

**CALIFORNIA COASTAL COMMISSION**

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# Th20b

**DATE:** April 25, 2019

**TO:** Commissioners and Interested Persons

**FROM:** Steve Hudson, Deputy Director  
Barbara Carey, District Manager  
Deanna Christensen, District Supervisor  
Carolyn Groves, Coastal Program Analyst

**SUBJECT:** City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-18-0083-2 (Public Access Map Update) for Public Hearing and Commission Action at the May 9<sup>th</sup>, 2019 Commission Meeting in Oxnard.

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## DESCRIPTION OF THE SUBMITTAL

The City of Malibu's proposed amendment to its certified Local Coastal Program (LCP) consists of an update to the Land Use Plan Public Access Map to reflect current information showing the location of existing public beaches, lateral public access ways along the shoreline, and vertical public access ways between the first public road and the shoreline. In addition to updating public access information, the City proposes to revise the graphic layout of the Public Access Map, whereby the map would consist of three sheets with three inset maps on each sheet. This graphic layout will allow for the access information to be shown at a larger scale than the certified map. The map is an informational planning tool that is used to apply other policies and provisions of the LCP to development proposals.

The Malibu City Council approved Amendment No. 12-004 and adopted City Council Resolution No. 18-58 on October 22, 2018 (Exhibit 1). The City of Malibu then submitted the subject LCP Amendment to the Commission on November 2, 2018. Commission staff determined the submission to be complete on November 7, 2018. At the December 2018 Coastal Commission hearing, the Commission granted a one-year time extension to act on the subject amendment request pursuant to Coastal Act Section 30517 and California Code of Regulations, Title 14, Section 13535(c). The one-year extension required that the Coastal Commission act on the amendment by February 5, 2020.

## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed City of Malibu LCP Amendment No. LCP-4-MAL-18-0083-2 as submitted, and **approve** the proposed amendment with one suggested modification. The suggested modification is necessary to ensure that the City's Land Use Plan Public Access Map is consistent with and adequate to implement the Chapter 3 provisions of the Coastal Act. The motions and resolutions to accomplish this recommendation can be found starting on page 6 of this report. The suggested modification

language can be found starting on page 7. The standard of review for the proposed changes to the Land Use Plan (LUP) is whether the amendment conforms to the Chapter 3 provisions of the Coastal Act.

The existing LUP Public Access Map was originally certified in 2002 as part of Malibu's LCP certification, the proposed amendment is a much-needed update to reflect current information, and it includes the addition of 274 recorded lateral public accessways to the Public Access Map, to show a total of 587 lateral accessways within the city. The proposed amendment also includes the addition of 7 existing/open vertical public accessways that were not depicted on the existing map, to show a total of 20 existing vertical public accessways within the city. In addition, the proposed map shows a total of 16 recorded vertical public access easements that were previously required by the Commission as conditions of approval of coastal development permits prior to the adoption of the City's LCP that have not yet been opened. In addition, the revised graphic layout of the map will allow for the access information to be shown at a larger scale than the certified map. Commission staff recommends that the Commission approve the proposed amendment with one suggested modification, which is necessary to ensure that the City's Land Use Plan Public Access Map is consistent with and adequate to implement the Chapter 3 provisions of the Coastal Act.

Commission and City staff coordinated on the subject amendment and were in agreement on all of the mapped information. However, the proposed amendment includes one change that was made by the Malibu City Council at its final public hearing in October 2018 to approve the map prior to submittal. At the hearing, a member of the public who owns property at the landward end of West Sea Level Drive, where an existing vertical public accessway had been depicted on the Public Access Map, disputed the accuracy of the City's depiction regarding its status as an open, existing accessway.

Prior to 1991, vertical public access via West Sea Level Drive (a private road) to Lechuza Beach from Broad Beach Road was restricted by a locked gate, and was only available for residents and guests. Since 1991, the public has had vertical access to the beach from West Sea Level Drive with the permission of the landowner and the local homeowner's association via a pedestrian gate located on private property at the intersection of West Sea Level Drive and Broad Beach Road that is unlocked during daylight hours. This gate also has signs posted that indicate public access and hours of operation. Once through the gate, access is provided along West Sea Level Drive, along which the Mountains Recreation and Conservation Authority (MRCA) holds an easement, as depicted on Exhibit 4. In 2002, MRCA acquired 21 beach lots at Lechuza Beach and 3 inland lots that would provide access between the beach and Broad Beach Road, and MRCA acquired easement rights on West and East Sea Level Drives (Exhibit 4). However, a small section of West Sea Level Drive near the pedestrian access gate overlaps with the northern edges of two private properties (APN's 4470-026-003 and 4470-026-001). Thus, additional easements are required for those properties to allow for public access across them. Due to its ambiguous status, this particular access point has been the subject of legal action involving MRCA and the Malibu-Encinal Homeowners Association (MEHOA), and a settlement which will officially resolve the issue is expected to be completed in the near future. As part of the settlement, it is expected that the property owners will transfer public access easements for the

sections of West Sea Level Drive in question to MEHOA, which will then transfer the easements to MRCA.

In response to the public comment raised at the October 2018 City Council meeting by the private property owner upon which the pedestrian access gate and a portion of the road are located, the City Council changed the two vertical access symbols at West Sea Level Drive from “Existing Vertical Accessway” to “Vertical Access Document Recorded”, and shifted the location of the northern symbol to the middle of West Sea Level Drive so that it would not be near the intersection of Broad Beach Road. Although the settlement that would clarify access easement rights on the portion of West Sea Level Drive that is on private property has not been completed to-date, the Commission finds that vertical public access at West Sea Level Drive should be depicted on the Public Access Map as an existing open vertical accessway based on historic, continuous public use of the accessway since 1991. The pedestrian gate has been, and continues to be, signed and managed for public access during daylight hours. Furthermore, the location of the northern symbol of the vertical accessway should be near where the accessway intersects with the first public road (Broad Beach Road) so that it is consistent with how all other vertical accessways are depicted on the map. Thus, Staff is recommending Suggested Modification One (1) to change the vertical public accessway symbols at West Sea Level Drive near Lechuza Beach from “Vertical Access Document Recorded” to “Existing Vertical Accessway.” Further, Suggested Modification 1 requires that the northern vertical public accessway symbol at West Sea Level Drive be located on Broad Beach Road near West Sea Level Drive. The location of the southern vertical public accessway symbol at West Sea Level Drive would remain the same as shown on the proposed map.

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## EXHIBITS

- [Exhibit 1: City of Malibu City Council Resolution No. 18-58 \(October 22, 2018\)](#)
- [Exhibit 2: Proposed Updated Public Access Maps associated with Resolution No. 18-58](#)
- [Exhibit 3: Current Certified City of Malibu Public Access Maps](#)
- [Exhibit 4: Map of West Sea Level Drive](#)

**Additional Information:** For further information, please contact Carolyn Groves 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 at the City of Malibu Planning Department.

## **I. PROCEDURAL ISSUES**

### **A. STANDARD OF REVIEW**

The Coastal Act provides:

*The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 30513(c))*

The standard of review that the Commission uses in reviewing the adequacy of the land use plan, as the City is proposing to amend it, is whether the land use plan is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act.

### **B. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held public hearings on this amendment and received oral and written comments regarding the proposed changes from concerned parties and members of the public. The hearings were duly noticed consistent with the provisions of Section 13515 of Title 14 of the California Code of Regulations. Notice of the Coastal Commission hearing for LCP Amendment No. LCP-4-MAL-18-0083-2 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 (“14 CCR”), the City, by resolution, may submit an LCP Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, because staff is recommending that this approval be subject to suggested modifications by the Commission, if the Commission approves this Amendment as recommended, 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 (14 CCR §§13544, 13555(b), and Section 13542(b)). Thereafter, pursuant to Section 13544, 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. If the Commission denies the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

## II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce each resolution and a staff recommendation for how to vote on the motion is provided just prior to each resolution.

### A. DENIAL AS SUBMITTED

**Motion I:** *I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-18-0083-2 as submitted by the City of Malibu.*

#### **Staff Recommendation to Deny as Submitted:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

#### **Resolution to Deny as Submitted:**

*The Commission hereby denies certification of the Land Use Plan Amendment No. LCP-4-MAL-18-0083-2 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.*

### B. APPROVAL WITH SUGGESTED MODIFICATION

**Motion II:** *I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-18-0083-2 for the City of Malibu if it is modified as suggested in this staff report.*

**Staff Recommendation to Certify with Suggested Modification:** Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modification passes only upon an affirmative vote of the majority of the appointed Commissioners.

#### **Resolution to Certify with Suggested Modification:**

*The Commission hereby certifies the Land Use Plan Amendment No. LCP-4-MAL-18-0083-2 for the City of Malibu if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modification will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 plan on the environment, or 2) there are no further feasible alternatives or*

*mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.*

### **III. SUGGESTED MODIFICATION**

The staff recommends the Commission certify LCP Amendment No. LCP-4-MAL-18-0083-2 if modified as described below in italics.

#### **1. West Sea Level Drive Vertical Public Accessway Correction**

*Modify Section 2 of Public Access Map 1 to (1) change the northern vertical public accessway symbol at West Sea Level Drive near Lechuza Beach from “Vertical Access Document Recorded” to “Existing Vertical Accessway” and locate the symbol on Broad Beach Road near West Sea Level Drive; and (2) change the southern vertical public accessway symbol at West Sea Level Drive near Lechuza Beach from “Vertical Access Document Recorded” to “Existing Vertical Accessway” in the same location as shown on the proposed map.*

### **IV. FINDINGS FOR DENIAL OF THE LOCAL COASTAL PROGRAM AMENDMENT AS SUBMITTED, AND APPROVAL IF MODIFIED AS SUGGESTED**

The following findings support the Commission’s denial of the LCP amendment as submitted, and approval of the LCP amendment if modified as indicated in Section III (*Suggested Modification*) above. The Commission hereby finds and declares as follows:

#### **A. AMENDMENT DESCRIPTION**

The proposed amendment would serve to update the Public Access Map of the City of Malibu’s certified Land Use Plan and is intended to show any changes or additions to vertical/lateral public access easements to or along the beach and offers to dedicate such easements that have been recorded, accepted, and/or opened since the Malibu LCP was adopted in September 2002. The Public Access Map depicts the location of all existing public beaches, existing and/or recorded lateral and vertical public accessways on beachfront lots in Malibu, including accessways that existed prior to the Coastal Act, and accessways that have been required as mitigation for new development approved by coastal development permits granted by both the Coastal Commission and the City of Malibu.

The proposed amendment would add 274 recorded lateral public accessways to the Public Access Map to show a total of 587 recorded lateral public accessways within the City of Malibu. Specifically, the amendment would add 177 new lateral public access easements and offers to dedicate (OTDs) public lateral access easements to the Public Access Map that have been required by the City or the California Coastal Commission pursuant to the terms and conditions of coastal development permits since the adoption of the City’s LCP (Exhibit 2). In addition, the amendment would add 97 lateral public accessways that were previously required by the Commission as conditions of approval of coastal development permits, prior to the adoption of

the City’s LCP in 2002. These 97 additional lateral public accessways were not shown on the previously certified Public Access Map and primarily consist of accessways that had been required by the Commission as a condition of approval for a coastal development permit but which had not yet been recorded at the time that the LCP was adopted, as well as accessways that had been required pursuant to a deed restriction requiring public access rather than an OTD for an easement and had not been accurately reflected on the map.

The City has not obtained any new vertical public access easements since the LCP was adopted. However, the proposed map would add 7 existing/open vertical public accessways that were not depicted on the existing map, to show a total of 20 existing vertical public accessways within the City of Malibu. In addition, the proposed map shows a total of 16 recorded vertical public access easements that were previously required by the Commission as conditions of approval of coastal development permits prior to the adoption of the City’s LCP that have not yet been opened.

In addition to updating public access information, the proposed amendment also includes revisions to the graphic layout of the Public Access Map, whereby the map would consist of three sheets with three inset maps on each sheet (Exhibit 2). This graphic layout will allow for the access information to be shown at a larger scale than the certified map. The following chart details the category descriptions that are used in the proposed Public Access Map, which are the same as the categories used in the existing certified map.

<b>Public Access Map Categories</b>
Existing Lateral Accessway
Lateral Access Document Recorded
Existing Vertical Accessway
Vertical Access Document Recorded
Public Beach

**B. BACKGROUND**

The proposed amendment is a resubmittal of two previous LCP amendments requested by the City to update the Public Access Map that were never certified. The original amendment request, LCP Amendment No. MAL-MAJ-1-12, was approved by the Commission with suggested modifications on July 10, 2014. On November 10, 2014, the Malibu City Council adopted Resolution No. 14-69, acknowledging receipt of the Commission’s certification of LCP Amendment No. 1-12 and accepting and agreeing to the modifications suggested by the Commission. However, during this action the City Council added an asterisk and footnote on one of the public access maps indicating that one vertical public accessway shown on the map (known as the “Tivoli Cove easement” at 26612 Latigo Shore Drive (APN 4460-019-036) that was required pursuant to Commission CDP No. 5-85-299)) was not open to the public, questioning whether the offer to dedicate the easement was lawfully created, and stating that the Commission had waived the right to enforce the public’s right to access in this location through a settlement. Although litigation relating to the property was settled, the settlement did not include any change to the easement in question and the Commission did not waive its right to ever enforce the public access easement offer to dedicate (OTD), which had already been recorded at the time of the settlement and was subsequently accepted. This asterisk and map footnote added by the City, which Commission staff believed to be inaccurate, was deemed a substantive change



by the Executive Director. As such, the modification to the public access map was inconsistent with the modifications approved by the Commission in its July 10, 2014 action, and the LCP Amendment was not properly accepted by the City and did not take effect. Pursuant to Public Resource Code Section 13544.5, the Commission treated the resolution as a land use plan amendment resubmittal and assigned it a new LCP Amendment Number, LCP-4-MAL-15-0031-2. That amendment resubmittal was approved by the Commission on March 9, 2017 with suggested modifications that included deleting the asterisk and footnote in question. However, the City never acted to accept the Commission's suggested modifications within the required timeframe, and the Commission's conditional certification of that amendment request expired on March 9, 2018.

The City continued to pursue an update to the Public Access Map and coordinated with Commission staff on a resolution to the issue of the disputed Tivoli Cove easement asterisk and map footnote in question prior to resubmitting the proposed amendment. City staff and Commission staff came up with mutually-agreeable language for the footnote to simply clarify the status of the Tivoli Cove accessway but not attempt to characterize the outcome of the Commission's settlement. The City then approved and submitted the subject new amendment request to update the Public Access Map and included the agreed-upon footnote as well as all of the Commission's previously required suggested modifications.

### **C. PUBLIC ACCESS AND RECREATION**

The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as for residents of cities and towns located throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands, as well as a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area including hiking, biking, horseback riding, camping, fishing, picnicking, nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails, and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels and motels has historically been a critical and controversial issue in Malibu. Coastal access is generally viewed as an issue of physical supply, and includes lateral access (access along a beach), vertical access (access from an upland street, parking area, bluff or public park to the beach), coastal bluff top trails, and upland trails that lead to the shore or traverse inland parklands within the Coastal Zone.

A broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are also incorporated into Malibu's Land Use Plan, reinforce this objective. The Coastal Act requires that development not interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); addresses the need to regulate the time, place, and manner of public access (30214); and specifies the need to protect ocean front land suitable for recreational use (Section 30221).

Section 30210 of the Coastal Act states that:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

The Coastal Act also requires that development not interfere with the public right of access to the sea in Section 30211:

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

Section 30212 of the Coastal Act provides for public access in new development projects with limited exceptions:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

*(b) For purposes of this section, "new development" does not include:*

*(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*

*(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*

*(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*

*(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure.*

*(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

*As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.*

*(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30212.5 of the Coastal Act provides for the distribution of parking over a wide area:

*Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Section 30214 of the Coastal Act addresses the need to regulate the time, place, and manner of public access:

*(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

*(1) Topographic and geologic site characteristics.*

*(2) The capacity of the site to sustain use and at what level of intensity.*

*(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

*(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

*(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

*(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

The Coastal Act specifies the need to protect ocean front land suitable for recreational use in Section 30220:

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

Section 30221 also requires the protection of oceanfront land for recreational use:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

The public already possesses ownership interests in tidelands, or those lands below the mean high tide line. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring the implementation of a public access program, the minimization of impacts to access, and the provision of access, where applicable, through the regulation of development. To carry out the requirement of Section 4 of Article X of the California Constitution, PRC Section 30210 provides that maximum access and recreational opportunities be provided consistent with public safety, public rights, private property rights, and natural resource protection. PRC Section 30211 requires that development not interfere with the public's right of access to the sea with certain exceptions. Furthermore, PRC Section 30212 requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects with certain exceptions such as public safety, military security, resource protection, and where adequate access exists nearby. Certain minor types of development also do not require the provision of access. Finally, PRC Section 30214 provides that the implementation of the public access policies shall take into account the need to regulate the time, place, and manner of public access depending on such circumstances as topographic and geologic characteristics, the need to protect natural resources, proximity to adjacent residential uses, etc.

As previously described, the proposed LCP Amendment would modify the Public Access Map which is part of the Land Use Plan (LUP). As such, the Chapter 3 policies of the Coastal Act are the standard of review for this LCP Amendment. It is also necessary to consider the internal consistency of the proposed changes with applicable LUP policies.

### **LUP Access Policies**

The certified LUP contains several policies to ensure the protection and provision of public access in new development, taking into consideration public safety needs, private property rights,

and the protection of natural resources, where applicable. Several policies require an offer to dedicate a lateral or vertical public access easement as a special condition in new development projects where a nexus is demonstrated between the proposed development and its impact on public access. The LUP also states that public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access, construction of related support facilities (e.g. parking, construction of necessary access improvements) shall be permitted in order to allow the public accessway to be opened and operated for its intended use (LUP Policy 2.7).

The LUP policies also provide the physical standards for locating such easements (LUP Policies 2.66 – 2.68). Other policies provide for the opening, construction and maintenance of new accessways or the ongoing operation of existing accessways as well as for the acceptance, operation and maintenance of offers to dedicate beach or trail access easements (LUP Policies 2.40 – 2.41, 2.69 – 2.71, 2.83 – 2.85). Additional policies require the consideration of public safety, minimization of impacts on private property and adjacent private uses such as residential dwellings, and the protection and enhancement of sensitive natural resources in providing and regulating public access (LUP Policies 2.73 – 2.75). To provide maximum access opportunities and to minimize overburdening any particular area, vertical access locations need to be distributed throughout the City's shoreline. The LUP contains specific accessway standards or objectives for specific beaches in the City. Vertical access standards generally recommend at least one accessway to the shoreline for each 1000 linear feet (LUP Policies 2.84-2.86).

All projects within the City's permitting jurisdiction requiring a coastal development permit must be reviewed for compliance with the policies and provisions of the City's certified LCP and the public access and recreation provisions of Chapter 3 of the Coastal Act. Based on the access, recreation, and development policies contained in Chapter 3 of the Coastal Act, the City and the Commission have required new development to provide public access to and along the shoreline and have required design changes in other projects along the coast to reduce interference with or eliminate impacts on public access. Impacts to access can occur from physical blockage of existing access, direct occupation of sandy beach by structures, as well as from impacts on shoreline sand supply and profile caused by seawalls and other shoreline protective structures.

Development on the beach, particularly the placement of shoreline protective devices, has been found to cause a number of effects on the dynamic shoreline and the availability of public land. As a result, such development can often lead to significant impacts on public access. For example, development on a beach often leads to a steeper beach profile, which will have less horizontal distance between the mean low water and the mean high water lines. This reduces the actual area in which the public can pass on its own property. This steepening of a beach can also lead to a progressive loss of sand on the beach. This material is not then available to nourish the offshore bar which usually provides the sand to replenish beaches after winter storms. The lack of an effective bar can allow such high wave energy on the shoreline that material may be lost far offshore where it is no longer available to nourish the beach, resulting in a smaller beach. In addition, shoreline protective devices cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches and by their direct occupation of sandy beach area.

To eliminate or reduce potential impacts from development on public access and recreation, the Commission, in numerous permit actions, has often required that new shoreline development be located as far landward as possible in order to reduce the development's adverse impacts to the sand supply and public access. In addition, the Commission has also required that public access to or along the shoreline be provided in new development projects as mitigation for adverse impacts to beach sand supply and/or public access. This form of required mitigation is usually accomplished through an offer-to-dedicate (OTD) an easement for public use, although it has also been accomplished through direct dedications of easements and deed restrictions in some cases.

The certified Public Access Map (Exhibit 3) is included in the LCP to graphically depict the location of lateral and vertical public accessways, including those that are subject to accepted access easements, other access restrictions, and access OTDs. This information is included primarily as a tool for planning, and is used when applying the policies and provisions of the LCP. It also provides information to agencies that may accept access easements, as well as the beach-going public. However, those are not the primary functions of the Public Access Map. Agencies looking to accept easements will need more specific information than the Public Access Map provides regarding the type, details, and terms of lateral or vertical access easements or other recorded documents in order to make decisions about acceptance. Such information is available from the City of Malibu and/or the Coastal Commission. Additionally, the Public Access Map does not provide the level of detail needed for the public to understand precisely where they may access the coast. There are public beach access guides available to the general public that supply more detailed information regarding the location of beach access opportunities and available facilities.

### **Consistency Analysis**

As previously described, the proposed amendment to the certified LUP Public Access Map includes updated depictions of lateral and vertical access ways that have been required as mitigation for new development approved by CDP's granted by both the Coastal Commission and the City of Malibu. This mitigation has been primarily required through the recordation of offers to dedicate (OTDs) an access easement across a designated portion of project sites, but other kinds of access restrictions, such as deed restrictions, have also been required. Pursuant to this amendment, updated public access information maintained by Coastal Commission and City staff and proposed to be shown on the updated Public Access Map will include additional vertical and lateral public accessways that have been required, recorded, accepted, and/or opened since the LUP Public Access Map was certified as part of the LCP in 2002.

The periodic addition of updated information to the Public Access Map is necessary to ensure that the map accurately reflects all recorded and existing lateral and vertical public accessways. Moreover, such updates are necessary to carry out the Coastal Act and the City's LUP, both of which require the implementation of a public access program adequate to provide and maintain maximum access and recreational opportunities.

In this case, the proposed amendment would add 274 recorded lateral public accessways to the Public Access Map to show a total of 587 recorded lateral public accessways within the City of

Malibu. Specifically, the amendment would add 177 new lateral public access easements and offers to dedicate (OTDs) public lateral access easements to the Public Access Map that have been required by the City or the California Coastal Commission pursuant to the terms and conditions of coastal development permits since the adoption of the City's LCP. In addition, the amendment would add 97 lateral public accessways that were previously required by the Commission as conditions of approval of coastal development permits, prior to the adoption of the City's LCP in 2002. These 97 additional lateral public accessways were not shown on the previously certified Public Access Map and primarily consist of accessways that had been required by the Commission as a condition of approval for a coastal development permit but which had not yet been recorded or accepted at the time that the LCP was adopted and accessways that had been required pursuant to a deed restriction requiring public access rather than an OTD for an easement and had not been accurately reflected on the map.

The proposed amendment also includes minor revisions intended to clarify the location and extent of existing vertical public accessways. The City has not obtained any new vertical public access easements since the LCP was adopted. However, the proposed map would add 7 existing/open vertical public accessways that were not depicted on the existing map, to show a total of 20 existing vertical public accessways within the City of Malibu. In addition, the proposed map shows a total of 16 recorded vertical public access easements that were previously required by the Commission as conditions of approval of coastal development permits prior to the adoption of the City's LCP that have not yet been opened.

The maps submitted as part of the City's two previous Public Access Map Update LCP amendments that were never certified had depicted West and East Sea Level Drives at Lechuza Beach as "existing vertical accessways". However, when the subject LCP amendment submittal was brought to Malibu's City Council in October 2018, the accuracy of the symbols was disputed by a member of the public who owns property at the landward end of West Sea Level Drive.

Prior to 1991, vertical public access via West Sea Level Drive (a private road) to Lechuza Beach from Broad Beach Road was restricted by a locked gate, and was only available for residents and guests. Since 1991, the public has had vertical access to the beach from West Sea Level Drive with the permission of the landowner and the local homeowner's association via a pedestrian gate located on private property at the intersection of West Sea Level Drive and Broad Beach Road that is unlocked during daylight hours. This gate also has signs posted that indicate public access and hours of operation. Once through the gate, access is provided along West Sea Level Drive, along which the Mountains Recreation and Conservation Authority (MRCA) holds an easement, as depicted on Exhibit 4. In 2002, MRCA acquired 21 beach lots at Lechuza Beach and 3 inland lots that would provide access between the beach and Broad Beach Road, and MRCA acquired easement rights on West and East Sea Level Drives (Exhibit 4). However, a small section of West Sea Level Drive near the pedestrian access gate overlaps with the northern edges of two private properties (APN's 4470-026-003 and 4470-026-001). Thus, additional easements are required for those properties to allow for public access across them. Due to its ambiguous status, this particular access point has been the subject of legal action involving MRCA and the Malibu-Encinal Homeowners Association (MEHOA), and a settlement which will officially resolve the issue is expected to be completed in the near future. As part of the

settlement, it is expected that the property owners will transfer public access easements for the sections of West Sea Level Drive in question to MEHOA, which will then transfer the easements to MRCA.

In response to the public comment raised at the October 2018 City Council meeting by the private property owner upon which the pedestrian access gate and a portion of the road are located, the City Council changed the two vertical access symbols at West Sea Level Drive from “Existing Vertical Accessway” to “Vertical Access Document Recorded”, and shifted the location of the northern symbol to the middle of West Sea Level Drive so that it would not be near the intersection of Broad Beach Road. Although the settlement that would clarify access easement rights on the portion of West Sea Level Drive that is on private property has not been completed to-date, the Commission finds that vertical public access at West Sea Level Drive should be depicted on the Public Access Map as an existing open vertical accessway based on historic, continuous public use of the accessway since 1991. The pedestrian gate has been, and continues to be, signed and managed for public access during daylight hours. Furthermore, the location of the northern symbol of the vertical accessway should be near where the accessway intersects with the first public road (Broad Beach Road) so that it is consistent with how all other vertical accessways are depicted on the map. Thus, **Suggested Modification One (1)** is required to change the vertical public accessway symbols at West Sea Level Drive near Lechuza Beach from “Vertical Access Document Recorded” to “Existing Vertical Accessway.” Further, Suggested Modification 1 requires that the northern vertical public accessway symbol at West Sea Level Drive be located on Broad Beach Road near West Sea Level Drive. The location of the southern vertical public accessway symbol at West Sea Level Drive would remain the same as shown on the proposed map.

The Commission finds that it is necessary to require Suggested Modification 1 to ensure that the LUP Public Access Map, as proposed to be amended, will accurately depict public access areas within the City of Malibu. The Public Access Map must be accurate since it will be used as a planning document to inform the City’s interpretation of the public access policies and provisions of the certified LCP. Only as modified will the Public Access Map conform to the public access and recreation policies of the Coastal Act. The Commission finds that, if modified as suggested, the proposed LCP amendment is consistent with the Coastal Act, including Sections 30210, 30211, 30212, 30214, 30220, and 30221.

#### **D. 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 an LCP. 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.

The Land Use Plan amendment has been found not to be in conformance with Chapter 3 policies of the Coastal Act. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. With incorporation of the suggested modifications, the Land Use Plan is in conformity with the Coastal Act. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment by ensuring that the proposed amendment does not interfere with public recreational opportunities or access trails. The Commission finds that approval of the LCP amendment, as modified, will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any significant adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with CEQA.