

**CALIFORNIA COASTAL COMMISSION**

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# W11a

## ADDENDUM

February 7, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: **Addendum to Item W11a, City of Malibu LCP Amendment No. LCP-4-MAL-21-0073-2 (Sea View Hotel Project) For the Commission Meeting of Wednesday, February 8, 2023**

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The purpose of this addendum is to: 1) add a link to Appendix A, Substantive File Documents; and 2) attach correspondence received to date and provide a response to certain correspondence. The correspondence letters are available in the Correspondence tab for this item on the Commission's website.

### I. APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

On page 5, after the Table of Contents, add Appendix A (Substantive File Documents) with link as follows:

<https://documents.coastal.ca.gov/reports/2023/2/W11a/W11a-2-2023-appendix.pdf>

### II. CORRESPONDENCE RECEIVED, STAFF'S RESPONSE TO CORRESPONDENCE

- a. On January 27, 2023, after the publication of the January 26, 2023 staff report, staff received comments from the City's planning department regarding Suggested Modification No. 3. The City's staff comment stated, "Our only comment based on your last correspondence was is if is possible to condition the money collected as an in-lieu fee for affordable overnight accommodations to not be used to fund camping in high fire severity zones or in ESHA areas." Specifically, the City staff requested that Commission staff condition the lower cost overnight visitor accommodations in-lieu mitigation fee of \$800,000 (which is being implemented through an escrow agreement between Commission staff and the property owners) not to fund camping located within high fire severity zones or Environmentally Sensitive Habitat Areas (ESHA).

Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. The entire City of Malibu is within territory designated by the California Department of Forestry and Fire Protection (“CAL FIRE”) as a Very High Fire Hazard Severity Zone (VHFHSZ). Therefore, requiring any new camping (a form of lower-cost overnight visitor accommodations) to be sited outside high fire severity zones would effectively preclude any new camping from being located within the City or adjacent unincorporated Santa Monica Mountains. This restriction would directly conflict with the lower cost overnight visitor accommodations in-lieu mitigation fee and policies and goals of the Malibu Local Coastal Program (LCP), which is to assist in funding affordable overnight accommodations in the Malibu/Santa Monica Mountains coastal zone.

In addition, any new camping within the Malibu/Santa Monica Mountains coastal zone will trigger the need for a coastal development permit. At that time, the respective permitting authority (City of Malibu or Los Angeles County) must review a proposed camping project in a manner that is consistent with the policies and provisions of their respective Local Coastal Programs (City of Malibu LCP or Santa Monica Mountains LCP). Both the City of Malibu LCP and Santa Monica Mountains LCP require new development to minimize risks to life and property in fire hazard areas and also require the protection of areas designated as ESHA and require new development in areas adjacent to ESHA to be sited and designed to prevent impacts which would significantly degrade those areas.

For these reasons, the Commission staff disagrees with the City’s requested modification to condition the in-lieu mitigation fee for affordable overnight accommodations not to fund camping located within high fire severity zones or Environmentally Sensitive Habitat Areas (ESHA).

- b. Correspondence dated February 3, 2023, was submitted by Marshall A. Camp, of Hueston Hennigan LLP, on behalf of Mani Brothers Real Estate Group, Mani MBI (DE), LLC, and affiliated companies (collectively, the “Mani Brothers”), that own properties in the vicinity of the proposed Sea View Hotel, including the Malibu Beach Inn at 22878 Pacific Coast Highway (PCH), the former Hertz lot at 22853 PCH, and the multifamily properties at 22640 and 22648 PCH, which are located approximately 500 feet from the proposed Sea View Hotel. This letter is available under the correspondence tab. This letter urges the Commission to deny the LCP amendment due to alleged inconsistencies with the Coastal Act and the Malibu LCP and because of alleged non-compliance with the California Environmental Quality Act (“CEQA”).

Specifically, the letter expresses opposition to the proposed LCP amendment raising concerns that the proposed increase in maximum Floor to Area ratio under the proposed overlay district is inconsistent with the City’s LCP and claims the amendment results in “spot zoning.” In response, Commission staff notes that these issues are addressed in Sections V (Findings for Approval of the LUP Amendment as Submitted, Denial of the LIP Amendment as Submitted, and Approval of the LIP Amendment if Modified as Suggested) of the January 26, 2023, staff report.

In addition, the letter claims that the January 26, 2023 staff report fails to demonstrate CEQA compliance. However, as discussed in the January 26, 2023 staff report, the City completed its CEQA review prior to submitting the subject LCP amendment to the Commission for review. Before adopting the Mitigated Negative Determination (MND) for the Sea View Hotel Project, the City Council considered the MND and all the comments received during the public review process. Based on the record, including the initial study and the comments received, which were included as part of the City's LCP Amendment submittal and can be found under Appendix A – Substantive File Documents for the January 26, 2023 staff report, the City Council determined that there would be no significant environmental impacts with the implementation of specific mitigation measures. The City Council also determined that the project does not have the potential to cause significant adverse impacts to the environment.

The commenter claims that the staff report's statements regarding CEQA in Section D of that report are "conclusory" and that the Commission has failed to comply with CEQA. This is incorrect. The entire staff report constitutes the Commission's CEQA-equivalent document under its certified regulatory program. The Commission, as with certain other state agencies, has a certified regulatory program under CEQA. Public Res. Code § 21085.5; 14 Cal. Code Regs. § 15252. Documents prepared by certified programs, such as the Commission's staff reports, are considered the functional equivalent of documents that CEQA would otherwise require.<sup>1</sup>

As part of its certified program, the Commission reviews a proposal to determine if there are feasible mitigation measures, or feasible alternatives, that would substantially lessen any significant adverse effect on the proposed development. The Commission's review of the proposed LCP amendment built off of the City's record, including the Initial Study and MND, which the City submitted to the Commission. Moreover, the Commission may rely on environmental documents prepared by the City that are part of the City's LCP submission.<sup>2</sup> In this case, the City prepared an extensive record, provided for public notice and comment, and determined that there would be no significant environmental impacts with the implementation of specific mitigation measures. The City also evaluated alternatives to the project and additional mitigation measures. Commission staff has reviewed the City's record as part of the Commission's review of the City's LCP amendment submittal.

As noted in the staff report, Commission staff is suggesting several modifications to the City's proposed LCP Amendment, including an in lieu mitigation fee for low-cost overnight accommodations. To the extent that potential impacts to public access and recreation may be considered environmental impacts under CEQA, the Commission is specifying a feasible mitigation measure and an alternative mechanism to provide a component of lower cost overnight accommodations. Specifically, the Commission's suggested modification would reflect the agreement by the property owners to provide a \$800,000 in lieu fee for the development of low-cost overnight accommodations in the Malibu/Santa Monica Mountains coastal

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<sup>1</sup> *Mountain Lion Found. v. Fish & Game Com.*, 16 Cal. 4th 105, 113 (1997).

<sup>2</sup> *See Ross v. Coastal Com.*, 199 Cal. App. 4th 900 (2011).

zone. The Commission has met its CEQA obligations under its certified regulatory program.

Finally, the commenter argues that the Commission is required to consider the “environmental impacts of the campground project in Ramirez Canyon” under CEQA. This is also incorrect. As an initial matter, no specific project for the in lieu fee is called out in the Commission’s suggested modification, and it remains uncertain if the mitigation fee will go towards a campground project in Ramirez Canyon or to some other project. Likewise, although the commenter claims that this project will usher in other citywide growth through other City-approved projects, this is speculative and does not require CEQA analysis in the context of this proposed LCP amendment.

In addition, as part of its review of this proposed LCP Amendment for the Sea View Hotel overlay district, the Commission is not required to evaluate the impacts of a future project when that project would have a different proponent, would serve a different purposes, or can be implemented independently,<sup>3</sup> as would be the case with any low-cost, visitor-serving development funded by the in lieu fee (or with any unrelated project). Thus, the Commission’s review of the proposed LCP amendment complies with CEQA.

- c. Correspondence has been received from Norman R. Haynie on behalf of the Sea View Hotel Project Site property owners on January 31, 2023. The correspondence supports the staff recommendation for the subject LCP amendment and includes a project rendering for the related Sea View Hotel Project. This letter is available under the correspondence tab.
- d. Correspondence has been received from the Mountains Recreation and Conservation Authority (MRCA) on February 6, 2023. The correspondence supports the staff’s recommendation of an in-lieu mitigation fee of \$800,000 to assist in funding affordable overnight accommodations in the Malibu/Santa Monica Mountains coastal zone. This letter is available under the correspondence tab.

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<sup>3</sup> *Aptos Council v. City of Santa Cruz*, 10 Cal. App. 5th 266, 280 (2017).