

CALIFORNIA COASTAL COMMISSION

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W11c

DATE: August 24, 2021

TO: Commissioners and Interested Parties

FROM: John Ainsworth, Executive Director

SUBJECT: **City of Malibu LCP Amendment LCP-4-MAL-19-0164-3 (Prohibit the Use of Pesticides):** Executive Director's determination that the City's acknowledgement of receipt, acceptance, and agreement with the Commission's certification with suggested modifications is legally adequate. This determination will be reported to the Commission at the Wednesday, September 8, 2021 hearing.

On May 13, 2021, the Commission approved Local Coastal Program Amendment No. LCP-4-MAL-19-0164-3, submitted by the City of Malibu, with one suggested modification. The subject amendment consists of several modifications to Land Use Plan (LUP) Policy 3.18 regarding the use of pesticides.

On June 28, 2021, the City Council adopted Resolution No. 21-32 (attached) acknowledging receipt of the Commission's certification of LCP Amendment No. LCP-4-MAL-19-0164-3 and accepting and agreeing to the modifications suggested by the Commission.

Pursuant to Section 13544 of the California Code of Regulations, Title 14, Division 5.5, the Executive Director must determine that the action taken by the City of Malibu acknowledging receipt and acceptance of, and agreement with the Commission's certification of the above referenced LCP amendment with suggested modifications is legally adequate and report that determination to the Commission. The certification shall become effective unless a majority of the Commissioners present object to the Executive Director's determination.

I have reviewed the City's acknowledgement, acceptance of, and agreement with the terms and suggested modifications to LCP Amendment LCP-4-MAL-19-0164-3, as approved by the Commission on May 13, 2021, as contained in the adopted City Council Resolution of June 28, 2021, and find that the City's action is legally adequate to satisfy the terms and requirements of the Commission's certification. I therefore recommend that the Commission concur in this determination.

RESOLUTION NO. 21-32

A RESOLUTION OF THE CITY OF MALIBU AMENDING THE LOCAL COASTAL PROGRAM LAND USE PLAN POLICY 3.18 PERTAINING TO A CITYWIDE PROHIBITION OF PESTICIDES, ACKNOWLEDGING RECEIPT OF THE CALIFORNIA COASTAL COMMISSION RESOLUTION OF CERTIFICATION FOR LOCAL COASTAL PROGRAM AMENDMENT NO. 14-001 WITH SUGGESTED MODIFICATIONS AND ADOPTING REVISIONS INCORPORATING THE CALIFORNIA COASTAL COMMISSION'S SUGGESTED MODIFICATIONS, REPEALING RESOLUTION NO. 19-54, AND DETERMINING THE LOCAL COASTAL PROGRAM AMENDMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On July 8, 2013, the City Council adopted Resolution No. 13-28 urging businesses in Malibu to no longer use or sell anticoagulant rodenticides and all property owners to cease the purchase of and use of these products, and committing the City of Malibu not to use them in City-owned parks and facilities.

B. On December 8, 2014, in compliance with Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 19.2.1, the City Council adopted Resolution No. 14-73 initiating Local Coastal Program Amendment (LCPA) No. 14-001 to consider changes to the LCP pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a coastal development permit.

C. The Malibu Zoning Ordinance Revisions and Code Enforcement Subcommittee met on August 11, 2015, and on September 21, 2015 to discuss the regulatory context in which the use of anticoagulant rodenticides may be regulated.

D. On November 4, 2015, a Notice of Planning Commission Public Hearing and Notice of Availability was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

E. On January 19, 2016 and February 16, 2016, the Planning Commission held public hearings and adopted Resolution No. 16-23 recommending the City Council approve LCPA No. 14-001, amending the LCP with provisions to prohibit the use of anticoagulant rodenticides, take additional actions to promote rodent control methods that do not involve the use of poisons, and lobby the California Legislature to either eliminate local preemption or ban use of anticoagulant rodenticides statewide.

F. On May 29, 2018, the City Council authorized Councilmember Rosenthal to request that the League of California Cities Environmental Quality Policy Committee consider adding the potential banning of pesticides, herbicides, rodenticides and insecticides throughout California as a priority issue and directed staff to proceed with a LCPA regarding the use of pesticides, herbicides, rodenticides and insecticides.

G. On March 25, 2019, the City Council authorized the Mayor to send a letter in support of AB 1788, a bill that would expand current regulations prohibiting the use of pesticides containing one or more anticoagulants to the entire State, including State-owned property, unless the Department of Public Health determines there is a public health emergency or California Environmental Protection Agency determines there is an environmental emergency.

H. On June 24, 2019 the City Council approved an update to the City's Earth Friendly Management Policy. The policy governs pest management on City-owned, managed or leased property and prohibits all poisons, including anticoagulant rodenticides.

I. On November 14, 2019, a Notice of Public Hearing and Notice of Availability of LCP Documents for LCPA No. 14-001 was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

J. On December 9, 2019, the City Council held a duly noticed public hearing on LCPA No. 14-001, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information in the record.

K. On December 26, 2019, the LCPA was submitted.

L. On June 19, 2020, the CCC staff deemed the LCPA submittal complete.

M. At its September 2020 CCC meeting, the CCC extended the 90-day time limit to act on the LCPA for a period not to exceed one year.

N. On May 13, 2021, the CCC conditionally certified LCP-4-MAL-19-0164-3 subject to modifications as set forth in the Resolution of Certification contained in the CCC letter dated May 19, 2021.

O. On June 17, 2021, a Notice of City Council Public Hearing to be held on June 28, 2021 was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; regional, state, and federal agencies affected by the amendment; local library and media; and the CCC.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA and therefore, does not apply to this application. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect

SECTION 3. Local Coastal Program Amendment No. 14-001 as Modified by the California Coastal Commission.

Consistent with the CCC's May 13, 2021, conditional certification of LCP-4-MAL-19-0164-3, the City Council hereby amends Land Use Plan (LUP) Chapter 3, Section C (Land Use Policies), Policy 3.18 to read as follows:

Except as permitted pursuant to this provision or Policy 3.20, throughout the City of Malibu, development that involves 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. 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 with the City.

SECTION 4. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

A. One of the main objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. Chapter 3 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against disruption of habitat values and that development should be designed to prevent impacts and be compatible with the continuance of those habitats. The use of pesticides can have a negative effect on habitat values by impacting the viability of plant and animal species in the City. Preserving and enhancing plant and animal species throughout the City will help ensure ESHA habitats are protected and enhanced.

B. LUP Policy 3.18 currently states that “[t]he use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade

Environmentally Sensitive Habitat Areas (ESHA), 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.” The LCPA will amend LUP Policy 3.18 to expand the list of poisons that can degraded biological resources by adding rodenticides and making the prohibition against pesticides citywide.

C. The language included in the LCPA fulfills and promotes the objectives of the Coastal Act by ensuring that toxic chemical substances that degrade coastal resources are prohibited within the City of Malibu’s jurisdiction. The LCPA is protective of wildlife and riparian habitat, marine resources, and water quality. Therefore, the LCPA meets the requirements of, and is in conformance with the goals, objectives and purposes of the LCP.

SECTION 5. Approval.

A. Subject to the contingency set forth in Section 9, the City Council hereby adopts LCPA No. 14-001, amending the LCP as modified by the CCC. Resolution No. 19-54 is hereby repealed and any amendments to the LUP authorized by Resolution No. 19-54 are superseded by the amendments set forth in Section 4 of this Resolution.

B. Pursuant to the CCC's Administrative Regulations Section 13544.5, the LCPA certification shall not be deemed final and effective until all of the following occur: 1) the City Council: a) acknowledges receipt of the CCC's Resolution of Certification, including any terms or modifications suggested for final certification; b) accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications; and c) agrees to issue coastal development permits for the total area included in the certified LCP; 2) the Executive Director of the CCC determines in writing that the City's action is legally adequate to satisfy any specific requirements set forth in the CCC's certification order and the Director reports the determination to the CCC at its next regularly scheduled meeting; 3) if the Director finds that the City's action does not conform to the CCC's order, the CCC shall review the City action as if it were a resubmittal; and 4) notice of the certification shall be filed with the Secretary of the Resources Agency for posting and inspection.

C. The City Council acknowledges receipt of the CCC's modifications to LCPA No. 14-001. The City Council further accepts and agrees to the modified language suggested by the CCC pertaining to the LUP and approves revisions to LCPA No. 14-001 without further changes.

SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this ordinance to the CCC per Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 8 and Chapter 6, Article 2 and California Code of Regulations Section 13551, et. seq.

SECTION 7. Report to California Coastal Commission

Staff is hereby directed to report back to the City Council in approximately three years from the date of this Resolution to discuss the implementation of amended LUP Policy 3.18 and its impacts, if any. Once conferred by the City Council, such report shall be made to the California Coastal Commission.

SECTION 8. Severability.

If any section, subsection, sentence, clause, portion, or phrase of this Resolution is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Resolution. The City Council hereby declares that it would have passed this Resolution and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of this Resolution would be subsequently declared invalid or unconstitutional.

SECTION 9. Effectiveness.

The LCPA approved in this Resolution shall become effective only upon its certification by the CCC.

SECTION 10. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 28th day of June 2021.



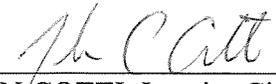
PAUL GRISANTI, Mayor

ATTEST:



KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:



JOHN COTTI, Interim City Attorney

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-32 was passed and adopted by the City Council of the City of Malibu at the Regular meeting thereof held on the 28th day of June 2021 by the following vote:

AYES:	5	Councilmembers:	Farrer, Pierson, Uhring, Silverstein, Grisanti
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		



KELSEY PETTIJOHN, Acting City Clerk
(seal)