

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
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Th20a

DATE: April 25, 2019

TO: Commissioners and Interested Persons

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

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-13-0241-1 (Affordable Housing/Reasonable Accommodation) for Public Hearing and Commission Action at the May 9, 2019 Commission Meeting in Oxnard.

DESCRIPTION OF THE SUBMITTAL

The City of Malibu (“City”) is proposing to amend the Local Implementation Plan (LIP) portion of its certified Local Coastal Program (LCP) to create a “Affordable Housing Overlay” with specific development standards to accommodate the City’s required housing needs allocation pursuant to State law, add procedures related to reasonable accommodations for persons with disabilities, add provisions for affordable housing density bonuses, farmworker employee housing, emergency shelters, single-room occupancy facilities, small and large residential care facilities, transitional and supportive housing, and update housing-related definitions.

The City of Malibu submitted Local Coastal Program Amendment LCP-4-MAL-13-0241-1 to the Commission on December 30, 2013. The amendment proposal was deemed complete and filed on March 26, 2018, after the submittal of additional information requested by Commission staff. At the May 10, 2018 hearing, the Commission granted a one year time extension to act on the subject amendment pursuant to Coastal Act Section 30517 and California Code of Regulations, Title 14, Section 13535(c). **The Commission must act on this LCP amendment at the May 2019 Commission hearing.**

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed LCP amendment, as submitted by the City of Malibu, and **approve** the proposed amendment with eleven suggested modifications. The modifications are necessary because the proposed amendment to the Local Implementation Plan, as submitted, does not conform with and is inadequate to carry out the provisions of the Land Use Plan. The motions and resolutions for Commission action can be found starting on **pages 6-7** of this staff report.

The subject amendment proposes to re-organize and update existing residential density bonus provisions of the LCP, which includes increasing the allowable density bonus housing units available for qualifying projects from 25 to 35 percent in order to be consistent with the State density bonus law (California Government Code Section 65915). The amendment also updates

the criteria for eligibility and other processing requirements for density bonus and incentive requests, and makes revisions to standards that are better suited for multi-family residential development. The key issues raised with regard to density bonus and incentives are the potential impacts to coastal resources should incentives include a reduction in development standards or other requirements in a manner inconsistent with the resource protection policies of the LUP. In this case, to ensure that bonuses are granted consistent with the resource protection policies of the LUP, staff is recommending Suggested Modification Four (4) to clarify that the City may only approve a housing development project with a bonus if the project is consistent with all applicable coastal resource protection policies and development standards and is compatible with the purpose and intent of the residential density bonus provisions.

The proposed amendment also creates a new Affordable Housing Overlay (AHO) District with specific development standards to accommodate the City's required housing needs allocation pursuant to the State's Housing Element Law. Lands designated under this overlay, known as "candidate sites," would qualify for higher density multi-family use for affordable housing development. Two of the proposed candidate sites are currently zoned Multi-Family Residential (MF) and the third site is zoned Community Commercial (CC). The third site, a 2.3-acre property located at 23465 Civic Center Way, is known as La Paz Site Parcel C. This site is also located within the Town Center Overlay (TCO) District. The TCO district provides specific development criteria for parcels within the Civic Center Area, which includes that the La Paz Site Parcel C is to be conveyed to the City of Malibu as a public benefit for the purpose of a City Hall or other municipal use. This is because this was required by the TCO District to offset the increased commercial development density for the rest of the La Paz commercial development, which allowed for an increase in floor area ratio (FAR) from 0.15 to 0.20, if certain public benefits were provided. The City of Malibu has indicated that affordable housing would constitute a municipal use that is a public benefit given the scarcity of affordable housing within the City and the City's ability to either develop, or be a partner in developing, affordable housing at this site. In order to ensure internal consistency within the LCP, staff is recommending Suggested Modification Three (3) to reflect that the affordable housing units on La Paz Site Parcel C shall be predominately affordable (80 percent) to lower and moderate households, in which a minimum of 50 percent of the affordable units shall be deed restricted for very-low or low-income households, and the housing is either built by the City, or the City is a partner to, in order to serve as a public benefit to the City.

With regards to transitional and supportive housing, single room occupancy housing, emergency shelters, residential care facilities, and housing for persons with disabilities, the proposed amendment incorporates and updates provisions consistent with the goals and objectives of the City's LUP. The proposed LIP revisions do not conflict with the provision of priority land uses identified in the LUP, nor do the proposed changes raise issues with regards to the coastal resources or public access policies of the LUP.

Lastly, the City is also proposing to add provisions regarding agricultural employee housing to comply with the State Employee Housing Act. The proposed amendment creates a new land use "agricultural employee housing", which is proposed to be allowed as an accessory use in the Rural Residential (RR), Single-Family Residential (SF), Multi-Family Residential (MF) and Commercial Recreation (CR) zones where agricultural uses are currently allowed. However, the proposed amendment included no requirements, limitations, or development standards for this type of housing development (including, but not limited to, size, height, number of residential

structures allowed on a property, etc.). Thus, it is unclear how this new type of use would be implemented, what adverse impacts to coastal resources may occur, and how this proposed use would be processed at the City. In order to correct the omission of development standards and requirements for agricultural employee housing, the City has requested that the Commission incorporate Suggested Modification Five (5) to add provisions to ensure that the development of agricultural employee housing does not adversely impact adjacent parcels or the surrounding neighborhood, and that they are developed in a manner consistent with the LCP. New agricultural employee housing would need to comply with all applicable policies and provisions of the LCP regarding the protection of coastal resources.

Staff is also recommending minor clarifications to the proposed LIP text that further the intent and implementation of the LCP and where the lack of information may cause inadequate interpretation and implementation of the LCP. All of the suggested modifications were developed in cooperation with City staff. For the reasons described in this report, staff recommends that the Commission find the proposed LIP amendment, only if modified as suggested, is consistent with and adequate to carry out the applicable policies of the certified LUP.

Additional Information: 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 <http://www.coastal.ca.gov/mtgcurr.html>.

TABLE OF CONTENTS

I. PROCEDURAL ISSUES.....	5
A. STANDARD OF REVIEW	5
B. PUBLIC PARTICIPATION.....	5
C. PROCEDURAL REQUIREMENTS.....	5
II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN AMENDMENT	6
III. SUGGESTED MODIFICATIONS.....	7
IV. FINDINGS FOR DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED, AND APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED AS SUGGESTED.....	18
A. AMENDMENT DESCRIPTION	18
B. CONSISTENCY ANALYSIS	21
1. Density Bonus for Affordable Housing.....	21
2. Affordable Housing Overlay District.....	23
3. Agricultural Employee Housing.....	25
4. Transitional and Supportive, Single Room Occupancy Housing, Emergency Shelters and Residential Care Facilities	26
5. Reasonable Accommodation.....	27
6. LCP Administration.....	28
7. Conclusion.....	28
V. CALIFORNIA ENVIRONMENTAL QUALITY ACT	29

EXHIBITS

Exhibit 1.	City of Malibu Ordinance No. 375
Exhibit 2.	Proposed LCP Amendment Text Summary
Exhibit 3.	Proposed Affordable Housing Overlay District Map

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act 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 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 Local 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 certified City of Malibu Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified 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 request. 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 and oral comments regarding the proposed amendment from interested parties and 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 that it 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, because this approval is subject to suggested modifications by the Commission, if the Commission approves the proposed amendment pursuant to the staff recommendation, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the amendment to become effective (California Code of Regulations, Title 14, Sections 13544

&13544.5; and Sections 13542(b) and 13537(b)). If the Commission certifies the proposed LCP Amendment with suggested modifications and the City acts on those suggested modifications, then pursuant to Section 13544 of the Code of Regulations, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE 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 prior to each resolution.

DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED

Motion I:

*I move that the Commission **reject** the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-13-0241-1, as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Local Implementation Plan Amendment No. LCP-4-MAL-13-0241-1 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 DENY CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-13-0241-1, as submitted, and adopts the findings set forth below on the grounds that the Local Implementation Plan amendment, as submitted, does not conform with and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Local 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 Local Implementation Plan amendment as submitted.

CERTIFICATION OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion II:

*I move that the Commission **certify** the City of Malibu Local Implementation Plan Amendment LCP-4-MAL-13-0241-1 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 Local Implementation Plan Amendment No. LCP-4-MAL-13-0241-1 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 LCP-4-MAL-13-0241-1, if modified as suggested, and adopts the findings set forth below on the grounds that the Local Implementation Plan amendment with suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Local 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 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.

III. SUGGESTED MODIFICATIONS

The staff recommends the Commission certify the proposed LIP amendment, with eleven modifications as shown below. Language presently contained within the certified LCP is shown in straight type. Language proposed to be added by the City of Malibu in this amendment is shown underlined. Language proposed to be deleted by the City of Malibu in this amendment is shown as ~~strikethrough~~. Language recommended by Commission staff to be inserted is shown double underlined. Language recommended by Commission staff to be deleted is shown as ~~double strikethrough~~.

SUGGESTED MODIFICATION NO. 1

The following definition shall be added to LIP Section 2.1 (Definitions):

COMMERCIAL AGRICULTURE - the growing of crops for food or fiber, or grazing or raising of livestock with the intent to sell the products for profit. Commercial agriculture does not include crops or agriculture grown for personal consumption or equestrian uses.

The following definitions in LIP Section 2.1 (Definitions) shall be modified as follows:

AFFORDABLE HOUSING / AFFORDABLE RESIDENTIAL UNIT – a housing unit which is available for sale to moderate income households or for rent to moderate, low and/or very-low income households, as those terms are defined in this chapter.

AGRICULTURAL EMPLOYEE – a person who works full or part-time (twenty-four (24) hours or more per week) in the service of a commercial agricultural operation employed for the purpose of engaging in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices performed by a farmer or on a farm as an incident or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

~~DWELLING~~, SUPPORTIVE HOUSING – a building or buildings configured as rental housing development with no limit on length of stay, that is occupied by a “target population”, and that is linked to on- or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Supportive housing is a residential use subject only to the same regulations and procedures that apply to other residential uses of the same type in the same zone.

~~DWELLING~~, TRANSITIONAL HOUSING – a building or buildings configured as rental housing development occupied by the “target population”, but operated under programs requirements that call for termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months. Transitional housing is a residential use subject only to the same regulations and procedures that apply to other residential uses of the same type in the same zone.

SUGGESTED MODIFICATION NO. 2

LIP Section 3.4 (Overlay Zones) shall be modified as follows:

Overlay zone regulations provide for the establishment of certain overlay zones in areas where, by reason of location, topography, existing development conditions, or other circumstances, development impacts may be greater or circumstances may necessitate additional site-specific regulation to further the purpose of this ordinance. Overlay zones may also be used to increase density and uses in underlying zones in order to facilitate affordable housing. Unless otherwise specified, a All uses within the boundaries of an overlay zone shall comply with the provisions of the overlay zone in addition to applicable standards in the underlying zone (unless otherwise specified), other provisions of this ordinance, and other provisions of law.

SUGGESTED MODIFICATION NO. 3

Subsections A, C, D and E of LIP Section 3.4.4 (Affordable Housing Overlay District) shall be modified as follows:

3.4.4 5 Affordable Housing Overlay District

A. Purpose and Applicability.

The Affordable Housing Overlay (AHO) District is intended to identify sites within the City where affordable housing developments may be established and maintained in compliance with this Section. ~~The AHO implements General Plan Housing Element Implementation Plan Program 2.2 by designating adequate sites to accommodate the City's assigned lower income housing need as identified in the Regional Housing Needs Assessment (RHNA). The Zoning Map shall designate sufficient sites within the AHO to accommodate the Adjusted RHNA for the current Housing Element planning period.~~ In addition to (and not as a limitation of) uses allowed within the underlying zoning district and any other applicable overlay, each property within the AHO District may be developed with an Affordable Housing Development, ~~wholly independent of and not constrained by the underlying zoning district,~~ subject to the provisions set forth below. All requirements for the Malibu LIP that are not inconsistent with the criteria listed below shall remain in effect for those parcels in the Affordable Housing Overlay.

...

C. Permitted Uses.

1. Affordable housing development is permitted in the AHO subject to the development standards set forth in this Section. Specifically, on AHO Site Number 3 (2.3 acre portion of 3700 La Paz Lane), an affordable housing development is only permitted if the affordable housing development is either directly developed/constructed by the City, or if the City partners with an affordable housing developer; and 80 percent of the units are affordable for lower and moderate households, to serve as a public benefit to the City.

D. Standards.

The Residential Development Standards contained in Section 3.6 of the Malibu LIP, as well as all other applicable LCP provisions, shall apply, unless specifically modified by standards detailed in this Section (3.4.45). The following special specific regulations shall apply to the AHO sites identified in Table 1 above.

1. Density. Affordable housing developments in the AHO shall:

- a. Have a minimum density of twenty (20) units per net acre.
- b. Have a maximum density of one dwelling unit per 1,613 square feet of lot area including the additional density bonus pursuant to Section 3.7.1 of the Malibu LIP.
- c. Have a minimum of sixteen (16) dwelling units.
- d. For Sites 1 and 2, ~~a~~All units in excess of the permitted base density of six (6) dwelling units per acre, shall be affordable to lower and moderate income households as set forth in Subsection E below. A minimum of 50 percent of all units in excess of the six (6) dwellings units per acre shall be deed restricted ("restricted units") as very-low or low-income multi-family dwelling units. For Site 3, 80 percent of the units within an

affordable housing development, exclusive of a manager's unit or units, shall be affordable to lower and moderate income households as set forth in Subsection E below. A minimum of 50 percent of the affordable units shall be deed restricted as very-low or low-income multi-family dwelling units.

~~e. Notwithstanding, a mixed-use development consisting of an affordable housing development and commercial development may be allowed in the CC zoning district, provided that the residential portion of the project complies with the requirements of this Section, in addition to all other applicable requirements of the Malibu LIP, and the commercial portion of the project complies with the applicable requirements of Section 3.8 of the Malibu LIP.~~

E. Development Standards.

...

~~2. Hillside Development. Affordable housing development is exempt from the hillside development standards of 17.40.040(A)(20) of the Malibu Municipal Code.~~

SUGGESTED MODIFICATION NO. 4

Subsections H and I.2 of LIP Section 3.6 (Residential Development Standards) shall be modified as follows:

...

H. Development Area. Except for an affordable housing development within the AHO Overlay, every ~~single-family~~ residential development shall be contained within a convex-shaped enclosure that shall not exceed 2 acres, except where otherwise restricted by provisions of the ESHA Overlay Chapter (Chapter 4), Scenic and Visual Resources Chapter (Chapter 6), or Grading Chapter (Chapter 8) of the Malibu LIP.

...

I.2 Multi-family. Twenty-five (25) percent of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to landscaping. "Green or living walls" shall not be considered landscaping for the purpose of this paragraph. The required five (5) foot landscape buffer around the perimeter of parking areas pursuant to Section 3.12.5(E)(1) of the Malibu LIP shall count toward the twenty-five (25) percent requirement. An additional five (5) percent of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to permeable surfaces.

SUGGESTED MODIFICATION NO. 5

The following section shall be added to LIP Section 3.6.N (Accessory Structures):

LIP Section 3.6.N.3 (Agricultural Employee Housing Standards)

A. The purpose of this section is to establish standards to ensure that the development of agricultural employee housing does not adversely impact adjacent parcels or the surrounding

neighborhood and that they are developed in a manner which protects the health, safety, and general welfare of the nearby residents and businesses, and the character of the City of Malibu.

B. The provisions of this section shall apply to Commercial Recreational (CR) and Rural Residential (RR) zones where agricultural uses are allowed. Agricultural employee housing is allowed as an accessory use in conjunction with a commercial agricultural use.

C. Agricultural employee housing shall be occupied only by farm employees (and their families) engaged in agricultural labor on the same parcel as the commercial agriculture use and shall not be otherwise occupied or rented.

D. No more than thirty-six (36) beds in a group quarters or up to twelve (12) units are allowed on an individual parcel.

E. At least one parking space per unit or one space per three beds, whichever is more, shall be provided.

F. Agricultural employee housing shall meet the applicable policies and provisions of the LCP, including the setback, lot coverage, height, and other development standards applicable to the zone in which it is located. Additionally, agricultural housing shall be located not less than seventy-five feet from barns, pens, or other structures that house livestock or poultry, and not less than fifty feet from any other agricultural and non-agricultural use.

G. Agricultural employee housing shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA, and shall be located as close to existing roads as feasible. Additionally, agricultural housing shall be clustered with existing development to the maximum extent feasible and minimize grading, landform alteration, and the need for construction of new roads.

H. The property owner shall obtain all permits and/or approvals from the City of Malibu, as applicable, and the State Department of Housing and Community Development (HCD) pursuant to Title 25 of the California Code of Regulations. Agricultural housing shall also require a coastal development permit pursuant to the provisions of Chapter 13 of this LCP.

I. Prior to submittal of the permit application for agricultural employee housing, the property owner shall provide appropriate evidence to the satisfaction of the Planning Director of an active commercial agricultural operation. An equestrian related use is not considered evidence of commercial agriculture for agricultural employee housing.

J. Agricultural employee housing shall be removed from the property or converted to another permitted use that is approved through a CDP within 90 days of termination of the property's use from agricultural production.

K. Within thirty days after approval from the City of Malibu for agricultural employee housing, the applicant shall record in the office of the County Registrar-Recorder/County Clerk a covenant running with the land for the benefit of the City of Malibu, declaring that the agricultural employee housing will continuously be maintained as such in accordance with the LCP and that:

1. The applicant will obtain and maintain, for as long as the agricultural employee housing is operated, the appropriate permit(s) from State Department of Housing and Community Development (HCD) pursuant to the Employee Housing Act and the regulations promulgated thereunder;
2. The improvements required by the City of Malibu related to agricultural employee housing shall be constructed and/or installed, and continuously maintained by the applicant; and
3. The applicant will submit the annual verification form as required by LIP 3.6(N)(3)(M) to the Planning Director.

L. Agricultural housing for five or more employees is subject to the permitting requirements of the California Housing Employee Act. The property owner shall obtain and maintain a permit(s) with the State Department of Housing and Community Development (HCD), pursuant to the Employee Housing Act and the California Code of Regulations, Title 25, Division 1, Chapter 1, Sections 600 through 940, prior to occupancy of the housing units. A copy of the HCD permit shall be provided to the planning director within fourteen (14) days of issuance or at the time of building permit application submittal, whichever is earlier.

M. On an annual basis, the property owner must file a verification form with the Director of the Planning Department stating that the commercial agricultural operation is still taking place on the property and that the tenants are employed as farm employees and thereby renew the agricultural certificate for the farm employee housing. Failure to file the verification form will be interpreted as indicating the commercial agriculture has ceased operation and may be the basis for building permit revocation.

The verification form shall be submitted annually by May 15th of each year to the Planning Director, or designee, in a form acceptable to the Planning Director, that all the dwelling units or sleeping quarters are being rented to and occupied by persons who meet the definition of an agricultural employee established in LIP 2.1 (“Agricultural employee”).

SUGGESTED MODIFICATION NO. 6

Subsections A, B, and D of LIP Section 3.7.1 (Residential Density Bonus Ordinance), LIP Section 3.7.2 (Affordable Housing Agreement), and Subsection A of LIP Section 3.7.3 (Affordable Housing Fund) shall be modified as follows:

3.7.1 Residential Density Bonus

A. Purpose and Intent.

The purpose of this section is to implement the incentive program provided in the State density bonus regulations (Government Code Sections 65915 through 65918) in order to provide additional opportunities for the provision of affordable housing within the City of Malibu in compliance with the policies set forth in the General Plan Housing Element. ~~Within the Coastal Zone, any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable~~ Local Coastal Program policies

~~and development standards. The intent of the following regulations is to ensure that, to the maximum extent feasible, the provisions of Government Code Sections 65915 through 65918 Government Code that allows developers of certain types of residential projects that comply with all standards set forth in Government Code Section 65915, to build no more than 25 percent more units than a property’s zoning would ordinarily allow. In exchange for this density bonus, the owners must make the units affordable for 30 years if an incentive is utilized in addition to the density bonus specified in Government Code Section 65915(b) or for 10 years if an incentive or concession (identified in 65915(h)) is not utilized in addition to the density bonus. This section insures that, to the maximum extent feasible, the provisions of Government Code section 65915 are implemented in a manner that is consistent with the policies of Chapter 3 of the Coastal Act and is most protective of coastal resources. In the event that any provision of this section conflicts with State law, State law shall control.~~

B. Eligibility.

A density bonus may be granted to an eligible housing development in any residential district through approval of a use permit by the city council (after recommendation from the planning commission) of a CDP. In order to qualify for a density bonus or other financial incentives of equivalent value as specified in Government Code Section 65915 the developer of a Housing Development project shall agree to construct one of the following:

...

D. Procedures for Approval.

...

2. (a) The number of units permitted by the use permits is compatible with the existing and planned infrastructure and service facilities serving the site;

...

(d) If located within the coastal zone, the project is found to be in conformity with the coastal resource protection standards in the Local Coastal Program (including but not limited to sensitive habitat, agriculture, public viewshed, public services, public recreational access and open space protections), with the exception of the density provisions; and

(e) The proposed project is compatible with the goals and coastal resource protection policies of the general plan LCP and purpose and intent of this code section.

3. In accordance with Government Code Section 65915(f), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan LCP. The “otherwise maximum allowable residential density” shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the coastal zoning ordinances and land use plan certified by the Coastal Commission LCP.

4. Any housing development approved pursuant to Government Code Section 65915 shall be consistent, to the maximum extent feasible and in a manner most protective of coastal resources, with all otherwise applicable certified local coastal program coastal resource protection policies and development standards, with the exception of the density provisions. If, however, the City determines that the means for accommodating the density increase proposed by the applicant will

have an adverse effect on coastal resources, before approving a density increase, the City shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The City shall require implementation of the means that are most protective of avoid impacts to significant coastal resources, as required by relevant LCP policies, while still providing the density increase permitted by law.

3.7.2 ~~Applicability~~ Affordable Housing Agreement

...

An applicant that chooses any option for satisfying the affordability requirements of this chapter shall enter into an Affordable Housing Agreement (“Agreement”) with the City. The Agreement shall be executed in a recordable form prior to the issuance of a CDP and building permit for any portion of a project including affordable units, subject to the requirements of this chapter.

...

3.7.3 ~~Filling Requirements~~ Affordable Housing Fund

A. Fund Revenues. The fund shall receive all in-lieu fees paid under Section 3.7.1(~~E~~)(2) and may also receive moneys from other sources.

SUGGESTED MODIFICATION NO. 7

Subsections C and D of LIP Section 3.11.5 (Emergency Shelter Requirements) shall be modified as follows:

...

C. Regulations. An emergency shelter is a principal use allowed, subject to the issuance of an administrative plan review (per Section 17.62.030 of the Malibu Municipal Code) if the facility already exists or subject to a coastal development permit, unless determined to be exempt pursuant to Section 13.4, (per Section 13.6 of the Local Implementation Plan) if a new facility is proposed, consistent with the LCP and subject to the following standards in each case:

...

D. Reviewing Authority.

1. Coastal Development Permit Applications for emergency shelters shall be reviewed by the appropriate decision making authority in accordance with Section 13.7 Director or his/her designee, if no approval is sought other than the request for the use of an existing facility. An administrative plan review shall be required for a shelter use pursuant to Section 17.60.030 of the Municipal Code. If the proposed use meets the requirements of this Section and is consistent with Chapter 17.40, the Director shall issue a permit.

2. Applications for the emergency shelter use submitted for concurrent review with another discretionary land use application (e.g. a coastal development permit to construct the facility) shall be reviewed by the authority reviewing the discretionary land use application.

SUGGESTED MODIFICATION NO. 8

The following sections of LIP Section 3.11.6 (Single-Room Occupancy Facility Requirements) shall be modified as follows:

3.11.6 Single-Room Occupancy Facility Requirements

The following standards shall apply to any single-room occupancy (SRO) facility development proposal in addition to all other commercial development standards set forth in this Chapter. The provisions of this Section are applicable in the Commercial General (CG) zoning district.

...

F. Management. The SRO facility must provide 24-hour onsite management. The applicant shall provide a copy of the proposed rules governing the SRO facility to the City. The management will be solely responsible for the enforcement of all rules that are reviewed and approved by the Planning Commission as part of a conditional use permit.

SUGGESTED MODIFICATION NO. 9

The following sections of LIP Section 3.14.3 (Specific Parking Requirements) shall be modified as follows:

Residential Units

...

Large Residential Care Facility One space for every two beds and one space for every employee ~~For each unit, 2 enclosed and 2 unenclosed spaces~~

...

Small Residential Care Facility For each unit, 2 enclosed and 2 unenclosed spaces

SUGGESTED MODIFICATION NO. 10

Subsection B, C, D, E and G of LIP Section 13.30 (Housing Accessibility – Request for Reasonable Accommodation) shall be modified as follows:

...

B. Applicability.

1. A request for reasonable accommodation may be made by any person with a disability, his/her representative or any property owner, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. Requests related to deviation from the Building Code shall apply directly to the Environmental Sustainability Department.

...

C. Application Submittal.

1.(e) The specific code provision, regulation, procedure or policy of the LCP City from which reasonable accommodation is being requested including an explanation of how application of the existing code provision, regulation, procedure or policy precludes reasonable accommodation;

...

(h) A determination of whether or not the request would result in adverse impacts to wetlands, environmentally sensitive habitat area, public access, and/or public views and/or other coastal resources;

2. A request for reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is being made also requires a CDP discretionary approval (including, but not limited to: conditional use permit, site plan review, etc.), then the applicant shall file the application submittal information together with the application for the CDP discretionary approval for concurrent review.

...

D. Reviewing Authority.

2. Applications for reasonable accommodation submitted for concurrent review with a CDP another discretionary land use application shall be reviewed by the authority reviewing the CDP discretionary land use application.

...

E. Findings.

A written decision to grant, grant with conditions, or deny a request for reasonable accommodation shall make ~~consider~~ all of the following findings factors:

1. ~~Whether~~ The housing, which is the subject of the request, will be occupied by a person with a disability as defined in subsection 1 above.

2. ~~Whether~~ The approved request for reasonable accommodation is necessary to make housing available to a person with a disability as defined in subsection 1 above.

3. ~~Whether~~ The approved requested reasonable accommodation would not impose an undue financial or administrative burden on the City.

4. ~~Whether~~ The approved requested reasonable accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning the LCP.

5. ~~Whether~~ The approved requested reasonable accommodation would not adversely impact wetlands, environmentally sensitive habitat area, public access and/or public views, and if it does have such an impact, whether the request can be accomplished under a feasible alternative approach that eliminates or minimizes those impacts. Mitigation shall be included to address significant impacts coastal resources.

6. ~~Whether~~ the feasible alternative to be implemented is the feasible alternative resulting in the least adverse impact on wetlands, environmentally sensitive habitat area, public access and/or public views. The project that is the subject of the approved reasonable accommodation conforms to the applicable provisions of the LCP and the applicable provisions of this section, with the exception of the provision(s) for which the reasonable accommodation is granted.

...

G. Conditions of Approval.

In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection 4 E of this Section.

SUGGESTED MODIFICATION NO. 11

Appendix 1 Table B PERMITTED USES shall be modified as follows:

KEY TO TABLE (In addition to a coastal development permit, the following <u>MCUP, CUP, LFDC, & WTF</u> permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
•	Not permitted (Prohibited)

RESIDENTIAL

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Single family residential ¹⁷⁵	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Multi-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar development ¹⁶⁸)	•	•	CUP ¹⁷²	CUP ¹⁷²	•	•	•	•	P ¹⁷⁰	•	•	•	•	•	•	•
Large residential care facilities (serving 7 or more persons)	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Small residential care facilities (serving 6 or fewer persons)	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Single Room Occupancy Facility	•	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•

AGRICULTURAL/ANIMAL-RELATED

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
<u>Agricultural employee housing, as an accessory use, animal related</u>	<u>PA</u>	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
<u>Agricultural employee housing, as an accessory use, crop related</u>	A	A	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•

Notes:

~~4517.~~ Transitional and supportive housing is permitted in the same manner as one single family residence and is subject to all the restrictions that apply to single family residential uses.

~~4618.~~ Transitional and supportive housing is permitted in the same manner as a multi-family residential use and is subject to all the restrictions that apply to multi-family residential uses.

~~4719.~~ Multi-family development associated with an affordable housing development project is permitted by right.

~~4820.~~ Multi-family development is only permitted in the CC zone if it is associated with an affordable housing development project within the Affordable Housing Overlay (APNs 4458-022-023 and 4458-022-024 only), in compliance with Section 3.4.5.

IV. FINDINGS FOR DENIAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED, AND APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

The following findings support the Commission’s denial of the proposed Local Implementation Plan Amendment as submitted, and approval of the Local Implementation Plan Amendment if modified as indicated in Section III (Suggested Modifications) above. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Malibu is requesting an amendment to the Local Implementation Plan (LIP) portion of its certified Local Coastal Program (LCP) to: 1) update density bonus provisions for affordable housing to comply with State density bonus laws; 2) create a new “Affordable Housing Overlay” (AHO) District with specific development standards to accommodate the City’s required housing needs allocation pursuant to the State’s Housing Element Law; 3) add procedures related to reasonable accommodation for person with disabilities; 4) update housing related zoning ordinance provisions including those related to permitted uses and development standards to accommodate higher density, affordable multi-family residential development, emergency shelters, single-room occupancy facilities, small and large residential care facilities, transitional and supportive housing, and agricultural employee housing; and 5) update and add housing-related definitions.

Specifically, the City’s proposed amendment includes the following (the full text of the proposed LCP Amendment is attached as Exhibit 2):

Density Bonus for Affordable Housing

The City proposes to re-organize and amend existing LIP Section 3.7 (Residential Density Bonus Ordinance) to update the requirements and increase the allowable density bonus housing units available for qualifying projects from 25 to 35 percent in order to be consistent with the State density bonus law (California Government Code Section 65915), which is intended to increase the economic feasibility of affordable housing developments for extremely low, very low, and low-income households. The proposed amendment defines the applicability of LIP Section 3.7 and updates the criteria for eligibility and other processing requirements for a density bonus and incentive request. Additionally, the proposed amendment would make revisions to LIP Section 3.6 (Development Standards), LIP Section 8 (Grading Ordinance) and Appendix 1-Table B pertaining to the allowable total square footage per residence, impermeable coverage, grading and development area to remove obstacles to the construction of affordable multi-family residential development. These revisions will create a set of standards that are better suited for

multi-family residential development. Further, definitions are updated and added within LIP Section 2.1 (Definitions) for the following terms: Adjusted Regional Housing Needs Assessment, Affordable Housing Agreement, Affordable Housing/Affordable Residential Unit, Affordable Housing Development, Affordable Rent, Concessions, Conversion, Density Bonus, Density Bonus Units, Extremely-Low Income Household, Housing Development, Incentives, Initial Subsidy, Low Income Household, Lower Income Households, Moderate Income Household, Proportionate Share of Appreciation, Qualifying Resident, Regional Housing Needs Assessment, Restricted Unit, Senior Citizen Housing Development, and Very-Low Income Household.

Affordable Housing Overlay (AHO)

The City is proposing to create a new overlay district (Affordable Housing Overlay) with specific development standards to accommodate the City's required housing needs allocation pursuant to the State's Housing Element law. Lands designated under this overlay would qualify for higher density multi-family use for affordable housing developments. The Affordable Housing Overlay (AHO) District is proposed to apply to three properties, known as "candidate sites," within the City (28517 Pacific Coast Highway, 28401 Pacific Coast Highway and 23465 Civic Center Way). The proposed overlay map will be added to the LIP Zoning Maps (Exhibit 3). For affordable housing projects constructed on a property within the AHO District, a developer could construct up to six dwelling units per acre, which are available for sale or rent at "market rate" and then could be eligible to construct additional units up to a maximum of 20 dwelling units per acre, as long as all of the units in excess of the six market rate units meet the definition of "affordable". The City determined that a new overlay district is needed that will accommodate the existing uses on the sites and maintain the site's underlying zoning in the event that affordable housing projects never move forward on these sites. The AHO District does not require a landowner to develop affordable housing on a particular site and does not place any requirements or restrictions on the current uses of these sites. Property zoned within the overlay district may still be developed with a market rate project, but in that case, the project would be subject to the underlying zoning and would be ineligible for the density increase allowed by the overlay.

Two of the proposed overlay sites are zoned Multi-Family Residential (MF) and the third site is zoned Community Commercial (CC). The MF designation provides for multi-family residential development, such as duplexes, condominiums and apartments. The MF designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. The CC designation is intended to provide for the resident-serving needs of the community similar to the types of uses allowed in neighborhood serving commercial developments, but on parcels of land more suitable for concentrated commercial activities. Uses that are allowed in the CC land use designation include, but are not limited to, small retail stores, salons and bookstores, restaurants, offices, financial institutions, medical clinics, service stations, health or day care facilities, and public open space and recreation. For CC zoned properties, the maximum allowable Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.20 where public benefits and amenities are provided as part of the project.

The development standards set forth in the AHO District will allow for a density of 20 units per acre (with the potential for a 35 percent increase if a density bonus is applied). Additionally, the purpose of the AHO District is to proactively plan for the three candidate sites to be developed with an affordable housing project. Specifically, the development standards provide allowable

uses, density standards and assurance of affordability for a period of not less than 55 years as required by the State's density bonus law. Furthermore, in order to accommodate residential development within the Community Commercial zone designation, the City is proposing to modify LIP Appendix 1 - Table B (Permitted Uses) to allow multi-family development that is associated with an affordable housing development project to be permitted within the CC zone.

Agricultural Employee Housing

The proposed amendment adds new provisions regarding the permitting and development of agricultural employee housing to comply with the State Employee Housing Act, which is codified in Sections 17000 through 17062.5 of the California Health and Safety Code (HSC). HSC Section 17021.5 requires that agricultural employee housing licensed by the California Department of Housing and Community Development (HDC) that provides accommodations for six or fewer employees shall be deemed a single family structure, and it prohibits the imposition of any permit requirement, business tax, local registration fee, use permit fee, or other fee that is not required of a family dwelling in the same zone. Section 17021.6 requires that agricultural housing licensed by HDC that consists of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single-family or household shall be deemed an agricultural use, and it prohibits the imposition of any permit requirement, business tax, local registration fee, use permit fee, or other fee that is not required of any other agricultural activity in the same zone.

To implement these housing regulations, the proposed amendment creates a new land use "agricultural employee housing", which is proposed to be allowed as an accessory use in the Rural Residential (RR), Single-Family Residential (SF), Multi-Family Residential (MF) and Commercial Recreation (CR) zones where agricultural uses are currently allowed. Furthermore, LIP Appendix 1 - Table B (Permitted Uses) is proposed to be modified to allow agricultural employee housing within the above mentioned zones. Lastly, the amendment proposes to add three definitions, Agricultural Employee, Agricultural Employee Housing, and Employee Housing to Section 2.1 (Definitions) of the LIP.

Transitional Housing, Supportive Housing and Emergency Shelters

The City proposes to add two definitions, Supportive Housing and Transitional Housing, to Section 2.1 (Definitions) of the LIP and amend the permitted uses of the LIP Appendix 1 - Table B (Permitted Uses), to allow for transitional and supportive housing to be permitted in the same manner as residential uses and are subject to the same restrictions that apply to other residential uses (Rural Residential (RR), Single-Family Residential (SF), Multi-Family Residential (MF), and Multi-Family Beachfront Residential (MFBF) zone districts). Furthermore, the proposed amendment adds a new definition for Emergency Shelters and adds a new LIP Section 3.11.5 (Emergency Shelter Requirements) to include development standards for emergency shelters. The City also proposes to include "Emergency Shelters" as allowed uses within the Commercial General (CG) and Institutional (I) zone districts. The City proposes to amend its LIP in order to assure compliance with changes in state law (Cedilla, Sen. Bill No. 2 (2007-2008 Reg. Sess.)), which clarified and strengthened the housing element law to ensure zoning laws encourage and facilitate emergency shelters and limit the denial of emergency shelters, and transitional and supportive housing under the Housing Accountability Act. These laws facilitate efforts to address the critical needs of the State's homeless population and persons with special needs. Senate Bill 2 of 2009 requires that emergency shelters be permitted by local governments and allowed as a matter of right in at least one residential zoning designation. Additionally, the City

added a definition of “Target Population,” to clarify who qualifies for residency in emergency shelters, transitional housing and supportive housing.

Reasonable Accommodation and Residential Care Facilities

The City proposes to add new provisions (LIP Section 13.30 “Housing Accessibility – Request for Reasonable Accommodation) regarding reasonable accommodation, consistent with State Law, whereby either individuals with disabilities or other applicants seeking to build accessible housing may request a reasonable accommodation from the strict application of zoning requirements in order to provide individuals with disabilities an equal opportunity to use and enjoy a dwelling of their choice in conformance with the state and federal fair housing laws. Specifically, the proposed provisions would allow an individual with a disability to apply for a reasonable accommodation from the strict application of the zoning regulations in order to construct improvements such as elevators or other mechanical access devices, handrails, ramps, walls, and other similar accessibility improvements necessary to accommodate an individual’s disability. Reasonable accommodations may include adjustments to encroachment allowances, floor area provisions, setback requirements, fences, walls and screening requirements, hardscape additions such as widening driveways, parking areas and/or walkways that would otherwise not comply with landscape, lot coverage, etc. The proposed amendment includes criteria and provisions related to the City’s review and processing of reasonable accommodation requests and includes the required findings for approving a reasonable accommodation request.

Additionally, the City proposes to replace the existing definition of Residential Care Facility found in LIP Section 2.1 (Definitions) with two new definitions (Residential Care Facility, Large and Residential Care Facility, Small). Lastly, LIP Appendix 1 - Table B (Permitted Uses) is proposed to be modified to allow small residential care facilities (serving 6 or fewer persons) to be permitted in all residential zone districts, and only allow large residential care facilities (serving 7 or more persons) to be conditionally permitted in the Commercial General (CG) zone district.

Single Room Occupancy Housing

The City proposes to add two new definitions (Single-Room Occupancy Facility and Single-Room Occupancy Unit) to Section 2.1 (Definitions) of the LIP. Additionally, the amendment includes a new LIP Section 13.30 “Housing Accessibility – Request for Reasonable Accommodation” to incorporate development standards for single room occupancy units. Lastly, LIP Appendix 1 - Table B (Permitted Uses) is proposed to be modified to include single room occupancy units as a permitted use within the Commercial General (CG) zone district.

B. CONSISTENCY ANALYSIS

Pursuant to Sections 30513 and 30514 of the Coastal Act, the standard of review for the proposed amendment to the Local Implementation Plan (LIP) portion of the certified LCP is whether the proposed amendment would be in conformance with, and adequate to carry out, the provisions of the certified Land Use Plan (LUP) component of the certified LCP.

1. Density Bonus for Affordable Housing

The City of Malibu Land Use Plan (LUP) includes several policies that protect wetlands, environmentally sensitive habitat areas, public access, public views and other coastal resources.

Furthermore, a specific goal of the LUP (Goal D1) states that an overriding goal of the LCP is to assure orderly, balanced utilization and conservation of coastal zone resources considering the social and economic needs of the people of the state. Additionally, the LUP requires that prior to the approval of any Coastal Development Permit, the City shall make the findings that the development conforms to the policies and provisions contained in the Land Use Plan (Land Use Plan Policy 5.1).

The proposed density bonus and incentive provisions are intended to encourage the voluntary creation of affordable housing. The City proposes to re-organize and amend existing LIP Section 3.7 (Residential Density Bonus Ordinance) to update the existing requirements and increase the allowable density bonus housing units available for qualifying projects from 25 to 35 percent in order to be consistent with the current State density bonus law (California Government Code Sections 65915-65918). Specifically, the City proposes to update the qualifications, bonus calculations, incentives and regulatory concessions offered by the City for affordable housing projects.

The proposed amendment includes detailed criteria to determine if a proposed project qualifies for a density bonus, and what percentage bonus is approvable for each percentage of very low, low, or moderate-income units proposed to be included. Additionally, the amendment provides for the City to include concessions or incentives to an applicant to provide affordable housing. Concessions or incentives include, but are not limited to, the following: a reduction in the site development standards of the zoning code requirements (e.g. site coverage limitations, setbacks, reduced minimum lot size or dimensions); other regulatory incentives; and a direct financial contribution from the City. The key issues raised with regard to density bonuses and incentives are the potential impacts to coastal resources should incentives include a reduction in development standards or other requirements in a manner inconsistent with the resource protection policies of the LUP, and/or if no maximum limits are placed on the density bonuses.

The Commission has, in general, found that the allowance for density bonuses can be an effective tool to provide for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the Coastal Act or a local government's certified LCP. In this case, the proposed LIP amendment does include provisions which describe the eligibility for a bonus, as well as how the subject bonus would be processed; however, to ensure that bonuses are granted consistent with the resource protection policies of the LUP, **Suggested Modification Four (4)** clarifies that the City may only approve a housing development project with a bonus if the project is consistent with all applicable coastal resource protection policies and development standards, with the exception of the density provisions, and is compatible with the purpose and intent of the residential density bonus provisions. Furthermore, consistent with the updated State's density bonus law, **Suggested Modification Four (4)** requires that the City shall require implementation of the means that avoid impacts to coastal resources, as required by relevant LCP policies, while still providing the density increase permitted by law.

In conclusion, the proposed density bonus amendment, as suggested to be modified, will allow for increased densities consistent with the LUP policies, the Coastal Act, and the State density bonus law, and will do so in a manner that protects coastal resources. Thus, if modified as suggested, the Commission finds the density bonus portion of the proposed amendment is consistent with and adequate to carry out the policies of the certified LUP.

2. Affordable Housing Overlay District

The proposed amendment creates a new Affordable Housing Overlay (AHO) District with specific development standards to accommodate the City's required housing needs allocation pursuant to the State's Housing Element Law. Lands designated under this overlay would qualify for higher density multi-family use for affordable housing development. The Affordable Housing Overlay (AHO) District is proposed to apply over three properties, known as "candidate sites," within the City (28517 Pacific Coast Highway, 28401 Pacific Coast Highway and 23465 Civic Center Way). The City determined that a new overlay district is needed that will accommodate the existing uses on the sites and maintain the site's underlying zoning in the event that affordable housing projects never move forward on these sites. Property zoned within the overlay may still be developed with a market rate project, but in that case, the project would be subject to the underlying zoning and would be ineligible for the density increase allowed by the overlay. Specifically, the development standards set forth in the AHO district will allow for density of 20 units per acre (with the potential for a 35 percent increase if a density bonus is applied), and provides allowable uses, density standards and assurance of affordability for a period of not less than 55 years. Additionally, the purpose of the AHO District would be to proactively plan for the three candidate sites to be developed with an affordable housing project.

As previously mentioned above, two of the proposed overlay sites (28517 Pacific Coast Highway and 28401 Pacific Coast Highway) are currently zoned Multi-Family Residential (MF) and the third site (23465 Civic Center Way) is zoned Community Commercial (CC). The MF designation provides for multi-family residential development, such as duplexes, condominiums and apartments. The MF designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. The CC zone designation is intended to provide for the resident serving needs of the community similar to the types of uses allowed in neighborhood serving commercial developments, but on parcels of land more suitable for concentrated commercial activities. Uses that are allowed in the CC land use designation include, but are not limited to, small retail stores, salons and bookstores, restaurants, offices, financial institutions, medical clinics, service stations, health or day care facilities, and public open space and recreation. Furthermore, the CC zone designation maximum allowable Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.20 where public benefits and amenities are provided as part of the project.

The third candidate site, a 2.3-acre property located at 23465 Civic Center Way, is known as La Paz Site Parcel C. This site is also located within the Town Center Overlay (TCO) District. The purpose of the TCO district is to provide specific development criteria for parcels within the Civic Center Area. On March 10, 2010 the Commission approved City of Malibu LCP Amendment No. 3-08 which created the TCO District, along with use restrictions and development standards. This amendment also included the approval of a Development Agreement between the City and the property owner to allow for an increase in the allowable floor area ratio (FAR) from 0.15 to 0.20, if certain public benefits were provided. Notably, in that action the Commission found that in order to justify the increased FAR, the property owner was to convey the 2.3-acre La Paz Site Parcel C to the City of Malibu for the purpose of a City Hall or other municipal use. Specifically, the terms of the approved development agreement were directly incorporated into the LCP as development provisions for the TCO District (LIP Section 3.4.3). As a result, the 2.3-acre La Paz Site Parcel C is designated for a use which benefits the City, such as a City Hall or another municipal use, and is limited to the permitted uses under the

Community Commercial (CC) zone district. While the underlying zone does not restrict development to only visitor-serving commercial uses, land uses permitted within the CC zone includes those that have consistently been considered by the Commission to be visitor-serving, such as restaurants, stores, etc., as required by Land Use Plan Policy 5.4.

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. Since residential use is not a permitted use within the Community Commercial zone, the City is proposing to modify LIP Table B (Permitted Uses) to allow multi-family development to be permitted within the CC zone if it is associated with an affordable housing development project. However, to address the potential loss of visitor serving uses if all sites designated Community Commercial are developed with affordable housing, Commission staff finds it necessary to require **Suggested Modification Eleven (11)** to clarify that multi-family development is only permitted in the CC zone if it is associated with an affordable housing development project on a site within the AHO District and in compliance with the AHO development standards and restrictions. This will ensure that other properties zoned CC located outside of the AHO District cannot be developed with an affordable housing development, and therefore will remain available for commercial uses which could provide for visitor-serving opportunities and will prevent the conversion of other CC designated properties to residential uses.

Further, LIP Section 3.4.3(D) indicates that the La Paz Site Parcel C located in the CC zone is to be conveyed to the City of Malibu as a public benefit pursuant to the La Paz Development Agreement for the purpose of a City Hall or other municipal use. Additionally, the La Paz Development Agreement required a \$500,000 contribution to the City of Malibu for the purpose of a City Hall or municipal use Infrastructure Construction Fund associated with the development of the 2.3-acre La Paz Site Parcel C (LIP Section 3.4.3(D)). The City of Malibu has indicated that affordable housing would constitute a municipal use that is a public benefit given the scarcity of affordable housing within the City and the City's ability to either develop, or be a partner in developing, affordable housing at this site. The site is also located within the City's Civic Center area that is suitable for that type of use and is close to services and public transit. In order to ensure internal consistency within the LCP, **Suggested Modification Three (3)** is necessary to require that any affordable housing development on the La Paz Site Parcel C is only permitted if the affordable housing development is either developed and constructed by the City, or if the City partners with an affordable housing developer. Therefore, an affordable housing project that is either built by the City or the City is a partner to, will be considered a municipal use and ultimately will serve as a public benefit to the City.

Furthermore, in order to ensure that any affordable housing project on La Paz Site Parcel C serves as a public benefit to the City, **Suggested Modification Three (3)** requires that the affordable housing units shall be predominately affordable (80 percent) to lower and moderate households, and a minimum of 50 percent of the affordable units on the La Paz Site Parcel C shall be deed restricted as very-low or low-income multi-family dwelling units. These changes were developed in cooperation with City staff. Additionally, the City staff has requested that Commission staff incorporate **Suggested Modification Three (3)**, in order to ensure there is no loss of visitor serving uses in CC designated properties by deleting language proposed by the City (LIP Section 3.4.4(D)(1)(e)) that would have allowed a mixed use development project consisting of an affordable housing development and a commercial development on properties

zoned for Community Commercial. However, the incorporation of a commercial component would not be consistent with the municipal use requirement of the La Paz Development Agreement that is associated with the LCP's Town Center Overlay (TCO) District. Lastly, **Suggested Modification Three (3)** also requires the deletion of references to standards where it may be interpreted to incorporate uncertified outside legal standards as part of the certified LCP.

In conclusion, the proposed Affordable Housing Overlay (AHO) District and associated development standards, as suggested to be modified, will encourage affordable housing, and will do so in a manner that protects coastal resources, does not result in the loss of visitor serving opportunities, ensures internal LCP consistency, and is consistent with the Coastal Act and LUP policies. Thus, the Commission finds that if modified as suggested, the proposed amendment regarding the AHO District is consistent with and adequate to carry out the policies of the certified LUP.

3. Agricultural Employee Housing

The proposed amendment adds new provisions regarding the permitting and development of agricultural employee housing to comply with the State Employee Housing Act, which is codified in Sections 17000 through 17062.5 of the California Health and Safety Code (HSC). Specifically, HSC Section 17021.5 requires that agricultural employee housing be deemed an agricultural land use requiring that it be treated the same as any other agricultural activities in the same zone. To implement these housing regulations, the proposed amendment creates a new land use "agricultural employee housing", which is proposed to be allowed in the Rural Residential (RR), Single-Family Residential (SF), Multi-Family Residential (MF) and Commercial Recreation (CR) zones where agricultural uses are currently allowed. Given the topography and development pattern, there are not significant areas of existing agricultural use in Malibu. The LCP does not designate any areas for agricultural use. However, agricultural uses, including crops, orchards, and vineyards, are permitted as an accessory use in the RR, SF, and MF zones and as a conditionally permitted use in the CR zone.

The purpose of agricultural employee housing is to provide housing opportunities for people who work on site and support commercial agricultural uses. Since the LUP does not make a distinction between agricultural uses that are crop related and agricultural uses that are animal related, the City is proposing two new land use categories in LIP Appendix 1 - Table B (Permitted Uses): Agricultural employee housing, "crop related" and Agricultural employee housing "animal related". Furthermore, the City is proposing to include three new definitions, Agricultural Employee, Agricultural Employee Housing, and Employee Housing to LIP Section 2.1 (Definitions). However, the definitions for this type of housing are too general and it is unclear what such a use consists of. Additionally, the proposed amendment includes no requirements, limitations, or development standards for this type of housing development (including, but not limited to, size, height, number of residential structures allowed on a property, etc.). Thus, it is unclear how this new type of use would be implemented, what adverse impacts to coastal resources may occur, and how this proposed use would be processed at the City.

In order to correct the omission of development standards and requirements for agricultural employee housing, the City has requested that the Commission incorporate **Suggested Modification Five (5)** to add a new LIP Section 3.6.N.3 (Agricultural Employee Housing

Standards) to incorporate provisions to ensure that the development of agricultural employee housing does not adversely impact adjacent parcels or the surrounding neighborhood, and that they are developed in a manner consistent with the LCP. Furthermore, to ensure that new development is sited 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 (incorporated by reference into the certified LUP), the siting and design of new agricultural employee housing must adhere to the requirements of other applicable policies and provisions regarding the protection of coastal resources. **Suggested Modification Five (5)** also includes provisions stating that the development of agricultural employee housing will have to obtain the necessary coastal development permits and all other permits and/or approvals from the State Department of Housing and Community Development consistent with the State Employee Housing Act. These changes were developed in cooperation with City staff.

Furthermore, the City has requested that the Commission incorporate **Suggested Modification Eleven (11)**, to add clarifying language that agricultural employee housing is only permitted as an accessory use to any onsite agricultural use, and would only be used to house the staff that supports the onsite agricultural use. Lastly, in order to distinguish what activities constitute commercial agricultural uses, **Suggested Modification One (1)** incorporates a new definition for “Commercial Agricultural” into LIP Section 2.1 to clarify that commercial agriculture does not include equestrian-related uses or “hobby” type crops that are for personal consumption. Since those uses are not to cultivate food, fiber, or plant material products for sale, they are therefore not an agricultural use for purposes of the Coastal Act. This definition was developed in cooperation with City staff to ensure that a situation where someone would request to build agricultural employee housing for hobby equestrian uses and/or crops that are accessory to a residence does not arise since these uses are not considered commercial agriculture.

For the reasons discussed above, the Commission finds that only if modified as suggested will the LIP amendment regarding agricultural employee housing conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

4. Transitional and Supportive, Single Room Occupancy Housing, Emergency Shelters and Residential Care Facilities

With regards to transitional and supportive housing, single room occupancy housing, and emergency shelters, the proposed amendment incorporates and updates provisions consistent with the goals and objections of the City’s LUP. Transitional housing may be designated for a homeless individual or a family transitioning to permanent housing. This housing may be group housing or multi-family units. Supportive housing is a place for permanent residence, where residents are disabled, or include populations such as elderly persons, individuals exiting from institutional settings, or veterans. Transitional and supportive housing would be allowed in the Rural Residential (RR), Single-Family Residential (SF), Multi-Family Residential (MF), and Multi-Family Beachfront Residential (MFBF) zone districts. Single Room Occupancy Units (SROs) are residential units of a smaller size than normally found in multiple dwellings, in which sanitary facilities and kitchen/cooking facilities may be provided within the units or may be shared among units. The amendment proposes to allow SROs within the Commercial General (CG) zone district and includes development standards for these types of housing, including unit size.

Emergency shelters are for the temporary housing of homeless persons. As proposed, emergency shelters would only be permitted within the Commercial General (CG) and Institutional (I) zone districts. The proposed amendment establishes a process and regulations for the review of Emergency Shelters requests, including maximum number of beds per persons to be served nightly, off-street parking, provisions of management, length of stay, lighting, security, etc. Additionally, definitions relating to housing for persons with disabilities would be modified. Further, the amendment clarifies that those residential care facilities for six or fewer people would be a permitted use within all the residential zones, and that large residential care facilities for six or fewer people would be conditionally permitted in the Commercial General zone. Additionally, the amendment includes revisions to existing LIP Section 3.14.3 (Specific Parking Requirements) to incorporate new specific parking standards for small and large residential care facilities. To correct an error, City staff has requested that the Commission incorporate **Suggested Modification Nine (9)** to correct the number of parking spaces required for residential care facilities under LIP Section 3.14.3.

The amendment does not require the development of the housing types described above; it simply provides the opportunity for these housing types to be developed. Development of such housing would require a coastal development permit, and would be subject to the same restrictions as other residential uses in the certain zone districts that already allow and provide for housing opportunities. Furthermore, all required provisions of the Local Coastal Program will still apply, including the policies and provisions requiring avoidance or minimization of adverse impacts to coastal resources, as applicable. The proposed LIP revisions do not conflict with the provision of priority land uses identified in the LUP, nor do the proposed changes raise issue with regards to the public access or coastal resource policies of the LUP. Therefore, the Commission finds that the subject sections of the proposed amendment, as suggested to be modified, conform with and are adequate to carry out the applicable policies of the certified Land Use Plan.

5. Reasonable Accommodation

The City proposes to add new provisions (LIP Section 13.30 “Housing Accessibility – Request for Reasonable Accommodation) regarding reasonable accommodation, consistent with State Law, whereby either individuals with disabilities or other applicants seeking to build accessible housing may request a reasonable accommodation from the strict application of zoning requirements in order to provide individuals with disabilities an equal opportunity to use and enjoy a dwelling of their choice in conformance with the state and federal fair housing laws. Specifically, the proposed provisions would allow an individual with a disability to apply for a reasonable accommodation from the strict application of the zoning regulations to accommodate an individual’s disability. Reasonable accommodations may include adjustments to encroachment allowances, floor area provisions, setback requirements, fences, walls and screening requirements, and allowing hardscape additions such as widening driveways, parking areas or walkways that would otherwise not comply with landscape, lot coverage, etc.

The proposed amendment includes criteria and provisions related to the City’s review and processing of reasonable accommodation requests and includes required findings of approval. The reasonable accommodation process would take place during the course of any other required review/approvals engendered by any particular request (e.g., if a coastal development permit was necessary).

Although the primary intent of the amendment is to comply with State laws related to reasonable accommodations, it is also important to ensure that any reasonable accommodations granted will not result in impacts to coastal resources in order to be consistent with the requirements of the City's LCP. The amendment request includes specific findings that the City's reviewing body will need to make before granting a request for reasonable accommodation for a project. These include that the housing be occupied by a person with a disability, is necessary to make housing available to a person with disability, the reasonable accommodation would not impose an undue financial or administrative burden on the City, and the reasonable accommodation would not require a fundamental alteration in the nature of the LCP. These types of measures are consistent with the ways in which other cities and counties have addressed Coastal Act concerns when addressing reasonable accommodations. However, any process which allows flexibility or waiver of the LCP implementation measures must include an analysis of the effects of such an action on coastal resources in order to carry out the certified LUP policies. A process that lacks such an analysis would not be able to adequately carry out the provisions of the certified LUP. In order to ensure and provide clarity that any reasonable accommodations granted will not result in adverse impacts to coastal resources, consistent with the requirements of the City's LUP, **Suggested Modification Ten (10)** is necessary to clarify proposed Finding No. 5 of proposed LIP Section 13.30(E) to state that the requested accommodation shall not adversely impact coastal resources.

The Commission finds that only if modified as suggested will the LIP amendment regarding reasonable accommodations conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

6. LCP Administration

There are several proposed revisions which relate to the administration of the LCP and the processing of coastal development permits. **Suggested Modifications One (1), Two (2), Four (4), Seven (7), Eight (8) and Eleven (11)** include minor modifications necessary to ensure consistency with the LCP, such as deleting outside references to documents or use permits that are not part of the standard of review for the LCP; correct the titles of proposed LIP Sections to be consistent with the LUP and LIP; make minor clarifications that further the intent and implementation of the LCP; and where the lack of information may cause inadequate interpretation and implementation of the LCP.

Lastly, since the proposed amendment includes revisions to LIP Appendix 1 – Table B to indicate when a Conditional Use Permit is required for Agricultural Employee Housing and Large Residential Care Facility, **Suggested Modification Eleven (11)** adds clarifying language to Appendix 1 – Table B “Key” which makes clear that Conditional Use Permits, Minor Conditional Use Permits, Large Family Day Care Permit and Wireless Telecommunications Facility Permits are types of use permits that are not required by the LCP, and these use permits are required pursuant to the City's Municipal Code, which is not a part of the certified LCP.

7. Conclusion

For the reasons stated above, the Commission finds that, if modified as suggested, the LIP amendment will conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

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 suggested to be modified, is consistent with the applicable policies of the certified Land Use Plan, including Coastal Act policies, incorporated by reference therein, and no feasible alternatives or mitigation measures beyond those already required are available which would 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.