramirez Canyon Road ("Ramirez Canyon Park") other than for the following ongoing activities (and necessary associated activities) ("Agreed Activities"), which specifically do not include renting out Ramirez Canyon Park for private events and/or parties:

A. Administrative and government offices for up to 15 employees.

B. A residential caretaker and his family.

C. Two special programs a week for disabled youth and/or for seniors.

D. Occasional employee training programs.

E. On-going property maintenance.

3. The City is hereby enjoined and restrained during the pendency of the Pending Action from taking any enforcement action or proceeding against plaintiffs, or either of them, other than the Pending Action, on or with reference to the Agreed Activities, or any of them, whether under the LCP, Coastal Act or City ordinances.

4. Notwithstanding the foregoing, any of the parties may seek to enforce this preliminary injunction in the manner provided by law.

5. This preliminary injunction will be dissolved upon the occurrence of the earlier of any of the following events:

A. The entry of final judgment in this Pending Action.

B. The dismissal of the Pending Action in its entirety by the parties or this Court.

C. The approval of plaintiffs' activities at Ramirez Canyon Park by the California Coastal Commission or the City.

D. Plaintiffs' delivery to the City of a written notice that they have abandoned the administrative process through which they were seeking approval by the City of their activities at Ramirez Canyon Park.

E. The filing with this Court of a written declaration by the City stating that (1) plaintiffs have delivered to the City a written notice that plaintiffs have abandoned the administrative process through which they sought approval by the City of their activities at Ramirez Canyon Park, and (2) the 90-day period following the City's receipt of the notice of abandonment, during which the MOU requires the parties to participate in voluntary mediation before the Hon. Steven J. Stone (Ret.), has expired.

6. No undertaking will be required of any party, and no party shall seek any such undertaking from any other party, at any time during the pendency of the preliminary injunction and stay.

7. The status conference currently set for April 11, 2007, is continued to August 10, 2007 at 8:30 a.m. in Department M of the above-entitled court.

Dated: MAR 0 8 2007

JOHN L. SEGAL
Judge of the Superior Court

MEMORANDUM OF UNDERSTANDING AGREEMENT

This Memorandum of Understanding Agreement ("MOU") is entered into by and between the CITY OF MALIBU, a California municipal corporation (hereinafter "City"), on the one hand; and the Santa Monica Mountains Conservancy ("SMMC" or the "Conservancy"), a California state agency formed and existing pursuant to the Santa Monica Mountains Conservancy Act, codified as Public Resources Code section 33000 *et seq,* and the Mountains Recreation and Conservation Authority ("MRCA"), a joint powers authority created pursuant to the Joint Exercise of Power Act, codified as Government Code section 6500 *et seq.,* and composed of the Conservancy and two local recreation and park districts, the Rancho Simi Recreation and Park District and Conejo Recreation and Park District, (collectively referred to as "SMMC/MRCA"), on the other hand. Together the City and the SMMC/MRCA are sometimes referred to herein as "the parties."

RECITALS

A. In early 2006, the SMMC/MRCA began preparation of a comprehensive development plan for its properties in and around the City of Malibu and for property it does not presently own but wishes to acquire. The SMMC/MRCA titled the document the "Malibu Parks Public Access Enhancement Plan Public Works Plan" ("Public Works Plan"). The Public Works Plan is a comprehensive planning document purporting to regulate and govern future development on property within its "planning area."

B. The City contends that the Public Works Plan constitutes a discretionary project within the meaning of Public Resources Code section 21080, subd. (a) and, therefore, is subject to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. The SMMC/MRCA contends, *inter alia*, that the Public Works plan is reviewed in the same manner prescribed for the review of local coastal programs, and is exempt from CEQA under Public Resources Code section 30605 and the same provisions of CEQA and the CEQA guidelines that exempt LCP amendments from CEQA.

C. The City further contends that the Public Works Plan is inconsistent with the Malibu LCP and therefore invalid and/or uncertifiable. The SMMC/MRCA contends, *inter alia*, that the Public Works Plan is consistent with the Malibu LCP, that the SMMC/MRCA is immune from local land use regulations and that no coastal development permit is required for any of it activities or proposed activities because they are each either within the legal ambit of the Public Works Plan or not development within the meaning of the Coastal Act.

D. The SMMC/MRCA filed a lawsuit in the Los Angeles County Superior Court seeking declaratory relief regarding its contentions with respect to the use of the Ramirez Canyon Park That lawsuit is designated LACSC Case No. SC 92212. City has filed an answer and cross complaint in Case No. SC 92212. The City has also filed a petition for writ of mandate and complaint for declaratory relief against the SMMC/MRCA

challenging its noncompliance with CEQA and use the Public Works Plan for its proposed development. That lawsuit is designated LACSC Case No. BS 106878 Together these cases are referred to as the "Pending Litigation."

E. The parties have met and discussed their differences. Each party has determined that it is in the best interest of all interested parties to attempt to resolve the differences through employing the provisions of the Coastal Act and the Malibu Local Coastal Program which provide for amendment to the Malibu LCP. The parties further agree that they will enter into and participate in the LCP amendment process in good faith; however, both parties wish to preserve their legal rights and positions and participate without prejudice to those respective rights and positions.

F. The parties recognize that the LCP amendment process may take many months to complete and will require, inter alia, duly noticed public hearings before the Malibu Planning Commission, the Malibu City Council and the California Coastal Commission. In order to address in the interim certain of the pressing issues that will be addressed by the LCP amendment, the parties agree, without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, that the City and SMMC/MRCA will stipulate to a preliminary injunction ("Preliminary Injunction") which will, pending the conclusion of the procedures contemplated herein, maintain the status quo with respect to the use of Ramirez Park and will otherwise limit the use of the Ramirez Park facility while the LCP amendment process is on-going, and which will stay the proceedings in the Pending Litigation and the City's enforcement against SMMC/MRCA of its LCP and the Coastal Act.

G. This MOU sets forth the terms and conditions and mutual understanding of the parties relative to the foregoing.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, and without waiving any of their respective rights and positions, including, without limitation, those asserted in the Pending Litigation, the parties agree as follows:

1. Obligations of the SMMC/MRCA. The SMMC/MRCA shall be responsible for the following:

1.1 Within two weeks of the execution of this MOU, or as soon thereafter as the SMMC can make its quorum, the SMMC shall hold a public hearing to consider rescission of Resolution No. 06-91 adopted November 29, 2006, and any other action it took to approve the Public Works Plan and MRCA shall hold a public hearing to consider rescission of Resolution No. 06-174 and any other action it took to approve the Public Works Plan. If the Conservancy or the MRCA fails to rescind the Resolutions, this

agreement shall be null and void without the necessity of any further action by either party.

1.2 Within ninety (90) days of the execution of this MOU the SMMC/MRCA shall submit to the City a complete application for an amendment to the Malibu LCP, which shall be in the nature of a comprehensive, specific, area or public works plan, and which shall include the substantive proposals for planning and development that the SMMC/MRCA wishes to propose.

1.3 The SMMC/MRCA shall amend its Public Works Plan to submit as an LCP amendment with at least the following changes:

1.3.1 Overnight camping in Escondido shall be eliminated if camping is included at Charmlee Wilderness Park;

1.3.2 Overnight camping (in a program run by the SMMC/MRCA) shall be proposed in Charmlee Wilderness Park;

1.3.3 An expansion of the City's shuttle service (currently connecting the Headlands with Zuma beach) shall be proposed to include Charmlee Nature Preserve, Corral Canyon Park as well as the Point Dume Headlands and Zuma Beach. This proposal may include the use of the City's Prop A funds as appropriate and needed, which funds the City will cooperate in making available to SMMC/MRCA.

2. Obligations of the City. The City shall be responsible for the following:

2.1 The City shall in good faith make staff from its Planning and Parks & Recreation departments available for pre-application review. The purpose of this obligation is to assure that the SMMC/MRCA's application is complete and avoid unnecessary delays in processing the SMMC/MRCA's LCP amendment application;

2.2 The City shall accept for processing a complete LCP amendment application and shall hold the necessary public hearings and reach a final determination within 180 days receipt of a complete application. The parties agree that a complete

application for the LCP amendment contemplated by this MOU consists of the required processing fee and the following:

2.2.1 Summary of Public Notice and Participation;

2.2.2 Policies, plans, standards, objectives, diagrams, drawings, maps, photographs contained in the current PWP as adopted;

2.2.3 Supplementary data (special studies) contained in the current PWP as adopted related to biology, traffic, geology, creek restoration, accessibility, fire protection and emergency evacuation, as revised to reflect project changes;

2.2.4 Public access component of the LCPA, included in chapter 3 of the current PWP as adopted;

2.2.5 Planning Area Map, showing the location of the properties included in the plan, the location of all highways, streets and alleys, public easements or Offers to dedicate Public Easements and all lots and parcels of land within a distance of five hundred feet from the exterior boundaries of the property involved included as figures in the current PWP as adopted and as revised to reflect project changes;

2.2.6 Summary of amendment's relationship to and effect on other sections of the certified LCP and analysis that demonstrates conformity with the requirements of Chapter 6 of the Coastal Act;

2.2.7 Zoning measures/implementation that will be used to carry out the amendment to the land use plan, included as Implementation measures of the current PWP as adopted.

2.3 In light of the stipulated preliminary injunction constraining the use of Ramirez Canyon Park as referred to in (paragraph 3.2 below) and the agreement to apply for an LCP amendment (as referred to in paragraph 1.2 above), which, if approved and certified, will resolve any possible inconsistencies with the Malibu LCP or Municipal Code, aside from the cross-complaint and its defense in LACSC case No. SC092212 the City will not

take enforcement action against the SMMC/MRCA, including, without limitation, under the LCP or Coastal Act, during the term of this MOU, except that any of the parties may seek, as necessary, to enforce the Preliminary Injunction.

3. Joint Obligations. The City and the SMMC/MRCA also agree as follows:

3.1 The parties agree to stay the Pending Litigation until final action is taken on the LCP amendment and to cooperate with one another in obtaining the Preliminary Injunction and a stay of the Pending Litigation from the court. The intention of this obligation is to minimize costs associated with the Pending Litigation and avoid the parties' use of resources prosecuting or defending the Pending Litigation.

3.2 The parties agree to stipulate to a preliminary injunction enjoining the SMMC/MRCA's use of Ramirez Canyon Park and further enjoining the City as set forth in the proposed Preliminary Injunction attached hereto as Exhibit A in the form attached hereto as Exhibit A.

3.3 The parties shall cooperate to secure changes, if any required, to the deed restrictions for Charmlee Wilderness Park in order to allow overnight camping in the park.

3.4 The parties agree to defend, and cooperate with one another to defend, any challenge to this MOU, the attached Preliminary Injunction, and the LCP Amendment approved by the City.

3.5 The parties further agree that if any court enjoins, restrains or otherwise prohibits the SMMC/MRCA from conducting the ongoing activities described in the Preliminary Injunction attached hereto as Exhibit A, the SMMC/MRCA can elect to terminate this MOU effective immediately upon giving notice to the City under the notice provisions set forth at Paragraph 6, below, and each party shall bear its own attorneys fees and costs incurred in connection with this MOU and the attached Preliminary Injunction.

4. Not an Impairment of the Police Powers. Nothing in this agreement is meant to nor shall be construed to constrain or impair the City's police powers impermissibly in connection with any decision it shall make in connection with the proposed LCP amendment or any other matters

contemplated by this MOU.

5. Dismissal or Resumption of Pending Litigation.

5.1 If the City Council approves an LCP amendment acceptable to the SMMC/MRCA and the Coastal Commission thereafter certifies that LCP amendment as approved by the City or suggests modifications acceptable to both the City and the SMMC/MRCA, in their sole, independent and respective discretion, the parties shall dismiss the Pending Litigation within two weeks after the issuance by the City of a CDP which applies to Ramirez Canyon Park consistent with and pursuant to the certified LCP amendment. The dismissal shall be without prejudice and all parties shall bear their own costs and attorneys fees. In the event the City dismisses its petition for writ of mandate and complaint for declaratory relief in Case No. BS 106878 following the rescission by the SMMC and MRCA of the resolutions and actions taken to approve the Public Works Plan, as provided in paragraph 1.1 above, the parties agree that each shall bear its own costs and attorneys fees in that action.

5.2 If the City Council fails to approve an LCP amendment acceptable to the SMMC/MRCA or the Coastal Commission fails to certify the LCP amendment approved by the City Council or the Coastal Commission insists on modifications unacceptable to either the SMMC/MRCA or the City, the MOU is terminated and the parties may resume the Pending Litigation and neither party shall use this MOU or any actions taken to implement it as evidence or a defense in the Pending Litigation (except with respect to any claims of laches, waiver, estoppel or the expiration of a statute of limitation that has not expired as of the date this MOU is executed).

6. Notices. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed or transmitted as set forth below, but either party may change its address or facsimile number by giving written notice thereof to the other parties in accordance with the provisions of this paragraph:

CITY: City of Malibu
ATTN: City Manager
23815 Stuart Ranch Road
Malibu, CA 90265

FAX (310) 456-2760

SMMC/MRCA: Mountains Recreation & Conservation Authority
ATTN: Joseph T. Edmiston Executive Officer
570 West Avenue 26, Suite 100
Los Angeles, California 90065
FAX (323) 221-9934

With copy to:

Paul, Hastings, Janofsky and Walker, LLP
ATTN: Robert I. McMurry, Esq.
515 S. Flower Street, 25th Floor
Los Angeles, California 90071

Santa Monica Mountains Conservancy
ATTN: Joseph T. Edmiston, Executive Director
5750 Ramirez Canyon Road
Malibu, California 90265
FAX (310) 589-3207

With copy to:

Richards, Watson and Gershon
ATTN: Steven H. Kaufmann, Esq.
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
FAX (213) 626-0078

7. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.

8. Term. This MOU shall commence upon execution by the parties and shall remain in effect until all obligations hereunder have been performed. A failure to perform any material obligation of this MOU constitutes a material breach. In the event of a material breach of this MOU, the non-breaching party shall give written notice to the other party, pursuant to Paragraph 6 above, specifying the purported material breach. The parties agree to meet and confer within seven calendar days of such written notice in an effort to cure the breach. If the parties are unable to reach agreement

within that seven-day period, the parties agree to mediation before the Hon. Steven J. Stone (Ret.) ("Mediator") at the offices of JAMS and the non-breaching party shall contact the Mediator for that purpose within fourteen calendar days of written notice of the breach. If Justice Stone is not available to act as Mediator the parties agree to use best efforts to mutually agree upon the selection of another JAMS mediator. If the parties are unable to reach agreement within fourteen calendar days of being notified that Justice Stone is not available to act as the Mediator, then, within the next seven calendar days, SMMC/MRCA shall choose a JAMS mediator and the City shall choose a JAMS mediator for the purpose of having those two mediators choose a third JAMS mediator, and the three mediators shall conduct the mediation. The MRCA/SMMC on the one hand and the City on the other agree to share the costs of mediation equally. The parties agree that the Mediator's decision shall be binding upon all parties.

9. No Third Party Beneficiaries. This MOU is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this MOU.

10. Joint Preparation. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.

11. Entire Agreement. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.

12 Authority to Execute. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

13. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be considered to be an original agreement and all of which together shall be considered to be but one enforceable agreement.

IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

MOUNTAINS RECREATION CONSERVATION AUTHORITY By: Michael D. Berger Dated: January 30, 2007 CITY OF MALIBU By: Kenneth Kearsley Mayor Dated: January 23, 2007 ATTEST: Lisa Pope City Clerk (seal)	SANTA MONICA MOUNTAINS CONSERVANCY By: Elizabeth A Cheadle, Chair Dated: ~~January~~ February 1, 2007

October 12, 2010

BY ELECTRONIC MAIL

Steven A. Amerikaner
805.882.1407 tel
805.965.4333 fax
SAmerikaner@bhfs.com

Honorable Chair Bonnie Neely and Members of the Coastal Commission
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001-2801

RE: Errata to October 11, 2010 Letter regarding Agenda Item W7a, October 13, 2010

Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority
Malibu Parks Public Access Enhancement Public Works Plan

Dear Chair Neely and Members of the Coastal Commission:

The October 11, 2010 letter we submitted on behalf of Ramirez Canyon Preservation Fund included numerous attachments. Please accept this errata with corrections to several misidentified references included within the letter. Changes are shown with strike-through and underline.

- Page 1, second paragraph, last line – The reference should be to Exhibits A through ~~M~~N.
- Page 2, last paragraph, third line – The reference should be to Exh. ~~M~~C, December 23, 200~~9~~8 Letter from Fund to Commission re Override, Attachment E.
- Page 4, second paragraph, first line – The reference should be to ~~Exhibit~~ Attachment B (November 24, 2008 Letter from Fund to Commission Chief Counsel Schmeltzer, Sec. II) ~~and~~ of Exhibit C (December 23, 2008 Letter from Fund to Commission re Override).
- Page 4, sixth paragraph, last line – The reference should be to Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. IV, C, 2.
- Page 5, second paragraph, last line – The reference should be to Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. IV, C, 5.
- Page 6, fifth paragraph, last line – The reference should be to Exh. M, August 23, 2010 Letter from Fund to the Conservancy, Sec. IV, F.
- Page 10, first paragraph, first line – The reference should be to Chap. 3, Coastal Resources Planning and Management Policies, *Article 3*.
- Page 17, first paragraph, fifth line – The citation should be *Ebbetts II Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Cal. 4th 936.

Thank you for your consideration of the Fund's comments.

Sincerely,

BROWNSTEIN HYATT FARBER SCHRECK, by:



Steven A. Amerikaner



Diane M. Matsinger

cc: Richard Mullen, President, Ramirez Canyon Preservation Fund
Christi Hogin, Malibu City Attorney
Jack Ainsworth, Deputy Director, South Central District, California Coastal Commission
Deanna Christensen, Coastal Program Analyst, California Coastal Commission

SB 560559 v1:011142.0011

ENTRIX
Down to Earth. Down to Business.™

BY E-MAIL

October 12, 2010

Honorable Chair Neely and Members of the California Coastal Commission
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

RE: Errata to October 11, 2010 Letter
Santa Monica Mountains Conservancy/Mountains Recreation and Conservation Authority
Malibu Parks Public Access Enhancement Public Works Plan FEIR
Agenda Item 7A, Commission Meeting of October 13, 2010

Dear Chair Neely and Members of the Commission:

My October 11, 2010 letter on behalf of the Ramirez Canyon Preservation Fund (Fund) regarding the Malibu Parks Public Access Enhancement Public Works Plan FEIR included a table comparing the biological impacts of the Conservancy's proposed access improvement in Ramirez Canyon and the Fund's proposed Lauber alternative (Exhibit B).

Exhibit B includes a row listing "total permanently disturbed area" for each road. These totals include existing and proposed paved areas as well as fuel clearance areas for each road based on the biological analysis figures in the FEIR. For clarification purposes, I am attaching a revised table with a new row labeled "total new permanently disturbed surface area" which lists the new area that would be disturbed along each roadway less the area that is already paved. All changes to the table are shown with underlines.

Thank you for your consideration of this additional information.

Sincerely,

Rosemary Thompson

Rosemary Thompson, Ph.D.
Senior Consultant

cc: Jack Ainsworth, Deputy Director, California Coastal Commission (by e-mail)
Deanna Christensen, Coastal Program Analyst, California Coastal Commission (by e-mail)
Richard Mullen, President, Ramirez Canyon Preservation Fund (by e-mail)

Attachments: Revised Exhibit B – Comparison of Biological Impacts of Access Improvements to Ramirez Canyon, Conservancy Approved Access vs. Lauber Alternative

201 N. Calle Cesar Chavez • Suite 203 • Santa Barbara, CA 93103 • MAIN 805.962.7679 • FAX 805.963.0412 • 1.800.368.7511 • entrix.com

Revised Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon Conservancy Approved Access vs. Lauber Alternative

	Ramirez Canyon/Delaplane Road Widening (Per Modified Redesign Alternative)	**Via Acero Road Extension/Widening** (Per Modified Redesign Alternative)	**Combined Ramirez Canyon & Via Acero Access Improvements** (Conservancy Approved Access)	**Lauber Road Access Improvements Alternative** (2002 LCP Alternative)
Project Specifications				
Existing conditions[1]	12-20-ft wide paved roadway with 10-ft wide wooden bridge and 2 Arizona crossings	Approx. 1,400 (linear feet) lf dirt road and 1,538 lf of 10-20 ft wide paved road	n/a	Approx. 600 lf existing 20-ft wide paved road, remainder undeveloped
Specifications for proposed access improvements[2]	Widen entire length to 20 ft with 26-ft width for 50 ft around 7 existing fire hydrants, 10 ft of fuel clearance on each side = 40-46 ft wide road disturbance corridor Road length: 3,473 lf Retaining walls: unknown[3]	Widen and extend to 20 ft, 10-20 ft of fuel clearance on each side = 40-60-ft wide road disturbance corridor Road length: 2,938 lf Retaining walls: 1,460 lf	See individual descriptions. Road length: 6,411 lf Retaining walls: >1,460 lf	Construct 20-ft wide road, 10-20 ft of fuel clearance = 40-60-ft wide road disturbance corridor Road length: 2,095 lf Retaining walls: 1,110 lf
New paved road area[4]	11,391 sf + 20% contingency = 13, 669 sf[5]	33,695 sf + 20% contingency = 40,434 sf	45,086 sf + 20% contingency = 54,103 sf	41,220 sf + 20% contingency = 49,464 sf
New parking[6]	n/a	n/a	14 spaces in 3 areas adjacent to Kanan Dume Road	18 spaces in 2 areas on Lauber property and 9 spaces in 2 areas adjacent to Kanan Dume Road
Grading for access road improvements[7]	Cut: 500 cy Fill: none	Cut: 1,587 cy Fill: 2,946 cy	Cut: 2,087 cy Fill: 2,946 cy	Cut: 6,755 cy Fill: 1,560 cy
Estimated fuel clearance areas for access roads[8]	1.5 ac (includes 0.5 ac ESHA)	2.5 ac (includes 0.2 ac ESHA)	4.0 ac (includes 0.7 ac ESHA)	1.7 ac (includes 0.7 ac ESHA)

Revised Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon Conservancy Approved Access vs. Lauber Alternative

	Ramirez Canyon/Delaplane Road Widening (Per Modified Redesign Alternative)	**Via Acero Road Extension/Widening** (Per Modified Redesign Alternative)	**Combined Ramirez Canyon & Via Acero Access Improvements** (Conservancy Approved Access)	**Lauber Access Alternative** (2002 LCP Alternative)
Total permanently disturbed surface area (excluding parking)[9]	3.6 ac (includes 0.5 ac ESHA)	5.2 ac (includes 0.4 ac ESHA)	8.8 ac (includes 0.9 ac ESHA)	2.9 ac (includes 1.4 ac ESHA)[10]
Total new permanently disturbed surface area (excludes existing paved areas on subject roads)[10a]	1.8 ac (includes 0.5 ac ESHA)	3.4 ac (includes 0.4 ac ESHA)	5.2 ac (includes 0.9 ac ESHA)	2.9 ac (includes 1.4 ac ESHA)
Area available for on-site biological impact mitigation[11]	None	None	None	1.0 ac
Direct Impacts to Vegetation				
Direct impacts to sensitive vegetation (excluding fuel clearance areas)[12]	0.04 ac[13]	≥0.24 ac[14]	≥0.28 ac	1.59 ac[15]
Direct impacts to non-sensitive vegetation	0.25 ac[16]	≤1.04 ac[17]	≥1.29 ac	<1.10 ac[18]
Native Tree Impacts				
Direct impacts to native trees	43[19]	3[20]	46	0[21]
Native trees removed	7[22]	2[23]	9	0[24]
Indirect impacts to native trees	8[25]	2[26]	10	0[27]

1. Appendix MRA-3, MRA Civil Plans; Appendix MRA-1, pp. 44-47; and Appendix D-2, Alternative 2 Civil Plans.
2. Appendix MRA-3, MRA Civil Plans; Appendix MRA-1, p. MRA-16 and pp. 44-47; and Appendix D-2, Alternative 2 Civil Plans.
3. The Civil Plans include notes indicating the possible need for new retaining walls and identify the relocation of some existing walls but do not provide the length of walls to be

Revised Exhibit B: Comparison of Biological Impacts of Access Improvements to Ramirez Canyon Conservancy Approved Access vs. Lauber Alternative

constructed or relocated.

4. Appendix MRA-3, MRA Civil Plans and Appendix D-2, Alternative 2 Civil Plans.
5. Ramirez Canyon/Delaplane new paved road area includes a 20% contingency but does not specifically account for the area necessary to accommodate an additional 6 feet of paving for a 50 foot length adjacent to existing fire hydrants as required by LACFD because this data was not provided in the FEIR. There are seven existing fire hydrants along Ramirez Canyon Road.
6. Appendix MRA-3, MRA Civil Plans and Appendix D-2, Alternative 2 Civil Plans.
7. Appendix MRA-1, pp. 46-47 and Appendix D-2, Alternative 2 Civil Plans. Figures exclude grading associated with new parking facilities.
8. The FEIR did not analyze the biological impacts of fuel clearance areas of up to 20 feet on each side of the fire access roads. Based on Appendix MRA-1, p. MRA-16 and Los Angeles County Fire Code Sec. 317.10, the above totals assume 10 feet of fuel clearance on each side of access roads in ESHA and 20 feet of fuel clearance on each side of access roads outside of ESHA. An estimate of the area affected by fuel clearance was derived from measurements taken from the civil plans and biological maps for each road (Appendices MRA-3, MRA-10 and D-2 and Sec. 8.0 Alternative 2 Impacts to biological resources figures).
9. The total permanently disturbed area was determined by adding the area of the proposed roads and the estimated fuel clearance areas associated with the roads.
10. As described in footnote 15, the FEIR appears to indicate 1.59 acres of ESHA impacts on the Lauber property. Taking the area of new paving plus fuel clearance in ESHA per FEIR Figures 8.2-1b and 8.2-1c shows only approximately 1.4 acres of ESHA would be permanently impacted. The discrepancy may exist because the FEIR analysis included areas to be graded outside of the road and fuel clearance areas. Since these areas can be restored following completion of construction, they would not be permanently impacted.

10a. The total new permanently disturbed area excludes already paved areas on the respective roads.

11. Ramirez Canyon and Via Acero roads are private and all adjacent property is privately owned. Therefore there is no area available for mitigation of biological impacts onsite/ adjacent to the roadways. If the Conservancy purchased the two easternmost parcels of the Lauber property for parking and access to its Ramirez Canyon property and obtained an easement over the westernmost parcel, the property could be used for on-site mitigation of biological impacts associated with the access road and other components of the Public Works Plan. The area in the table was determined based on measurements taken from Figure 8.2-1a – 2002 LCP Alternative – Impacts to Biological Resources. The area includes land classified as Developed, Ruderal, or non-sensitive vegetation on the figure less area that will be used for the access road, parking and associated fuel clearance.
12. The data in this row was taken directly from the FEIR and does not account for biological impacts in fuel clearance areas of up to 20 feet on each side of all fire access roads. An estimate of the area affected by fuel clearance is listed separately.
13. Sec. 15.0, Table 15-47.
14. Statement in Sec. 15.0, p. 15-83 that no ESHA is directly impacted by Via Acero improvements is inconsistent with Sec. 5.4, Table 5.4-11, which indicates 0.24 ac of direct impacts to ESHA would result under the proposed plan. Because the disturbance area of the Via Acero improvements increased under the MRA as compared to the proposed plan, the direct ESHA impacts are assumed to be equal or greater to those reported in the DEIR for the proposed plan.
15. The FEIR does not specifically state the direct impacts to sensitive vegetation resulting from Lauber Road construction. For the purposes of this analysis, it was assumed that the "Parking" column in Table 15-7 includes impacts associated with the proposed parking facilities on the Lauber property and the road. The proposed parking area is located in an area containing non-sensitive vegetation, therefore all impacts to ESHA were assumed to be associated with road improvements.
16. Sec. 15.0, Table 15-47.
17. As stated above, the statement on Sec. 15.0, p. 15-83 that no ESHA would be directly impacted by the Via Acero improvements is inconsistent with Sec. 5.4, Table 5.4-11. Sec. 15.0, p. 15-83 indicates total impacts to vegetation communities increased from 1.01 ac under the proposed plan to 1.28 ac under the MRA, however no supporting data is provided. Using the data from Table 5.4-11, impacts to non-sensitive vegetation were calculated to be ≤1.04 ac (1.28 ac total impacts under MRA less 0.24 ac ESHA impacts under proposed plan).
18. As stated above, it was assumed that the "Parking" column in Table 15-7 includes direct impacts associated with both proposed parking facilities and the access road on the Lauber property. Impacts to non-sensitive vegetation resulting from parking facilities are included in the reported amount of 1.10 ac. Therefore, the impacts to non-sensitive vegetation resulting from the road alone would be some amount less that this total.
19. Appendix MRA-10, Table 7.
20. Appendix MRA-10, Table 7.
21. Sec. 15.0, p. 15-28.
22. Appendix MRA-10, Table 7. (Assumes conflicting text on Appendix MRA-10, p. 16 is incorrect.)
23. Appendix MRA-10, Table 7.
24. Sec. 15.0, p. 15-28.
25. Appendix MRA-10, Table 8.
26. Appendix MRA-10, Table 8.
27. Sec. 15.0, p. 15-28.

STATE OF CALIFORNIA–THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

SANTA MONICA MOUNTAINS CONSERVANCY
RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207

W 7a

October 12, 2010

The Honorable Bonnie Neely, Chairperson
and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Malibu Parks Public Access Enhancement Plan – Public Works Plan (PWP)
Response to Ramirez Canyon Letter (dated October 11, 2010)

Dear Chairperson Neely and Commissioners:

I am writing as Chief Staff Counsel for both the Santa Monica Mountains Conservancy (Conservancy) and Mountains Recreation and Conservation Authority (MRCA). This letter responds to the legal issues raised in the letter to you, dated October 11, 2010, sent by counsel for the Ramirez Canyon Preservation Fund ("Ramirez residents"). The Conservancy and MRCA are separately responding to the other issues raised by the letter.1

In June 2009, the Commission certified an amendment to the Malibu LCP (the LCPA Override) to which the Public Works Plan (PWP) now before you conforms. By their letter, the Ramirez residents continue their narrow, self-interested goal – to block public access to and public use of Ramirez Canyon Park, a coastal park owned by the State of California by and through the Conservancy and managed by the MRCA.

The Residents' Procedural Objections Have No Merit

In their letter, the Ramirez residents first complain that the Conservancy's hearing process on the PWP and Final EIR did not comply either with the Commission's

1 The Conservancy and MRCA incorporate by reference all letters that they submitted in connection with the LCPA Override, including, without limitation, the letter from SMMC Chief Staff Counsel Laurie C. Collins to CCC Chair Bonnie Neely, dated May 14, 2009, and the letter from SMMC Executive Director Joseph T. Edmiston to CCC Chair Bonnie Neely, dated June 8, 2009.

Exhibit 4
SMMC/MRCA PWP
Addendum
SMMC Letter In Response to
Brownstein Letter of Exhibit 3

regulations for local hearings on proposed PWP or with CEQA. (RCPF Letter, p. 1.) This complaint is NOT directed to the Commission's process on the PWP. As required by law, the Commission should presume that the hearing process conducted jointly by the Conservancy and MRCA met all legal notice and hearing requirements. (Evid. Code § 664; CEQA Guidelines § 15233.)

The residents note that "the Commission appears to have technically complied with its own notice and hearing requirements for public works plans," but complain that setting the hearing within two weeks of the issuance of the staff report violates the Coastal Act mandate for maximum public participation. (RCPF Letter, p. 2.) First and foremost, compliance with the notice and hearing requirements of the Coastal Act and the Commission's regulations, as the residents concede, is compliance with the law. But, in this case, the contention is remarkable and belied by the fact that the City of Malibu was able to prepare and submit its letter to the Commission early on October 7, 2010, and the Ramirez residents themselves also were able to prepare and submit their 24-page letter, along with an additional 9-page letter from Entrix, on October 11, 2010. Furthermore, the hearing before the Commission presents a further opportunity for the residents and other interested parties to present their position on the PWP to the Commission.

The Ramirez residents also assert that both they and the City of Malibu have challenged the LCPA Override in a lawsuit presently pending in the Los Angeles Superior Court, City of Malibu v. California Coastal Commission, Los Angeles Superior Court Case No. BS 121650. In preliminary proceedings in that case, the trial court has already ruled for the Commission on two issues: (1) the Commission, as a certified regulatory agency, did not have to comply with the 30-day notice requirement applicable to EIRs; and (2) the Commission properly had jurisdiction to consider and act on the LCPA Override. The residents argue that action on the PWP should await the outcome of that case. (RCPF Letter, p. 2.) There is, however, no legal impediment to the Commission acting on the PWP at the October meeting. While the residents undoubtedly would like to drag out the Commission's process indefinitely, the process before the Conservancy and MRCA resulting in adoption of the PWP and certification of the Final EIR has concluded, your

Staff has prepared a comprehensive well-reasoned Staff Report, and there simply is no reason to delay the proceedings at this point.

The Ramirez residents also take aim at the LCPA Override certified by the Commission in June 2009 and complain that the Override violated the Coastal Act requirements for public notice and participation. (RCPF Letter, p. 2.) The Override is no longer before the Commission. Assuming a notice and participation has been raised in the pending litigation (to the extent it was, we believe that issue was disposed of in the context of the trial court's ruling on the 30 day issue), it will be addressed in that lawsuit, not in this proceeding.

Finally, the Ramirez residents echo the argument made by the City of Malibu in its October 7, 2010 letter that the Commission was required under CEQA to circulate its staff report for a minimum 30-day period, citing Ultramar v. South Coast Air Quality District (1983) 17 Cal.App.3d 701-704. (RCPF Letter, pp. 2, 15-16.) The residents' reliance on Ultramar and CEQA section 21091 is misplaced. In acting on a PWP, however, the Commission is acting as a certified regulatory agency, not a lead agency. Section 21091 is not applicable to the Commission. The lead agency in this case, the SMMC/MRCA, did circulate the draft EIR for 45 days.

Further, it bears noting that on July 23, 2010, the court (Hon. John A. Torribio, presiding) in the City of Malibu v. California Coastal Commission, supra, rejected the same argument where the Commission, as a lead agency acting under its certified regulatory program, certified the LCPA override that amended the City's LCP to include the Malibu Parks Public Access Enhancement Plan. Even assuming the Commission were lead agency here (and, as the Staff Report points out, it is not), the residents' argument would lack merit because: (1) the City's attempted collateral attack on the regulations certified by the Secretary for Resources relating to distribution of the Commission's staff report is time-barred; and (2) CEQA section 21174 expressly provides that no provision in CEQA (including Section 21091) limits or restricts the Commission's power or authority to administer or enforce any provision of law (including the Commission's notice regulations) that the Commission is permitted or required to administer or enforce, and additionally that in the event of an inconsistency between the Coastal Act and CEQA, the Coastal Act controls.

The PWP Properly Includes the Limited Administrative Office Use and Special Events at Ramirez Canyon Park

The Ramirez residents also rehash their contention in opposing the LCPA Override that the PWP is overbroad because, in their view, the PWP cannot be utilized to authorize specific uses proposed at Ramirez Canyon Park -- park administrative offices and

special events. In effect, they renew the argument made in connection with LCP amendment that those uses do not qualify as a "major public work" because the uses do not, in themselves, meet the definition in the Coastal Act of a "public work." (RCPF Letter, pp. 2-3.)

The Coastal Act defines "public works" as including "[a]ll publicly financed recreational facilities." (Pub. Res. Code § 30114.) The Commission's regulations further state that a "major public work means facilities that cost more than one hundred thousand dollars," and that it "also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities." (Tit. 14, Cal. Code Regs § 13012.) The "major public work" here is Ramirez Canyon Park, and despite the Ramirez residents' attempt to parse the uses undertaken, the Park indisputably constitutes an important publicly financed recreational facility that serves, affects, and impacts regional and statewide use of the coast by increasing public recreational opportunities and facilities.

Since there is no definition of "recreational facility" in the Coastal Act, the Ramirez residents cite to Public Resources Code section 5780.1(h), in the Recreation and Park District law. (RCPF Letter, p. 3.) That Section, however, does not support the residents' argument. It undermines it. Section 5780.1(h) defines "recreational facility" as meaning:

> An area, place, structure, or other facility under the jurisdiction of a public agency that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation facility" includes, but is not limited to, an arts and crafts room, auditorium, beach, camp, community center, golf course, gymnasium, lake, meeting place, open space, park, parkway, playground, playing court, playing field, recreational reservoir, river, and swimming pool. (Emphasis added.)

Looking only at Ramirez Canyon Park, the PWP proposes detailed policies and implementation measures for program and operational elements that support special

public outreach and educational opportunities, as well as the administrative infrastructure and offices necessary to operate specialized public outreach programs and to ensure that maximum public access and recreational opportunities are provided for visitors with varying degrees of special needs. In particular, the Conservancy and MRCA have emphasized the need at this Park to provide facilities and outreach programs

intended to reach visitors of diverse abilities, disadvantaged youth, or other underserved groups. Accessibility implementation measures in the PWP provide that the Conservancy/ MRCA will continue all public outreach programs and provide for development of additional day-use picnic facilities designed specifically for safe use by physically challenged visitors, in compliance with Americans with Disability Act (ADA) requirements, including trails, picnic facilities, drinking fountains, restrooms, and parking areas.

Moreover, consistent with the Commission's original permit decision (CDP No. 4-98-334), the primary buildings at Ramirez Canyon Park have all been used as "recreational facilities" and as a location to conduct or manage recreation uses at the Park. The Barn serves as the indoor venue for senior and disabled tours of the Park and its grounds. The Staff who operate and plan for outreach programs – including programs for senior citizens, disabled and disadvantaged persons, inner-city and at-risk youth, veterans, and battered women – operate out of the Barn, as do volunteer docents. By stipulated agreement with the City, Garden Tours have been suspended. But, the PWP proposes to resume the Garden Tours by reservation to the general public, and the Barn is the central meeting location for tour participants. The Peach House has in the past and will again be part of the Garden Tour visits. The Barwood and Art Deco Houses similarly have been part of the Garden Tours. Additionally, all four buildings have been and will be used for park-related conferences, retreats, recreational events, and paid reserved events.

In short, viewed in context, Ramirez Canyon Park is a publicly financed recreational facility. It makes no difference whether the Park includes uses that are also necessary to create, operate and manage the recreational uses in the Park, in the Overlay area implemented by the PWP, or this particular area of the Santa Monica Mountains, as noted in Public Resources Code section 5780.1(h). Like the California Department of Parks and Recreation, the National Park Service, Los Angeles County Department of Beaches and Harbors, and the Conservancy and MRCA with respect to other facilities, limited park agency administrative offices are also located at the Park. Further the PWP incorporates the special events that the Commission previously approved, subject to conditions, at Ramirez Canyon Park in CDP No. 4-98-334. Despite the Ramirez residents' attempt to inaccurately portray these events as "commercial leasing," they are merely temporary events and the PWP provides that the net proceeds generated by special events held at Ramirez Canyon Park will "be used to establish and maintain a fund for purposes of funding access and recreational improvements and opportunities

for visitors with diverse abilities, disadvantaged youth, or other underserved groups." (Staff Report, Exh. 10, Malibu LIP Section 3.4.2.D.12.vi.)

The Ramirez residents further erroneously point to provisions of the Public Resources Code relating to State Parks to suggest that park administrative offices and special events are not permissible at Ramirez Canyon Park. (RCPF Letter, p. 3.) First, they state that Public Resources Code section 5019.53 defines permissible uses of State Park lands, and it does not include park administrative offices or special events. That Section deals with new improvements at State Parks, not existing ones, as here, and does not deal with uses undertaken at State Parks. As noted State Parks adaptively uses the facilities that it owns for headquarters or park administrative offices, rather than paying rent or paying for construction of additional facilities to house its essential administrative function. For example, California State Parks Coastal Sector headquarters, that provides office space for the Coastal Sector Superintendent and his staff, including administrative staff, is located in an adaptively reused residence at 40000, 40006, and 40040 Pacific Coast Highway in the City of Malibu. Likewise, the Angeles District Superintendent, who is in charge of California State Park from Antelope Valley to Downtown Los Angeles, including the Santa Monica Mountains, and his entire staff, including administrative, office, and accounting personnel, are located in the adaptively reused Hunter House at Malibu Creek State Park and a specially constructed office facility at Malibu Creek State Park – all within the Coastal Zone. Similarly, the Adamson House at Malibu Lagoon State Beach houses administrative offices. The National Park Service houses administrative offices at Diamond X Ranch (the former Rex Allen Ranch) within the Coastal Zone in the Santa Monica Mountains. It is the consistent practice of every park agency to house their offices with a park setting if that is possible. The same applies to the Conservancy and MRCA. Indeed, to not use these facilities and to spend much more elsewhere to support them (by acquisition, rent, or construction) would necessarily mean less money is available in the budget to undertake acquisitions, programs and management of park properties – the antithesis of wise conservation of public resources, but apparently what the Ramirez residents would prefer.

Second, the Ramirez residents assert that the PWP includes an acknowledgment that the special events are being included for their revenue producing potential, contrary to Public Resources Code section 5080.03(b). (RCPF Letter, p. 3.) First of all, the cited Section is a provision applicable only to the California State Park System, and not to the Santa Monica Mountains Conservancy or the MRCA, entities that are governed by

entirely different statutes, i.e., the Santa Monica Mountains Conservancy Act (Pub. Res. Code Sect. 33000 *et seq.*), the Joint Exercise of Powers Act (Govt. Code Sect. 6500 *et seq..*), and the Recreation and Park District Law (Pub. Res. Code Sect. 5780(a) *et seq.*). Moreover, Section 5080.03(b) states that "[c]oncessions shall not be entered into solely for their revenue generating potential." (Emphasis added.) As noted, the special events here are not proposed solely for their revenue generating potential, but rather, as provided in the certified Overlay and PWP, to assist in funding access and recreational improvements and opportunities for visitors with diverse abilities, advantaged youth, or other underserved groups. Specifically, it should be noted that California State Parks encourages weddings as a park related use that is welcomed and encouraged. (See "Getting married in a California State Park" (http://www.parks, ca.gov/?page id=23428.)

Finally, the Ramirez residents cite City of Lafayette v. East Bay Municipal Utility District (1993) 18 Cal.App.4th 1005, and argue that the scope of public works for recreational facilities should be limited to those components "directly and immediately" used for the public work. (RCPF Letter, p. 2.) The City of Lafayette case is of no help here. There, the utility district proposed to construct administration headquarters and a corporate yard, and claimed an exemption from local land use regulations under a provision exempting "facilities for the production, generation, storage and transmission of water." The court read the exemption narrowly to apply only to facilities *directly and immediately* used to produce, generate, store or transmit water, and held that the support facility proposed there did not fall within the exemption. While exemptions, as address in City of Lafayette, ordinarily are construed narrowly (City of Lafayette, supra, 18 Cal.App.4th at 1017), Section 30114, defining "public works," is not an exemption and the Coastal Act in section 30009 provides that the Act's provisions "shall be liberally construed to accomplish its purposes and objectives." Here, as explained above, Ramirez Canyon Park, viewed in context and in terms of its facilities and the uses permitted by the Overlay and proposed by the PWP, constitutes a "publicly financed recreational facility," and thus meets the definition of a "public work" under the Coastal Act.

Access to Ramirez Canyon Park is Consistent with and Furthered by the Certified Malibu Parks Public Access Enhancement Plan Overlay

The Ramirez residents also erroneously contend that the proposal in the PWP to access Ramirez Canyon Park over private roads violates the City's zoning law, noting that the properties over which those roads pass are zoned rural-residential (RR) and that the

Park is zoned open space (OS). They assert that for the Conservancy to use the roads to access the property for administrative offices or special events, the City's zoning would have to be changed. (RCPF Letter, p. 8.)

The right to access Ramirez Canyon Park via Ramirez Canyon Road, Delaplane, and Via Acero was expressly recognized by the Commission in certifying the LCPA Override. Not only is access over the private roads the sole means of accessing the property, but the Malibu Parks Public Access Enhancement Plan Overlay, certified by the LCPA Override, specifically contemplates access to the Park over those roads for all of the uses permitted in the Overlay, including limited administrative offices and special events. Moreover, Section 3.4.2.C of the Overlay provides that where any policy or standard provided in the overlay conflicts with any other policy or standard in, for example, the City's Zoning Code, the Overlay takes precedence. No change in the underlying zoning is required.

The PWP Properly Proposes to Widen Ramirez Canyon Road Within the 40-Foot Easement Owned by the Conservancy, Consistent With The Certified LCPA Override

The Conservancy owns a 40-foot easement on Ramirez Canyon Road. Consistent with the LCPA Override certified by the Commission, the PWP proposes to remove encroachments from portions of Ramirez Canyon Road within that easement area that do not currently meet the 20-ft roadway width required by the County Fire Department. The Ramirez residents contend that the Conservancy owns only an easement for ingress and egress within a 40-foot strip of land for residential purposes only, and the extent of its right of ingress and egress is defined by the paved portion of the Road.

Apparently turning a blind eye to fire safety intended for their own protection, the Ramirez residents contend that the Commission has no power to authorize either the Conservancy's use of the road or to widen it. (RCPF Letter, p. 7.) This argument is meritless because, although ignored by the residents, the court has already rejected their attempt to block public usage of Ramirez Canyon Road. In Ramirez Canyon Preservation Fund v. Santa Monica Mountains Conservancy, Los Angeles Superior

Court Case No. SC054425 (summary judgment granted to the Conservancy, February 14, 2000), the court ruled that the Fund was not entitled to injunctive relief to block public use of the road, but rather it was limited, if at all, to an action for damages in

inverse condemnation. That decision was not appealed and it is now res judicata and binding on the Ramirez residents.

While the Commission's review of the PWP is not the forum in which to relitigate the issue, the Conservancy and MRCA submit that the proposed use and improvement of Ramirez Canyon Road is in accordance with the Conservancy's rights as an easement holder and with well-established case law. The Conservancy can sue to enforce its easement rights, exercise its right of eminent domain in a worst case scenario, and pursue (as can the Commission) an action under Coastal Act section 30803(a) to address removal of unpermitted development, i.e., the encroachments placed by residents in the easement area without a CDP.

Conclusion

For all these reasons, the arguments that the Ramirez residents purport to raise as legal issues concerning the Public Works Plan have absolutely no merit. Our separate letter will address other aspects of the letter submitted by the residents. It bears emphasis that the PWP before the Commission first underwent a substantial public and environmental review process before the Conservancy and MRCA, and it was modified in many respects to be responsive to the public input provided. As your Staff has concluded, with the Suggested Modification now recommended, the PWP for the Malibu Park Public Access Enhancement Plan is in conformity with the LCPA Override that the Commission certified in June 2009, as required by Public Resources Code section 30605.

Sincerely,

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