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W13a

Prepared March 25, 2021 (for April 14, 2021 hearing)

TO: Commissioners and Interested Persons

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

SUBJECT: **Dispute Resolution No. 4-21-0132-EDD (Sycamore Tennis Court Association).** Public hearing and Commission determination on dispute over appealability (pursuant to California Code of Regulations, Title 14, Section 13569) of a pending City of Malibu coastal development permit application for a vehicular and pedestrian access gate located at 6480 Via Escondido Drive located in the City of Malibu's jurisdiction.

SUMMARY OF STAFF RECOMMENDATION

After a local coastal program (LCP) is certified by the Coastal Commission, the local government takes on the primary CDP processing role, including making determinations regarding appealability of CDPs. However, some local government CDP processing decisions, such as whether a local CDP decision is appealable to the Commission, may be challenged, as specified in the Commission's regulations. When a processing decision is challenged, the Commission's regulations (and many LCPs, consistent with the Commission's regulations) require the local government to consult with the Commission's Executive Director. If the local government and the Executive Director agree on CDP processing procedures, then those procedures apply. If they do not agree, then the Coastal Commission is responsible for resolving the disagreement at a public hearing. These procedures are specified in Section 13569 of Title 14 of the California Code of Regulations (CCR) ("CCR Section 13569").

The City of Malibu has a certified LCP, and on October 2, 2020 determined that a pending CDP application for a new vehicular and pedestrian gate at 6480 Via Escondido Drive is not appealable to the Coastal Commission because the proposed gate is not located within 100 feet of any stream or within any other areas specified as appealable under Coastal Act Section 30603 and the Malibu LCP. The City's determination was challenged by the Mountains Recreation and Conservation Authority (MRCA) and the City requested a determination from the Commission's Executive

Director as provided by the City's LCP and CCR Section 13569. MRCA is a public agency that manages land in the Santa Monica Mountains for public use. MRCA owns parcels within the Sycamore Park subdivision that it intends to make available for public use. One option for the public to access the MRCA parcels is to use Via Escondido Drive¹.

The Executive Director has reviewed all available information provided by the City, including the project description and location of the proposed development. The Executive Director's position is that although the proposed gate is located outside the Commission's applicable geographic appeals jurisdiction areas (100 feet from the stream top of bank and 300 feet from the inland extent of the beach), the "development" proposed in this case (as "development" is defined in the certified Malibu LCP) is not limited to the proposed gate itself, but the change in intensity of use of land beyond the gate, due to the gate's intended effects on public access. The proposed gate is meant to deny public vehicular and pedestrian ingress and would also restrict access to other areas that are located within the Commission's geographic appeals jurisdiction (100 feet from Escondido Canyon Creek stream top of bank), such as portions of Via Escondido Road as well as public land and public trails (Coastal Slope Trail and Escondido Falls Trails) currently owned by MRCA north of the proposed gate.

This proposed development constitutes a change in the intensity of use of those areas within the Commission's appellate jurisdiction by physically restricting the public's ability to access them. Therefore, development proposed by this project (specifically changing the intensity of use of the areas affected by the proposed gate) is located within the appeals jurisdiction of the Coastal Commission and the proposed project is appealable to the Coastal Commission. The City staff was provided this CDP appealability determination; however, City staff has maintained its position that the proposed project is not appealable to the Coastal Commission. On February 23, 2021, City staff issue a letter requesting that the Commission hold a hearing, pursuant to CCR Section 13569, to resolve this dispute regarding the appealability of the City's pending CDP. Staff recommends that the Commission concur with the Executive Director's determination that the City's pending CDP Application No. 20-018 is directly appealable to the Coastal Commission. The motion to implement this recommendation is found on page 4 below.

¹ Although the scope of public rights that flow from the MRCA's ownership is currently disputed by the City, MRCA has certainly obtained some right to use Via Escondido Drive for itself and its guests, who are members of the public. Additionally, in a ruling on motion for summary judgment on March 25, 2020, in the matter of *Sycamore Park Private Community Group v. Mountains Recreation & Conservation Authority*, Los Angeles Superior Court case number SC126502 the Court found that the association had not established there is a rule barring the general public from being invitees.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Proposed Gate Site Survey dated February 1, 2021 by Chris Nelson](#)

[Exhibit 3 – Map of Areas within 100 feet of Stream](#)

[Exhibit 4 – Malibu LCP Park Lands Map 2: Zuma Beach to Escondido Beach](#)

[Exhibit 5 a-g – Correspondence regarding Appealability Determination](#)

[5a – October 12, 2020 Letter City to CCC](#)

[5b – October 14, 2020 Letter CCC to City](#)

[5c – December 23, 2020 Letter City to CCC](#)

[5d – December 28, 2020 Letter MRCA to CCC](#)

[5e – December 28, 2020 Letter and January 15, 2021 Email CCC to City](#)

[5f – February 23, 2021 Letter City to CCC](#)

[5g – February 25, 2021 Letter CCC to City](#)

I. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director has determined that the subject pending City of Malibu CDP is appealable to the Commission, and recommends that the Commission concur. If the Commission concurs, then notice of this Commission determination will be forwarded to City of Malibu and to the property owners. To concur with the Executive Director's determination, the Executive Director recommends a **NO** vote on the motion below. Failure of this motion will result in: (1) the Commission upholding the Executive Director's determination that the pending action by the City of Malibu on Sycamore Tennis Court Association CDP Application No. 20-018 is appealable to the Coastal Commission; and (2) the adoption of the following resolution and findings. The affirmative vote of a majority of the Commissioners present is necessary to pass the motion.

MOTION:

I move that the Commission reject the Executive Director's determination that the City of Malibu's pending action on CDP Application 20-018 that is the subject of Dispute Resolution Number 4-21-0132-EDD is appealable to the Commission, and I recommend a no vote.

RESOLUTION:

The Commission, by adoption of the attached findings, determines, consistent with Section 13569 of Title 14 of the California Code of Regulations, that the City of Malibu's pending action on CDP Application No. 20-018 that is the subject of Dispute Resolution Number 4-21-0132-EDD is appealable to the Commission.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. COASTAL ACT AND LCP DISPUTE RESOLUTION PROCEDURES

The Commission's regulations provide a resolution mechanism for disputes regarding CDP processing. California Code of Regulations, Title 14, Section 13569 states:

(a) The determination of whether a proposed development is exempt or categorically excluded, or whether a decision on the proposal would be appealable to the Commission shall be made by the local government as soon as practicable after the application for development or the request for exemption or categorical exclusion within the coastal zone is submitted to the local government. This determination shall be made according to the provisions of the Coastal Act, the certified Local Coastal Program, and Section 13240-13253 and 13300 et seq., including based upon applicable maps, coastal resources existing at the time of the application or request, categorical exclusions, land use designations, and zoning ordinances.

(b) The local government shall inform the applicant and the Commission district office with jurisdiction over the local government in writing of its determination as soon as practicable and at a minimum prior to providing the required notice for any potential permit action and prior to allowing any activity without a permit (for exemptions and exclusions), with reference to any notice and hearing requirements.

(c) The executive director may review the local government determination independently, or at the request of the applicant or an interested person(s). If the executive director reviews the local government determination, he or she shall inform the local government of said review, and the local government shall supply, at a minimum a copy of the application or request and a copy of its determination to the executive director. Within 30 working days, unless extended by the executive director for good cause, the executive director shall notify the local government, the applicant, and the interested person(s) who requested the review, if any, in writing of his or her determination regarding whether the proposed development or request qualifies for exemption or categorical exclusion, or whether local government decisions on a permit for the proposed development would be appealable to the Coastal Commission.

(d) If the executive director's determination regarding the appropriate permitting process for the proposed development or request is the same as the local government's, then that determination shall apply to the proposed development or request, and there is no further challenge available. If the executive director's determination conflicts with the local government's determination and the respective staffs are not able to resolve the conflict and reach agreement on the appropriate permitting process for the proposed development or request in a reasonable time, the executive director shall schedule a hearing as soon as practicable for the Commission to resolve any dispute. Only the local government, the applicant, and the interested person(s), if any, who made the request for review may testify at the hearing. Any person may submit written comments. The Commission shall make findings to support its decision, which shall be provided to the local government.

Similarly, City of Malibu Local Implementation Plan (LIP) Section 13.10.1 also provides a resolution mechanism for disputes regarding CDP processing that mirrors CCR Section 13569.

LIP Section 13.10.1 Appeals of Determination of Permit Type and Jurisdiction states:

Where an applicant, interested person, or the city has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is non-appealable or appealable:

- A. The Planning Manager or his or her designee shall make its determination as to what type of development is being proposed (i.e. appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development.

- B. If the determination of the Planning Manager is challenged by the applicant or an interested person, or if the City wishes to have a Coastal Commission determination as to the appropriate designation, the Planning Manager shall notify the District Director of the South Central Coast District Office of the Coastal Commission by telephone or in writing of the dispute/question and shall request the Executive Director's determination as to whether the development is categorically excluded, non-appealable or appealable.
- C. The Executive Director of the Coastal Commission shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable.
- D. Where, after the Executive Director's investigation, the Executive Director's determination is not in accordance with the City Planning Manager's determination, the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the Executive Director's determination.

After the certification of a local coastal program (LCP), the Commission is authorized to resolve disputes regarding the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable) when requested to do so. The purpose of the dispute resolution regulation is to provide for an administrative process for the resolution of disputes over the status of a particular project. The Coastal Act was set up to give local governments with certified LCPs the primary permitting authority over projects proposed in the Coastal Zone, but to provide the Commission with oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements as to whether a particular project may be appealed to the Commission and an administrative dispute resolution process would be preferable (and more efficient) than resorting to litigation. The local government must initiate the process if its determination is challenged by an applicant or other interested party to the Commission's Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination (14 CCR Section 13569(d) and LIP Section 13.10.1(d)).

B. DISPUTE SUMMARY

The gate at issue is proposed to be generally located where a Sycamore Park community association, the Via Escondido Road Maintenance Association, currently stations a guard to control access to Via Escondido Drive, without the necessary coastal development permit, as described in more detail below. Commission enforcement staff has requested that the City address this unpermitted development, but the City has

either declined or failed to take timely action. Although the City is considering the permit application described herein for a proposed gate in the approximate location of the guard station, which the City could suggest effectively resolves the issue of the unpermitted guard station going forward (i.e. by replacing it with the gate), the outcome of that permit application is unknown, and, as noted herein, it is Commission staff's opinion that the proposed gate would interfere with public access. In the meantime, the unpermitted guard station, guard, and signage persist on the site, which the City has not abated.

On October 2, 2020, Commission staff received the City of Malibu Determination of Notice and Hearing Requirements for pending CDP Application No. 20-018 informing Commission staff that the proposed CDP is "not appealable" to the Coastal Commission. Specifically, pending CDP Application No. 20-018 proposes a new view permeable vehicular and pedestrian access gate across Via Escondido Drive. This determination was challenged by the Mountains Recreation and Conservation Authority (MRCA). In a letter dated October 12, 2020, the City notified the Coastal Commission of this dispute and requested the Executive Director's determination as to whether the project is non-appealable or appealable to the Coastal Commission, as is required by CCR Section 13569 and the Malibu LCP ([Exhibit 5a](#)).

In a letter dated October 14, 2020 ([Exhibit 5b](#)), Commission staff responded to the City's request, informing them that Commission staff needed additional information to verify the location of the proposed project in relation to the Commission's geographic appeals jurisdiction area (100 feet from the stream top of bank) prior to providing a final jurisdictional determination regarding the subject CDP. Furthermore, Commission staff notified the City that the placement of the proposed gate would restrict access and constitute a change in intensity of use of land. Therefore, the "development" proposed in this case is not limited to the proposed gate itself, but the change in intensity of use of land caused by the proposed gate. Since the proposed gate would restrict access to other areas that appear to be located within the Commission's appeal jurisdiction (100 feet from stream), such as portions of Via Escondido Drive as well as public lands and trails (Coastal Slope Trail and Escondido Falls Trails) to the north of the proposed gate, Commission staff's opinion was that the proposed project is located within the appeals jurisdiction of the Coastal Commission based on available information. However, additional information was needed to render a final jurisdictional determination regarding the subject CDP.

On December 23, 2020, the City responded to Commission staff's October 12, 2020 letter by stating that they disagree with the Commission's view that the "development" proposed in this case is not limited to the proposed gate itself, but the change in intensity of use of land caused by the gate. Further, the letter included a site survey showing the location of the proposed gate in relation to the stream top of bank ([Exhibit 5c](#)). However, no additional information was provided to verify the location of the Commission's geographic appeals jurisdiction area (100 feet from the steam top of bank) in relation to any portion of Via Escondido Road, public lands, and public trails (Coastal Slope Trail and Escondido Falls Trails) located north of the proposed gate. In response, Commission staff sent a letter dated December 28, 2020 ([Exhibit 5e](#))

reiterating to City staff that the “development” proposed in this case is not limited to the proposed gate itself, but the change in intensity of use of land caused by the gate, and therefore additional information is still needed in order to provide a final jurisdiction determination regard the subject CDP application.

On December 28, 2020, MRCA provided Commission staff with a letter stating that the proposed gate location is also located within 300 feet of the inland extent of a beach (Escondido Beach), which is an applicable geographic appeals area pursuant to the City’s LCP and Coastal Act Section 30603 ([Exhibit 5d](#)). Commission staff notified the City via email on January 15, 2021 ([Exhibit 5e](#)) of that assertion. Further, Commission staff informed the City that after reviewing the proposed gate location site survey with the Commission’s mapping unit, it appeared that the proposed gate was located within 300 feet of the inland extent of a beach; however, in order to provide a final determination relative to the gate’s distance from the inland extent of the beach, Commission staff requested that City staff provide the Commission’s Mapping Unit Staff with the GIS shapefile with projection data of the proposed gate location.

In response, City staff provided a letter dated February 23, 2021 ([Exhibit 5f](#)) to Commission staff indicating that the proposed gate location had been adjusted approximately 20 feet further north from Pacific Coast Highway by the applicant, and therefore, the proposed gate would no longer be within 300 feet of the inland extent of a beach. An updated site survey was also provided showing the proposed gate location in relation to the geographic appeal jurisdiction areas of 300 feet from the inland extent of the beach and 100 feet from the stream top of bank. Further, the City restated their position that the development proposed in this case is limited to the proposed gate itself. Additionally, the letter requested that the Executive Director provide a final determination on the jurisdictional issue, and if the Executive Director’s determination was not in accordance with the City’s determination that the project does not lie within the appeals jurisdiction, the City requested that the matter be scheduled for a hearing as required by LIP Section 13.10.1(D).

Commission staff responded in a letter dated February 25, 2021 ([Exhibit 5g](#)) to City staff indicating that the location of the proposed gate, as adjusted 20 feet further north from Pacific Coast Highway, appeared to be located outside the Commission’s geographic appeals jurisdiction area (100 feet from the stream top of bank or within 300 feet of the inland extent of a beach) as evidenced by their site survey. However, Commission staff reiterated that the “development” proposed in this case is not limited to the proposed gate itself, but the change in intensity of use of land affected by the gate. The proposed gate would still restrict access to other areas that are located within the Commission’s geographic appeals jurisdiction (100 feet from stream top of bank) based on measurements from Commission Mapping Unit Staff, such as portions of Via Escondido Road as well as public land and public trails (Coastal Slope Trail and Escondido Falls Trails) currently owned by the MRCA to the north of the proposed gate. Therefore, the Executive Director concluded that the proposed project is located within the appeals jurisdiction of the Coastal Commission and is appealable to the Coastal Commission.

City staff disagrees with the Executive Director's determination. As a result, the provisions of CCR Section 13569 and the City's LCP specify that the Coastal Commission shall hold a hearing for purposes of determining the appropriate designation for the proposed project, and thus the dispute is now before the Commission.

C. PROJECT HISTORY AND BACKGROUND

The City of Malibu's pending CDP Application No. 20-018, which is the subject of this dispute resolution, proposes a new view permeable vehicular and pedestrian access gate across Via Escondido Drive at 6480 Via Escondido Drive. Via Escondido Drive, which is a private road, is accessible off from Pacific Coast Highway and meanders up Escondido Canyon. Escondido Canyon consists of Escondido Canyon Park, a very popular visitor destination in the City that is surrounded by residential neighborhoods including the Sycamore Park community. Portions of Via Escondido Drive are located within 100 feet of Escondido Canyon Creek, a designated blueline stream on the United States Geological Survey (USGS) quadrangle maps ([Exhibit 3](#)).

The proposed gate will be located approximately 180 feet north of the intersection of Via Escondido Drive and Pacific Coast Highway ([Exhibit 2](#)). Via Escondido Drive is approximately half a mile long and dead ends approximately a quarter mile from the entrance to Escondido Canyon Park. Although Escondido Canyon Park is primarily accessed via Winding Way, there are additional trail easements, including some required by the Commission as permit conditions in certain CDPs, and public parkland in close proximity to the Park potentially providing additional mountains to beach access connections.

Public rights to coastal access exists to and along Via Escondido Drive, which flow in part from the Mountain Recreation and Conservation Authority's ownership of parcels within the Sycamore Park subdivision.² Furthermore, public access exists to and along Via Escondido Drive to public land and coastal trails accessible from Via Escondido Drive. As shown on [Exhibit 3](#), Via Escondido Drive connects Pacific Coast Highway to public property and trails, including a Commission-required trail³ easement at 6100 Via Escondido Drive, which is located at the northern terminus of Via Escondido Drive. In addition, the public may hike down from Escondido Canyon Park (or other surrounding public trails such as the Coastal Slope Trail and Escondido Falls Trails) down Via Escondido Drive to reach Escondido Beach. An existing Los Angeles County-owned beach accessway is located at the intersection of Via Escondido Drive and Pacific Coast Highway ([Exhibit 3](#)).

² See FN 1.

³ Commission Coastal Development Permit No. A-80-7287 requires the permittee (the property owner at 6100 Via Escondido Drive) to grant public access to a trail at the terminus of Via Escondido Drive that connects Via Escondido Drive to adjacent parkland.

The City's certified Land Use Plan (LUP) also includes a "Park Lands Map," which depicts the location of public parklands and existing and planned inland public trails at the time the LCP was certified in 2002. The purpose of depicting trails that have not yet been developed, or for which public rights of access have not yet been set forth in any recorded document, is as a planning tool to indicate where a reviewing agency must seek to establish and/or formalize such rights. As can be seen on the certified Park Lands Map, the Escondido Falls Trail is located within Escondido Canyon Park and a portion of Escondido Falls Trail overlaps with the Coastal Slope Trail. The Coastal Slope Trail is a long-envisioned regional trail conceptualized as an east-west lateral trail between Point Mugu State Park and Topanga State Park in the Santa Monica Mountains and to provide an alternative route to the California Coastal Trail. The Coastal Slope Trail currently consists of existing and planned segments. The certified Park Lands Map shows existing and planned segments of the Coastal Slope Trail located north of Via Escondido Drive, within Escondido Canyon Park and between Escondido Canyon Park and Solstice Canyon Park to the east ([Exhibit 4](#)).

Additionally, the City previously proposed an LCP amendment (Coastal Commission LCP Amendment No. MAL-MAJ-2-11-B) to replace the existing "Park Lands Map" in the LUP with a new map that would update the existing and planned trails on the map. As part of that LCP amendment, the City was proposing to include a future planned trail named "Haunted House Trail" along Via Escondido Drive and starting from Pacific Coast Highway and terminating at the entrance of Escondido Canyon Park. This LCP amendment was approved by the Coastal Commission on December 10, 2015 with suggested modifications; however, the amendment was never certified because the Malibu City Council declined to accept the Commission's suggested modifications for certification. Even though the LCP amendment was never certified, it demonstrates that there was some recognition by the City of Via Escondido Drive's value as a trail connection.

Coastal Act Violations

Coastal Act violations have occurred in the area of the proposed gate, including but not limited to Via Escondido Road Maintenance Association's use of a security guard to change access to Via Escondido Drive and placement of associated guard house or station and "guard on duty" signage. The role of the guard to preclude use of Via Escondido Drive to access public land and trails at the end of Via Escondido Drive is evident from interactions of the guard with prospective users of Via Escondido Drive, and the fact that this is the express purpose for employing the guard is clear from a letter from Sycamore Park resident, which Commission staff obtains, and which says, in part, the following: "Secondly, we have to establish that we have taken steps to maintain the community as 'private' and the existing signage is not enough. We need to be closing off the road to the public. This is why we need to hire a security guard to keep our community 'private'."

In addition, recently, unpermitted installation of another sign to preclude public access, which reads, "private access, residents only", has occurred at the site.

As of the date of this staff report, the use of the guard and associated station and signs persist on the site in violations of the Coastal Act and City of Malibu Local Coastal Program.

Commission enforcement staff have asked the City to resolve these Coastal Act / LCP violations. The City has declined to or failed to take timely action. In the case of the guard and guard station, the City declined to take any enforcement action; and in the case of the signs, the City has not taken effective, timely action, as evidenced by the continued presence of the guard signs. Commission enforcement staff is considering its options to assume primary enforcement authority to resolve these instances of unpermitted development.

D. COMMISSION DETERMINATION OF APPEALABILITY

Coastal Act Section 30603 outlines which local CDP actions may be appealed to the Coastal Commission:

- (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of development:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
 - (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.
 - (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).
 - (5) Any development which constitutes a major public works project or a major energy facility.
- (b) (1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.
- (2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to

the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

(d) A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.

Similarly, the City of Malibu Local Implementation Plan (LIP) mirrors the Coastal Act provisions regarding which CDP actions may be appealed to the Coastal Commission. Specifically, LIP Section 2.1 (Definitions) defines "appealable coastal development permit" as follows:

Appealable Coastal Development Permit – After certification of the Local Coastal Program an action taken by the City on a Coastal Development Permit application may be appealed to the California Coastal Commission for only the following types of developments:

1. Developments approved by the City between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.
2. Developments approved by the City not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
3. Developments approved by the City not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.
4. Any development which constitutes a major public works project or a major energy facility as defined in this Chapter. The phrase "major public works" or a "major energy facility" as used in Public Resources Code Sec. 30603(a)(5) and in these regulations shall mean: any proposed public works project or energy facility, as defined by Section 13012 of the Coastal Commission Regulations and the Coastal Act.

Furthermore, the following definition for "development" in the Malibu LIP is also relevant in this case. This definition corresponds to the Coastal Act's definition of development in Section 30106.

Development – means, on land, in or under water, the placement or erection of a solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; **change in density or intensity of use of land**, including but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water; or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private or public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes; kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (emphasis added)

As specified in Coastal Act Section 30603(a)(2) and as defined under the Malibu LIP, an action taken by a local government on a CDP application may be appealed to the Commission for any development that is located within 100 feet of any stream. As described above, portions of Via Escondido Drive are located within 100 feet of Escondido Canyon Creek, a designated blue line stream on the United States Geological Survey (USGS) quadrangle maps. The City determined that the subject pending City of Malibu CDP for the proposed vehicular and pedestrian gate, which was deliberately changed from its originally proposed location to a location slightly more than 300 feet from the inland extent of the beach, is not appealable to the Coastal Commission because the proposed gate location itself is not located within 100 feet of any stream or within any other areas specified as appealable under Coastal Act Section 30603 and the Malibu LIP. Specifically, the City relied on the Applicant’s biological information and a site survey to conclude that the proposed gate was located more than 100 feet from the top of bank of Escondido Canyon Creek ([Exhibit 3](#)). The City’s determination was challenged by Mountains Recreation and Conservation Authority (MRCA).

After review of the materials submitted by the City, the Executive Director determined that the location of the proposed gate is located outside the Commission’s geographic appeals jurisdiction area (100 feet from top of bank of Escondido Canyon Creek and 300 feet from the inland extent of the beach); however, the “development” proposed in this case (as “development” is defined in the Malibu LIP) is not limited to the exact location of the proposed gate itself. Rather, the change in intensity of use of land would extend to areas affected by the proposed gate because the proposed gate would restrict access to other areas that **are** located within the Commission’s geographic appeals jurisdiction (100 feet from top of bank of Escondido Canyon Creek, a designated USGS blue line stream) based on measurements by the Commission’s Mapping Unit Staff. This includes portions of Via Escondido Road as well as public land and public trails

currently owned by the Mountains Recreation and Conservation Authority to the north of the proposed gate (shown on [Exhibit 3](#)). Specifically, the Commission's Mapping Unit Staff used the approximate centerline of Escondido Canyon Creek to depict the approximate top of stream bank in [Exhibit 3](#) since that is the best available data and the applicant and City did not provide top-of-bank survey data for the portions of Escondido Canyon Creek north of the proposed gate as requested. Nevertheless, using the centerline data is conservative since the true top of bank would extend the appeal area even further east and further over the road in places.

Via Escondido Drive is a private road that is accessible from Pacific Coast Highway and meanders up Escondido Canyon approximately half a mile. The proposed new vehicular and pedestrian access gate across Via Escondido Drive at 6480 Via Escondido Drive would be located approximately 180 feet north of the intersection of Via Escondido Drive and Pacific Coast Highway. Escondido Canyon consists of Escondido Canyon Park, a very popular visitor destination in the City that is surrounded by residential neighborhoods including the Sycamore Park community. Via Escondido Drive dead-ends approximately a quarter mile from the entrance to Escondido Canyon Park. Although Escondido Canyon Park is primarily accessed via Winding Way, there are additional trail easements, including some required by the Commission as permit conditions in certain CDPs that have been accepted by MRCA, and public parkland in close proximity to the Park potentially providing additional mountains to beach access connections. Evidence of potential prescriptive rights of coastal public access exist to and along Via Escondido Drive to public land and coastal trails, which flow in part from the Mountain Recreation and Conservation Authority's ownership of parcels within the Sycamore Park subdivision.⁴ As shown on [Exhibit 1](#), Via Escondido Drive connects Pacific Coast Highway to public property and trails, including a Commission-required trail⁵, located near the northern terminus of Via Escondido Drive. In addition, the public may hike down from Escondido Canyon Park (or other surrounding public trails such as the Coastal Slope Trail and Escondido Falls Trails) down Via Escondido Drive to reach Escondido Beach. An existing Los Angeles County-owned beach accessway is located at the intersection of Via Escondido Drive and Pacific Coast Highway ([Exhibit 1](#)). Given the location of Escondido Canyon Creek in proximity to the proposed new vehicular and pedestrian access gate across Via Escondido Drive, construction of the gate would clearly restrict public access, which appears to be its primary purpose. It would therefore constitute a change in intensity of use of land along portions of Via Escondido Road and public land and public trails north of the proposed gate that are located within the Commission's geographic appeals jurisdiction. Therefore, the Executive Director has determined that a portion of the development included in the proposed project (specifically the change in intensity of use of land) is located within the appeals

⁴ See FN 1.

⁵ See FN 3.

jurisdiction of the Coastal Commission and the proposed project is therefore appealable to the Coastal Commission.

As noted above, the City disagrees with Commission's staff's interpretation that the "development" proposed in this case is not limited to the proposed gate itself, but the change in intensity of use of land cause by the gate. Therefore, at the center of the dispute is whether the "change in intensity of use of land" cause by the gate of areas that are located within the Commission's geographic appeals jurisdiction renders the subject CDP for the gate appealable to the Commission. However, for the reasons stated above, the Commission concurs with the Executive Director's determination and finds that the proposed project is appealable to the Coastal Commission pursuant to Section 30603(a)(2) of the Coastal Act and Section 2.1 of the Malibu LIP.

APPENDIX A – Substantive File Documents

- City of Malibu LCP
- Coastal Act and Title 14 of the California Code of Regulations
- Coastal Commission Coastal Development Permit No. 80-7287
- City of Malibu LCP Amendment No. MAL-MAJ-2-11-B (Parklands/Trails Map Update and Trail Incentive Program)