

CALIFORNIA COASTAL COMMISSION

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DATE: June 30, 2011

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director
Gary Timm, Coastal Program Manager

SUBJECT: City of Malibu Local Coastal Program Amendment No. 2-10 for Public Hearing and Commission Action at the July 14, 2011 Commission Meeting at the Marin Civic Center in San Rafael, CA.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment will affect both the Land Use Plan (LUP) and Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP). The amendment proposes to amend LUP Policy No. 6.18 and LIP Section No. 6.5(E)(2) (View Corridor Requirements) to allow for the substitution of off-site view corridors and public benefits in lieu of the LCP required on-site view corridor.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission deny the proposed City of Malibu LCP Amendment MAL-MAJ-2-10 as submitted and approve the amendment if modified as suggested. The suggested modifications will provide additional requirements or standards for off-site view corridor sites to insure that such off-site view parcels are permanently restricted as such, are limited in use and location, and will allow for the provision of public access. As modified, the amendment would allow for the provision of a larger aggregate offsite view corridor than would otherwise be provided on site and potential public access to the beach resulting in substantially greater public benefits. The motions to accomplish this are found on Pages 4-7 of this staff report. The standard of review for the changes to the Land Use Plan is whether the 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 changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan (LUP) portion of the certified City of Malibu Local Coastal Program.

SUBSTANTIVE FILE DOCUMENTS

City of Malibu City Council Ordinance No. 336 and Resolution No. 09-03 approving Local Coastal Program Amendment 07-001; Local Coastal Program Amendment No. 07-001 Text, dated January 12, 2009; City of Malibu certified Local Coastal Program, adopted September 2002; Coastal Development Permit Nos. 4-99-185 & 4-99-266;

Coastal Development Permit Amendment Nos. 4-99-146-A2, 4-99-185-A1 & 4-99-266-A1.

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I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

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

The Coastal Act further provides:

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

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

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

B. PUBLIC PARTICIPATION

On March 6, 2007, an application for Local Coastal Program Amendment (LCPA) No. 07-001 was submitted to the City of Malibu by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application concerned parcels located at 22258 and 22310 Pacific Coast Highway. Notice of the LCPA submittal was duly noticed in a local newspaper of general circulation, was posted on the subject

property, and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings (Planning Commission Hearing on August 19, October 7, November 17, and December 2, 2008, and a City Council Hearing on January 12, 2009) and received oral and written comments regarding the proposed changes from concerned parties and members of the public. The hearings were noticed to the public by publishing the notice in the local newspaper and by mailing notice to interested parties, consistent with Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission hearing for LCP Amendment 2-10 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 shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP. In this case formal adoption of suggested modifications by the City must take place subsequent to the Commission's action to approve the LCPA and be transmitted to the Executive Director of the Commission for a final determination that the City's action is legally adequate.

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-2-10 to the City of Malibu Land Use Plan, as submitted by the City of Malibu.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Following the staff recommendation 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-2-10 to the City of Malibu Land Use Plan and adopts the findings set forth below on grounds that the land use plan as modified by the proposed amendment 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-2-10 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-2-10 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 as modified by the proposed amendment 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 Local Implementation Plan Amendment No. MAL-MAJ-2-10 as submitted by the City of Malibu.*

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-2-10 and adopts the findings set forth below on grounds that the Implementation Plan as modified by the proposed amendment 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 Local Implementation Plan Amendment No. MAL-MAJ-2-10 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-2-10 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan as modified by the proposed 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 TO THE LAND USE PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. All new language proposed by the City of Malibu to be added as part of the subject LCP amendment is shown in straight type only since no deletions to existing language is proposed. Language recommended by Commission staff to be inserted is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~strikethrough~~.

<i>SUGGESTED MODIFICATION TO THE LAND USE PLAN</i>

The amendment to the LUP is as follows:

1. Amend LUP Section 6.18, which addresses View Corridors, to include Subsection f to read as follows:
 - f. The requirements of Section 6.18 may be satisfied by ~~undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor. The offsite view parcel must be~~ providing an offsite view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The required offsite view corridor shall span the entire width of a beachfront parcel and be at least twenty-five (25) percent wider than the view corridor or corridors that would otherwise be required on the project site. Potential offsite view parcels shall be located adjacent to at least one publicly owned beachfront parcel that affords ocean views and, to the extent feasible, be located in the same geographic portion of the City as the project site. ~~The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits~~

that are greater than what would otherwise be provided through an onsite view corridor. ~~An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor.~~ Public beach access and accessways shall be permitted uses on the view corridor mitigation site. Any unimproved parcel, ~~or portion thereof,~~ to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, ~~or portion thereof,~~ could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel ~~may~~ shall be rejected as inadequate and inconsistent with the intent of this provision.

If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an offsite view corridor consistent with the above requirements, undertake or fund all or a portion of an offsite measure, project, or program that provides additional public visual resource benefits.

IV. SUGGESTED MODIFICATIONS TO THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The staff recommends the Commission certify the following, with the modifications as shown below. New language proposed by the City of Malibu to be added as part of the subject LCP amendment is shown in straight type only since no deletions to existing language is proposed. Language recommended by Commission staff to be inserted is shown in underline. Language recommended by Commission staff to be deleted is shown in ~~strikethrough~~.

SUGGESTED MODIFICATION TO THE IMPLEMENTATION PLAN
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Amendments to the LIP are as follows:

A. Amend LIP Section 6.5 (E)(2), which addresses View Corridor Requirements, to include Subsections ~~d~~ f and g to read as follows:

~~d f.~~ The requirements of Section 6.5(E)(2) may be satisfied by ~~undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to~~ providing an offsite view corridor that preserves and enhances coastal views from Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive. The requirements of Section 6.5(E)(2) may be deemed satisfied by an off-site view corridor if the decision making body ~~finds~~

that makes the findings required in 1 through 6 below and the View Parcel has been dedicated in accordance with Section 6.5(E)(2)(g):

- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean and will provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor;
- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views and, to the extent feasible, be located in the same geographic portion of the City as the project site;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite shall be provided across the entirety of the View Parcel and shall be at least twenty-five (25) percent wider than the view corridor(s) that otherwise would be required on the project site;
- ~~(4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and~~
- ~~(54) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that the proposed view corridor parcel is not suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel shall be rejected as inadequate and inconsistent with the intent of this provision.~~
- ~~(5) Public viewing, public beach access and accessways shall be permitted uses on the dedicated View Parcel. Any physical development of facilities or structures to enhance public views or public access shall conform to the applicable standards, provisions, and requirements of the Malibu LCP.~~
- ~~(6) If deemed necessary by the decision-making body to satisfy the findings of this subsection, the applicant may, in addition to providing an offsite view corridor consistent with the above requirements, undertake or fund all or a portion of an offsite measure, project, or program that provides additional public visual resource benefits.~~

~~An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the~~

~~development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision-making body in supporting findings (3) and (4) above.~~

- g. The substitution of an off-site View Parcel for a required on-site view corridor shall be effectuated by the recordation of an open space deed restriction and transfer of the View Parcel in fee title to a public entity, including the following requirements and restrictions:
1. Recordation with the Los Angeles County Recorder of an open space deed restriction that applies to the entirety of the View Parcel(s), that ensures that any future development on the lot(s) is limited to only those improvements necessary to provide for public view enhancement or public beach access such as benches and visually permeable fencing, maintenance of roads, public access ways, and utilities consistent with existing easements; and shoreline protection if necessary to protect existing development 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 a deed restriction listed in the prior paragraph and that the document effectuating the conveyance has been recorded with the Los Angeles County Recorder.

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 following findings support the Commission's denial of the Local Coastal Program amendment as submitted and approval of the Local Coastal Program amendment if modified as indicated in Section III (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION AND BACKGROUND

The City of Malibu's proposed LCP amendment consists of changes to the Scenic and Visual Resource policies and provisions contained in Chapter 6 of the Land Use Plan (LUP) portion of the certified LCP and Chapter 6 –Scenic, Visual, and Hillside Resource Protection Ordinance of the Local Implementation Plan (LIP) portion of the certified LCP

to allow for the provision of offsite view corridors and, where applicable, additional public benefits, in lieu of the currently required onsite view corridor for new development. Specifically, the LCPA request proposes amendments to the certified LUP, *View Corridor Requirements* to amend policy 6.18 and to the certified LIP to amend Section 6.5(E)(2), *Ocean Views*. The proposed amendment text is attached as Exhibit 1.

As previously indicated, an application for the subject LCP amendment was originally submitted to the City by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application concerned parcels located at 22258 and 22310 Pacific Coast Highway in Malibu. Mr. Morton received a CDP (4-00-057) from the Commission in 2001 to demolish two existing single-family residences and construct a new single-family residence, garage, bulkhead and septic system. The permit contained a special condition to provide a view corridor across the site consistent with the requirements currently contained in the certified LCP. Specifically, Special Condition Twelve (12) required the applicant to execute and record a deed restriction which provided that no less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor was limited to fencing of visually permeable designs and materials that minimized adverse effects to public views. Further, Special Condition Two (2) required the submittal of a landscape plan to ensure that vegetation within the public view corridor would not block public coastal views. Mr. Morton subsequently built the structures permitted by the CDP but development was not in compliance with the view corridor requirement established by special condition to the permit because a large wall was constructed in the location where the view corridor had been required which completely blocks all views through the site to the ocean. The proposed LCP amendment would allow the onsite view corridor requirement to be replaced by an offsite view parcel requirement and additional public benefits. An amendment to the CDP for the Morton site would also be required from the Commission in order to change the view corridor requirement to allow for the substitution of an offsite view parcel.

The subject LCP amendment was approved/certified by the Malibu City Council on January 12, 2009. The City's resolution (No. 09-03) and ordinance (No. 336) approving the subject LCP amendment (No. 07-001) is attached as Exhibits 2-3. The LCP amendment was initially submitted to the Commission on March 20, 2009. The LCPA was subsequently withdrawn on May 25, 2010 in order to allow additional time for Commission staff to consider the amendment and officially resubmitted on the same date. At the August 12, 2010 Commission hearing, the Commission extended the deadline to act on LCPA 2-10 for a period of one year.

B. SCENIC AND VISUAL RESOURCES AND PUBLIC ACCESS

Coastal Act Policies

The Coastal Act requires that new development be sited and designed in order to protect the scenic and visual qualities of coastal areas. Section 30251 of the Coastal Act states:

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, both the certified Malibu Land Use Plan and Local Implementation Plan contain scenic and visual resource protection policies and ordinance requirements to carry out the provisions of the Coastal Act and the LUP, respectively. The primary intent of these policies is to require that new development is sited and designed to minimize impacts to visual resources, and where feasible, to preserve bluewater ocean views by limiting the height and siting of structures to maintain views over the site and/or to provide view corridors to maintain an ocean view through the site. The view corridor policies of the certified LCP are proposed to be amended by the subject LCPA in order to allow offsite view corridors in lieu of currently required onsite view corridors. In addition, because the proposed LCP amendment contains language specifically prohibiting public access on offsite view corridor parcels the proposed amendment raises issues with the Public Access and Recreation policies of the Coastal Act as provided below:

Section **30210** states that:

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.

Coastal Act Section **30211** states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section **30212(a)** provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section **30220** of the Coastal Act states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

Malibu Land Use Plan Policies And Proposed Amendment

The LUP currently contains the following policy requirements in regard to on-site view corridors:

6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.
- c. No portion of any above ground structure shall extend into the view corridor.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor. (Resolution No. 07-04 (LCPA No. 05-001))

The proposed amendment to the LUP would add subsection f. to state as follows:

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

Malibu Local Implementation Plan And Proposed Amendment

The LIP currently contains the following requirement to implement the provisions of LUP policy 6.18 provided above:

6.5 E. Ocean Views

New development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views.

2. Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.

b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors. (Resolution No. 07-04 (LCPA No. 05-001))

c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street. (Resolution No. 07-04 (LCPA No. 05-001))

d. Any fencing across the view corridor shall be visually permeable and any landscaping

in this area shall include only low-growing species that will not obscure or block bluewater views.

e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor. (Resolution No. 07-04 (LCPA No. 05-001))

The proposed LIP amendment would add subsection f. to state as follows:

- f. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:
- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;
 - (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
 - (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
 - (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
 - (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

The certified LCP Land Use Plan also contains policies relative to the provision of public access and recreation including the following:

2.1 The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities

shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

2.7 Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.

Discussion

There are two primary components or objectives of the proposed LCP amendment. The amendment would add provisions to the existing LCP view protection policies to allow an alternative to satisfying the existing onsite view corridor requirements by: 1) providing an offsite view corridor of greater lineal frontage than the 20 percent required for onsite view corridors; and 2) undertaking or funding an offsite alternative measure, project or program that would enhance the City's visual and scenic resources. The City states that an example of an offsite program could be the funding of a City park. In approving the proposed LCP amendment, the City found that the proposed amendment would provide greater public visual resource benefits than a standard onsite view corridor.

As stated above, consistent with Section 30251 of the Coastal Act, the City of Malibu Land Use Plan (LUP) Policies require that new development on parcels located on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, and Cliffside Drive be sited and designed to preserve ocean views be either siting structures below road grade where feasible, limiting height, landscaping, fencing etc. (policy 6.17) or by providing onsite view corridors through 20 percent of the lineal frontage of the site where it is not feasible to site a structure below road grade (policy 6.18). Chapter 6 (Scenic and Visual Resources – New Development) policy 6.18 of the Land Use Plan is proposed to be amended by the City of Malibu in order to allow onsite view corridors to be replaced by offsite view corridors in limited circumstances.

The City's Local Implementation Plan (LIP) portion of the LCP includes nearly identical policies in Chapter 6 that carries out the LUP Policies. Chapter 6 of the LIP (Scenic Resources), policy section 6.5(Development Standards), E. (Ocean Views), No. 2 is proposed to be amended to allow the substitution of offsite view corridors to carry out the corresponding LUP policy referenced above.

In past permit actions and in its action to certify the Malibu Local Coastal Program the Commission found that it was important to preserve ocean views in new development projects in the City. For ocean fronting parcels the Commission required that views be preserved over structures where feasible and that view corridors be provided through

sites where it was not possible to site structures below road grade. In the eastern section of the City, where existing and new development on the ocean side of Pacific Coast Highway is at road grade a view corridor has been required. Because parcels are small and development tends to maximize the buildable area on the site the view corridors are also small and provide only fleeting glances of the ocean, especially from cars. Nonetheless, the Commission has found that a view corridor, even of narrow, is necessary to preserve ocean views and to prevent a solid wall of development that blocks views of the ocean from public roads and other viewing areas.

In a past action, prior to certification of the Malibu LCP, the Commission has allowed for the provision of offsite mitigation in lieu of the onsite view corridor for a project that consisted of the demolition of six existing single-family residences and construction of three new single-family residences on Carbon Beach (4-99-146-A2, Gamma; 4-99-185-A1, Broad; and 4-99-266-A1, Daly). In this action the Commission required the dedication of a specific entire parcel to the State of California or an appropriate public agency in fee simple. The Commission also required that the offsite view parcel be opened for both visual and physical public access (vertical and lateral). The Commission found that the provision of a larger aggregate offsite view corridor constituted a substantially greater public benefit than the provision of the originally required smaller separate public view corridors on each site. The required offsite view parcel was a beachfront lot located on the seaward side of PCH in the La Costa Beach area of Malibu immediately east of Carbon Beach. Both Carbon and La Costa Beach are characterized as built-out residential beach areas in Malibu. In its prior approval of permits for two of the subject parcels (4-99-185 and 4-99-266) the Commission specifically provided that the applicants may obtain an amendment to the coastal permit to delete the required onsite view corridor if the applicants provided for offsite mitigation consisting of both a public view corridor and a public vertical accessway across another parcel in the vicinity of Carbon Beach. The Commission's action was subsequently upheld by the court of appeal. (*La Costa Beach Homeowners' Ass'n v. California Coastal Commission* (2002) 101 Cal.App.4th 804.)

The subject proposed amendment to allow for the provision of substantially larger offsite view corridors in lieu of smaller onsite view corridors will likely be utilized for ocean front development projects proposed in the more densely populated areas of eastern Malibu along Pacific Coast Highway although there is also potential for offsite view corridors to be provided along Malibu Road, Broad Beach Road, and Birdview Avenue and Cliffside Drive which are ocean fronting streets on Point Dume. For instance, relative to the related Coastal Development Permit 4-00-057 (Morton) which required the provision of a public view corridor of no less than 20 percent of the lineal frontage of the project site on the project site, had the applicant included the provision for a larger public view corridor offsite, similar to the requirements of this proposed LCP amendment, such mitigation would have provided substantially greater public benefits in the forms of coastal views and potential public access and would have been consistent with the Chapter 3 requirements of the Coastal Act.

Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. Such development, when viewed on a regional basis, results in cumulative adverse effects to public views and to the visual quality of coastal areas. Therefore, in past permit actions and in certifying the Malibu LCP, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development be designed consistent with the provision of a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway. The intent of the public view corridors required by the Commission was to provide unobstructed public views of the beach and ocean from Pacific Coast Highway over a portion of each site to mitigate the adverse effects to public views that result from new development along the coast. The proposed amendment is intended to provide for offsite mitigation of the currently LCP required public view corridors on sites.

As the Commission has found in prior actions, the City's proposal to modify existing LCP view corridor requirements in the proposed amendment to allow for the use of offsite view corridors in limited circumstances is generally consistent with the intent of the scenic resource protection policies of the Coastal Act and the LCP. Opportunities exist to provide for expanded uninterrupted public view corridors. However, to provide greater clarification in order to adequately carry out the relevant policies of the LUP and LIP, some changes or modifications are needed to the proposed amendment language in order to provide additional requirements or standards for off-site view corridor sites to insure that such off-site view parcels are permanently restricted as such, are limited in use, and will allow for the provision of public access. As such, suggested modifications are required.

As proposed, the amendment to the LCP (LUP and LIP) allows for an offsite alternative measure, project, or program to be undertaken or funded that includes an offsite view corridor of greater lineal frontage that what would otherwise be required onsite. The proposal does not define "alternative measure, project, or program" or sufficiently define the location or size of an offsite view corridor other than to say it must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. Representatives for Peter Morton, who submitted the subject LCP amendment request to the City, have identified 16 sites that they state will meet the requirement of being located adjacent to a publicly owned beachfront parcel. However, it has not been confirmed that all 16 sites

are currently buildable or that they would all be suitable as an offsite view parcel. Further, the proposed amendment language states that “an offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor” inconsistent with Section 30210 of the Coastal Act, as incorporated in the certified LUP, which specifically requires that maximum public access, and recreational opportunities be provided. In addition, LUP Policy 2.7 provides that public accessways and trails to the shoreline shall be a permitted use in all land use and zoning designations. Moreover, no language exists anywhere in the certified LCP for Malibu that specifically prohibits public access on a parcel of land. Further, physical access to an oceanfront parcel only serves to enhance the visual experience of the coast. Therefore, suggested modifications to the LUP and the LIP are necessary to ensure public access and recreation is a permitted use on any offsite view corridor mitigation parcel consistent with LUP Policy 2.7 and the relevant public access and recreation policies of the Coastal Act.

The Coastal Act defines “Land Use Plan” as “the relevant portion of a local government’s general plan, or local coastal element which are *sufficiently detailed* to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies, and, where necessary, a listing of implementing actions” (emphasis added). The Commission finds that the proposed language in the LUP amendment is not sufficiently detailed to ensure that the offsite view corridor requirements are adequate to mitigate the impacts of development on coastal views. Therefore, the Commission finds that the proposed amendment to the LUP Scenic and Visual Resource policies contained in the certified LCP does not conform to the requirements of Section 30251 of the Coastal Act. Further, because the proposed LCP (LUP and LIP) amendment contains specific prohibitions for public access, the Commission finds that the proposed amendment is not consistent with the Public Access and Recreation policies of the Coastal Act.

The proposed LIP language, in addition to providing the same requirements as the LUP mentioned above, continues to allow the offsite view corridor parcel to be developed which can result in difficulty in maintaining the view corridor and lead to enforcement problems in the future. Future development on a view parcel would also be limited by siting requirements and the necessity of providing and maintaining a public view corridor. Finally, the proposed LIP language implementing the LUP contains no requirements for deed restrictions or offers to dedicate on the offsite view parcel and, therefore, there is no guarantee that the offsite view corridor will be adequately protected. For these reasons the Commission finds that the proposed amendment to the Scenic Resources policies of the LIP are not sufficient to carry out the requirements of the certified Land Use Plan.

In order to provide conformity with Section 30251 of the Coastal Act, and the relevant policies of the certified City of Malibu LCP discussed above, relative to protecting views to and along the ocean, the Commission finds that suggested modifications to the proposed LCP amendment are necessary. Suggested modifications to the Land Use Plan amendment limit offsite view corridor parcels to Pacific Coast Highway, Malibu

Road, Broad Beach Road, plus Birdview Avenue and Cliffside Drive on Point Dume and include requirements that the offsite view parcel consist of an entire beachfront parcel, that the view corridor spans the entire width of the parcel, and be at least 25 percent wider than the view corridor or corridors that would otherwise be required on the project site. In addition, the offsite view parcel should, to the extent feasible, be located in the same geographic area of the City as the project site. Also, because the proposed amendment contains specific prohibitions on public access, the Commission finds that a suggested modification is necessary to delete said prohibition and to provide that public access on the view corridor mitigation parcels shall be a permitted use consistent with applicable provisions of the LCP. Public access to the offsite view parcel will allow more visitors to experience public views of the coast and ocean directly from the site. Relative to the requirement that offsite view corridors be larger than the view corridor that would otherwise be required on the project site and the requirement for additional public benefits the Commission notes that the provision for allowing an offsite view corridor parcel will be an available option to providing an onsite view corridor. An applicant for a coastal development permit can choose to provide a view corridor onsite in compliance with the LCP policy requirements that currently exist and will not be changed.

Identical suggested modifications are necessary to the proposed LIP amendment relative to carrying out the scenic resource and public access policies of the LCP Land Use Plan. In addition, suggested modifications provide that the substitution of an offsite view parcel for a required onsite view corridor be effectuated by the recordation of an open space deed restriction and transfer of the view parcel in fee title to a public entity. An open space deed restriction is the more appropriate mechanism to ensure that a donor parcel is protected as open space in instances where the property is dedicated in fee title to a public entity. In addition, a transfer of the view parcel in fee is necessary to insure that the site is adequately protected and is not sold or otherwise compromised at some future point in time. The LCP contains a similar requirement for parcels used as sites for Transfer of Development Credits (TDCs). Modifications to the LIP also ensure that any future development on the view parcel is limited to only those facilities necessary to provide for public view enhancement or public beach access such as benches and visually permeable fencing.

Finally, as proposed by the City, the LCP amendment provides that the view corridor requirements in the LUP and the LIP may be satisfied “by undertaking or funding all or a portion of an offsite alternative measure, project, or program” which “must include an offsite view corridor” or be included “in addition to providing an offsite view corridor” as a primary component of the proposed amendment. An example of an offsite alternative measure, project, or program could be the funding of a City park. The Commission is not opposed to the City’s proposal to include an alternative measure, project, or program in conjunction with an offsite view corridor. However, such a component or requirement should be independent and should augment, not substitute for the LCP requirement of an offsite view parcel to mitigate the impacts of future development on coastal views. Therefore, suggested modifications to the LUP and the LIP are necessary to separate the City’s proposal to include a provision to undertake or fund an

alternative measure, project, or program from the primary requirement for allowing offsite view corridors. Modifications provide the City the option of requiring an applicant to undertake or fund an alternative measure, project, or program at the City's discretion in addition to providing the offsite view parcel, however, the suggested modifications make it clear that the offsite view corridor parcel must be required as mitigation for not providing the typically required onsite view corridor for new development projects. The alternative measure, project, or program is allowed as an additional option, subject to the City's discretion, however, and not as an alternative to the primary intent of the proposed amendment to allow for offsite view corridor mitigation.

The Commission finds that the suggested modifications to the LUP policies of the proposed amendment are required to ensure that the proposed amendment conforms to the applicable coastal view protection and public access policies of the Coastal Act. The Commission also finds that the suggested modifications to the LUP provisions of the proposed amendment are required to ensure that they are consistent with all applicable LUP policies and adequate to carry out all provisions of the LUP.

C. 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 regarding scenic and visual resource protection. 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.

PROPOSED

MALIBU LOCAL COASTAL PROGRAM AMENDMENT

January 12, 2009

LCPA No. 07-001

RECEIVED
MAR 23 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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. Land Use Plan

Chapter 6 (Scenic and Visual Resources), Section C (Land Use Plan Policies) No. 2 (New Development) Policy No. 6.18 is hereby amended as follows:

For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.
- b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on beachfront lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views.
- c. No portion of any above ground structure shall extend into the view corridor.
- d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.
- e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

2. Local Implementation Plan

Chapter 6 (Scenic Resources) Section 6.5 (Development Standards) E (Ocean Views) No. 2 is hereby amended as follows:

2. Where the topography of the project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures.

a. Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.

b. The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.

c. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.

d. Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.

e. In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.

f. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:

- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;
- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
- (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

RESOLUTION NO. 09-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 07-001 AMENDING THE MALIBU LOCAL COASTAL PROGRAM'S LAND USE PLAN SECTION 6.18 (VIEW CORRIDORS) AND COROLLARY CHANGES TO THE LOCAL IMPLEMENTATION PLAN TO ALLOW FOR THE UTILIZATION OF OFFSITE VIEW CORRIDORS AND PUBLIC BENEFITS IN LIEU OF THE REQUIRED ONSITE VIEW CORRIDOR (MORTON)

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

Section 1. Recitals.

- A. On March 6, 2007, an application for Local Coastal Program Amendment (LCPA) No. 07-001 was submitted by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton.
- B. In addition, on March 6, 2007, an application for Coastal Development Permit (CDP) No. 07-029, Neighborhood Standards (NS) No. 08-002, Demolition Permit (DP) No. 07-007, and Administrative Plan Review (APR) No. 08-082 was submitted concurrently with the LCPA application by David Goldberg of Latham and Watkins, LLP, on behalf of property owner, Peter Morton. The application was for parcels located at 22258 and 22310 Pacific Coast Highway.
- C. On July 24, 2008, as required by the Local Coastal Program's (LCP) Local Implementation Plan (LIP) Chapter 19, a Notice of Availability for Local Coastal Program Documents and Notice of Planning Commission public hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.
- D. On July 29, 2008, a Notice of Application for LCPA No. 07-001, CDP No. 07-029, NS No. 08-002, APR No. 08-082, and DP No. 07-001 was posted on the subject property.
- E. At its August 19, 2008 meeting, the Planning Commission continued the item to the October 7, 2008 Regular Planning Commission meeting. The applicant requested that the Commission continue the item, to allow for a modification to the proposed amendment.
- F. On September 11, 2008, pursuant to LIP Chapter 19, a Notice of Availability of Local Coastal Program Documents and Notice of Planning Commission Public Hearing public hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

G. On October 7, 2008, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record. The Planning Commission directed staff to prepare a resolution recommending the City Council adopt the LCPA as amended.

H. The Regular Planning Commission meeting of November 4, 2008 was adjourned to November 17, 2008.

I. On November 17, 2008, the Planning Commission continued the item to its December 2, 2008 meeting due to lack of quorum.

J. On December 2, 2008, the Planning Commission adopted Resolution No. 08-80 recommending that the City Council approve LCPA No. 07-001.

K. On December 25, 2008, pursuant to LIP Chapter 19, a Notice of City Council Public Hearing was published in a newspaper of general circulation and mailed to interested parties, regional, state and federal agencies affected by the amendment, local libraries, media, and to the California Coastal Commission.

L. 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 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 an LCPA. This application is for an amendment of the LCP, which must be certified by the California Coastal Commission before it takes effect.

Section 3. Local Coastal Program Amendment No. 07-001.

A. LCPA No. 07-001 includes amendments to the certified LCP Land Use Plan (LUP) and LIP. Section 4 of this Resolution 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. Amendments to the LIP are identified in City Council Ordinance No. 336. The amendment to the LUP is as follows:

1. Amend LUP Section 6.18, which addresses View Corridors, to include Subsection f to read as follows:

f. The requirements of Section 6.18 may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, which must include an offsite view corridor of greater lineal frontage, than what would otherwise be required by an onsite view

corridor. The offsite view parcel must be adjacent to at least one publicly owned beachfront parcel that affords ocean views. The offsite alternative measure, project, or program and offsite view corridor must provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor. An offsite alternative measure, project, or program shall not include a vertical access component on the parcel providing the offsite view corridor. Any unimproved parcel, or portion thereof, to be used as an offsite view corridor must otherwise be suitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations. If the decision making body finds that there are legitimate concerns over whether a proposed view corridor parcel, or portion thereof, could otherwise be suitable for the development of a habitable structure or other primary use due to the presence of geotechnical hazards or other constraints, the proposed view corridor parcel may be rejected as inadequate and inconsistent with the intent of this provision.

Section 4. Local Coastal Program Amendment Findings.

The proposed amendment would advance the core goals and policies of the Coastal Act. The intent of the onsite view corridor requirement is to preserve coastal views from the City's seaside roads. Under the proposed amendment, the permitting of offsite projects or programs, including an offsite view corridor, would enhance the City's visual and scenic resources and provide a greater public benefit to coastal resources than an onsite view corridor. Pursuant to the proposed amendment, the offsite view corridor alternative would only be available in those cases where the decision making body determines that the public benefits of a proposed offsite view corridor and related program would be greater than the benefits that would otherwise flow from an onsite view corridor meeting minimum applicable LCP requirements. Accordingly, an offsite project or program alternative, that includes an offsite view corridor, would be more protective of coastal scenic resources and more beneficial to the community than the minimum onsite view corridor requirement.

Section 5. Approval of Amendments to the Certified Local Coastal Program LUP.

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 07-001 amending the LUP.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 07-001 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 resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 8. Certification.

The City Clerk shall certify the adoption of this Resolution.

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

ORDINANCE NO. 336

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 07-001 AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SECTION 6.5(E)(2) (VIEW CORRIDOR REQUIREMENTS) TO ALLOW FOR THE UTILIZATION OF OFFSITE VIEW CORRIDORS AND PUBLIC BENEFITS IN LIEU OF THE REQUIRED ONSITE VIEW CORRIDOR (MORTON)

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. 09-03, in which the City Council approved amendments to the Land Use Plan (LUP), subject to certification by the California Coastal Commission (CCC).
- B. 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 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 Plan Amendment (LCPA). This application is for an amendment of the LCP, which must be certified by the California Coastal Commission before it takes effect.

Section 3. Local Coastal Program Amendment No. 07-001.

LCPA No. 07-001 includes amendments to the certified LCP LUP and Local Implementation Plan (LIP). 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. Amendments to the LUP are identified in City Council Resolution No. 09-03. Amendments to the LIP are as follows:

- A. Amend LIP Section 6.5 (E)(2), which addresses View Corridor Requirements, to include Subsection d to read as follows:
- d. The requirements of Section 6.5(E)(2) may be satisfied by undertaking or funding all or a portion of an offsite alternative measure, project or program, in addition to an offsite view corridor. The requirements of Section 6.5(E)(2) may be deemed satisfied if the decision making body finds that:
- (1) the proposed offsite view corridor parcel (the "View Parcel") is a beachfront parcel that affords public views of the ocean;

- (2) the View Parcel is located adjacent to at least one publicly owned beachfront parcel that also affords ocean views;
- (3) the offsite view corridor to be provided is of greater lineal frontage than otherwise would be required onsite;
- (4) the offsite alternative measure, project or program and offsite view corridor provide public visual resource benefits that are greater than what would otherwise be provided through an onsite view corridor; and
- (5) in the opinion of the decision making body, there are no geotechnical hazards or other constraints present on or near the View Parcel that could otherwise render the View Parcel, or any portion thereof, unsafe or unsuitable for the development of a habitable structure or other primary use consistent with the underlying zoning regulations.

An offsite alternative measure, project, or program shall not include a vertical access component on the View Parcel. The remaining portion of a View Parcel, if any, that is not restricted for use as a view corridor, pursuant to this Section, shall be subject to the standard view corridor requirements otherwise applicable to the entire lineal frontage of the View Parcel. If, after considering the width of a proposed offsite view corridor and all other applicable legal and physical constraints on physical development of the View Parcel (including standard view corridor requirements), the remainder of the View Parcel would not allow for the development of a primary use consistent with the applicable development standards contained in the LIP, then the remaining lineal frontage of the View Parcel shall be offered as a permanent view corridor, and such excess lineal frontage may be relied upon by the decision making body in supporting findings (3) and (4) above.

Section 4. Local Coastal Program Amendment Findings.

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.

The proposed amendment would advance the core goals and policies of the Coastal Act. The intent of the onsite view corridor requirement is to preserve coastal views from the City's seaside roads. Under the proposed amendment, the permitting of offsite projects or programs, including an offsite view corridor, would enhance the City's visual and scenic resources and provide a greater public benefit to coastal resources than an onsite view corridor. Pursuant to the proposed amendment, the offsite view corridor alternative would only be available in those cases where the decision making body determines that the public benefits of a proposed offsite view corridor and related program would be greater than the benefits that would otherwise flow from an onsite view corridor meeting minimum applicable LCP requirements. Accordingly, an offsite project or program alternative, that includes an offsite view corridor, would be more protective of coastal scenic resources and more beneficial to the community than the minimum onsite view corridor requirement.

Section 5. Approval of Amendments to the Certified Local Coastal Program LIP.

Subject to the contingency set forth in Section 7, the City Council hereby adopts LCPA No. 07-001 amending the Local Implementation Plan.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 07-001 to the California Coastal Commission for certification, in conformance with the submittal requirements specific 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 amendments and zoning ordinance amendments approved in this ordinance shall be come effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 8. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2009.

PAMELA CONLEY ULICH, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney