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Th9b

DATE: April 29, 2021

TO: Commissioners and Interested Persons

FROM: Steve Hudson, District 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-19-0164-3 (Prohibit the Use of Pesticides) for May 13, 2021 Commission Meeting

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, reject proposed City of Malibu Local Coastal Program (LCP) Amendment No. LCP-4-MAL-0164-3, as submitted, and approve the amendment only if modified pursuant to one suggested modification. The suggested modification is necessary to ensure that the Land Use Plan (LUP) meets the requirements of and is in conformity with Chapter 3 policies of the Coastal Act. The motion and resolution for Commission action can be found on page 7.

The proposed amendment includes several modifications to the existing, certified language of LUP Policy 3.18. This existing policy generally prohibits the use of insecticides, herbicides, or any toxic chemical substance within or adjacent to environmentally sensitive habitat areas (ESHA) if it would impact the ESHA. However, such use is permitted for purposes of controlling invasive species or restoring habitat, if certain criteria are met. The exact language of LUP Policy 3.18 is shown on Page 10.

The proposed LCPA stems from an effort began by the City in 2014 to enact a citywide prohibition on anticoagulant rodenticides. However, the proposed language changed as the proposal went through Planning Commission and City Council hearings, and the City eventually adopted a broader change that restricts all types of pesticides throughout the City. The language of the proposed LUP Policy 3.18 is shown on Page 10. Specifically, the LCP amendment as proposed by the City would modify existing LUP Policy 3.18 by:

- Explicitly including rodenticides as a type of restricted pesticide.
- Expanding the policy's scope by making its restrictions on the use of harmful pesticides apply citywide, rather than only in and adjacent to ESHA.
- Narrowing the circumstances under which pesticides may be used for habitat

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restoration or control of invasive species by, among other things, requiring applicants to first consider using non-chemical methods.

- Deleting language that disallows application of such chemical substances during the winter season or when rain is predicted.

The introduction of pesticides to the environment has potential individual and cumulative impacts to environmentally sensitive wildlife species, ESHA, and water quality. In the greater Santa Monica Mountains area the U.S. National Park Service has documented the deaths of coyotes, bobcat, mountain lions, and fox due to coagulopathy, or internal bleeding caused by anticoagulant rodenticides.¹ Rodenticides have also caused at least six known mountain lion deaths in the Santa Monica Mountains area. Other types of pesticides can also cause impacts to wildlife, ESHA, and water quality. For example, the use of herbicides within sensitive wetland and riparian habitat may result in the loss of native vegetation and have adverse impacts upon water quality.

To avoid pesticides' potential impacts to wildlife, ESHA and water quality, and the cascading effect on the ecosystem that is caused when predator and other key species' populations decline, the Commission has often imposed permit conditions that prohibit the use of rodenticides (e.g. prohibit the use of anticoagulant rodenticides in landscaping plans as a condition of CDPs for new development approved in the Santa Monica Mountains) and other pesticides. The Commission has also certified a number of LCP policies that restrict the use of rodenticides and other pesticides that could affect ESHA. However, in recognition that pesticides are sometimes the only effective way to eradicate invasive species and restore habitat, LCP policies—including Policy 3.18 (both as it now exists and as proposed)—generally permit the use of herbicides for such restoration purposes, if certain criteria are met.

Local governments are generally free to use their inherent police power to enact LCP policies that are more stringent than the Coastal Act's minimum requirements. However, state law disallows local governments from regulating pesticides, although does not prohibit state agencies from regulating them when administering other state laws. See Food and Agriculture Code section 11501.1(a). Because LCPs embody and carry out state law—the Coastal Act—local governments may adopt LCP policies that regulate pesticide use, but only to the extent that such policies are necessary or proper in carrying out the Coastal Act. Given that the Coastal Act regulates “development,” as that term is defined in Section 30106 of the Act, local governments may only regulate the use of pesticides if such use qualifies as, or is associated with, proposed development. **Suggested Modification One (1)** clarifies that the pesticide limitations proposed by the City apply in connection with “development” that consists of or may involve the use of pesticides. The modification ensures that the LCP policy is consistent with the Coastal Act, is not preempted, and can be successfully carried out in order to protect important coastal resources.

The proposed amendment also replaces the words “Environmentally Sensitive Habitat Areas” with “biological resources,” thus arguably broadening the types of substances that would be restricted. While the Commission supports limiting the use of pesticides to reduce

¹ See <https://www.nps.gov/samo/learn/news/bobcat-and-mountain-lion-found-dead-from-anticoagulant-rodenticide-poisoning.htm>

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the harmful effects they have on wildlife, the term “biological resources” is overly broad and does not serve to tie the restriction to specific Coastal Act goals/resources. Indeed, read literally, it suggests that pesticides could never be used, as they are, by definition, designed to harm specific, target biological resources. Thus, prohibiting chemicals that harm “biological resources” could have the unintended consequence of prohibiting certain activities, such as tenting of a home for termites, because it would cause harm to those biological resources, even though it likely would not harm ESHA, water quality, or other resources protected by the Coastal Act. Therefore, **Suggested Modification One (1)** is required to modify proposed LUP Policy 3.18 to retain the reference to “ESHA” and delete the reference to “biological resources.”

The use of pesticides in Malibu and the Santa Monica Mountains has the potential to adversely impact not only ESHA, but also coastal water quality and aquatic resources. To ensure consistency with Coastal Act Sections 30230 and 30231, **Suggested Modification One (1)** is required to prohibit the use of pesticides where their application would have the potential to significantly degrade coastal water quality.

Further, the amendment would remove existing certified language that prohibits the application of chemical substances, even in circumstances where they would otherwise be permitted, during the winter season or when rain is predicted within a week of application. Since the application of chemical substances, when permitted, may still result in some potential adverse effects to water quality due to unintentional application, overspray or runoff, **Suggested Modification One (1)** is necessary to require the application of such chemical substances, when permitted, to not take place during the winter season, when rain is predicted within a week of application, or when wind is predicted above 5 mph.

The City has also adopted an Earth Friendly Management (EFM) Policy.² The policy governs pest management on City-owned, managed or leased property and bans the use of rodenticides on City property and prohibits their use in connection with any contract with the City. Since the City’s proposed pesticide limitations will only be effective if they are complied with, and compliance will require education and knowledge, the Commission recommends **Suggested Modification One (1)** to require the City to identify non-toxic and earth-friendly management techniques (such as their EFM policy) for controlling pests and to conduct public outreach to promote the use of such techniques on property throughout the City of Malibu. Lastly, **Suggested Modification One (1)** also includes minor modifications necessary to make minor clarifications and typographical corrections that further the intent and implementation of proposed LUP Policy 3.18 and where the lack of information or the errors may cause inadequate interpretation of LUP Policy 3.18.

It is worth noting that the state Legislature recently enacted AB 1788, which is a law that generally prohibits the use of second-generation anticoagulant rodenticides, except in certain instances, such as when used for eradication of invasive species on offshore islands.³ Although this law already restricts the use of rodenticides in Malibu, the subject

² <https://www.malibucity.org/DocumentCenter/View/24741/Earth-Friendly-Management-Policy-62419>

³ The Legislature found that “[t]he use of pesticides and rodenticides to reduce or eliminate nonnative invasive species inhabiting or found to be present on offshore islands is critically important for the environmental and ecosystem health of these islands”

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LCP policy would go further than these restrictions because it would apply to all rodenticides and pesticides rather than just second-generation anticoagulant rodenticides. In addition, the restrictions in AB 1788 may change over time after the state reevaluates these rodenticides and adopts other control measures, but the LCP policy's restrictions would remain in place unless later amended.

Commission staff has met with members of the non-profit group Poison Free Malibu on multiple occasions to discuss the proposed amendment. In addition, the suggested modification was also developed in cooperation with City staff. Members of Poison Free Malibu as well as City staff have indicated that they are supportive of the suggested modification. Commission staff has also been in communication with the Department of Pesticide Regulation (DPR) regarding the proposed amendment and the issue of jurisdiction regarding the regulation of pesticides. DPR has shared its concern about the local regulation of pesticides and has shared information regarding how it regulates pesticides statewide.

For the reasons described in this report, Staff recommends that the Commission find that the LUP amendment, only if modified as suggested, meets the requirements of, and is in conformity with, the Chapter 3 policies of the Coastal Act.

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Exhibits

[Exhibit 1 – City of Malibu Resolution No. 19-54](#)

[Exhibit 2 – Public Comment Letters](#)

I. PROCEDURAL OVERVIEW

A. Standard of Review

The Coastal Act provides:

The Commission shall certify a land use plan, or amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) ... (Section 30512(c))

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

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

B. Procedural Requirements

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 §§ 13537, 13544, 13551, 13555(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 approves or denies the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

C. 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's consideration of the subject amendment has been distributed to all known interested parties.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS FOR THE LAND USE PLAN AMENDMENT

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

A. DENIAL OF THE LUP AMENDMENT AS SUBMITTED

MOTION I:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-19-0164-3 as submitted by the City of Malibu.

STAFF RECOMMENDATION OF DENIAL:

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-19-0164-3 as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the land use plan as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 land use plan as submitted.

B. CERTIFICATION OF THE LUP AMENDMENT IF MODIFIED

MOTION II:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-19-0164-3 for the City of Malibu if it is modified as suggested in this staff report.

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the amendment with suggested modifications 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 CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby **certifies** the Land Use Plan Amendment No. LCP-4-MAL-19-0164-3 for the City of Malibu, if modified as suggested, and adopts the findings set forth below on grounds that the land use plan amendment with the suggested modifications 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 land use plan amendment 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 the proposed LUP amendment, with one suggested modification as shown below. Existing language of the certified Land Use Plan 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 in double underlined. Language recommended by Commission staff to be deleted is shown in ~~double strikethrough~~.

A. Suggested Modification No. 1

Land Use Plan Policy 3.18 shall be modified as follows:

Except as permitted pursuant to this provision or Policy 3.20, throughout the City of Malibu, development that consists of or may involve ~~the~~ use of pesticides, including insecticides, herbicides, rodenticides or any other similar toxic chemical substances, shall be prohibited in cases where the application of such substances would ~~which~~ have the potential to significantly degrade Environmentally Sensitive Habitat Areas ~~biological resources shall be prohibited throughout the City of Malibu~~ or coastal water quality or harm wildlife. Herbicides may be used for within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as ~~the~~ eradication of invasive plant species, or habitat restoration, but only if ~~shall consider first~~ the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls are infeasible. ~~Herbicides may be selected only after all other non-chemical methods have been exhausted.~~ Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and used for a limited time. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.” When permitted, application of such herbicides shall not take place during the winter season, when rain is predicted within a week of application, or when wind is predicted above 5 mph. The City will identify non-toxic and earth-friendly management techniques for controlling pests and will conduct public outreach to promote the use of such techniques on property within the City.

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

The following findings support the Commission’s denial of the proposed Land Use Plan Amendment as submitted, and approval of the Land Use Plan Amendment if modified as

suggested in Section III (Suggested Modifications) above. The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The City of Malibu (“City”) is requesting an amendment to the Land Use Plan (LUP) portion of its certified Local Coastal Program (LCP) to make several modifications to LUP Policy 3.18 regarding the use of pesticides.

In 2014, the City of Malibu initiated an LCP amendment to consider modifying this policy to enact a citywide prohibition on anticoagulant rodenticides for development subject to a coastal development permit. After holding public hearings in 2016, the Planning Commission adopted a resolution recommending that the City Council modify its LCP to prohibit the use of anticoagulant rodenticides in a manner similar to L.A. County’s Santa Monica Mountains LCP, which places jurisdiction-wide restrictions on pesticide (including rodenticide) use if such use harms biological resources. Some advocacy groups urged the City to adopt a broader prohibition on the use of pesticides, while the California Department of Pesticide Regulation questioned the City’s legal authority to adopt a regulation broadly prohibiting pesticide use. The City Council ultimately adopted LCP amendment language that had been proposed by the group Poison Free Malibu and that was broader than that proposed by the Planning Commission. For example, the City-adopted language restricts use of all rodenticides, rather than only anticoagulant rodenticides, and restricts use of other pesticides and other toxic substances as well. The City also did not adopt Planning Commission-proposed language that would have applied the restrictions through conditions on permits for landscape plans for proposed new development. Rather, the policy places a citywide prohibition on the use of any pesticide or toxic chemical substance that has the potential to significantly degrade biological resources, with a few exceptions.

Specifically, the LCP amendment would modify LUP Policy 3.18 to expand the list of prohibited poisons by, among other things, explicitly including rodenticides as a type of restricted pesticide. Although the existing wording of Policy 3.18 can be interpreted to include rodenticides as a restricted, toxic substance, the LCPA would specifically call out the prohibition of this type of pesticide. Further, the amendment would replace the words “Environmentally Sensitive Habitat Areas” with “biological resources” to expand the areas where the application of pesticides, which have the potential to significantly degrade those areas, will generally be prohibited. Instead of them only being prohibited within or adjacent to ESHA, as specified in current LUP Policy 3.18, the proposed policy would make the prohibition against pesticides apply citywide.

The proposed policy would also modify the situations in which pesticides could be used. Specifically, it would allow their use to eradicate invasive plant species or restore habitat, if certain criteria are met. In situations where pesticides were allowed, proposed LUP Policy 3.18 would require applicants to first consider the use of non-chemical methods for the eradication of invasive plant species or habitat restoration, prior to allowing the use of herbicides, and when herbicides are to be used, they shall be the least toxic product and method, biodegradable, derived from natural sources, and used for a limited time. Lastly, the City is proposing to delete language that disallows application of such chemical

substances during the winter season or when rain is predicted within a week of application.

The full text of the City's proposed changes to the LUP are included as Exhibit 1 of this report.

The City of Malibu submitted the subject LCP Amendment to the Commission on December 27, 2019. The amendment submittal was deemed complete by Commission staff and filed on June 19, 2020. At its September 2020 Commission meeting, the Commission extended the 90-day time limit to act on the LCP amendment for a period not to exceed one year.

Plain Language Versions of LUP Policy 3.18

For clarity and ease of reading, the following are the plain language versions (i.e. text without underline or overstrike that indicates changes) of LUP Policy 3.18 including: 1) the existing certified language of LUP Policy 3.18; 2) LUP Policy 3.18 as proposed to be amended by the City of Malibu; and 3) LUP Policy 3.18 as proposed to be amended by the City of Malibu with the changes recommended in Suggested Modification No. 1.

1. Existing, Certified LUP Policy 3.18

The use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas, shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.

2. City of Malibu Proposed LUP Policy 3.18

The use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade biological resources shall be prohibited throughout the City of Malibu. The eradication of invasive plant species or habitat restoration shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicides may be selected only after all other non-chemical methods have been exhausted. Herbicides shall be restricted to the least toxic produce [sic] and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and use for a limited time.

3. Commission Staff Recommended LUP Policy 3.18:

Except as permitted pursuant to this provision or Policy 3.20, throughout the City of Malibu, development that consists of or may involve the use of pesticides, including insecticides, herbicides, rodenticides, or any other similar toxic

chemical substances, shall be prohibited in cases where the application of such substances would have the potential to significantly degrade Environmentally Sensitive Habitat Areas or coastal water quality or harm wildlife. Herbicides may be used for the eradication of invasive plant species or habitat restoration, but only if the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls are infeasible. Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible shall be biodegradable, derived from natural sources, and used for a limited time. When permitted, application of such herbicides shall not take place during the winter season, when rain is predicted within a week of application, or when wind is predicted above 5 mph. The City will identify non-toxic and earth-friendly management techniques for controlling pests and will conduct public outreach to promote the use of such techniques on property within the City.

Correspondence Received

Commission staff has received correspondence from interested parties expressing support for the LCP amendment as submitted by the City of Malibu. These letters are attached as Exhibit 2. Furthermore, Commission staff has met with members of the non-profit group Poison Free Malibu on multiple occasions to discuss the proposed amendment and their concerns with various iterations of the staff recommendation. The issue raised by Poison Free Malibu is discussed further in Section C of this staff report below. In addition, Commission staff has been in communication with the Department of Pesticide Regulation (DPR) regarding the proposed amendment and the issue of jurisdiction regarding the regulation of pesticides. DPR has expressed concern about the broad pesticide prohibition proposed by the City, the extent of local governments' jurisdiction to regulate pesticides through their LCPs, and the potential for different jurisdictions to enact different pesticide regulations.

B. Background on State Preemption

The subject LCP amendment includes changes to the regulation of pesticides that are also regulated by state law. Generally, local governments may go farther or be more stringent in their LCPs than required by the Coastal Act, pursuant to Coastal Act Section 30005. However, in the case of pesticide regulation, Food and Agriculture Code section 11501.1(a) preempts local governments from "prohibit[ing] or in any way attempt[ing] to regulate any matter relating to the registration, sale, transportation, or use of pesticides." This 1984 law was passed in response to, and in order to overturn, a California Supreme Court decision holding that local governments were not preempted from regulating pesticide use. See *The People v. County of Mendocino* (1984) 36 Cal.3d 476 (upholding county voter initiative that banned aerial spraying of certain herbicides). In passing the law, the Legislature found that "matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration."

Although it restricts local authority to regulate pesticides, the Food and Agriculture Code

does not limit the authority of state agencies or departments to enforce or administer any law that the agency or department is authorized or required to enforce or administer—e.g., the Coastal Act. Food and Agriculture Code § 11501.1(c). See also *Ebbetts Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Ca1.4th 936, 957 (state agency must analyze and mitigate the effects of pesticide use when conducting CEQA review, notwithstanding that pesticides are already regulated by the Department of Pesticide Regulation). Under this framework, the Commission itself is authorized to regulate pesticides in order to carry out the Coastal Act, at least so long as such regulation does not conflict with other statewide pesticide laws.

Additionally, although LCPs and LCP amendments are adopted by local jurisdictions, they must be approved by the Coastal Commission, which is required to find that they conform to the Coastal Act. Because LCPs and LCP amendments embody and carry out state law (the Coastal Act) and must be certified by the Coastal Commission, courts have held that they “are not solely a matter of local law, but embody state policy.” *Charles A. Pratt Const. Co., Inc. v. California Coastal Comm’n* (2008) 162 Cal.App.4th 1068, 1075. As a consequence, local jurisdictions may adopt LCP policies that address/regulate pesticide use, including rodenticide use, through LCPs to the extent such regulation is necessary or proper in carrying out Chapter 3 policies of the Coastal Act, such as protecting environmentally sensitive habitat areas or water quality, and as long as the regulations do not directly conflict with other statewide pesticide regulation. Preemption also likely does not prevent local governments from restricting pesticide use on a case by case basis when approving specific projects, when doing so is necessary to comply with environmental review obligations under CEQA or the Coastal Act. However, unlike other issue areas, where local governments may adopt policies that go beyond what is required or encompassed by the Coastal Act, local governments are preempted from broadly regulating pesticides unless they are doing so under the auspices of the Coastal Act or another state law.

The Food and Agriculture Code restriction also does not preclude local governments from taking certain non-regulatory actions related to pesticides, whether or not they are acting under the Coastal Act. For example, local governments may adopt policies requiring businesses to put locks on dumpsters to prevent rodent infestations and may promote integrated or alternative pest management practices through educational campaigns. Such policies do not *regulate* the use of pesticides, per se, but rather encourage or require actions that can help avoid the need for pesticides. In addition, local governments may adopt policies controlling or banning pesticide use on property owned by that local government itself. In such a situation, the local government is acting in its capacity as landowner, rather than regulator.

C. Coastal Act Consistency

The standard of review for the proposed amendment to the Land Use Plan of the certified Local Coastal Program (LCP), pursuant to Section 30512 of the Coastal Act, is whether the LUP, with the proposed amendment, would meet the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. The proposed amendment’s consistency with the policies of Chapter 3 of the Coastal Act is detailed below.

The following Coastal Act policies are applicable:

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 of the Coastal Act states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30001 of the Coastal Act states:

The Legislature hereby finds and declares:

...

- (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources and the natural environment, it is necessary to protect the ecological balance of the coastal

zone and prevent its deterioration and destruction.

In addition, the following LUP policies are applicable in this case:

Land Use Plan Policy 3.19 states:

The use of insecticides, herbicides, or any toxic chemical substances by City employees and contractors in construction and maintenance of City facilities shall be minimized.

Land Use Plan Policy 3.20 states:

Mosquito abatement within or adjacent to ESHA shall be limited to the implementation of the minimum measures necessary to protect human health, and shall minimize adverse impacts to ESHA.

Wildlife and Environmentally Sensitive Habitat Areas

One of the chief objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats and water quality. The rarest and most ecologically important habitats are given particular protection from development. Section 30107.5 of the Coastal Act defines Environmentally Sensitive Habitat Area as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” Coastal Act Section 30240 requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development, with the exception of uses dependent on the resources, is allowed within any ESHA. This policy further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and must be compatible with the continuance of the habitat areas. Finally, development adjacent to parks and recreation areas must also be sited and designed to prevent such impacts.

The introduction of pesticides to the environment has potential individual and cumulative impacts to environmentally sensitive wildlife species, environmentally sensitive habitat areas, and water quality. In a perfect world, pesticides would not be necessary. However, there are situations where pesticide use is the most effective and safe approach. Ideally, all feasible alternatives to pesticides are first explored before pesticides are employed. This is the way of IPM, or integrated pest management, which is

an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risk to human health, beneficial and nontarget organisms, and the

environment.⁴

Organic and inorganic pesticides are designed to eradicate/kill target pest(s) and therefore decisions to use them must be made judiciously. Even the most conscientious and appropriate application of pesticides can result in spillover to non-target organisms with sub-lethal and lethal consequences.

Certain rodenticides, particularly those containing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife. As the target species tend to be preyed upon by raptors, mountain lions, or other predators and scavengers, these compounds can bioaccumulate in the animals that have consumed the rodents to concentrations that are toxic to the ingesting non-target species. The state Department of Fish and Wildlife contends that the use of poison baits to control rodents has injured and killed hundreds or thousands of pets and wild animals throughout California, including the golden eagle, great-horned owl, black bear, fisher, San Joaquin kit fox (federally endangered), coyote, mountain lion, bobcat, and badger. In the greater Santa Monica Mountains area in particular, the U.S. National Park Service has documented the deaths of coyotes, bobcat, mountain lions, and fox due to coagulopathy, or internal bleeding caused by anticoagulant rodenticides.⁵ Rodenticides have caused at least six known mountain lion deaths in the Santa Monica Mountains area, including three within the past approximately two years. In a letter to the City of Malibu during its consideration of this LUP amendment, the Park Service stated:

National Park Service scientists have been studying carnivores in the Santa Monica Mountains for more than two decades, since 1996. Our studies include observations and data collection on bobcats, coyotes, and mountain lions, predominantly. In these studies we have found widespread exposure to and large impacts of anticoagulant rodenticides on all three of these carnivores . . . Our studies have found anticoagulant rodenticide poisoning to be a leading cause of death for many carnivores.

Other types of pesticides can also cause impacts to wildlife, ESHA, and water quality, especially when the respective pesticide is not the right one for the particular target pest, is not certified for use in California, or is not applied exactly per the label instructions. For example, the use of herbicides (toxic substances used to control unwanted plants) within sensitive wetland and riparian habitat may result in the loss of native vegetation and have adverse impacts upon water quality. The potential exists, especially when herbicides are not applied per the label instructions, for herbicide to enter aquatic environments and for non-targeted vegetation to receive overspray. Another example are insecticides that are highly specific to eliminating mosquito larvae, which may have an adverse impact on the ecosystem with the removal of mosquito larvae that are important food for native amphibians, reptiles, fish and birds. Furthermore, neonicotinoid-based insecticides, when absorbed by plants, can be present in pollen and nectar, thus making them toxic to bees.

⁴ See <https://www2.ipm.ucanr.edu/what-is-IPM/?src=redirect2refresh>

⁵ See FN 1.

To avoid pesticides' potential cumulative impacts to environmentally sensitive wildlife species, ESHA, water quality impacts and the cascading effect on the ecosystem that is caused when predator and other key species' populations decline, the Commission has often imposed special conditions on permits to prohibit the use of rodenticides (e.g. prohibit the use of anticoagulant rodenticides in landscaping plans as a condition of CDPs for new development approved in the Santa Monica Mountains) and other pesticides. The Commission has also certified a number of LCP policies that restrict the use of rodenticides and other pesticides that could affect ESHA.⁶

In Malibu, the Coastal Commission drafted, coordinated with the City of Malibu, and certified, existing LUP Policy 3.18, which states that:

The use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas, shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species or habitat restoration. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.

According to the City's staff report for the subject amendment, the City carries out LUP Policy 3.18 through conditions of approval of coastal development permits to prohibit the use of insecticides, herbicides, or other toxic chemical substances within or adjacent to ESHA, when they have the potential to significantly degrade ESHA.

The City of Malibu is now requesting an LCP amendment to add rodenticides as a specific type of restricted pesticide and to restrict the use of all pesticides throughout the City of Malibu, rather than only in and adjacent to ESHA. It would also place additional restrictions

⁶ See, e.g.,

- Santa Monica Mountains Land Use Plan Policy CO-58: "The use of insecticides, herbicides, anti-coagulant rodenticides or any toxic chemical substance that has the potential to significantly degrade biological resources in the Santa Monica Mountains shall be prohibited, except where necessary to protect or enhance the habitat itself, such as for eradication of invasive plant species or habitat restoration, and where there are no feasible alternatives that would result in fewer adverse effects to the habitat value of the site."
- Solana Beach LUP Policy 3.15, and San Diego County LUP Policy 3.45: "The use of insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade ESHA, shall be prohibited within and adjacent to ESHAs, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration or as required for fuel modification.
- City of Long Beach Policy 5.32 (approved by Commission in October, 2020, but City has not yet accepted LCP amendment with Commission modifications): "In addition to the standards above, new development located on properties that contain or are located within 100 feet of wetlands, ESHA, or sensitive coastal habitat areas (including open water) . . . shall also comply with the following: . . . (E) The use of insecticides, herbicides, anti-coagulant rodenticides or any toxic chemical substance that has the potential to significantly degrade biological resources shall be prohibited, except where necessary to protect or enhance the habitat itself, such as for eradication of invasive plant species or habitat restoration, and where there are no feasible alternatives . . ."

on when pesticides may be used in conjunction with removing invasive plant species or conducting habitat restoration.

Although the existing policy language regarding “toxic chemical substances” likely already covers rodenticides, adding the term “rodenticides” is consistent with the policy and with the Coastal Act. As described above, rodenticides have been documented to have particularly harmful effects on wildlife in the Santa Monica Mountains. The proposed change helps clarify the policy and ensure that the use of rodenticides is restricted pursuant to this policy.

Expanding the policy so that it regulates pesticide use citywide, rather than only adjacent to and in ESHA is also consistent with the need to protect ESHA and wildlife that is a part of, or relies on, that ESHA. Rodenticides and some other pesticides have been shown to have far-ranging effects. Recent studies by the National Park Service have shown that, after wildfires in southern California scorched natural areas where bobcats normally roamed, the cats spent more time in residential areas, where at least one bobcat ingested rodenticides and died as a result. Raptors also hunt over large territories, including in areas that are not in or adjacent to ESHA. And pesticides applied adjacent to ESHA or in non-ESHA areas can leach into wetlands, streams, rivers, and lakes with potential adverse impact to ESHA. Such spillover effects could include, for example, when sensitive predator species such as mountain lions and raptors, which are key components of chaparral and coastal sage scrub communities considered ESHA in the Santa Monica Mountains, die as a result of ingesting rodenticides while traveling outside of ESHA areas, or sensitive organisms endemic to vernal pools, another type of ESHA, suffering or dying from adjacent insecticide or herbicide over-spray.

As the Legislature found when enacting AB 1788 recently, wildlife being harmed by rodenticides do not only use, and become exposed to those poisons in, rural areas; rather, “[u]rban areas are increasingly being used by predatory mammals and birds of prey,” so it is important to restrict rodenticide use in those areas as well. Accordingly, restricting the use of harmful pesticides throughout Malibu, as opposed to just in and adjacent to ESHA, will help prevent impacts that would significantly degrade ESHA in the Santa Monica Mountains, as well as protect wildlife that is an integral part of that ESHA.

The amendment would also replace the words “Environmentally Sensitive Habitat Areas” with “biological resources,” thus arguably broadening the types of substances that would be restricted. While the Commission supports limiting the use of pesticides to reduce the harmful effects they have on wildlife, the term “biological resources” is overly broad and does not serve to tie the restriction to specific Coastal Act goals/resources. Indeed, read literally, it suggests that pesticides could never be used, as they are, by definition, designed to harm specific, target biological resources. Thus, prohibiting chemicals that harm “biological resources” could have the unintended consequence of prohibiting certain activities, such as tenting of a home for termites, because it would cause harm to those biological resources, even though it likely would not harm ESHA, water quality, or other resources protected by the Coastal Act. Therefore, the Commission finds that it is important to use more specific terminology and clarify in the policy that the use of pesticides, including insecticides, herbicides, rodenticides or other toxic chemical substances, shall be prohibited where the application of such substances would have the potential to

significantly degrade ESHA.⁷ As such, **Suggested Modification One (1)** is required to modify proposed LUP Policy 3.18 to retain the reference to “ESHA” and delete the reference to “biological resources.”

Although the Coastal Act does not necessarily protect all “biological resources,” per se, it does protect wildlife. For example, Coastal Act Section 30001(c), in applicable part, declares that to protect wildlife, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. Although Section 30001 is not a Chapter 3 policy of the Coastal Act, the coastal zone values cited in Section 30001 can be used to further interpret the coastal resource protection policies of Chapter 3. Sections 30230, 30231, and 30240 also speak to the need to protect marine and aquatic species, as well as to protect wildlife species that form an integral part of ESHA. The Commission notes that certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas and have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to ensure that the provision regulates pesticides that may harm wildlife and sensitive predator species, which are key components of ESHA, **Suggested Modification One (1)** is required to clarify that the use of pesticides, including insecticides, herbicides, rodenticides or other toxic chemical substances, shall be prohibited where the application of such substances would have the potential to significantly harm wildlife.

California Ecosystem Protection Act of 2020 (AB 1788)

It is also important to note that state law now generally prohibits the use of second generation anti-coagulant rodenticides due to their threat to mountain lions and other wildlife. Specifically, the California Ecosystem Protection Act of 2020 (Assembly Bill 1788 (Bloom)), approved by the Governor on September 29, 2020 and effective as of January 1, 2021, prohibits the use of second generation anti-coagulant rodenticides (containing the active ingredients brodifacoum, bromadiolone, difenacoum, and difethialone), with some exceptions, until the Department of Pesticide Regulation (DPR) has completed a reevaluation of second generation anticoagulant rodenticides and adopts any additional restrictions that are necessary to limit significant adverse effects on non-target wildlife.

Under the law, prohibited uses include residential or home uses and most industrial and institutional uses. For example, prohibited uses include use in and around restaurants (that do not have an attached brewery or winery), grocery stores, airports, offices, construction sites, transport vehicles (e.g. ships, trains, aircraft), ports and terminal buildings, shipyards,

⁷ The Commission has previously certified some LCP policies, such as one for the Santa Monica Mountains portion of Los Angeles County, that use the term “biological resources” in connection with pesticide restrictions. In the context of that LCP, and when read to be consistent with the Coastal Act, that phrase is best interpreted to have the same, narrower meaning as described here – i.e., to cover only biological resources that are protected by the Coastal Act. However, modifying the City of Malibu’s proposed policy to retain the existing, more specific language will provide important clarity and ensure that the policy is more closely tied to specific Coastal Act policies and goals.

timber yards, schools, shopping malls, sewers, and sewage treatment plants. Many non-production agricultural uses are also prohibited (such as use around man-made structures at cemeteries, golf courses, and parks). The law does allow for certain exemptions such as for agricultural activities, public health activities, protecting water supply infrastructure and facilities, vector control, eradication of nonnative invasive species on offshore islands, and/or research purposes.

The existence of this other state law means that second generation anticoagulant rodenticides are already prohibited, with certain exceptions, throughout the City of Malibu. However, the subject LCP policy would go further than these restrictions because it would apply to all rodenticides and pesticides rather than just second-generation anticoagulant rodenticides. In addition, the restrictions in AB 1788 may change over time after DPR reevaluates these rodenticides and adopts other control measures, but the LCP policy's restrictions would remain in place unless later amended. The LCP policy also does not contain exceptions that would allow the use of second-generation anticoagulant rodenticides in new development under certain circumstances. Overall, the LCP policy is more protective than AB 1788 in order to protect the unique ecology and resources in the Malibu and Santa Monica Mountains area and in order to deal with the documented, historic impacts of rodenticides on mountain lions and other wildlife there.

Water Quality

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through means that include, but are not limited to, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. The City of Malibu lies within several significant watersheds, including Malibu Creek Watershed and Topanga Creek Watershed. Numerous coastal creeks drain from these watersheds into the Pacific Ocean and Santa Monica Bay. The Commission recognizes that the use of pesticides in Malibu and the Santa Monica Mountains has the potential to adversely impact coastal water quality and aquatic resources. The introduction of pesticides to coastal waters can cause cumulative impacts such as: fish kills and diseases and the alteration of aquatic habitat, adverse changes to species composition and size; disruption to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and potential impacts on human health. As discussed above, the Commission finds that it is important to use more specific terminology and clarify in the policy that the use of pesticides shall be prohibited where the application of such substances would have the potential to significantly degrade coastal water quality. Therefore, in order to protect water quality as provided in Coastal Act Sections 30230 and 30231, **Suggested Modification One (1)** is required to prohibit the use of pesticides where their application would have the potential to significantly degrade coastal water quality.

The LCP amendment also proposes to require that before herbicides can be used for the eradication of invasive plant species or habitat restoration the use of non-chemical methods

for prevention and management be considered. When herbicides are to be used, the proposed policy requires them to be the least toxic product and method, and to the maximum extent feasible, be biodegradable, derived from natural sources, and used for a limited time only. The proposed language is generally consistent with other LCP language previously certified by the Commission, such as in L.A. County's Santa Monica Mountains LUP, which specifies that pesticides may be used for restoration purposes if there are no feasible alternatives that would result in fewer adverse effects. It is also consistent with the Coastal Act's goals of maintaining and restoring habitat, but in a manner that also adequately protects and maintains water quality. The Commission's regulations also call for an analysis of alternatives in situations like this, stating that an LUP must ensure "that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." (14 Cal. Code Regs § 13540(f).) **Suggested Modification One (1)** does not significantly change the substance of the City's language, but is needed to clarify that use of herbicides is permitted for restoration purposes if other control methods have been found to be infeasible. The feasibility standard is a well known legal standard that will be more clear and enforceable than requiring that other control methods have first been "exhausted."

Further, the amendment would remove existing certified language that prohibits the application of chemical substances, even in circumstances where they would otherwise be permitted, during the winter season or when rain is predicted within a week of application. The Commission notes that the application of chemical substances, when permitted, may still result in some potential adverse effects to water quality due to unintentional application, overspray or runoff. Specifically, the application of chemical substances prior to heavy rains may result in greater potential for contaminated runoff than application during dry season conditions. Therefore, the removal of this restriction ("application of chemical substances shall not take place during the winter season or when rain is predicted within a week of application") is inconsistent with the water quality protection policies of the Coastal Act. In order to protect water quality consistent with Sections 30230 and 30231 of the Coastal Act, **Suggested Modification One (1)** is necessary to require the application of such chemical substances, when permitted, to not take place during the winter season, when rain is predicted within a week of application, or when wind is predicted above 5 mph.

Limiting Pesticide Restriction to New Development

The Coastal Act does not provide the Commission or local governments with plenary authority to regulate all ongoing activities or uses in the coastal zone. Rather, the Act regulates "development" in the coastal zone by requiring a coastal development permit for anyone wishing to undertake such development. (Coastal Act §§ 30600(a), 30106 (defining "development".) LCPs establish the kinds, locations and intensities of development allowed in the coastal zone and include policies and development standards necessary to achieve the objectives of the Coastal Act. Once an LCP is certified by the Commission and found to be consistent with the Coastal Act requirements, local governments then have the authority and responsibility to issue coastal development permits for proposed development. (Coastal Act § 30519(a).) The Coastal Act also permits the Commission, and local governments through their LCPs, to take non-regulatory actions such as conducting

planning studies, promoting coastal education, and planning for public access, that are consistent with, and that implement the provisions of, the Coastal Act. (See Coastal Act §§ 30108.6, 30330, 30500(a), 30530 et seq.)

The Coastal Act does not limit the power of cities and counties to adopt additional regulations that are not in conflict with the Coastal Act and that go beyond what is required by the Act. (Coastal Act § 30005.) Thus, local governments may generally use their inherent police power authority to regulate activities in a manner that is more stringent than the Coastal Act or that goes beyond the authority delegated to them under the Coastal Act. It is not uncommon for local governments to include such additional restrictions in their LCPs. But as described above, state law disallows local regulation of pesticides, though it does not limit the authority of a state agency to administer any law that it is authorized or required to administer; in the case of the Coastal Act, local governments administer state law through their LCPs. Thus, local governments may include policies in their LCPs to regulate pesticide use to the extent that such policies are necessary or proper in carrying out the Coastal Act, such as by regulating the use of pesticides that qualify as, or are associated with, proposed development. Likewise, LCPs may contain non-regulatory policies that encourage alternatives to pesticides, promote education about pesticide alternatives, or restrict pesticide use on the local government's own property. However, LCP policies that purport to regulate pesticide use more broadly are likely preempted by the Food and Agriculture Code.

The non-profit group Poison Free Malibu has submitted correspondence asserting that the Commission can broadly regulate or ban pesticides, regardless of whether such use is associated with new development that would require a coastal development permit. It points to language in other LCPs that it says supports this position. Further, Poison Free Malibu cites a recent trial court decision involving a challenge to the certification of Los Angeles County's LCP for the Santa Monica Mountains (SMM LCP), where the Coastal Commission asserted that its decision to certify a pesticide restriction in the SMM LCP was not subject to the preemption of local regulations of pesticides (see Section IV. B. Background State Preemption).

Specifically, the Commission found that a ban on the use of most pesticides in the Santa Monica Mountains coastal region was necessary to avoid impacting ESHA and the biological productivity and quality of coastal waters. The Commission argued in court that it had the authority to restrict pesticide use in the certified LCP because California Food and Agricultural Code section 11501(c) does not limit the authority of a state agency to enforce or administer any law that the agency or department is authorized to enforce or administer. Judge Chalfant of the Los Angeles Superior Court ruled that, although the County was not permitted to regulate pesticide use itself, the Commission was permitted to require policies in the LCP that would have the County do so.⁸

Poison Free Malibu cites this decision as evidence that a citywide pesticide ban, rather than a ban on pesticide use that qualifies as, or may occur in connection with, proposed

⁸ The decision was appealed, with the Court of Appeal rejecting claims that the Commission's decision to disallow vineyards in the SMM due to their potential impacts was invalid. However, the preemption issue was not litigated on appeal, and the trial court decision on this issue is not citable in litigation as legal precedent.

development, is appropriate. However, the ruling did not distinguish between banning pesticides categorically versus banning them in connection with proposed development; rather, it only involved a challenge regarding whether the Commission's requirement of pesticide regulations in LCPs is generally permissible. The issue of whether the Commission or a local government can require a ban on all pesticide use, regardless of whether such use constitutes or is associated with proposed development was not raised. In addition, although other LCPs—such as the SMM LCP—include broadly worded policies and provisions that could be viewed as broadly restricting or prohibiting the use of pesticides, the Commission's intent in certifying those policies was to regulate pesticides to the extent authorized by the Coastal Act. Since the Coastal Act provides authority to regulate “development,” then LCPs may only carry out the Coastal Act by regulating pesticides in connection with, or to the extent their application itself qualifies as, such development.

This understanding is also consistent with the Commission's intent in certifying, and the City's practice of carrying out, existing Policy 3.18. As previously mentioned, the City of Malibu currently carries out existing LUP Policy 3.18 through conditions of approval of coastal development permits to prohibit the use of insecticides, herbicides, or other toxic chemical substance within or adjacent to Environmentally Sensitive Habitat Areas (ESHA), when they have the potential to significantly degrade ESHA. Further, the Commission has consistently found that, in order to avoid ESHA and water quality impacts, it is necessary to prohibit the use of anticoagulant rodenticides in landscaping plans as a condition of coastal development permits (CDPs) for new development approved in the Santa Monica Mountains (in the Commission's decisions on CDPs acted on prior to the certification of the Malibu LCP or the SMM LCP, as applicable). Although existing Policy 3.18 does not explicitly state that its restriction on pesticides will be carried out through permit conditions on new development, rather than being a blanket restriction, the Commission's 2002 staff report for the certification of the City's LCP shows that this is how the policy was intended:

The Commission finds that the ESHA protection policies of the LUP (Policies 3.8, 3.14-3.22, 3.23-3.30, and 3.36-3.39), *by requiring new development* to avoid and/or minimize impacts to ESHA, provide adequate buffers, mitigate impacts that cannot be avoided through the implementation of siting and design alternatives, and by requiring review of projects within or adjacent to ESHA by the environmental review board, will ensure that ESHA is protected against any significant disruption of habitat values.

(emphasis added.)

Regulating pesticide use through analyzing proposals for non-exempt development also allows the City (or Commission on appeal) to determine whether any particular pesticide or other toxic chemical substance may have impacts on ESHA, water quality, or wildlife. Although the harms of rodenticides are well documented and might not need to be considered on a case by case basis, the proposed policy would restrict the use of many different pesticides, and it would often be necessary to consider whether particular products that are proposed or could be used in conjunction with proposed development would have the potential to significantly degrade ESHA or water quality or harm wildlife.

The Coastal Commission does not enforce the Food and Agriculture Code's restriction on local regulation of pesticides and is not the arbiter of whether local pesticide restrictions are preempted. If a jurisdiction proposed a pesticide ban (or other pesticide policy) that exceeded what was necessary or proper to carry out the Coastal Act, but was not actually *inconsistent* with the Coastal Act's Chapter 3 protective policies, the Commission might be able to certify it despite questions about whether or not it was preempted. However, there would be a question about whether the policy was preempted and could take effect. In this case, clarifying that the pesticide limitations proposed by the City only apply in connection with proposed development that consists of or may involve the use of pesticides, and where the application of such substances would have the potential to significantly degrade ESHA or coastal water quality or harm wildlife, is warranted to help ensure that the LCP policy is closely tied to the Coastal Act, is not preempted, and can be successfully carried out in order to protect important coastal resources. For these reasons, **Suggested Modification One (1)** adds language stating that "development that consists of or may involve" the use of pesticides "shall be prohibited in cases where the application of such substances would have the potential to significantly degrade ESHA or coastal water quality or harm wildlife."

Additional Modifications

The City has also adopted an Earth Friendly Management (EFM) Policy, which is not part of the City's LCP. The policy governs pest management on City-owned, managed or leased property and bans the use of rodenticides on City property and prohibits their use in connection with any contract with the City. Further, the EFM policy states that that City will educate City staff and the public about earth friendly management, including integrated pest management methodology (the use of non-chemical methods for the prevention and management of pest issues utilizing methods such as physical, mechanical, cultural, and biological controls). Since the City's proposed pesticide limitations will only be effective if they are complied with, and compliance will require education and knowledge, the Commission recommends **Suggested Modification One (1)** to require the City to identify non-toxic and earth-friendly management techniques (such as their EFM policy) for controlling pests and to conduct public outreach to promote the use of such techniques on property throughout the City of Malibu.

The City's LUP also contains policies regarding mosquito abatement. Specifically, LUP Policy 3.20 allows for mosquito abatement within or adjacent to ESHA if certain criteria are met. However, the City's proposed LUP Policy 3.18 does not make an exception for the use of pesticides (specifically insecticides) to be used for mosquito abatement. Therefore, **Suggested Modification One (1)** adds language to the beginning of LUP Policy 3.18 to clarify that the policy's prohibition of pesticides does not apply to mosquito abatement, as currently allowed under LUP Policy 3.20. This revision is necessary to ensure consistency within the LUP.

Furthermore, the policy as proposed states that the use of pesticides or "any toxic chemical substances" which have the potential to significantly degrade biological resources shall be prohibited. However, read broadly, the proposed policy could prohibit the use of common household products that might have adverse impacts if used improperly. Because the

intent of the policy is to regulate pesticides and related products, the Commission finds it is necessary to add “other similar” to the first sentence of LUP Policy 3.18 in order to clarify that the policy only applies to toxic chemical substances and products that are similar to act to deter unwanted biological pests.

Lastly, **Suggested Modification One (1)** includes minor modifications necessary to make minor clarifications and typographical corrections that further the intent and implementation of proposed LUP Policy 3.18 and where the lack of information or the errors may cause inadequate interpretation of LUP Policy 3.18.

Therefore, for the reasons discussed above, the Commission finds that only if modified as suggested will the LUP amendment regarding the regulations of pesticides be consistent with, and implement the policies and provisions of, the Coastal Act.

D. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its 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, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP action.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

As discussed above, the City's LUP amendment as originally submitted does not conform with Chapter 3 policies of the Coastal Act. The Commission has, therefore, suggested modifications to the proposed LUP to include all feasible measures to ensure that potentially significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act and CEQA. For the reasons discussed in this report, the LCP amendment, as suggested to be modified, is consistent with Chapter 3 policies of the Coastal Act. These modifications represent the Commission's analysis and thoughtful consideration of all significant environmental issues raised in public comments received, including with regard to potential direct and cumulative impacts of the proposed LUP amendment, as well as potential alternatives to the proposed amendment. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed LUP amendment into conformity with Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed LCP amendment, as suggested to be modified, is consistent with CEQA.