

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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DATE: March 30, 2010

TO: Commissioners and Interested Persons

FROM: Jack Ainsworth, Deputy Director
Steve Hudson, District Manager
Barbara Carey, Supervisor, Planning and Regulation
Deanna Christensen, Coastal Program Analyst

SUBJECT: City of Malibu Local Coastal Program Amendment No. MAL-MAJ-2-09-B for Public Hearing and Commission Action at the April 15, 2010 Commission Meeting in Ventura.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu submitted Local Coastal Program Amendment 2-09 on March 23, 2009. The amendment consists of three separate changes to the City's certified LCP: (1) to modify the requirements of the Planned Development (PD) land use and zoning designation to allow for a mix of residential and recreational use instead of commercial visitor-serving use at the "Crummer Trust" property; (2) re-zone property located at 21200 Pacific Coast Highway (known as the "Herzig" property) from Commercial Visitor-Serving to Multi-Family Beachfront; and (3) add water wells as a type of development that may be processed as an administrative coastal development permit. In order to facilitate processing of Component 1 (Crummer Trust) of the amendment request in an expedited manner, the City of Malibu requested that the amendment request be split into Part A and Part B, with Part A processed on its own first and the remaining Components 2 and 3 (Herzig and water wells) of the amendment request be processed together as Part B at a later date. Part A was acted on by the Commission at the February 2010 Commission hearing. ***Therefore, this staff report and recommendation deals only with the remaining portions of the amendment request.***

The City of Malibu is requesting an amendment to change the land use and zoning designation of a property known as 21200 Pacific Coast Highway (APN 4451-001-042) from Commercial Visitor-Serving (CV-1) to Multi-Family Beachfront (MFBF) in the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP). The City of Malibu is also requesting an amendment to the LIP only to add water wells to the list of development that may be processed as an administrative coastal development permit in Section 13.13.1 of the LIP.

The amendment submittal was deemed complete and filed on April 7, 2009. At its June 2009 Commission meeting, the Commission extended the 90-day time limit to act on Local Coastal Program Amendment 2-09 for a period not to exceed one year.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed City of Malibu LCP Amendment MAL-MAJ-2-09 Part B as submitted and **approve** the amendment subject to suggested modifications. The motions to accomplish this are found on Pages 5-7 of this staff report.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu Local Coastal Program, adopted September 2002; Resolution No. 08-77 approving LCPA No. 08-004 (water wells), adopted by the City Council of the City of Malibu November 18, 2008; Ordinance No. 335 approving LCPA No. 08-004 (water wells), adopted by the City Council of the City of Malibu January 26, 2009; Resolution No. 08-67 approving LCPA No. 08-002 (21200 PCH), adopted by the City Council of the City of Malibu December 8, 2008; Ordinance No. 332 approving LCPA No. 08-002 (21200 PCH), adopted by the City Council of the City of Malibu January 12, 2009; CDP No. 4-00-259 (Malibu Beachfront Properties/Ralph Herzig); City of Malibu LCP Amendment No. MAJ-1-06.

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| <p>Additional Information: For further information, please contact Deanna Christensen at the South Central Coast District Office of the Coastal Commission at (805) 585-1800. The proposed amendment to the City of Malibu Local Coastal Program (LCP) is available for review at the Ventura Office of the Coastal Commission or at the City of Malibu Planning Department.</p> |
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EXHIBITS

- Exhibit 1. Proposed LCP Amendment 2-09-B Text Regarding Water Wells**
- Exhibit 2. Proposed LCP Amendment 2-09-B Text Regarding Re-Zone**
- Exhibit 3. City of Malibu Ordinance Nos. 335 and 332 Approving LCP Amendment**
- Exhibit 4. Herzig Property - Location Map**
- Exhibit 5. Herzig Property - Parcel Map**
- Exhibit 6. Herzig Property - Aerial View**
- Exhibit 7. Herzig Property - Locations of Existing Public Access Easements/Deed Restrictions**

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

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

The Coastal Act further provides:

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

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

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

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings on November 18, 2008, December 8, 2008, and January 12, 2009. The hearings were noticed to the public consistent with Sections 13551 and 13552 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. The City Council Resolution for this amendment states that the amendment will take effect after Commission certification. However, in this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (California Code of Regulations, Title 14, Section 13544; Section 13537 by reference). Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City.

II. STAFF MOTIONS, RESOLUTIONS, & RECOMMENDATIONS

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission CERTIFY Amendment MAL-MAJ-2-09-B to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

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

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

The Commission hereby denies certification of Amendment MAL-MAJ-2-09-B to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as submitted does not meet the requirements of and is not in conformity

with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan as submitted.

B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission CERTIFY Amendment MAL-MAJ-2-09-B to the City of Malibu Land Use Plan, if modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED:

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

RESOLUTION TO CERTIFY THE LAND USE PLAN WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Amendment MAL-MAJ-2-09-B to the City of Malibu Land Use Plan if modified as suggested and adopts the findings set forth below on grounds that the land use plan with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan if modified.

C. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED

MOTION I: *I move that the Commission reject the City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-09-B as submitted.*

STAFF RECOMMENDATION OF REJECTION:

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

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

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-09-B and adopts the findings set forth below on grounds that the Implementation Plan Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

D. CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-09-B if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

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

RESOLUTION TO CERTIFY THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment MAL-MAJ-2-09-B if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives and

mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified LCP is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

SUGGESTED MODIFICATION NO. 1

Land Use Plan Map No. 4 shall be revised to reflect that the parcel at 21200 Pacific Coast Highway/APN 4451-001-042 is designated Single Family Residential-Medium (SF-M).

IV. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. The existing language of the certified LCP is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

SUGGESTED MODIFICATION NO. 2

Zoning Map No. 4 shall be revised to reflect that the parcel at 21200 Pacific Coast Highway/APN 4451-001-042 is designated Single Family Residential-Medium (SF-M) Zone.

V. FINDINGS FOR DENIAL OF THE CITY OF MALIBU LCP AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF MALIBU LCP AMENDMENT, IF MODIFIED AS SUGGESTED

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of the certified Malibu LCP. The standard of review that the Commission uses in reviewing the adequacy of the LUP amendment is whether the

LUP amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the IP of the certified LCP, pursuant to Sections 30513 and 30514 of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Malibu LCP.

The following findings support the Commission's approval of the LCP amendment if modified as suggested. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Malibu is requesting an amendment to change the land use and zoning designation of a property known as 21200 Pacific Coast Highway (APN 4451-001-042) from Commercial Visitor-Serving (CV-1) to Multi-Family Beachfront (MFBF) in the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP). The City's proposed amendment request also includes adding water wells to the list of development that may be processed as an administrative coastal development permit in Section 13.13.1 of the LIP portion of its certified LCP.

B. NEW DEVELOPMENT

1. Coastal Act Policies

Section 30222 of the Coastal Act states:

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

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

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

2. Existing LUP Policies

2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation.

On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.

3. Discussion

Land Use and Zone Designation Change

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

As part of the proposed LCP Amendment, the City proposes to change the land use and zoning designation of a beachfront parcel known as 21200 Pacific Coast Highway (APN 4451-001-042) from Commercial Visitor-Serving (CV-1) to Multi-Family Beachfront (MFBF). The subject, approximately 12,750 sq. ft. (0.3 acre) lot is comprised almost entirely of the flood channel of Las Flores Creek and based on historic aerial photographs, has not been developed, with the exception of the partially channelized creek. The City's certified LCP ESHA map does not designate any areas of the site beyond the creek channel itself as ESHA. The portion of Las Flores Creek within the subject parcel is both channelized and highly disturbed and does not support significant riparian habitat. The site is located on the easternmost end of La Costa Beach. Duke's Restaurant is located on the adjacent downcoast parcel. Upcoast is a beachfront condominium complex and a gas station.

In October 2006, as part of Malibu LCP Amendment No. MAJ-1-06, the Commission had approved re-zoning the adjacent parcel to the north of the subject parcel (21202 Pacific Coast Highway/APN 4451-001-041) from Commercial Visitor-Serving (CV-1) to Multi-Family Beachfront (MFBF). In the subject LCP Amendment submittal, the City has stated that the subject lot, held in common ownership with the adjacent lot that was re-zoned in 2006, was inadvertently left out of that previous zone change request. The City has stated that the proposed LUP/Zoning Map change is intended to correct that oversight.

The subject lot, as well as the adjacent lot under common ownership, had been designated for visitor serving use in the certified 1987 Los Angeles County Malibu/Santa Monica Mountains Land Use Plan. The adjacent lot, now vacant, had once supported a restaurant facility. However, the restaurant was abandoned in 1978 and was destroyed in a wildfire in 1993. The lot has been vacant since. The Commission designated both lots as CV-1 in the adopted Malibu Local Coastal Program, based on the previous LUP designation of the sites, and in recognition of the higher priority accorded to visitor-

servicing commercial uses by the policies of the Coastal Act, particularly on beachfronting sites such as this. However, in approving LCP Amendment No. MAJ-1-06 in 2006, the Commission found that multi-family residential development was a more appropriate land use designation for the adjacent 17,820 sq. ft. (0.4 acre) lot given unique site constraints that had not made commercial development viable. As such, the Commission approved re-zoning that parcel from Commercial Visitor-Serving (CV-1) to Multi-Family Beachfront (MFBF). Although adjacent and under common ownership, the subject lot was not considered by the Commission in that previous zone change request and approval.

On August 12, 1998, the applicant applied for and received approval from the City of Malibu for a Conditional Certificate of Compliance, which recognized the subject lot in the flood channel as a separate legal lot. The City imposed a condition on the Certificate of Compliance requiring the applicant to construct flood control improvements within the stream channel that would alleviate flooding of upstream parcels the City had acquired. At that time, the issuance of the Certificate of Compliance enabled the applicant to demonstrate "lot legality" for that parcel as a separate parcel, and then apply for the approval of a lot line adjustment between the two lots that would increase the size of the creek parcel and decrease the area of the other lot. Based on the way the approvable number of multi-family units is calculated in the MFBF zone, such a lot line adjustment would have resulted in allowing the maximum of four units for each parcel, or eight multi-family units. This would have resulted in an increase in the density of residential units the applicant could potentially construct on the two lots, because there is very little if any developable area on the creek parcel.

"Conditional" Certificates of Compliance typically indicate that the parcel was not created in compliance with the applicable laws in effect at the time of creation. However, Commission staff has researched the issue of lot legality further, and it appears that the two lots have been separate parcels since at least 1955, even though they have been in common ownership most, if not all, of that time. Staff has not had access to a full chain of title for the properties, but based on limited information, it appears the subject parcel was created in conformance with the laws at the time and therefore, the lot is legal.

In 2000, following the City's approval, the property owner of the subject lot and adjacent lot applied for a coastal development permit from the Coastal Commission for redivision of the two lots and construction of eight residential condominium units totaling 19,000 square feet (CDP No. 4-00-259). On August 10, 2001 the Commission denied the redivision and residential development, finding that the project was not consistent with the hazard, shoreline protection, public access, ESHA, visual resource, water quality, and cumulative impact policies of Chapter 3 of the Coastal Act. The major issues raised by that development proposal was that the development was not adequately set back from the mean high tide line and the recorded lateral public access easement, that the vertical public access easement would be adversely impacted without an alternative provided, that proposed creek channel improvements adjacent to the sea would adversely impact shoreline processes, and the proposed privacy wall would obstruct coastal views.

The two lots are physically constrained by the Las Flores Creek corridor, the ocean, Pacific Coast Highway, an existing vertical access easement, a vertical access deed restriction, lateral access easement, and lateral access deed restriction on the parcels that limit the developable area of the lots. The Coastal Conservancy holds an unimproved 10 ft. wide vertical access easement along Las Flores Creek on the subject lot, and a 25 ft. wide lateral public access easement (plus a 5 ft. privacy buffer) ambulatory with the movement of the Mean High Tide Line that traverses the beachfront side of both lots. Both easements have been shown in publicly recorded documents since 1982. With these constraints, the Commission found that the subject 12,750 sq. ft. parcel appeared to contain less than 2,500 sq. ft. of net developable area.

Both Coastal Act Section 30222 and LUP Policy 2.33 require that the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential use. In consideration of the site constraints discussed above, in conjunction with the parcel's history of remaining vacant and being held in common ownership with the adjacent, recently residentially-zoned parcel, it does not appear that a viable visitor serving use could be developed on the creek parcel alone. As such, the existing land use/zoning designation of visitor-serving commercial is no longer a suitable land use for this site. In this case, given the pattern of development along the subject stretch of the coast (mix of commercial and residential development) and the fact that at the time the applicant purchased the parcel the County's certified Land Use Plan did not designate the vegetation on the site as an environmentally sensitive habitat area (ESHA), the property owner had reason to believe that he had purchased a parcel on which it would be possible to build a development of reasonable economic use. Additionally, the lot is a legal parcel and the Commission had previously found that residential use of the site could be appropriate in its action on CDP Application No. 4-00-259, even though the applicant's proposed residential project was not consistent with the policies of the Coastal Act (this project was considered prior to certification of the Malibu LCP).

In this case, other potential land use designations that would provide priority public opportunities for coastal recreation, such as a Public Open Space or Commercial Recreation, are not feasible and would deprive the property of all reasonable economic use. There is currently no offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no suitable or viable alternative use for the site other than residential development.

However, the density of development proposed by the City is not appropriate given the factors affecting the site. The subject parcel is substantially smaller in size and more constrained than the adjacent upcoast parcel that the Commission approved re-zoning to a multi-family residential beachfront designation in 2006. The parcel is approximately 12,750 sq. ft. (0.3 acre) in size and is comprised almost entirely of the flood channel of Las Flores Creek. Although the creek is partially channelized, highly disturbed, and does not support significant riparian habitat, a multi-family residential use that is currently proposed is not appropriate given the parcel's small size and physical

constraints. Additionally, there is a vertical public access easement and vertical public access deed restriction crossing the site from north to south, as well as a lateral public access easement and deed restriction along the beach side of the parcel. As noted above, the Commission has previously found that there is only approximately 2,500 sq. ft. of the parcel that that applicant could even develop, given the stream channel and access easements.

The Multi-Family Beachfront Zone of the certified LCP allows for a density of one unit per 1,885 sq. ft. of lot area, not to exceed 4 units. The LCP definition of “lot area” is: “the total area within the lot lines of a lot, excluding any street rights of way”. So, although there are portions of the subject site that could not be developed, these areas would not be excluded from the total area for the purposes of determining maximum allowable density. Theoretically, the subject approximately 12,750 sq. ft. parcel would allow for up to 4 residential units, without consideration of other LCP policies and provisions. The maximum density cannot be allowed if to do so would result in significant adverse impacts to coastal resources. The proposed high density residential use on this beachfront parcel raises issue with regard to adverse impacts related to ESHA, visual/scenic resources, traffic and parking/public access, flood and storm wave hazards, sea level rise, and onsite wastewater treatment. So, it is likely in any case that application of the applicable LCP policies would result in fewer than the maximum four units being approved for the subject site. Nonetheless, applying a multi-family zone on the subject creekbed parcel would provide an unreasonable expectation that four units could be approved on the parcel. Clearly four units would not be consistent with the applicable LCP policies and provisions.

As such, this proposed change from Commercial Visitor-Serving to Multi-family Beachfront on the Land Use map for the subject parcel cannot be found consistent with the policies of the Coastal Act, and the change to the LIP Zoning Map for the subject parcel does not conform with the policies of the LUP.

The lowest density residential land use designation and zone that could be applied to the parcel would be “Single Family-Medium”, which allows one residence per lot with a minimum lot area of 0.25-acre. The subject site could only physically be developed with one residence at most. As such, it is more appropriate to match the land use designation and zone category to the physical constraints of the parcel. Additionally, a residential use designation similar to, but of a lower density, that of the adjacent upcoast parcel under common ownership will allow the opportunity for a collective future development proposal across the two parcels in which the development can be designed to minimize impacts to coastal resources and the two lots can be merged. Low density residential development on the subject parcel would ensure impacts to visual resources, public access, water quality, ESHA, and shoreline processes are minimized, and would allow the clustering of development within or near an area able to accommodate it, consistent with Section 30250 of the Coastal Act, which is also incorporated as a policy into the Malibu LCP. For the reasons stated above, the Commission finds that a residential use designation of the lowest possible allowable density is most appropriate for the subject parcel. As such, the Commission finds it

necessary to require the City to revise both the Land Use map and LIP Zoning Map to reflect that the parcel at 21200 Pacific Coast Highway/APN 4451-001-042 is re-designated Single Family Residential-Medium (SF-M). This is detailed in **Suggested Modification Nos. 1 and 2.**

The Commission finds that only as modified will the LCP Amendment be consistent with the policies of the Coastal Act, and in conformity with and adequate to carry out the policies of the certified Land Use Plan.

C. GENERAL LCP ADMINISTRATION AND CDP PERMITTING

The City's proposed amendment request includes a change that relates specifically to the processing of coastal development permits, as set forth in Chapter 13 of the LIP (Coastal Development Permits), particularly administrative permits.

Administrative Permits

The amendment proposes to add a category of development, "water wells", to the list of coastal development permits that can be processed as an Administrative Permit (LIP Section 13.13.1), as long as the development is located outside of the Coastal Commission's retained or appeals jurisdiction. Obviously, development located within the Commission's retained jurisdiction would require a coastal development from the Commission. In the case of development in the appeals jurisdiction, coastal development permits that are appealable must only be acted upon by the City after a public hearing. Therefore, appealable development cannot receive an administrative permit because there would be no public hearing. The existing categories are:

- a. Improvements to any existing structure;
- b. Any single-family dwelling;
- c. Lot mergers;
- d. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land.

By adding water wells to this list, all of the policies and provisions of the LCP will still be applied to water well development, only the permit process will be altered in locations that are outside the Commission's retained or appeals jurisdiction in order to allow for an expedited permit process. As such, adding water wells to the categories found in Section 13.13.1 is consistent with other provisions of the LIP and will be in conformance with and adequate to carry out the policies of the LUP.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

California Public Resources Code (PRC) Section 21080.9 – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their activities and

approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the Natural Resources Agency found the Commission's LCP review and approval program to be functionally equivalent to the EIR process, see 14 C.C.R. § 15251(f), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for each LCP. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (see 14 C.C.R. §§ 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC section 21080.5(d)(2)(A). That section requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Land Use Plan amendment has been found not to be in conformance with the Chapter 3 policies of the Coastal Act. The Implementation Plan amendment has been found not to be in conformance with, or adequate to carry out, the provisions of the Land Use Plan portion of the certified LCP. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. Without incorporation of the suggested modifications, the Land Use Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Chapter 3 policies of the Coastal Act. Without incorporation of the suggested modifications, the Implementation Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Land Use Plan. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

RECEIVED
MAR 23 2009
SOUTH CENTRAL CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

January 26, 2009

LCPA No. 08-004

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

1. Local Implementation Plan

Chapter 13 (Coastal Development Permits) Section 13 (Administrative Permits) No. 1 (Applicability) is hereby amended as follows:

Section 13.13.1 Applicability

A. The Planning Manager may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the California Coastal Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).

- a. Improvements to any existing structure;
- b. Any single-family dwelling;
- c. Lot mergers;
- d. Any development of four dwelling units or less that does not require demolition, and any other development not in excess of \$100,000 other than any division of land;
- e. Water wells.

| |
|---|
| Exhibit 1 |
| Malibu LCPA 2-09-B |
| City of Malibu LCPA Text Regarding Water Wells, dated 1/26/09 |

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

January 12, 2009

LCPA No. 08-002

Land Use Plan / Local Implementation Plan

Land Use Plan Map No. 4 and Zoning Map No. 4 are hereby amended as follows:

RECEIVED
MAR 29 2009
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

| Address | Current Land Use / Zoning | Proposed land Use / Zoning |
|-----------------------------|----------------------------------|-----------------------------------|
| 21200 Pacific Coast Highway | Commercial Visitor Serving-1 | Multi Family Beach Front |

| |
|----------------------------|
| Exhibit 2 |
| Malibu LCPA 2-09-B |
| City of Malibu LCPA |
| Text Regarding Re- |
| zone, dated 1/26/09 |

RECEIVED
MAR 23 2009
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ORDINANCE NO. 335

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU ADOPTING AN AMENDMENT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SECTION 13.13.1(A) TO ADD WATER WELLS TO THE LIST OF APPLICATIONS WHICH MAY BE PROCESSED AS AN ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT

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

Section 1. Recitals.

- A. On October 27, 2008, the City Council initiated Local Coastal Program Amendment (LCPA) No. 08-004 and directed staff to present the amendment to the Planning Commission.
- B. On November 6, 2008, pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Chapter 19, a Notice of Planning Commission Public Hearing and Notice of Availability for Local Coastal Program Documents was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.
- C. On November 18, 2008, the Planning Commission held a duly noticed public hearing at which time the Planning Commission reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.
- D. On December 18, 2008, pursuant to LIP Chapter 19, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.
- F. On January 12, 2009, the City Council held a duly noticed public hearing to consider the application, the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendation of the Planning Commission.

Section 2. Environmental Review.

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of a LCP amendment. This application is for the amendment of the LCP, which must be certified by the California Coastal Commission before it takes effect.

Section 3. Local Coastal Program Amendment No. 08-004.

A. Local Coastal Program Amendment No. 08-004 includes amendments to the certified LCP. Section 4 of this Ordinance sets forth the City Council's conclusions with respect to the required findings set forth in LIP Section 19.6 pertaining to amendments to the LCP. The amendment to the LIP is as follows:

- Amend LIP Section 13.13.1(A) to add Subsection e
- e. water wells

| |
|---|
| Exhibit 3 |
| Malibu LCPA 2-09-B |
| City of Malibu Ordinance No. 335 and 332 Approving LCP Amendment |

Section 4. Local Coastal Program Amendment Findings.

Pursuant to LIP Section 19.6, the City Council hereby finds as follows:

A. Based on the evidence in the whole record, the City Council hereby finds that the proposed amendment meets the requirements of, and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act.

B. The amendment to the Local Coastal Program meets the requirements of, and is in conformance with the goals, objectives and purposes of the LCP as identified in said document.

Section 5. Approval of Amendment to the Certified Local Coastal Program Local Implementation Plan.

Subject to the contingency set forth in Section 7, the City Council hereby adopts that portion of LCPA No. 08-004 amending LIP Section 13.13.1(A).

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 08-004 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. seq.

Section 7. Effectiveness.

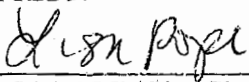
The LCP amendment approved in this ordinance shall become effective only upon certification by the California Coastal Commission.

Section 8. Certification.

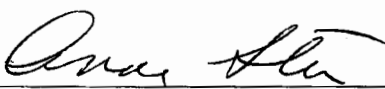
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 26th day of January, 2009.

ATTEST:

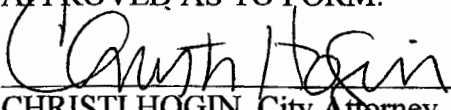


LISA POPE, City Clerk
(seal)



ANDREW STERN, Mayor

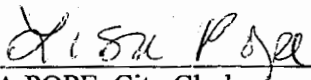
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 335 was passed and adopted at the regular City Council meeting of January 26, 2009, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, Sibert, Wagner, Barovsky, Stern
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)

ORDINANCE NO. 332

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU ADOPTING LOCAL COASTAL PROGRAM AMENDMENT NO. 08-002 AMENDING THE CERTIFIED MALIBU LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN ZONING MAP TO CORRECT A DISCREPANCY BETWEEN THE CITY OF MALIBU GENERAL PLAN AND ZONING MAPS AND THE LOCAL COASTAL PROGRAM, CHANGING THE DESIGNATION FROM COMMERCIAL VISITOR SERVING-1 TO MULTI-FAMILY BEACHFRONT FOR THE PROPERTY LOCATED AT 21200 PACIFIC COAST HIGHWAY (MALIBU BEACHFRONT PROPERTIES, LLC)

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

Section 1. Recitals.

A. The history of this Local Coastal Program Amendment (LCPA) is set forth in the recitals of Resolution No. 08-67, in which the City Council approved an amendment to the LCP Land Use Plan Land Use Map, subject to certification by the California Coastal Commission (CCC).

B. On December 8, 2008, the City Council held a duly noticed public hearing to consider the application, the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission.

Section 2. Environmental Review.

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of a Local Coastal Program. This application is for the amendment of the LCP, which must be certified by the CCC before it takes effect.

Section 3. Local Coastal Program Amendment No. 08-002.

LCPA No. 08-002 includes an amendment to the certified LCP. Section 4 of this ordinance sets forth the City Council's conclusions with respect to the required findings set forth in LIP Section 19.6 pertaining to amendments to the LCP. This amendment amends the LCP Local Implementation Plan (LIP) Zoning Map to change the designation for the parcel known as APN 4451-001-041, addressed as 21200 Pacific Coast Highway, from CV-1 to MFBF. Changes to the LCP Land Use Plan Land Use Map are identified in City Council Resolution No. 08-67.

Section 4. Local Coastal Program Amendment Findings.

Pursuant to LIP Section 19.6, the City Council hereby finds as follows:

A. The proposed LCPA meets the requirements of, and is conformance with, the policies and requirements of Chapter 3 of the California Coastal Act to the extent necessary to achieve the basic State goals specified in Public Resources Code Section 30001. The City Council has considered the requirements of other applicable policies of Chapter 3 of the Coastal Act, including public access, recreation, land and marine resources, and scenic and visual quality. The City Council has analyzed the amendment and found that it will not have significant cumulative impacts on coastal resources, as required by Section 30250 of the Coastal Act, and that the use is appropriate in location, density and intensity. The LCPA is consistent with the policies contained in the Coastal Act.

B. The proposed LCPA meets the requirements of, and is in conformance with, the goals, objectives and purposes of the LCP as identified in LCP Land Use Plan Chapter 1.D and LIP Section 1.2. The LCPA only affects the LCP Land Use and Zoning Maps; it does not modify LCP policies or standards, and thus does not have an anticipated impact on other sections of the LCP.

Section 5. Approval of Amendment to the Certified Local Coastal Program Zoning Map.

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 08-002 amending the LCP LIP Zoning Map.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 08-002 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulation, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations Section 13551, et. seq.

Section 7. Effectiveness.

The LCP amendment approved in this ordinance shall become effective only upon certification by the CCC of this amendment to the LCP.

Section 8. Certification.

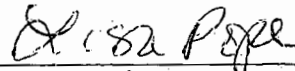
The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this 12th day of January, 2009.



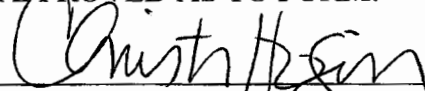
PAMELA CONLEY ULICH, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

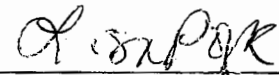
APPROVED AS TO FORM:



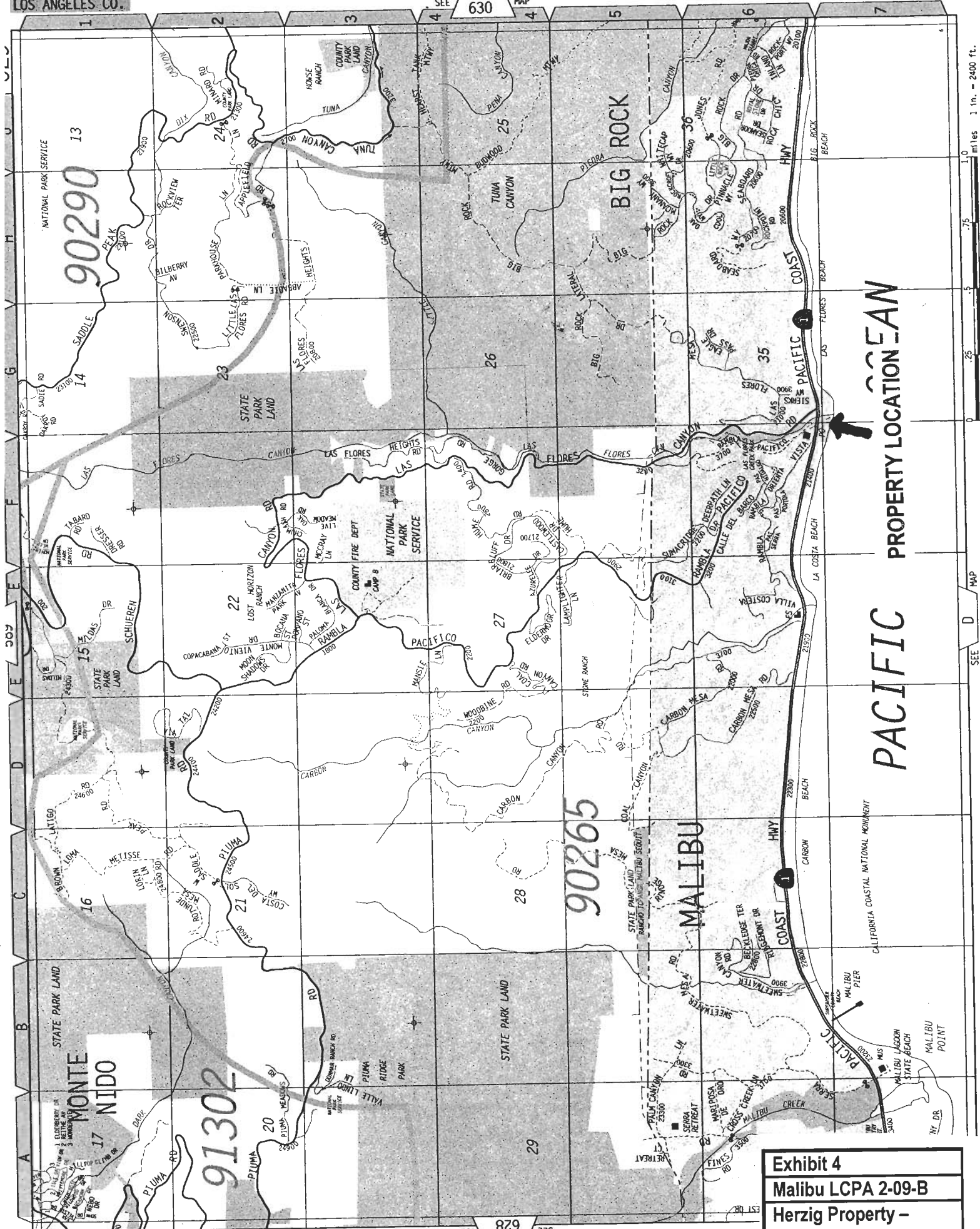
CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 332 was passed and adopted at the regular City Council meeting of January 12, 2009, by the following vote:

| | | | |
|----------|---|-----------------|---|
| AYES: | 5 | Councilmembers: | Sibert, Wagner, Barovsky, Stern, Conley Ulich |
| NOES: | 0 | | |
| ABSTAIN: | 0 | | |
| ABSENT: | 0 | | |



LISA POPE, City Clerk
(seal)



0 .25 .5 1.0 miles 1 in. = 2400 ft.

SEE D MAP

PACIFIC OCEAN
PROPERTY LOCATION
PACIFIC

Exhibit 4
Malibu LCPA 2-09-B
Herzig Property -
Location Map

1451 | SHEET 1 |
 SCALE 1" = 100'

1999

4622010,05501,35
 9902270,00000,25
 19990220,07000,002,35

| | | | |
|---|-----------------|-------------------------|---------|
| The assessment of units in the following Condominium Plan O.R. M's includes all rights and interests in the common areas as set forth in deeds of record. | | | |
| Condominium O.R. | Common Area | Subdivision of Airspace | Sheet 2 |
| MU421-977 | Tract No. 27916 | Lot No. | |

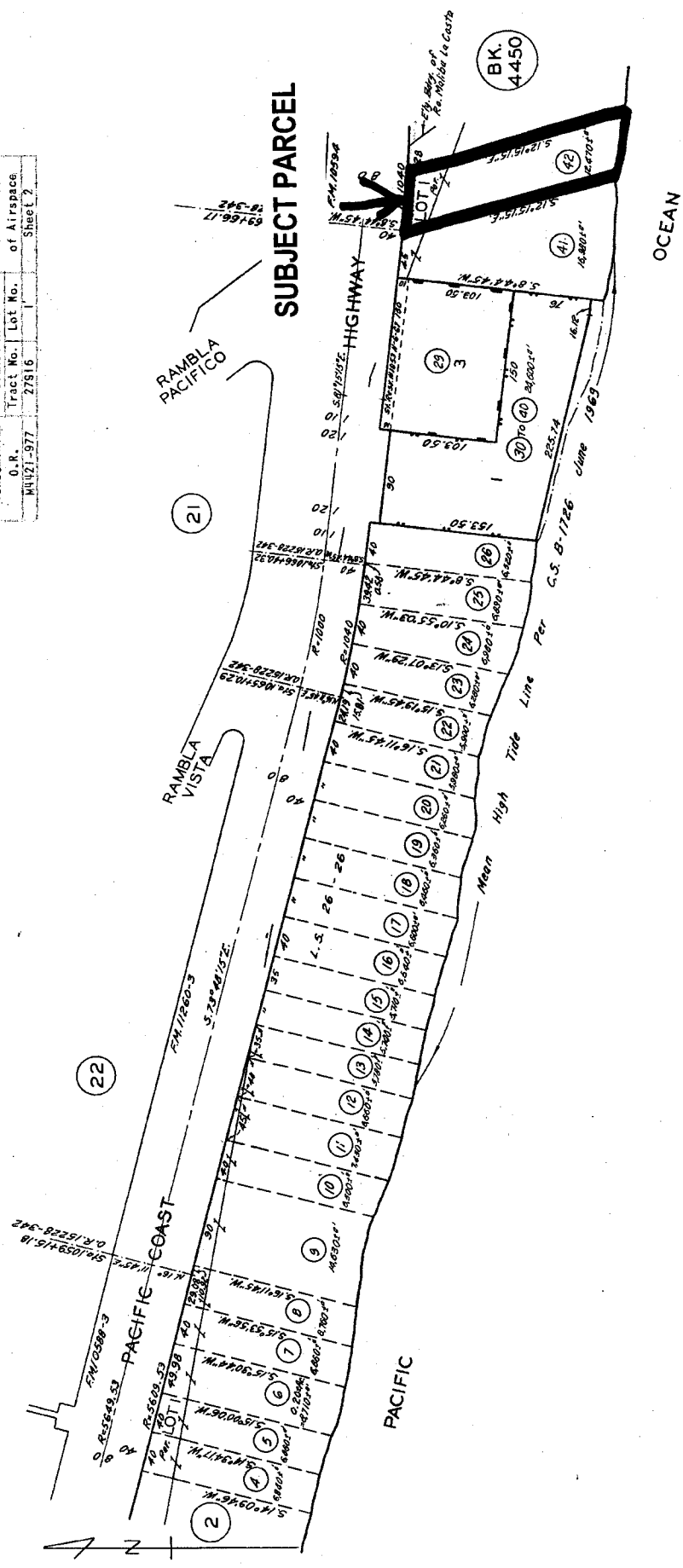


Exhibit 5
Malibu LCPA 2-09-B
Herzig Property -
Parcel Map

LAND OF MATTHEW KELLER IN THE RANCHO
 TOPANGA MALIBU SEQUIT R.F. 534

CONDOMINIUM TRACT NO. 27916 .. M.B. 630-23-24

PARCEL MAP - - - P.M. 22-74

EV. ASSMT SEE:
 48.35

ASSESSOR'S MAP
 COUNTY OF LOS ANGELES, CALIF.

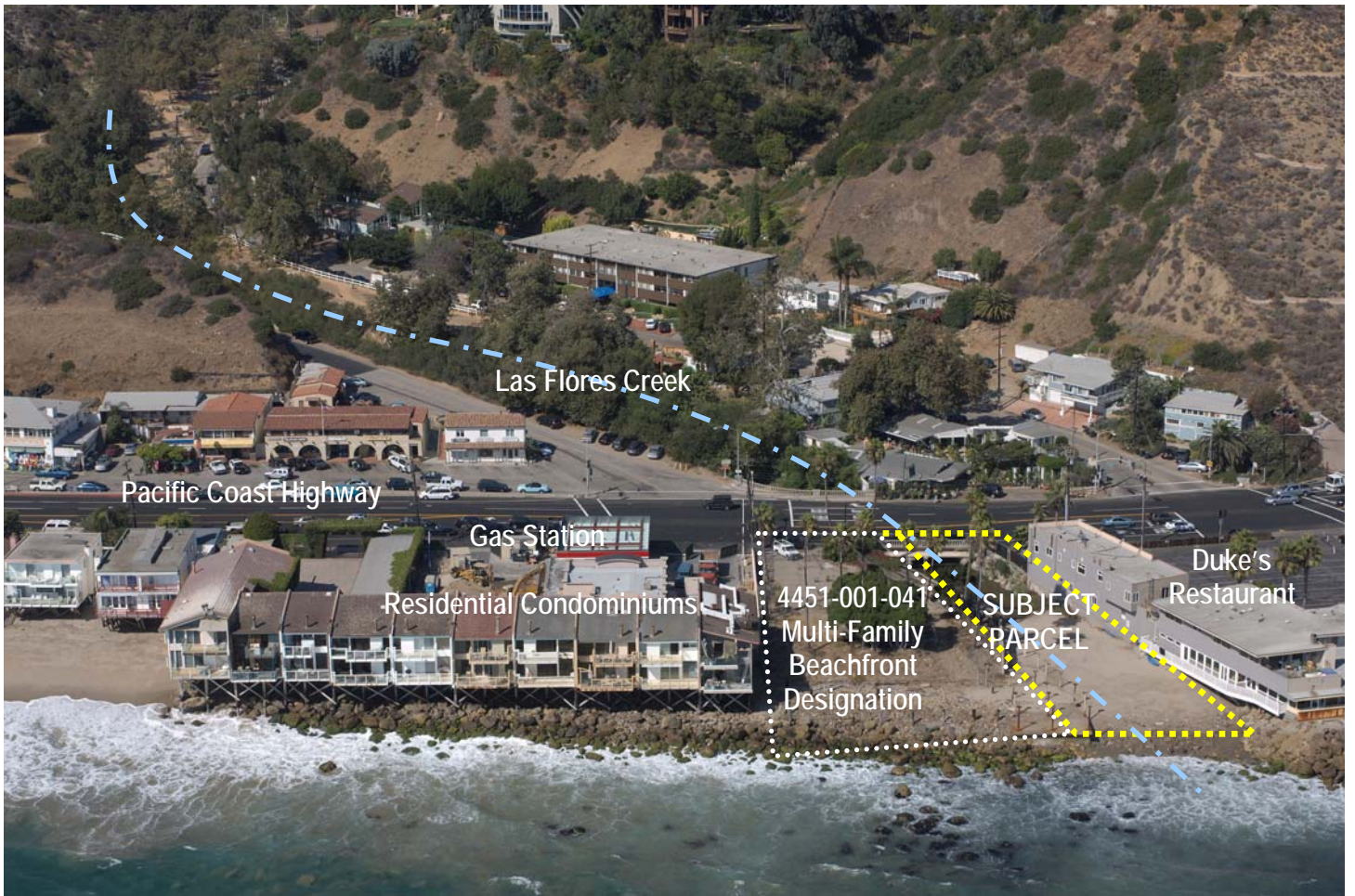


Exhibit 6
Malibu LCPA 2-09-B
Herzig Property - Aerial
View

