

**CALIFORNIA COASTAL COMMISSION**

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

# Th 14a



**DATE:** March 24, 2011

**TO:** Commissioners and Interested Parties

**FROM:** Peter Douglas, Executive Director  
John Ainsworth, Deputy Director  
Deanna Christensen, Coastal Program Analyst

**SUBJECT: City of Malibu LCP Amendment No. 3-09 (Transfer Development Credit Program):** Executive Director's determination that action by the City of Malibu, acknowledging receipt, acceptance, and agreement with the Commission's certification with suggested modifications, is legally adequate. This determination will be reported to the Commission at the April 14, 2011 meeting in Santa Barbara.

On November 29, 2010, the Commission approved Local Coastal Program Amendment No. 3-09 with suggested modifications. The subject amendment consists of changes to the Transfer of Development Credit (TDC) provisions to give parties seeking TDC credits two additional options for completing the process.

On January 24, 2011, the City Council adopted Resolution Nos. 11-05 (attached) acknowledging receipt of the Commission's certification of LCP Amendment No. 3-09 and accepting and agreeing to all modifications suggested by the Commission. On February 14, 2011, the City Council adopted Ordinance No. 355 (attached) acknowledging receipt of the Commission's certification of LCP Amendment No. 3-09 and accepting and agreeing to all modifications suggested by the Commission. The documents were transmitted to Commission staff on February 24, 2011.

Pursuant to Section 13544 of the California Code of Regulations, Title 14, Division 5.5, the Executive Director must determine that the action taken by the City of Malibu acknowledging receipt and acceptance of, and agreement with the Commission's certification of the above referenced LCP amendment with suggested modifications is legally adequate and report that determination to the Commission. The certification shall become effective unless a majority of the Commissioners present object to the Executive Director's determination.

I have reviewed the City's acknowledgement and acceptance of, and agreement with the terms and suggested modifications of LCP Amendment 3-09, as certified by the Commission on November 29, 2010, as contained in the adopted Resolution of January 24, 2011 and Ordinance of February 14, 2011 and find that the City's action and notification procedures for appealable development are legally adequate to satisfy the terms and requirements of the Commission's certification. I therefore recommend that the Commission concur in this determination.

RESOLUTION NO. 11-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ACKNOWLEDGING RECEIPT OF THE CALIFORNIA COASTAL COMMISSION'S CONDITIONAL CERTIFICATION OF MAL-MAJ-3-09 (LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002) AND APPROVING THE RE-ADOPTION OF LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002 CONSISTENT WITH THE COMMISSION'S SUGGESTED MODIFICATIONS (TRANSFER OF DEVELOPMENT CREDITS)

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

Section 1. Recitals.

A. On March 23, 2009, the City Council adopted Resolution No. 09-20 initiating Local Coastal Program Amendment (LCPA) No. 09-002 and directed staff to present the amendments to the Planning Commission.

B. On April 30, 2009, a 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 amendments; local libraries and media; and the California Coastal Commission.

C. On May 7, 2009, a Notice of Planning Commission 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 amendments; local libraries and media; and the California Coastal Commission (CCC) indicating that the Planning Commission would hold a public hearing on May 19, 2009 to consider amendments to the Local Coastal Program (LCP).

D. On May 19, 2009, the Planning Commission held a duly noticed public hearing on LCPA No. 09-002, reviewed and considered written reports, public testimony, and other information and adopted Planning Commission Resolution No. 09-33 recommending that the City Council approve the proposed amendments.

E. On July 30, 2009, 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 amendments; local libraries and media; the CCC indicating that the City Council would hold a public hearing on August 10, 2009 to consider amendments to the LCP.

F. On August 10, 2009, the City Council held a duly noticed public hearing on the subject application, reviewed and considered written reports, public testimony, and related information and 1) adopted Resolution No. 09-49; 2) introduced on first reading of Ordinance No. 340, and 3) directed staff to schedule second reading and adoption of Ordinance No. 340 for the September 14, 2009 City Council meeting.

G. On September 14, 2009, the City Council adopted Ordinance No. 340, adopting an amendment of the Malibu LCP Local Implementation Plan (LIP) and directing staff to submit LCPA No. 09-002 to the CCC for certification.

H. On September 21, 2009, the LCPA was submitted to the CCC. On October 5, 2009, the submittal, identified by the CCC as MAL-MAJ-3-09 (Transfer of Development Credits), was reviewed by Commission staff and determined to be complete.

I. At the December 9, 2009 CCC hearing, the Commission extended the deadline to act on MAL-MAJ-3-09 for a period of one year.

J. On November 18, 2010, the CCC conditionally certified MAL-MAJ-3-09 (LCPA No. 09-002) subject to modifications as set forth in the Resolution of Certification adopted by the CCC on November 18, 2010. The modifications are non-substantive in nature and within the scope of the previously approved amendment.

K. On December 1, 2010, the City received said Resolution of Certification.

L. On January 13, 2011, a one-quarter page public hearing notice for a City Council meeting to be held on January 24, 2011 was published in a newspaper of general circulation within the City and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; and the California Coastal Commission.

M. On January 24, 2011, the City Council held a duly noticed public hearing.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above. The City Council has found that the subject amendment does not signify any new or different development. There is no possibility that the proposed Local Coastal Program Amendment may have significant impact on the environment. As such, if not already statutorily exempt, the provisions contained herein are categorically exempt under the common sense rule that CEQA only applies where the action may have a significant effect on the environment. See 14 Cal. Code Regs. § 15061(b)(3).

Section 3. Re-adoption of Local Coastal Program Amendment No. 09-002 As Modified by the California Coastal Commission.

Consistent with the CCC's November 18, 2010 conditional certification of MAL-MAJ-3-09 (LCPA No. 09-002), Land Use Plan Chapter 5 (Land Use Development) LUP Policies 5.29 and 5.30 are amended to read as follows:

5.29 Any coastal development permit for a parcel map, tract map, or certificate of compliance (pursuant to Policy 5.42 or 5.43) that would result in the creation of

additional lots or for a multi-family use resulting in the development of more than one unit per existing lot in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development rights on an undeveloped buildable parcel(s). That condition shall state that it must be satisfied prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired through: A) the recordation of a document dedicating an open space easement over the entire parcel to a public entity and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired, or B) the recordation of an open space deed restriction over the entirety of the parcel(s) to be retired and evidence that fee title to that retired lot(s) has been transferred to a public entity.

5.30 The City shall coordinate with the County of Los Angeles to ensure that lots retired through the TDC program are restricted and either merged with an adjacent developed or buildable parcel(s) or transferred in fee title to a public entity, and that such actions are accurately reflected in the records of the County Tax Assessor.

Section 4. Findings.

A. Pursuant to the CCC's Administrative Regulations Section 13544.5:

- 1) The City Council acknowledges receipt of the CCC's modifications to LCPA No. 09-002 as set forth in its conditional certification of MAL-MAJ-3-09;
- 2) The City Council accepts and agrees to the modified language conditionally certified by the CCC and approves the revisions to LCPA No. 09-002 without further changes; and
- 3) The City of Malibu agrees to issue coastal development permits for the total area included in the certified LCP.

B. The City Council hereby incorporates the administrative record of the CCC's proceedings in connection with MAL-MAJ-3-09 as further support for the findings and conclusions herein.

C. The City Council finds that the amendment to the LCP Land Use Plan Map meets the requirements of, and is in 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.

D. Any amendments to the LCP Land Use Plan authorized by Resolution No. 09-49 are superseded by the amendment set forth in Section 3 of this Resolution.

Section 5. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this Resolution to the Commission per Title 14, California Code of Regulations Section 134544.5(a).

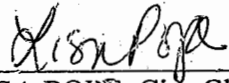
Section 6. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 24th day of January, 2011.

  
\_\_\_\_\_  
JOHN W. SIBERT, Mayor

ATTEST:

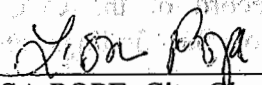
  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for CHRISTOPHOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 11-05 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 24<sup>th</sup> day of January, 2011, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, La Monte, Wagner, Rosenthal, Sibert  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

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

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ORDINANCE NO. 355

AN ORDINANCE OF THE CITY OF MALIBU ADOPTING REVISIONS TO LOCAL COASTAL PROGRAM AMENDMENT NO. 09-002 AND INCORPORATING THE COASTAL COMMISSION SUGGESTED MODIFICATIONS TO INCLUDE AMENDMENTS TO LOCAL IMPLEMENTATION PLAN SECTION 7.8.3 TO MEET LEGAL REQUIREMENTS FOR PUBLIC ENTITIES ACCEPTING EASEMENTS AND TO CLARIFY THE PROCESS FOR DONOR CREDITS (TRANSFER OF DEVELOPMENT CREDITS)

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

Section 1. Recitals.

- A. The history of this Local Coastal Program (LCP) amendment is set forth in the recitals of Resolution No. 11-05 in which the City Council approved Local Coastal Program Amendment (LCPA) No. 09-002 (Transfer of Development Credit), subject to conditional certification by the California Coastal Commission (CCC).
- B. On September 14, 2009, the City Council adopted Ordinance No. 340, adopting an amendment of the Malibu LCP Local Implementation Program (LIP) and directing staff to submit LCPA No. 09-002 to the CCC for certification.
- C. On September 21, 2009, the LCPA was submitted to the CCC. On October 5, 2009, the submittal, identified by the CCC as MAL-MAJ-3-09 (Transfer of Development Credits), was reviewed by Commission staff and determined to be complete.
- D. At the December 9, 2009 CCC hearing, the Commission extended the deadline to act on MAL-MAJ-3-09 for a period of one year.
- E. On November 18, 2010, the CCC conditionally certified MAL-MAJ-3-09 (LCPA No. 09-002) subject to modifications as set forth in the Resolution of Certification adopted by the CCC on November 18, 2010. The modifications are non-substantive in nature and within the scope of the previously approved amendment.
- F. On December 1, 2010, the City received said Resolution of Certification.
- G. On January 14, 2011, a one-quarter page public hearing notice for a City Council meeting to be held on January 24, 2011 was published in a newspaper of general circulation within the City and was mailed to all interested parties; regional, state and federal agencies affected by the amendments; local libraries and media; and the California Coastal Commission.

H. On January 24, 2011, the City Council held a duly noticed public hearing and adopted Resolution No. 10-49 acknowledging receipt of the CCC's modifications to the LCP amendment and adopting revisions to the LCP Land Use Plan Land Use Map.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above. The City Council has found that the subject amendment does not signify any new or different development. There is no possibility that the proposed Local Coastal Program Amendment may have significant impact on the environment. As such, if not already statutorily exempt, the provisions contained herein are categorically exempt under the common sense rule that CEQA only applies where the action may have a significant effect on the environment. See 14 Cal. Code Regs. § 15061(b)(3).

Section 3. Local Coastal Program Local Implementation Plan Amendments.

Consistent with the CCC's November 18, 2010 conditional certification of MAL-MAJ-3-09 (LCPA No. 09-002), the Local Implementation Plan is hereby amended as follows:

- A. LIP Section 7.8.3 (Donor Credits Implemented) is hereby amended to read as follows:

The right to a TDC credit shall be granted by the Planning Manager's determination that the TDC conditions of development on a coastal development permit have been met prior to the issuance of the permit by submittal of evidence that all of the following steps have been completed for either one of the following two methods. Subsequent to completion of either one of the following two methods, the City shall provide the Executive Director of the Coastal Commission with copies of the required recorded documents to ensure coordination within the region-wide TDC program.

- A. Open space easement dedication and the merging or recombination of the retired lot(s) with one or more adjacent developed or buildable parcel(s).

1. Evidence of the purchase of development rights on one or more donor sites that have not been previously retired through the City's or Coastal Commission's TDC program (herein the terms "donor site" and "retired lot" are used interchangeably) and recordation with the Los Angeles County Recorder of a valid dedication to a public entity of a permanent, irrevocable open space easement in favor of the People of the State of California over the entirety of the retired lot(s) that conveys an interest in the lot(s) that insures that future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents). Recordation of said easement on the donor site shall be permanent; and

2. Evidence of recordation with the Los Angeles County Recorder of a voluntary merger or of a deed restriction reflecting that the retired lots used to generate the credit(s) are combined with one or more adjacent lot(s) through a process outlined in section 7.8.4 of the Malibu LIP, where one of the combined lots has no recorded restrictions on its development rights.

B. Open space deed restriction and transfer in fee title to a public entity.

1. Evidence of the purchase of development rights on one or more donor sites that have not been previously retired through the City's or Coastal Commission's TDC program and recordation with the Los Angeles County Recorder of an open space deed restriction that applies to the entirety of the donor site(s), that insures that the future development on the lot(s) is prohibited and that restrictions can be enforced, the text of which has been approved pursuant to procedures in Section 13.19 of the Malibu LIP (recorded legal documents); and

2. Evidence that fee title to the donor site has been successfully transferred to a public entity after the recordation of the deed restriction listed in the prior paragraph and that the document effectuating the conveyance has been recorded with the Los Angeles County Recorder.

B. Section 7.8.4 (Combining of Donor Lots) is hereby amended to read as follows:

A. Upon recordation of an easement pursuant to Section 7.8.3(A)(1) of the Malibu LIP, a retired parcel that has qualified to be used for TDC credits shall be combined with an adjacent already developed or buildable parcel(s), or with multiple contiguous parcels, at least one of which has no recorded restrictions on its development rights and all of which are in the same tax rate area and in common ownership. The retired lot and adjacent parcel(s) shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, lease, development, taxation or encumbrance.

B. The mechanism used to accomplish the combination shall make clear that the single parcel created herein shall not be divided and none of the original parcels shall be alienated from each other or from any portion of the combined and unified parcel hereby created.

C. A deed restriction shall be recorded reflecting restrictions of this section.

D. The combining of lots shall occur through one of the following mechanisms:



1. Voluntary merger of lots pursuant to the Subdivision Ordinance Chapter 15 of the Malibu LIP;

2. Recorded Declaration of Restrictions that includes a legal description and graphic depiction of the parcels being recombined; states that it runs with the land, binding all successors and assigns; and is recorded free of prior liens, including tax liens.

E. The permittee shall provide evidence that a copy of the recorded merger or deed restriction has been provided to the Los Angeles County Tax Assessor with a written request that the assessor's office: (1) revise its records and maps to reflect the combination of the parcels, including assigning a new, single assessor's parcel number (APN) for the unified parcel, and (2) send the City and Coastal Commission notice when it has done so, indicating the new, single APN.

F. The permittee shall provide evidence that the combined parcels appear on a preliminary report (regarding title) as a single parcel (which may require the property owner re-conveying the combined property to him/her/itself, presumably via a quitclaim deed).

G. Any amendments to the Local Implementation Plan authorized by Ordinance No. 340 are hereby suspended by the amendments set forth in subparagraphs (A) and (B) of this section.

#### Section 4. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

*Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.*

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The City Council hereby finds that the proposed LCP text amendments allows greater flexibility in retiring eligible lots in the transfer of development credit process, allows donor lots to be legally conveyed to public entities and ensures that donor lots are preserved as open space. Therefore, the overall text amendment is consistent with Chapter 3 of the Coastal Act.

Section 5. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this Ordinance to the Commission per Title 14, California Code of Regulations Section 13544.5(a).

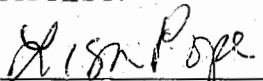
Section 6. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of February, 2011.


  
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JOHN W. SIBERT, Mayor

ATTEST:

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

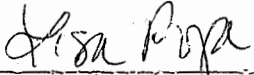
DATE: 2.15.11

APPROVED AS TO FORM:

  
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FOR CHRISTY MOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 355 was passed and adopted at the regular City Council meeting of February 14, 2011, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, La Monte, Wagner, Rosenthal, Sibert  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

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