

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
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VENTURA, CA 93001
(805) 585-1800



Th13b

DATE: February 14, 2019

TO: Commissioners and Interested Parties

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

SUBJECT: City of Malibu Minor LCP Amendment No. LCP-4-MAL-19-0010-1 for Commission Action at its March 7, 2019 hearing in Los Angeles.

AMENDMENT DESCRIPTION

The City of Malibu is requesting that the Commission certify an amendment to the Local Implementation Plan (LIP) portion of its certified Local Coastal Program (LCP) that includes revisions to existing regulations and permit procedures to facilitate and help streamline the process for the rebuilding of structures damaged or destroyed by the 2018 Woolsey Fire. Specifically, the amendment: (1) refines existing temporary housing regulations that allow temporary housing structures to be placed on a property during reconstruction or in anticipation of reconstruction of a residence destroyed due to natural disaster, (2) clarifies that the removal of native trees that were fatally damaged or destroyed by a natural disaster or that constitute an imminent public health and safety hazard may be exempt from the native tree protection provisions of the LCP, (3) clarifies that an onsite wastewater treatment system that was damaged or destroyed by a disaster may be replaced without the need for a coastal development permit (CDP) provided that the replacement system does not exceed the capacity of the damaged or destroyed system by more than 10 percent, (4) adds a de minimis waiver procedure that would allow the City to waive the CDP requirement for proposed upgrades to onsite wastewater treatment systems for structures that were damaged or destroyed by natural disaster and minor access road improvements required by the Fire Department after a natural disaster, only if certain findings can be made which are intended to track the Coastal Act and Commission's Regulations on waiver provisions, (5) allows driveway or access road improvements required by the Fire Department to improve access to properties damaged or destroyed as part of the Woolsey Fire to be processed through an administrative CDP if the improvements do not meet the criteria for a de minimis waiver, (6) allows temporary housing structures necessary for use during reconstruction or in anticipation of reconstruction of a residence destroyed due to natural disaster to be processed as an emergency CDP if certain conditions are met, and (7) makes other minor corrections and language revisions.

The amendment contains various provisions that ensure that development permitted through emergency permits or de minimis waivers will not have adverse impacts on coastal resources. For example, temporary housing structures may only be placed in existing developed areas, and

no new grading is permitted as part of the emergency permits. Homes permitted through the emergency procedure must be removed within 4-6 years or else receive a follow-up permit if they are to remain. Likewise, waivers for access road and on-site wastewater treatment improvements are only permitted if they will not impact environmentally sensitive habitat areas or have any other potential for adverse effects, either individually or cumulatively, on coastal resources.

On February 11, 2019, the Malibu City Council held a public hearing on the proposed amendment, and it will be taking a final action during the second reading of the proposed ordinance at its February 25, 2019 City Council meeting. Although the City has not yet formally adopted the proposed amendments, it is in the process of doing so, and the City has assured Commission staff that no substantive amendments to the ordinance can be made at the City's February 25th hearing. Accordingly, in an effort to help expedite the City's LCP amendment and provide relief for fire victims, Commission staff has prepared its recommendation and scheduled this item for the March 7, 2019 Commission hearing in anticipation that the City will take a final action prior to the Commission hearing on the matter. City and Commission staffs have been coordinating closely on the proposed changes to ensure that it can move forward quickly with no recommended modifications from Commission staff.

MINOR LCP AMENDMENT DETERMINATION

Pursuant to Section 30514(c) of the Coastal Act and Sections 13554(a) and (c) of Title 14 of the California Code of Regulations (CCR), the Executive Director has determined the proposed amendment is "minor" in nature. 14 CCR Section 13554(a) provides that a minor amendment includes, but is not limited to, changes which make the use as designated in implementing actions more specific, changes that do not affect the kind, intensity, or density of use, and changes that are consistent with the certified LUP. 14 CCR Section 13554(c) further provides that a minor amendment may include changes in the notification and hearing procedures that are consistent with the requirements of the Coastal Act.

The City's proposed modifications include minor changes to existing language and procedures contained in the City's certified LIP. The subject amendment request which is reflected in Ordinance 445 (attached) represents changes to make implementing provisions more organized and specific and include a de minimis waiver procedure that would allow the City to waive the CDP requirement for proposed modifications to existing onsite wastewater treatment systems and access roads only if certain findings can be made which are intended to track the Coastal Act and Commission's Regulations on waiver provisions. These modifications do not change the kind, location, intensity or density of uses allowed. Further, the changes proposed in the subject amendment (attached) will modify the notification, hearing, and other procedures required for approving certain types of development, such as by allowing emergency permits or de minimis waivers for specified activities. Therefore, the proposed amendment is considered "minor" as defined under 14 CCR Section 13554.

PROCEDURES

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government's resolution for submittal of a proposed LCP amendment must indicate whether the local coastal program amendment will require formal local government adoption after 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, the City has submitted the amendment as one that will take effect automatically upon approval by the Commission. If one third of the appointed members of the Commission requests, the determination of minor amendment shall not become effective and the amendment shall be processed in accordance with 14 CCR Section 13555(b).

PUBLIC NOTICE

Section 13555 of Title 14 of the California Code of Regulations requires the Executive Director to prepare a report describing the proposed amendment and providing notice of the Executive Director's determination the amendment is of a "minor" nature. Section 13555 also requires the Executive Director to report to the Commission at the next meeting his or her determination and objections to the determination, if any, that have been received within 10 working days. If one third of the appointed members of the Commission requests, the determination of minor amendment shall not become effective and the amendment shall be processed in accordance with 14 CCR Section 13555(b).

Notification of the proposed amendment will be mailed on February 19, 2019. The ten working-day objection period will therefore terminate on March 5, 2019. The Commission will be notified at the March 7, 2019 meeting of any objections.

Also, Section 30503 of the Coastal Act requires that maximum opportunities for public input be provided in preparation, approval, certification, and amendment of any LCP. The City held public hearings on the proposed ordinance changes. The hearings were noticed to the public consistent with Section 13515 of Title 14 of the California Code of Regulations and the City provided evidence of the measures taken to provide notice of their hearings, consistent with Section 13552 of Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

ORDINANCE NO. 445

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING THE LOCAL COASTAL PROGRAM AND MALIBU MUNICIPAL CODE TITLE 17 (ZONING) MODIFYING STANDARDS AND PROCEDURES TO FACILITATE THE REBUILDING OF STRUCTURES DAMAGED OR DESTROYED BY THE 2018 WOOLSEY FIRE, REGULATING TEMPORARY HOUSING, ALLOWING REMOVAL OF CERTAIN NATIVE TREES, AND ALLOWING APPROVAL OF CHANGES TO AN ONSITE WASTEWATER TREATMENT SYSTEM OR ACCESS WAY THROUGH A DE MINIMIS WAIVER PROCESS (CITYWIDE)

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Recitals.

A. On December 4, 2018, in compliance with Malibu Municipal Code (MMC) Section 17.74.020, the City Council adopted Council Resolution No. 18-65 to initiate a Local Coastal Program Amendment (LCPA) and zoning text amendment (ZTA) to consider changes to the Malibu LCP and Title 17 (Zoning) of the MMC to facilitate the rebuilding of homes damaged or destroyed by the 2018 Woolsey Fire and provide relief for victims of the fire.

B. On December 20, 2018, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu.

C. On January 10, 2019, the Planning Commission held a duly noticed public hearing, and adopted Planning Commission Resolution No. 19-07, recommending the City Council adopt the proposed amendments.

D. On January 17, 2019, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu indicating that the City Council would hold a public hearing on February 11, 2019, to consider the proposed amendments.

E. On February 11, 2019, the City Council held a duly noticed public hearing on the subject amendments, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information.

SECTION 2. Environmental Review.

The City Council has analyzed the project proposal described herein and makes the following findings. Pursuant to Public Resources Code Section 21080.9, the

California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment, and thus does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect. Local Implementation Plan (LIP) section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This corollary amendment is required by the adoption of the LCPA to avoid conflicts between the LCP and MMC and as it shall only be implemented if the LCPA is approved and is dependent upon, related to, and duplicative of, the exempt activity, it is subject to the same CEQA exemption.

In addition, CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines section 15061(b)(3), where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council determined that there is no possibility the amendments will have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies. The amendments to the MMC that are not corollary to the LCP, specifically, 1) amendments to Section 17.60.020 (Nonconforming Structures and Uses), 2) amendments to Section 17.40.040(A)(18) introducing the requirement to obtain a temporary housing permit from the Planning Director, and 3) amendments to Section 17.40.040(A)(18)(f) adding the citation/fine provisions, can be seen not to have a significant effect on the environment as they merely create permit and fine requirements and allow structures that existed previously to be rebuilt in the same location with substantially the same purpose and capacity as the structure that would be replaced. In addition, the proposed citation/fine structure would qualify for exemption pursuant to CEQA Guidelines section 15321 (Enforcement Actions by Regulatory Agencies). The amendments to Section 17.60.020 would also qualify for exemption pursuant to CEQA Guidelines section 15302 (Replacement or Reconstruction).

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 18-004 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act.

A. The amendments to the LCP meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP. Updated standards and regulations specific to properties impacted by a natural disaster ensure that these properties are rebuilt quickly while maintaining standards to require that development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal resources.

B. As a part of the LIP, the updated natural disaster standards and regulations for homes, native trees, and onsite wastewater systems (OWTSs) located on property damaged or destroyed by a natural disaster ensure that future residential structures within the City conform to applicable LCP policies, goals, and provisions, while taking into consideration the protection and enhancement of visual resources, public access, and recreation opportunities. Incorporating specific requirements for fire rebuilt homes including temporary housing and new and upgraded OWTSs, including adding de minimis waivers for some minor development, achieves LIP Sections 1.2(D) and (G) (guides future growth and development), LIP Section 1.2(F) (promotes public health, safety, and general welfare), and LIP Section 1.2(K) (assures adequate public uses, facilities and improvements).

SECTION 4. Local Coastal Program Amendment No. 18-04 (Amendments to the LIP).

The City Council hereby amends the LIP as follows:

A. Amend LIP Section 3.3(I)(2) to remove the following language:

“In addition to the uses permitted in Table B, mobile homes for residential occupancy by the property owner shall be considered a permitted use for a period of not more than two consecutive years where the property owner’s primary residence is destroyed or uninhabitable as a result of landslide, fire or other natural disaster. The homes shall comply with all applicable building codes for residential occupancy. This provision shall automatically expire on December 9, 2003.”

B. Amend LIP Section 3.6(M) to read as follows:

M. Temporary Housing. Temporary housing structures as used herein means mobilehomes, trailers, recreational vehicles or other structures which are self-contained units which include sanitary facilities, and facilities for normal daily routines including cooking and sleeping. Temporary housing structures do not include any structure placed upon a permanent foundation, nor do they include tents, yurts, or similar fabric or textile installations. Temporary housing structures used as a residence during reconstruction or in anticipation of reconstruction of a residence destroyed due to natural disaster shall comply with the following conditions:

1. No more than two (2) temporary housing structures which together total no more than 1,200 square feet shall be permitted.
2. No additional grading shall be allowed beyond that permitted as part of the development plan. The temporary housing shall be placed within the existing development area as defined by the LIP. Development area for residences built before the Coastal Act shall include all of the site that was legally developed, including the building pad and all graded slopes, all structures, driveways and parking areas.

3. The temporary housing structure shall include skirting.
4. The temporary housing structure shall not include any structural attachments.
5. The temporary housing structure shall comply with the following utility requirements:
 - a. Be connected to a city-approved power source.
 - b. Provide the City with written authorization from the owner allowing the City to terminate all utilities upon expiration of the period for which the temporary housing structure is permitted to remain on the property.
 - c. Be connected to a functioning onsite wastewater treatment system (OWTS) or sewer as approved by the Environmental Health Administrator. A City-registered OWTS practitioner must inspect the OWTS and verify its functionality prior to installation of the temporary housing structure.
 - d. Be connected to an approved source of potable water.
6. Temporary housing structures shall be permitted for an initial period of four (4) years and shall be renewable by the Planning Director in increments up to one year, for a maximum placement of the temporary housing structure of six (6) years, provided that a building permit for the reconstruction has been issued and regular inspections are occurring.
7. Prior to final approval (e.g., Certificate of Occupancy) by the Building Official for the reconstructed residence, the temporary housing structure shall be removed from the lot unless the temporary housing structure is permitted and is converted into a permanent structure that meets the requirements of the LCP. An RV may remain on the lot and would no longer be considered a temporary housing structure if it is disconnected from utilities and legally stored in compliance with the LCP.

- C. Amend LIP Chapter 5 to add a new LIP Section 5.8 to read as follows:

5.8 EXEMPTIONS

The following shall be exempt from the provisions of this chapter:

- A. Native trees destroyed or damaged by a natural disaster. A damaged tree shall be exempt only if the general health of the tree is so poor that efforts to ensure its long-term health and survival are unlikely to be successful as determined by an arborist report and confirmed by the City Biologist after a site inspection of the tree.
- B. Native trees that constitute an imminent public health and safety hazard due to the risk of falling where the structural instability cannot be remedied as determined by a licensed arborist's report and confirmed by the City Biologist after a site inspection of the tree.

- C. Native trees that were planted for ornamental purposes as part of an approved coastal development permit where their planting was not required by the LCP or Coastal Act for mitigation or restoration.
- D. Amend Section 13.4 Exemption to address both coastal development permit exemptions and de minimis waivers as follows:

13.4 EXEMPTIONS FROM AND DE MINIMIS WAIVERS OF COASTAL DEVELOPMENT PERMIT

The projects described in Sections 13.4.1 through 13.4.9 are exempt from the requirement to obtain a Coastal Development Permit, subject to the requirements of Section 13.4.10. Section 13.4.11 describes general requirements for de minimis waivers and projects eligible for de minimis waivers.

- E. Amend the heading of Section 13.4.1 to read as follows:

13.4.1 Exemption for Improvements to Existing Single-Family Residences

- F. Amend the heading of Section 13.4.2 to read as follows:

13.4.2 Exemption for Repair and Maintenance Activities

- G. Amend the heading for Section 13.4.3 to read as follows:

13.4.3 Exemption for Other Improvements

- H. Amend the heading for Section 13.4.4 to read as follows:

13.4.4 Exemption for Categorically Excluded Development

- I. Amend the heading for Section 13.4.5 to read as follows:

13.4.5 Exemption for Utility Connections

- J. Amend LIP Section 13.4.6. to read as follows:

13.4.6 Exemption for Structures Destroyed by Natural Disaster

A. The replacement of any structure, other than a public works facility, destroyed by a disaster provided that the replacement structure meets all the of the following criteria:

1. It is for the same use as the destroyed structure;

2. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and

3. It is sited in the same location on the affected property as the destroyed structure.

As used in this section, “Structure” includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

B. An onsite wastewater treatment system (OWTS) that was damaged or destroyed by a disaster may be replaced provided that the replacement OWTS does not exceed the capacity of the damaged or destroyed OWTS by more than 10 percent. For purposes of this section, if the existing tank is less than 1500 gallons the proposed new tank shall be allowed to increase in capacity to 1500 gallons only to meet the minimum code requirement of the City under this exemption.

K. Amend the heading for Section 13.4.7 to read as follows:

13.4.7 Exemption for Time Share Conversions

L. Amend the heading for Section 13.4.8 to read as follows:

13.4.8 Exemption for Repair, Maintenance and Utility Hook-Up Exclusions

M. Amend the heading for Section 13.4.9 to read as follows:

13.4.9 Exemption for Temporary Event

N. Add a new Section 13.4.11 to read as follows:

13.4.11 General Requirements for De Minimis Waiver

A. General Requirements for De Minimis Waiver

The requirement for a coastal development permit may be waived through a De Minimis Coastal Development Permit Waiver issued by the Planning Director for the items listed below where the improvements are not otherwise exempt pursuant to Section 13.4, provided all the requirements of subsections B and C are met. The Planning Director’s decision on whether to issue a de minimis waiver is not locally appealable.

1. Improvements to an onsite wastewater treatment system (OWTS) serving a structure that was damaged or destroyed as a result of a natural disaster,

where the improvements involve installing a new system or upgrading an existing system to an advanced system on the same lot.

2. Minor improvements to existing driveways or access roads that are required by the Fire Department after a natural disaster, such as minor changes to the width or grade of driveways or access roads. Access improvements that do not meet the findings for a waiver may be processed as an Administrative Coastal Development Permit (ACDP) under Section 13.13.1(A) or as a regular Coastal Development Permit.

B. Findings for and Reporting of De Minimis Waivers

All decisions on de minimis waivers shall be accompanied by written findings:

1. That the OWTS or driveway/road improvements have no potential for adverse effects, either individually or cumulatively, on coastal resources.
2. That the OWTS or driveway/road improvements are consistent with the certified Malibu Local Coastal Program, including the resource protection policies, as applicable.
3. If an OWTS is to be relocated on the lot, that the Director, in consultation with Environmental Health Administrator, has determined the relocation is necessary to better protect coastal resources.
4. If driveway/road improvements are proposed, that: a) they are in the same general alignment as the existing road, b) they are not located in environmentally sensitive habitat area (ESHA), c) they do not remove or encroach within the protected zone of native trees, and d) they do not adversely impact visual resources.
5. That the development is not in a location where an action on the development would be appealable to the Coastal Commission (See Chapter 2 – Definitions).

C. Reporting De Minimis Waiver

1. At the time the application is submitted for filing, the applicant must post, at a conspicuous place as close to the site as possible that is easily accessible by the public and approved by the City, notice, on a form approved by the City, that an application for a de minimis waiver has been submitted to the City. Such notice shall contain a general description of the nature of the proposed development.
2. The Planning Director shall issue a notice of determination on the application which shall be reported to the Planning Commission. The notice of determination shall be provided to all known interested parties, including the Executive Director of the Coastal Commission, at least ten

days prior to the waiver determination being reported to the Planning Commission.

3. If, after consideration of the waiver and any public objections to it, the Planning Commission requests that the waiver not be effective, then the applicant shall be advised that a Coastal Development Permit is required for the OWTS or road improvements. Otherwise, the waiver is effective immediately after the Planning Commission meeting where the matter is heard.

D. Waiver Expiration.

A De Minimis Waiver shall expire and be of no further force and effect if the authorized OWTS or driveway or access road improvements are not commenced pursuant to a valid Grading and/or Building Permit, as applicable, within five years of the effective date of the waiver. If expired, a Coastal Development Permit or another waiver shall be required.

- O. Amend LIP Section 13.13.1(A) to add a new subsection (6), as follows:

6. Driveways or access road improvements required by the Fire Department to improve access to properties damaged or destroyed as part of the Woolsey Fire that do not meet the criteria for a De Minimis Waiver.

- P. Amend LIP Section 13.14 to add a new subsection (H) as follows:

H. An emergency permit issued for temporary housing pursuant to LIP 3.6(M) shall not be subject to subsections (F)(5) or (F)(7) above.

SECTION 5. Zoning Text Amendment Findings.

Pursuant to MMC Section 17.74.040, the City Council hereby makes the following findings:

- A. The subject zoning text amendment is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed amendment serves to enhance the Malibu General Plan Mission Statement, protect public safety and preserve Malibu's natural and cultural resources.
- B. The City Council held a public hearing, reviewed the subject zoning text amendment application for compliance with the City of Malibu General Plan, Malibu Municipal Code and the Malibu Local Coastal Program, and finds that the zoning text amendment is consistent.

SECTION 6. Zoning Text Amendment No. 18-005, Amendments to MMC Title 17.

The City Council hereby amends MMC Title 17 as follows:

- A. Amend MMC section 17.24.020 to read as follows, deleting subsection C:

17.24.020 Permitted uses.

The following uses and structures are permitted in the CC district:

- A. All permitted uses and activities set forth in Section 17.22.020 (CN District); and
- B. Medical, dental and physical therapy clinics and health clubs and dance studios.

- B. Amend MMC Section 17.40.040(A)(18) to read as follows:

Temporary Housing. Temporary housing structures as used herein means mobilehomes, trailers, recreational vehicles or other structures which are self-contained units which include sanitary facilities, and facilities for normal daily routines including cooking and sleeping. Temporary housing structures do not include any structure placed upon a permanent foundation, nor do they include tents, yurts, or similar fabric or textile installations. Temporary housing structures used as a residence during reconstruction or in anticipation of reconstruction of a residence destroyed due to natural disaster shall be permitted with a temporary housing permit approved by the Planning Director and shall comply with the following conditions:

- a. No more than two (2) temporary housing structures which together total no more than 1,200 square feet shall be permitted.
- b. No additional grading shall be allowed beyond that permitted as part of the development plan. The temporary housing shall be placed within the existing development area as defined by the LIP. Development area for residences built before the Coastal Act shall include all of the site that was legally developed, including the building pad and all graded slopes, all structures, driveways and parking areas.
- c. The temporary housing structure shall include skirting.
- d. The temporary housing structure does not include any structural attachments.
- e. The temporary housing structure shall comply with the following utility requirements:
 - i. Be connected to a city-approved power source.
 - ii. Provide the City with written authorization from the owner allowing the city to terminate all utilities upon expiration of the period for which the temporary housing structure is permitted to remain on the property.

- iii. Be connected to a functioning onsite wastewater treatment system (OWTS) or sewer as approved by the Environmental Health Administrator. A City-registered OWTS practitioner must inspect the OWTS and verify its functionality prior to installation of the temporary housing structure.
 - iv. Be connected to an approved source of potable water.
- f. Temporary housing structures shall be permitted for an initial period of four (4) years and shall be renewable by the Planning Director in increments up to one year, for a maximum placement of the temporary housing structure of six (6) years, provided that a building permit for the reconstruction has been issued and regular inspections are occurring.
- g. Upon expiration of the temporary housing permit, the property owner shall obtain verification from the City that all temporary housing structures have been removed from the property. Failure to obtain this verification shall result in a fine of \$100 per day until the verification is obtained.
- h. Prior to final approval (e.g., Certificate of Occupancy) by the Building Official for the reconstructed residence, the temporary housing structure shall be removed from the lot unless the temporary housing structure is permitted and converted into a permanent structure that meets the requirements of the LCP. An RV may remain on the lot and would no longer be considered a temporary housing structure if it is disconnected from utilities and legally stored in compliance with the LCP.

C. Amend MMC Section 17.60.020(A) to read as follows:

- A. Any structure which was lawfully erected and which does not conform to the current design and development standards or lot development criteria of this title may be continuously maintained and shall be treated in all respects as though in full compliance with this title.

D. Amend MMC Section 17.60.020(C) to read as follows:

C. Any structure described in subsection A of this section, may be remodeled, or may be reconstructed in the general location and to the same height as it existed prior to damage or destruction, subject to obtaining planning verification and provided that the application for the reconstruction is initiated with the city within two years of the date of damage or destruction, and a building permit is diligently pursued and obtained within four years from the date of damage or destruction and has not expired. A request for an extension of time to the two year or four year periods may be granted by the Planning Commission where it finds, based on substantial evidence, that due to unusual circumstances, strict compliance with the two or four year limit creates an undue hardship. Extensions may not total more than 5 years. Any reconstruction shall extend the termination date described in Section 17.60.040 for the use operating within such a structure.

E. Amend MMC Section 17.60.020(F) to read as follows:

F. Any structure described in subsection A of this section that was damaged or destroyed by the 2018 Woolsey Fire may be permitted, at the discretion of the planning director through approval of a planning verification, to increase the square footage, height or bulk permitted by this title by ten (10) percent of the existing or previously existing square footage, height or bulk of the structure. Increased height shall not exceed 18 feet, unless a site plan review is obtained, and increased square footage shall not exceed the limits of Section 17.40.040(A)(13).

SECTION 7. Approval.

Subject to the contingency set forth in Section 10, the City Council hereby adopts LCPA No. 18-004 and ZTA No. 18-005 amending the LCP and MMC.

SECTION 8. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 18-004 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulations, 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 9. Effectiveness.

The LCP amendment and corollary ZTA amendments approved in this Ordinance shall become effective only upon certification by the CCC of this amendment to the LCP. The MMC amendments that are not corollary to the LCP, specifically, 1) amendments to Section 17.60.020 (Nonconforming Structures and Uses), 2) amendments to Section 17.40.040(A)(18) introducing the requirement to obtain a temporary housing permit from the Planning Director, and 3) amendments to Section 17.40.040(A)(18)(f) adding the citation/fine provisions, will take effect on the 31st day after adoption.

SECTION 10. Certification.

The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this _____ day of February 2019.

JEFFERSON WAGNER, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED

BY THE CITY ATTORNEY'S OFFICE
CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

1. Local Coastal Program Amendment No. 18-04 (Amendments to the LIP).

A. Amend LIP Section 3.3 to delete the text in 3.3(I)(2) as follows:

2. Permitted and Conditionally Permitted Uses

Refer to Table B (Permitted Uses).

~~In addition to the uses permitted in Table B, mobile homes for residential occupancy by the property owner shall be considered a permitted use for a period of not more than two consecutive years where the property owner's primary residence is destroyed or uninhabitable as a result of landslide, fire or other natural disaster. The homes shall comply with all applicable building codes for residential occupancy. This provision shall automatically expire on December 9, 2003.~~

B. Amend LIP Section 3.6(M) to read as follows:

~~M. Temporary Mobilehomes or Trailers. Mobilehomes or trailer used as a residence during construction or in anticipation of reconstruction of residences destroyed due to natural disaster, shall comply with the following conditions:~~

M. Temporary Housing. Temporary housing structures as used herein means mobilehomes, trailers, recreational vehicles or other structures which are self-contained units which include sanitary facilities, and facilities for normal daily routines including cooking and sleeping. Temporary housing structures do not include any structure placed upon a permanent foundation, nor do they include tents, yurts, or similar fabric or textile installations. Temporary housing structures used as a residence during reconstruction or in anticipation of reconstruction of a residence destroyed due to natural disaster shall comply with the following conditions:

1. ~~No more than one (1)~~ two (2) temporary housing structures ~~dwelling unit which together total no more than 1,200 square feet~~ shall be permitted.

2. ~~The mobilehome or trailer shall not exceed twenty eight (24) feet in width.~~

~~3.2.~~ No additional grading shall be allowed beyond that permitted as part of the development plan. The temporary housing shall be placed within the existing development area as defined by the LIP. Development area for residences built before the Coastal Act shall include all of the site that was legally developed, including the building pad and all graded slopes, all structures, driveways and parking areas.

4. ~~The mobilehome incorporates compatible colors with the neighborhood and includes skirting along the base of the mobilehome.~~

3. The temporary housing structure shall include skirting.

~~5.4.~~ The mobilehome temporary housing structure does shall not include any structural attachments.

~~6. The mobilehome or trailer shall be occupied by the property owner and connected to a temporary power pole with owner authorization to the City to terminate utilities upon expiration of the permit period.~~

5. The temporary housing structure shall comply with the following utility requirements:

- a. Be connected to a city approved power source.
- b. Provide the city with written authorization from the owner allowing the city to terminate all utilities upon expiration of the period for which the temporary housing structure is permitted to remain on the property.
- c. Be connected to a functioning onsite wastewater treatment system (OWTS) or sewer as approved by the Environmental Health Administrator. A city-registered OWTS practitioner must inspect the OWTS and verify its functionality prior to installation of the temporary housing structure.
- d. Be connected to an approved source of potable water.

~~7.6. The mobilehome or trailer~~ Temporary housing structures shall be permitted for an initial period of two-four (4) years and shall be renewable for six-month increments at the discretion of by the Planning Director in increments up to one year, for a maximum placement of the temporary housing structure of six (6) years, provided that a building permit for the reconstruction has been issued and regular inspections are occurring.

7. Prior to final approval (e.g., Certificate of Occupancy) by the Building Official for the reconstructed residence, the temporary housing structure shall be removed from the lot unless the temporary housing structure is permitted and is converted into a permanent structure that meets the requirements of the LCP. An RV may remain on the lot and would no longer be considered a temporary housing structure if it is disconnected from utilities and legally stored in compliance with the LCP.

C. Amend LIP Chapter 5 to add a new LIP Section 5.8 to read as follows:

5.8 EXEMPTIONS

The following shall be exempt from the provisions of this chapter:

A. Native trees destroyed or damaged by a natural disaster. A damaged tree shall be exempt only if the general health of the tree is so poor that efforts to ensure its long-term health and survival are unlikely to be successful as determined by an arborist report and confirmed by the City Biologist after a site inspection of the tree.

B. Native trees that constitute an imminent public health and safety hazard due to the risk of falling where its structural instability cannot be remedied as

determined by a licensed arborist's report and confirmed by the City Biologist after a site inspection of the tree.

C. Native trees that were planted for ornamental purposes as part of an approved coastal development permit where their planting was not required by the LCP or Coastal Act for mitigation or restoration.

D. Amend LIP Section 13.4 Exemption to address both coastal development permit exemptions and de minimis waivers as follows:

13.4 EXEMPTIONS FROM AND DE MINIMIS WAIVERS OF COASTAL DEVELOPMENT PERMIT

The following projects are exempt from the requirement to obtain a Coastal Development Permit, subject to the requirements of Section 13.4.10. Section 13.4.11 describes general requirements for de minimis waivers and projects eligible for de minimis waivers.

E. Amend the heading of Section 13.4.1 to read as follows:

13.4.1 Exemption for Improvements to Existing Single-Family Residences

F. Amend the heading of Section 13.4.2 to read as follows:

13.4.2 Exemption for Repair and Maintenance Activities

G. Amend the heading for Section 13.4.3 to read as follows:

13.4.3 Exemption for Other Improvements

H. Amend the heading for Section 13.4.4 to read as follows:

13.4.4 Exemption for Categorically Excluded Development

I. Amend the heading for Section 13.4.5 to read as follows:

13.4.5 Exemption for Utility Connections

J. Amend LIP Section 13.4.6. to read as follows:

13.4.6 Exemption for Structures Destroyed by Natural Disaster

A. The replacement of any structure, other than a public works facility, destroyed by a disaster provided that the replacement structure meets all the of the following criteria:

~~A.~~1. It is for the same use as the destroyed structure;

~~B.~~2. It does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and

~~C.~~3. It is sited in the same location on the affected property as the destroyed structure.

As used in this section, “Structure” includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

B. An onsite wastewater treatment system (OWTS) that was damaged or destroyed by a disaster may be replaced provided that the replacement OWTS does not exceed the capacity of the damaged or destroyed OWTS by more than 10 percent. For purposes of this section, if the existing tank is less than 1500 gallons the proposed new tank shall be allowed to increase in capacity to 1500 gallons only to meet the minimum code requirement of the City under this exemption.

K. Amend the heading for Section 13.4.7 to read as follows:

13.4.7 Exemption for Time Share Conversions

L. Amend the heading for Section 13.4.8 to read as follows:

13.4.8 Exemption for Repair, Maintenance and Utility Hook-Up Exclusions

M. Amend the heading for Section 13.4.9 to read as follows:

13.4.9 Exemption for Temporary Event

N. Add a new Section 13.4.11 to read as follows:

13.4.11 General Requirements for De Minimis Waiver

A. General Requirements for De Minimis Waiver

The requirement for a coastal development permit may be waived through a De Minimis Coastal Development Permit Waiver issued by the Planning Director for the items listed below where the improvements are not otherwise exempt pursuant to Section 13.4, provided all the requirements of subsections B and C are met. The Planning Director’s decision on whether to issue a de minimis waiver is not locally appealable.

1. Improvements to an onsite wastewater treatment system (OWTS) serving a structure that was damaged or destroyed as a result of a natural disaster,

where the improvements involve installing a new system or upgrading an existing system to an advanced system on the same lot.

2. Minor improvements to existing driveways or access roads that are required by the Fire Department after a natural disaster, such as minor changes to the width or grade of driveways or access roads. Access improvements that do not meet the findings for a waiver may be processed as an Administrative Coastal Development Permit (ACDP) under Section 13.13.1(A) or as a regular Coastal Development Permit.

B. Findings for and Reporting of De Minimis Waivers

All decisions on de minimis waivers shall be accompanied by written findings:

1. That the OWTS or driveway/road improvements have no potential for adverse effects, either individually or cumulatively, on coastal resources.
2. That the OWTS or driveway/road improvements are consistent with the certified Malibu Local Coastal Program, including the resource protection policies, as applicable.
3. If an OWTS is to be relocated on the lot, that the Director, in consultation with Environmental Health Administrator, has determined the relocation is necessary to better protect coastal resources.
4. If driveway/road improvements are proposed, that: a) they are in the same general alignment as the existing road, b) they are not located in environmentally sensitive habitat area (ESHA), c) they do not remove or encroach within the protected zone of native trees, and e) they do not adversely impact visual resources.
5. That the development is not in a location where an action on the development would be appealable to the Coastal Commission (See Chapter 2 – Definitions).

C. Reporting De Minimis Waiver

1. At the time the application is submitted for filing, the applicant must post, at a conspicuous place as close to the site as possible that is easily accessible by the public and approved by the City, notice, on a form approved by the City, that an application for a de minimis waiver has been submitted to the City. Such notice shall contain a general description of the nature of the proposed development.
2. The Planning Director shall issue a notice of determination on the application which shall be reported to the Planning Commission. The notice of determination shall be provided to all known interested parties, including the Executive Director of the Coastal Commission, at least ten days prior to the waiver determination being reported to the Planning Commission.

3. If, after consideration of the waiver and any public objections to it, the Planning Commission requests that the waiver not be effective, then the applicant shall be advised that a Coastal Development Permit is required for the OWTS or road improvements. Otherwise, the waiver is effective immediately after the Planning Commission meeting where the matter is heard.

D. Waiver Expiration.

A De Minimis Waiver shall expire and be of no further force and effect if the authorized OWTS or driveway or access road improvements are not commenced pursuant to a valid Grading and/or Building Permit, as applicable, within five years of the effective date of the waiver. If expired, a Coastal Development Permit or another waiver shall be required.

- O. Amend LIP Section 13.13.1(A) to add a new subsection (6), as follows:

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

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

6. Driveways or access road improvements required by the Fire Department to improve access to properties damaged or destroyed as part of the Woolsey Fire that do not meet the criteria for a De Minimis Waiver.

- P. Amend LIP Section 13.14 to add a new subsection (H) as follows:

13.14 EMERGENCY PERMITS

In the event of an emergency as defined in Chapter 2 of the Malibu LIP (Definitions), an application for an Emergency Coastal Development Permit

(“emergency permit”) shall be made to the Planning Manager. The Planning Manager may issue an emergency permit in accordance with Coastal Act Section 30624 and the following:

A. Applications in cases of emergencies shall be made to the Planning Manager by letter or facsimile during business hours if time allows, by telephone or in person if time does not allow.

B. The information to be included in the application shall include the following:

1. The nature of the emergency;
2. The cause of the emergency, insofar as this can be established;
3. The location of the emergency;
4. The remedial, protective or preventative work required to deal with the emergency; and
5. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.

C. The Planning Manager shall verify the facts, including the existence and nature of the emergency, insofar as time allows.

D. Prior to issuance of an emergency coastal development permit, when feasible, the Planning Manager shall notify, and coordinate with, the South Central Coast District office of the California Coastal Commission as to the nature of the emergency and the scope of the work to be performed. This notification shall be in person or by telephone.

E. The Planning Manager shall provide public notice of the proposed emergency, with the extent and type of notice determined on the basis of the nature of the emergency itself. The Planning Manager may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the Planning Manager finds that:

1. An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of this chapter and Public Resources Code Section 30600.5 and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;

2. Public comment on the proposed emergency action has been reviewed if time allows; and
 3. The work proposed would be temporary and consistent with the requirements of the City's certified LCP.
 4. The work proposed is the minimum action necessary to address the emergency and, to the maximum extent feasible, is the least environmentally damaging temporary alternative for addressing the emergency.
 5. The Planning Manager shall not issue an emergency permit for any work that falls within the provisions of Public Resources Code Section 30519(b) since a coastal development permit application must be reviewed by the California Coastal Commission pursuant to provisions of Public Resources Code Section 30600.5.
- F. The emergency permit shall be a written document that includes the following information:
1. The date of issuance;
 2. An expiration date;
 3. The scope of work to be performed;
 4. Terms and conditions of the permit;
 5. A provision stating that within 90 days of issuance of the emergency permit, a regular coastal development permit application shall be submitted and properly filed consistent with the requirements of this Chapter;
 6. A provision stating that any development or structures constructed pursuant to an emergency permit shall be considered temporary until authorized by a follow-up regular coastal development permit and that issuance of an emergency coastal development permit shall not constitute an entitlement to the erection of permanent development or structures;
 7. A provision that states that: The development authorized in the emergency permit must be removed unless a complete application for a regular coastal development permit is filed within 90 days of approval of the emergency permit and said regular permit is approved. If a regular coastal development permit authorizing permanent retention of the development is denied, then the development that was authorized in the emergency permit, or the denied portion of the development, must be removed.

G. The emergency permit may contain conditions for removal of development or structures if they are not authorized in a regular coastal development permit, or the emergency permit may require that a subsequent permit must be obtained to authorize the removal.

H. An emergency permit issued for temporary housing pursuant to LIP 3.6(M) shall not be subject to subsections (F)(5) or (F)(7) above.