

**CALIFORNIA COASTAL COMMISSION**

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# Th10a

**DATE:** March 22, 2018

**TO:** Commissioners and Interested Persons

**FROM:** Steve Hudson, Deputy Director  
Barbara Carey, District Manager  
Denise Venegas, Coastal Program Analyst

**SUBJECT:** City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-18-0024-1 (Malibu Beach Inn) for Public Hearing and Commission Action at the April 12, 2018 Commission Meeting in Redondo Beach.

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## DESCRIPTION OF THE SUBMITTAL

The City of Malibu (“City”) is proposing to amend the Land Use Plan (LUP) and the Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP) to change the land use and zoning designation of a beachfront parcel identified as APN: 4452-005-029 from Public Open Space (OS) to Commercial Visitor Serving Two (CV-2) on the LUP Land Use Map and LIP Zoning Map.

The City of Malibu submitted Local Coastal Program Amendment LCP-4-MAL-18-0024-1 to the Commission on February 12, 2018. The amendment proposal was deemed complete and filed on February 27, 2018. Pursuant to Public Resources Code Section 30512 and California Code of Regulations, Title 14, Section 13522, an amendment to the certified LCP that combines changes to the LUP and LIP must be scheduled for a public hearing and the Commission must take action within 90 days of a complete submittal. In the subject case, the 90<sup>th</sup> date will be May 28, 2018.

## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **approve** the proposed LCP amendment, as submitted by the City of Malibu. No modifications are necessary because the proposed amendment to the LUP, as submitted, is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. Additionally, the proposed amendment to the LIP, as submitted, conforms with and is adequate to carry out the provisions of the Land Use Plan. The motions and resolutions for Commission action can be found starting on **page 5** of this staff report.

The subject parcel is one of three adjoining oceanfront parcels identified as 22878 Pacific Coast Highway (APN 4452-005-029, -030, and -031) that is developed with a hotel currently known as the Malibu Beach Inn. The California State Parks-owned Malibu Pier parking lot is located immediately west, and a vacant parcel and multi-family residential development are located immediately east of the Malibu Beach Inn. The subject property was previously occupied by a small 9-unit motel, restaurant, and a parking lot. In 1988, the Commission approved Coastal Development Permit 5-87-576 for the demolition of the existing motel and the construction of

the Malibu Beach Inn, restaurant, parking lot and a rock revetment. At the time CDP No. 5-87-576 was approved, all three parcels (including the subject parcel) were zoned “General Commercial” by Los Angeles County (prior to incorporation of Malibu as a City). While the subject parcel is currently designated Public Open Space in the LCP, the parcel has never been used in the past as a publicly owned beach, park and/or preserve. Since the 1960s hotel uses have been sited on the subject parcel and adjoining lots.

When the Malibu City Council adopted the parcel-specific Interim Zoning Map in 1993, two of the hotel’s parcels, APN 4452-005-030, and -031, were zoned “Commercial Visitor Serving 2 (CV-2)”, while the third parcel (APN 4452-005-029), which is the subject of this amendment, was zoned “Public Open Space (OS)”, instead of CV-2 like the two other parcels. When the Commission adopted the Malibu LCP in 2002, the subject property was given the land use and zoning designation of OS, consistent with the City’s existing designations. The City asserts that the current land use designation of Public Open Space had been assigned to the subject parcel in error when the City’s LCP Land Use Map and Zoning Map were adopted in 2002. The City is now proposing to change the LUP and Zoning Maps of the LCP to correct the discrepancy and to bring the LCP maps into conformance with the City’s General Plan Land Use Maps.

While the Coastal Act requires that oceanfront lands suitable for public access and recreation be protected for such use, the subject parcel has not been available for such uses since prior to the effective date of the Coastal Act. Additionally, visitor-serving commercial development is considered a priority use under the Coastal Act and the Malibu LCP, and is given priority over other non-coastal dependent development. In consideration of the parcel’s existing hotel development, the fact that the parcel is developed with a use (hotel) consistent under the allowable uses under CV-2, and given the parcel is in common ownership with the adjacent two adjoining parcels (APN 4452-005-030, and -031), a commercial visitor serving two land use/zoning designation is more appropriate for this parcel than public open space.

Furthermore, changing the designation of the parcel from OS to CV-2 will recognize the existing development located on the subject site and correct the existing land use designation discrepancy. All future development on the site will need to support the visitor-serving nature of the area, be consistent with the allowable uses under the CV-2 land use designation, and be consistent with the policies and provisions of the certified LCP. As such, the site is appropriate for such visitor-serving commercial use. The proposed LUP amendment, as submitted, is consistent with Chapter 3 policies of the Coastal Act, including Section 30250, and the LUP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. As such, staff recommends that the Commission approve LCP Amendment LCP-4-MAL-18-0024-1 as submitted.

<p><b>Additional Information:</b> For further information, please contact Denise Venegas at the South Central Coast District Office of the Coastal Commission at (805) 585-1800. The proposed amendment to the City of Malibu Local Coastal Program (LCP) is available for review at the Ventura Office of the Coastal Commission or on the Commission’s website at <a href="http://www.coastal.ca.gov/mtgcurr.html">http://www.coastal.ca.gov/mtgcurr.html</a>.</p>
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Appendix A Substantive File Documents

### EXHIBITS

Exhibit 1.	City of Malibu Ordinance No. 430
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Exhibit 5.	Vicinity Map
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Exhibit 7.	Aerial Photo

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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 Commission may suggest modifications...(Section 30513)*

The standard of review that the Commission uses in reviewing the adequacy of the Land Use Plan, as the City is proposing to amend it, is whether the Land Use Plan, as amended, would remain 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 (LUP) portion of the adopted City of Malibu Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Malibu Land Use Plan.

### **B. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings on the subject amendment requests. The hearings were noticed to the public consistent with Sections 13551 and 13552 of Title 14 of the California Code of Regulations. The City received written or oral comments regarding the proposed amendment from interested parties or members of the public. Notice of the subject amendment has been distributed to all known interested parties.

**C. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551 (b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that a Local Coastal Program Amendment will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission’s approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, if the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. City staff has indicated that the ordinance will only become final after certification by the Commission, but no formal action is required. Should the Commission deny the LCP amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective.

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

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

**APPROVAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED**

**Motion:**

*I move that the Commission **certify** the City of Malibu Land Use Plan Amendment LCP-4-MAL-18-0024-1, as submitted.*

**STAFF RECOMMENDATION TO CERTIFY:**

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

**RESOLUTION TO CERTIFY THE LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the City of Malibu Land Use Plan Amendment LCP-4-MAL-18-0024-1 and adopts the findings set forth below on the grounds that the Land Use Plan amendment as submitted conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effect of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan amendment may have on the environment.

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

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

#### **APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED**

##### **Motion :**

*I move that the Commission **reject** the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-18-0024-1 as submitted.*

#### **STAFF RECOMMENDATION:**

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

#### **RESOLUTION TO CERTIFY THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-18-0024-1, as submitted and adopts the findings set forth below on the grounds that the Local Implementation Plan amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, and certification of the Local Implementation Plan amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Local Implementation Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Local Implementation Plan amendment.

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

The proposed amendment affects the Land Use Plan (LUP) and Local Implementation Plan (LIP) components of the certified Malibu Local Coastal Program (LCP). The standard of review that the Commission uses in reviewing the adequacy of the LUP amendment is whether the LUP, as amended, would continue to meet the requirements of and be consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed LIP, pursuant to Section 30513 and 30514 of the Coastal Act, is whether the LIP, as amended, would remain in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Malibu LCP, as amended.

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

## **A. AMENDMENT DESCRIPTION AND BACKGROUND**

The City of Malibu is proposing to amend the Land Use Plan (LUP) and the Local Implementation Plan (LIP) portions of its certified Local Coastal Program (LCP) to change the land use and zoning designation of a beachfront parcel identified as APN: 4452-005-029 from Public Open Space (OS) to Commercial Visitor Serving Two (CV-2) on the LUP Land Use Map and LIP Zoning Map. The subject parcel is one of three adjoining oceanfront parcels identified as 22878 Pacific Coast Highway (APN 4452-005-029, -030, and -031) developed with a hotel, currently known as the Malibu Beach Inn. The California State Parks owned Malibu Pier parking lot is located immediately upcoast/west, and a vacant parcel and multi-family residential development are located immediately downcoast/east of the Malibu Beach Inn. The proposed amendment is attached as Exhibits 1-3 and the property location map is attached as Exhibit 5.

The subject property was previously occupied by a small 9-unit motel, named Tonga Lei, a restaurant, and a parking lot that served the two facilities. On January 14, 1988, the Commission approved Coastal Development Permit No. 5-87-576 for the demolition of existing structures (small motel, restaurant and parking lot) and construction of the Malibu Beach Inn, a 47-room hotel with 52 parking spaces, stairways from state beach parking lot to the state beach, and a rock revetment. At the time of approval, and prior to the incorporation of the City of Malibu, all three parcels (including the subject parcel) were zoned General Commercial in the 1986 Los Angeles County Malibu-Santa Monica Mountains Land Use Plan (LUP). The property was specifically designated general commercial in the 1986 LUP to recognize the existing development.

## **B. CONSISTENCY ANALYSIS AND FINDINGS**

### **1. New Development and Cumulative Impacts**

The Coastal Act and the Malibu LCP place a high priority on providing for visitor-serving uses in the coastal zone. The Coastal Act and Malibu LCP prioritize visitor-serving commercial development over residential development. The following Coastal Act policies have been incorporated into their entirety in the certified City of Malibu Land Use Plan as policies.

#### Relevant Coastal Act Policies

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

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions,*

*other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels...*

Section 30222 of the Coastal Act states:

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

The Malibu LCP also contains several additional policies to ensure the protection and provision of public access in new development and relate to land use.

#### Applicable City of Malibu Land Use Plan Policies

- 2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On lands designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.
- 2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities; shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.
- 5.11 Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent uses. All uses shall be consistent with protection of public access and ESHA.

#### Discussion

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

The City is proposing to change the land use and zoning designation of a beachfront parcel identified as APN: 4452-005-029 from Public Open Space (OS) to Commercial Visitor Serving Two (CV-2). The subject parcel is one of three adjoining oceanfront parcels developed with the Malibu Beach Inn. The subject parcel is located just east of the Malibu Pier and an adjacent



public parking lot, at the upcoast end of the densely developed Carbon Beach area, in the City of Malibu (Exhibit 5). Beachfront residential development is situated to the east (downcoast) of the property. While the subject parcel is currently designated Public Open Space in the LCP, the parcel has never been used in the past as a publicly owned beach, park and/or preserve. Since the 1960s hotel uses have been sited on the subject parcel and adjoining lots. As previously mentioned, the Coastal Commission in 1988 approved Coastal Development Permit No. 5-87-576 (Miser and Cooper) for the demolition of an existing motel and construction of a new 47-room hotel, parking and a rock revetment. At the time CDP No. 5-87-576 was approved, all three parcels (including the subject parcel) were designated “General Commercial” in the certified 1986 Los Angeles County Malibu-Santa Monica Mountains Land Use Plan.

After the incorporation of the City of Malibu in 1991, the City developed a general plan which designates land uses and a municipal code which designates zoning for each parcel. When the Malibu City Council adopted the parcel specific Interim Zoning Map in 1993, two of the hotel’s parcels, APN 4452-005-030, and -031, were zoned to Commercial Visitor Serving 2 (CV-2), while the third parcel (APN 4452-005-029), which is the subject of this amendment, was zoned to Public Open Space (OS), instead of CV-2 like the two other parcels.

The land use and zoning designations of the Malibu LCP were based on the City’s existing General Plan and Zoning designations (at the time of LCP adoption in 2002), as well as the policies of the Coastal Act. In the case of the three parcels, the adopted LCP designates two parcels as CV-2, with the third subject parcel being designated as OS. The Commercial Visitor Serving (CV) designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting, as well public open space and recreation uses. Additionally, CV designations are divided into two levels of density. Hotels are only permitted in CV-2 designations, the highest density designation. The Public Open Space (OS) designation provides for publicly owned lands which are dedicated to recreation or preservation of the City’s natural resources, including public beaches, park lands and preserves. Allowable uses include passive recreation, research and education, natural observations, and recreational and support facilities.

The City asserts that the LCP land use and zoning designation of OS had been assigned to the subject parcel in error. Commission staff would note that this designation was based on the City’s General Plan and Municipal Code designations existing in 2002 at the time the City’s LCP was adopted. Although at the time of LCP adoption, the City’s General Plan reflected the subject parcel as CV-2, the City’s Municipal Code Zoning designation reflected the parcel as OS. The City is now proposing to change the LUP and Zoning Maps of the LCP to correct the discrepancy and to bring the LCP maps into conformance with the City’s General Plan Land Use Maps.

In consideration of the parcel’s existing hotel development discussed above, the fact that the parcel is developed with a use (hotel) consistent with allowable uses under the Commercial Visitor Serving land use designation, and since the parcel is in common ownership with the adjacent two adjoining parcels (APN 4452-005-030, and -031), it appears that a land use/zoning designation of visitor serving commercial is a more appropriate land use for this parcel instead of the current land use/zoning designation of public open space. Given the suitability of this parcel for visitor serving uses, the CV-2 land use and zoning designations will ensure that priority for such uses is given should new development be proposed in the future. While the Coastal Act

requires that oceanfront lands suitable for public access and recreation be protected for such use, the subject parcel has not been available for such uses since prior to the effective date of the Coastal Act.

Furthermore, changing the designation of the parcel from OS to CV-2 will recognize the existing development located on the subject site and correct the existing designation/use discrepancy. All future development will need to support the visitor-serving nature of the area, be consistent with the allowable uses under the CV land use designation, and be consistent with the policies and provisions of the certified LCP.

Lastly, consistent with LUP Policy 2.33 and LUP Policy 5.11, which generally state that priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation, the proposed land use/zoning change from public open space to visitor serving commercial will still provide for public benefit since the population is able to take advantage of and enjoy the use of the hotel property, and such hotel use supports visitors to the coast.

The Commission therefore finds that the proposed LUP amendment, as submitted, is consistent with Chapter 3 policies of the Coastal Act, including Section 30250, and the LIP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended.

## **V. 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 its review of and action on LCP provisions. 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.

For the reasons discussed in this report, the LCP amendment as submitted is consistent with the intent of the applicable policies of the Coastal Act, the amendment will have no significant adverse effects on the environment within the meaning of CEQA, and no feasible alternatives are available which would substantially lessen any significant

adverse effect which the approval would have on the environment. Therefore, the Commission further finds that the proposed LCP amendment, as submitted, is consistent with CEQA.

## **APPENDIX A**

### **Substantive File Documents**

Certified City of Malibu Local Coastal Program; City of Malibu Ordinance No. 430 approving LCP Implementation Plan Amendment 17-003; City of Malibu Resolution No. 18-01 approving LCP Amendment No. 17-001; Coastal Development Permit No. 5-87-576 (Miser and Cooper).