

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-2801  
VOICE (805) 585-1800  
FAX (805) 641-1732



# W10a

**City of Malibu Local Coastal Program Amendment  
No. LCP-4-MAL-21-0049-1-Part B (Sign Regulations)**

**March 13, 2024**

## **Exhibits**

### **Table of Contents**

**Exhibit 1 – City LCPA Proposed Text Changes**

**Exhibit 2 – City LCPA Planning Commission Staff Report**

**Exhibit 3 – City LCPA City Council Staff Report**

**Exhibit 4 – City LCPA Final Resolution and Final Ordinance**

## Proposed Changes to the Local Coastal Program:

### Local Coastal Program Amendment No. 20-001

These changes correspond with City Council Ordinance No. 483

---

**Action:** Adopted Resolution No. 21-16 amending the Local Coastal Program (LCP) Land Use Plan (LUP) Sections 2.80 and 2.81 and adopted Ordinance No. 483 amending the LCP Local Implementation Plan (LIP) Local Implementation Plan Sections 3.15.3(X) and 3.15.4(C) as part of LCPA No. 20-001 and found the action exempt from the California Environmental Quality Act to avoid any implementation that might infringe on residents' constitutional rights.

#### Land Use Plan

##### Changes in ~~strikethrough~~/underline

- A. Amend LUP Chapter 2 (Public Access and Recreation), Section C (Land Use Policies), Subsection 3 (Shoreline Access), Item 80 to read as follows:

2.80. In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. ~~In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.~~

- B. Amend LUP Section 2.81 to read as follows:

2.81. No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. ~~Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.~~

#### Local Implementation Plan

##### Changes in ~~strikethrough~~/underline

- C. LIP Chapter 3.15.3 (Prohibited Signs), Subsection X is hereby amended to read as follows:

[Repealed] ~~“Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.”~~

- D. LIP Chapter 3.15.4 (Permit Requirements and Procedure), Subsection C (Criteria) is hereby amended to repeal items 3, 5, and 9, and to read as follows:

- C. Criteria. The following criteria shall be used in reviewing an application for a sign permit:
1. That any business sign is necessary for the applicant's enjoyment of substantial trade and property rights;
  2. That the sign is consistent with the certified Local Coastal Program, general plan and the provisions of the Municipal Code;
  3. ~~That the sign is not detrimental to the public health, safety, or welfare;~~
  4. That the size, shape, color, and placement of the sign is compatible with the building it identifies;
  5. ~~That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;~~
  6. That both the location of the proposed sign and the design of its visual elements (lettering, words, figures, colors, decorative motifs, spacing, and proportions are legible under normal viewing conditions prevailing where the sign is to be installed;
  7. That the location and design of the proposed sign does not obscure from view or unduly detract from existing or adjacent signs;
  8. That the location and design of the proposed sign, its size, shape, illumination, and color are compatible with the visual characteristics of the surrounding area so as not to detract from or cause depreciation of the value or quality of adjacent properties; and
  9. ~~That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.~~
  10. Signs shall be designed and located to minimize impacts to scenic areas from scenic roads and public viewing areas.
  11. Signs approved as part of commercial development shall be incorporated into the design of the project and shall be subject to height and width limitations to ensure that signs are visually compatible with surrounding areas.



# Commission Agenda Report

Planning Commission  
Meeting  
03-15-21

**Item  
5.A.**

To: Chair Jennings and Members of the Planning Commission

Prepared by: Kathy Shin, City Attorney's Office

Approved by: Richard Mollica, Planning Director

Date prepared: February 22, 2021 Meeting date: March 15, 2021

Subject: Local Coastal Program Amendment No. 20-001 - An Amendment to the Malibu Local Coastal Program Sign Regulations

Applicant: City of Malibu  
Location: Citywide

---

**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 21-22 (Attachment 1) recommending that the City Council approve Local Coastal Program Amendment (LCPA) No. 20-001, which amends the Malibu Local Coastal Program (LCP) sign regulations, specifically, sections 3.15.3(X) and 3.15.4(C) of the LCP Local Implementation Plan (LIP) and section 2.81 of the LCP Land Use Plan (LUP).

**DISCUSSION:**

On November 9, 2020, the City Council adopted Resolution No. 20-60 to initiate the amendments to the LCP proposed in Attachment 1. In initiating the LCPA, the Council directed the Planning Commission to consider provisions of the LCP sign regulations in light of the “constitutionally protected rights of private property owners” recognized in the California Coastal Act. (See Cal. Pub. Res. Code, § 30001.5(c).)

On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) violate residents’ right to speech under the First Amendment to the United States Constitution.<sup>1</sup>

Plaintiffs, the Seiders, reside in Latigo Beach. As relevant here, a lateral public access easement encumbers their residence, and the Seiders now seek to post signs that would purport to demarcate the boundary between the easement area and unencumbered,

---

<sup>1</sup> *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu* (Case No. 2:20-cv-8781).

private beach. (The easement was recorded pursuant to a condition in the original CDP authorizing development of the residence.) Prior to filing their lawsuit, the Seiders had posted two “PRIVATE BEACH” signs on their property without the benefit of a CDP. Under the LIP, a CDP is required for any such development on beachfront properties.

On April 29, 2020, the California Coastal Commission (CCC) issued the Seiders a Notice of Violation of the California Coastal Act. The Notice states that the Seiders’ signs discouraged public access to the coast and purported to identify the boundary between private property and public beach. Accordingly, even if the Seiders were to apply for a CDP, the Notice states “it is unlikely that Commission staff would recommend approval of the signs since the signs are inconsistent with the Coastal Act and City of Malibu LCP public access policies . . . .”<sup>2</sup> Among other grounds for denial, CCC staff determined that the signs are prohibited by LIP Section 3.15.3(X).

LIP Section 3.15.3(X) reads as follows:

“Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.”

The Seiders challenge this section as an unconstitutional content-based regulation of speech in violation of the First Amendment. They also challenge the criteria by which sign permit applications are reviewed as inherently subjective. Specifically, the Seiders contend that paragraphs 3, 5, and 9 of LIP section 3.15.4(C) give City officials “unbridled discretion to deny a sign CDP,” and thereby result in an unconstitutional prior restraint on speech. The challenged criteria read as follows:

3. That the sign is not detrimental to the public health, safety, or welfare;
5. That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;
9. That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.

Staff has since determined that Sections 2.80 and 2.81 of the LUP contain the same or substantially similar restriction on signs as that challenged in LIP Section 3.15.3(X). See italicized provisions below:

---

<sup>2</sup> Because the public access easement encumbering the Seiders’ property was recorded as a condition for a CDP issued by the South Coast Regional Commission (a predecessor agency to the CCC), the sign CDP the Seiders now seek may be subject to the CCC’s original permitting jurisdiction. Under LIP § 13.10.2(B)(2), the CCC retains jurisdiction over “development that would lessen or negate the purpose of any specific permit condition . . . of a Commission-issued coastal permit.”

“2.80. In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. *In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.*”

“2.81. No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. *Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.*”

For consistency, staff recommends that the foregoing language in LUP Sections 2.80 and 2.81 be amended in the same manner as LIP Section 3.15.3(X).

### Proposed Amendments

The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech. Therefore, the proposed LCP amendment removes LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of LIP Section 3.15.4(C) from the Malibu LCP to avoid any implementation that might infringe on residents’ constitutional rights. The amendment also removes the second sentence in LUP Section 2.80 and the second sentence in LUP Section 2.81 from the text.

### Findings of Consistency with Coastal Act and LCP:

The proposed amendments meet the requirements of, and are in conformance with, the LCP and the policies of Chapter 3 the California Coastal Act.

Chapter 2 of the LUP incorporates the public access policies set forth in the Coastal Act, including Public Resources Code section 30210, which reads as follows (with relevant text italicized):

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

Public Resources Code Section 30001.5(c) also declares that one goal of the Act is to pursue public access policies consistent with the “constitutionally protected rights of private property owners.” Taken together, Section 30210 of the Coastal Act, Section 30001.5(c), and Chapter 2 of the LUP support the amendments proposed herein.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, City activities and approvals necessary for the preparation and adoption of an LCP, including the recommended LCPA, are exempt from the requirements of the California Environmental Quality Act (CEQA). The recommended application is for an amendment to the LCP, which must be certified by the California Coastal Commission before the amendments take effect.

CORRESPONDENCE: No written public correspondence has been received to date.

PUBLIC NOTICE: On February 18, 2021, a Notice of Public Hearing was published in a newspaper of general circulation in the City of Malibu and mailed to all interested parties (Attachment 2).

CONCLUSION: Staff recommends that the Planning Commission adopt Resolution No. 21-22 (Attachment 1) recommending that the City Council approve Local Coastal Program Amendment No. 20-001.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-22
2. Hearing Notice

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 21-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU RECOMMENDING THAT THE CITY COUNCIL APPROVE LOCAL COASTAL PROGRAM AMENDMENT NO. 20-001, AN AMENDMENT TO THE LOCAL COASTAL PROGRAM SIGN REGULATIONS, AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that the sign regulations in the Malibu Local Coastal Program (LCP)—specifically, Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) of the LCP Local Implementation Plan (LIP)—violate residents’ rights to speech under the First Amendment to the United States Constitution.

B. The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech.

C. On November 9, 2020, the City Council adopted Resolution No. 20-60, initiating a Local Coastal Program Amendment (LCPA), to consider the challenged provisions of the LIP in light of constitutionally protected rights of private property owners recognized in the California Coastal Act and to determine if amendments to the Malibu LCP are necessary.

D. Resolution No. 20-60 also directs the Planning Commission to schedule a public hearing on the proposed amendment in accordance with the requirements of LIP Chapter 19.

E. On February 18, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation in the City of Malibu.

F. On March 15, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 20-001, at which time it reviewed and considered the Commission Agenda Report, public testimony, and related information in the record.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, City activities and approvals necessary for the preparation and adoption of an LCP, including the proposed LCPA, are exempt from the requirements of the California Environmental Quality Act (CEQA). The proposed application is for an amendment to the LCP, which must be certified by the California Coastal Commission before the amendments take effect.



SECTION 3. Local Coastal Program Amendment Findings.

Based on the evidence in the whole record, the Planning Commission hereby finds as follows:

- A. LCPA No. 20-001, as set forth in Section 4 below, meets the requirements of, and is in conformity with, the LCP and the policies of Chapter 3 the California Coastal Act.
- B. Section 30210 of Chapter 3 of the Act requires the State to advance the public right of access to coastal resources, including through local coastal programs, in a manner consistent with the rights of private property owners.
- C. Chapter 2 of the Malibu Land Use Plan (LUP) incorporates the Act's public access policies, including Section 30210.
- D. As relevant here, the Legislature's statement of goals in Section 30001.5(c) of the Act also declares an intent to maximize public access to the coast "consistent with . . . constitutionally protected rights of private property owners."
- E. Section 2.80 and Section 2.81 of the LUP contain restrictions on permissible signs that are substantially similar to the restriction in LIP section 3.15.3(X). Consistency within the LCP, and with the concern for private property owners' constitutional rights in the Act, requires that all three restrictions be removed from the LCP.

SECTION 4. Local Coastal Program Amendment No. 20-001.

Based on the foregoing findings and record evidence, the Planning Commission hereby recommends that the LCP be amended as follows:

1. Remove section 3.15.3(X) from the LIP.
2. Remove paragraphs 3, 5, and 9 from section 3.15.4(C) of the LIP.
3. Amend section 2.80 of the LUP to read as follows:

"In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed."

4. Amend section 2.81 of the LUP to read as follows:

"No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit."

SECTION 5. Planning Commission Recommendation.

Pursuant to Section 19.3.2(C) of the LIP, the Planning Commission hereby recommends that the City Council approve LCPA No. 20-001.

SECTION 6. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 15<sup>th</sup> day of March, 2021.

---

JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

---

KATHLEEN STECKO, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-22 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 15<sup>th</sup> day of March, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

KATHLEEN STECKO, Recording Secretary



City Of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
Phone (310) 456-2489  
www.malibucity.org

**PLANNING DEPARTMENT**  
**NOTICE OF PUBLIC HEARING AND**  
**NOTICE OF AVAILABILITY OF LCP**  
**AMENDMENT MATERIALS**

**NOTICE OF PUBLIC HEARING  
AND NOTICE OF AVAILABILITY OF  
LCP AMENDMENT MATERIALS**

The Malibu Planning Commission will hold a public hearing on **Monday, March 15, 2021, at 6:30 p.m.** for the project identified below which will be held via teleconference only in order to reduce the risk of spreading COVID-19 pursuant to the Governor's Executive Orders N-25-20 & N-29-20 & the County of Los Angeles Public Health Officer's Safer at Home Order

**LOCAL COASTAL PROGRAM AMENDMENT NO. 20-001** - An amendment to the sign regulations in the certified Malibu Local Coastal Program (LCP), including Local Implementation Plan Sections 3.15.3(X) and 3.15.4 and Land Use Plan Sections 2.80 and 2.81

**APPLICANT:** City of Malibu  
**LOCATION:** Citywide Project  
**CASE PLANNER:** Justine Kendall, Associate Planner, [jkendall@malibucity.org](mailto:jkendall@malibucity.org) (310) 456-2489, ext. 301

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an Local Coastal Program (LCP) amendment. This application is for an LCP amendment which must be certified by the California Coastal Commission before it takes effect.

A written staff report will be available at or before the hearing for the project. All persons wishing to address the Commission regarding this matter will be afforded an opportunity in accordance with the Commission's procedures.

To view or sign up to speak during the meeting, visit [www.malibucity.org/virtualmeeting](http://www.malibucity.org/virtualmeeting).

Copies of all related documents including review drafts can be reviewed by any interested person by contacting the Case Planner during regular business hours. Oral and written comments may be presented to the Planning Commission on, or before, the date of the meeting.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

RICHARD MOLLICA, Planning Director

Date: February 18, 2021



# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Kathy Shin, City Attorney's Office  
Justine Kendall, Associate Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: March 24, 2021

Meeting date: April 12, 2021

Subject: Amendments to the Malibu Local Coastal Program Sign Regulations

---

**RECOMMENDED ACTION:** 1) Adopt Resolution 21-16 (Attachment 1) amending the Local Coastal Program (LCP) Land Use Plan (LUP) sign regulations (Local Coastal Program Amendment (LCPA) No. 20-001) and finding the action exempt from the California Environmental Quality Act (CEQA); 2) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 483 (Attachment 2) amending the LCP Local Implementation Plan (LIP) sign regulations as part of LCPA No. 20-001 and finding the action exempt from CEQA; and 3) Direct staff to schedule second reading and adoption of Ordinance No. 483 for the April 26, 2021 Regular City Council meeting.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the adopted Work Plan for Fiscal Year 2020-2021.

**DISCUSSION:** The proposed amendment is in response to litigation brought to the City in October 2020 which alleged that LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) violate residents' right to speech under the First Amendment to the United States Constitution.<sup>1</sup> This LCPA is being processed to avoid any implementation that might infringe on residents' constitutional rights.

---

<sup>1</sup> *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu* (Case No. 2:20-cv-8781) (Attachment 5).

The plaintiffs challenged that LIP Section 3.15.3(X), is an unconstitutional content-based regulation of speech in violation of the First Amendment. They also challenged the criteria by which sign permit applications are reviewed—specifically paragraphs 3, 5, and 9 of LIP Section 3.15.4(C). The plaintiffs alleged that the criteria are inherently subjective, give City officials “unbridled discretion to deny a sign CDP,” and thereby result in an unconstitutional prior restraint on speech.

The challenged sections read as follow:

LIP Section 3.15.3(X):

“Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.”

LIP Section 3.15.4(C) : “The following criteria shall be used in reviewing an application for a sign permit:

- ...
- 3. That the sign is not detrimental to the public health, safety, or welfare;
- ...
- 5. That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;
- ...
- 9. That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.”

Staff has since determined that Sections 2.80 and 2.81 of the LUP contain the same or substantially similar restriction on signs as the restriction challenged in LIP Section 3.15.3(X). See italicized provisions below:

“2.80. In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. *In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.*”

“2.81. No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. *Signs which*

*purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.”*

For consistency, staff recommends that the foregoing language in LUP Sections 2.80 and 2.81 be amended in the same manner as LIP Section 3.15.3(X).

The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech. Therefore, to avoid any implementation that might infringe on residents’ constitutional rights, the proposed LCP amendment removes LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of LIP Section 3.15.4(C) from the Malibu LCP. Pursuant to LIP Section 19.5(B), these amendments are achieved through Ordinance No. 483. For consistency, the proposed LCPA also removes the second sentence in LUP Section 2.80 and the second sentence in LUP Section 2.81 from the text. Pursuant to LIP Section 19.5(A), these amendments are also achieved through Resolution No. 21-16.

In response to the litigation, on November 9, 2020, the City Council adopted Resolution No. 20-60 initiating amendments to the LCP and directing the Planning Commission to consider the challenged LIP sign regulations in light of the “constitutionally protected rights of private property owners” recognized in the California Coastal Act. (See Cal. Pub. Res. Code, § 30001.5(c).)

On March 15, 2021, the Planning Commission conducted a duly noticed public hearing on LCPA No. 20-001 and adopted Planning Commission Resolution No. 21-22 (Attachment 3), recommending that the City Council approve the LCPA, as recommended by staff.

#### Findings of Consistency with Coastal Act And LCP

Pursuant to LIP Section 19.6, before approval of an LCPA, the City Council must make the finding that such amendment meets the requirements of, and is in conformity with, the LCP and polices of Chapter 3 of the California Coastal Act. The following findings can be made:

The proposed amendments meet the requirements of, and are in conformance with, the LCP and the policies of Chapter 3 the California Coastal Act.

Chapter 2 of the LUP incorporates the public access policies set forth in the Coastal Act, including Public Resources Code Section 30210, which reads as follows (with relevant text italicized):

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

Public Resources Code Section 30001.5(c) also declares that one goal of the Act is to pursue public access policies consistent with the “constitutionally protected rights of private property owners.” Taken together, Section 30210 of the Coastal Act, Section 30001.5(c), and Chapter 2 of the LUP support the amendments proposed herein.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, City activities and approvals necessary for the preparation and adoption of an LCP, including the recommended LCPA, are exempt from the requirements of the CEQA. The recommended application is for an amendment to the LCP, which must be certified by the California Coastal Commission before the amendments take effect.

CORRESPONDENCE: Public comments in support of the amendment were received prior to and at the March 15, 2021 Planning Commission meeting. (See Attachment 4). On March 11, 2021, the California Coastal Commission submitted a written letter in opposition, stating that the proposed amendments would “allow for signs that restrict public access to State tidelands, public vertical or lateral access easement areas, or purport to identify the boundary between State tidelands and private property . . . inconsistent with the public access and recreation policies of the Coastal Act and Malibu LCP.”

According to California Coastal Commission staff, “Such signs can mislead and intimidate the public from gaining legal beach access. For instance, signs portraying the boundary between public and private property as a fixed line are inaccurate since the line where the mean high tide intersects the beach is an ambulatory boundary that constantly moves to correspond to changes in the beach profile and daily tide flows. For these reasons, the proposed amendment would not maximize public access and could interfere with the public’s right of access to the sea, which is in direct conflict with the goals and requirements of the Coastal Act and Malibu LUP.”

As discussed previously, staff has determined that the amendments to the LCP are consistent with the Coastal Act and Public Resources Code, as both restate that the constitutionally protected rights of private property owners are maintained.

SUMMARY: Staff recommends that the City Council adopt Resolution No. 21-16 amending LUP Sections 2.80 and 2.81 and introduce on first reading Ordinance No. 483, amending LIP Sections 3.15.3(X) and 3.15.4(C).

ATTACHMENTS:

1. Resolution No. 21-16
2. Ordinance No. 483
3. Planning Commission Resolution No. 21-22
4. Correspondence Received for March 15, 2021 Planning Commission Meeting
5. Litigation Background
6. Notice of Public Hearing



RESOLUTION NO. 21-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU  
AMENDING THE LOCAL COASTAL PROGRAM LAND USE PLAN  
SIGN REGULATIONS (LOCAL COASTAL PROGRAM AMENDMENT  
NO. 19-001) AND FINDING THE ACTION 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. Findings.

A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that the sign regulations in the Malibu Local Coastal Program (LCP)—specifically, Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) of the LCP Local Implementation Plan (LIP)—violate residents' rights to speech under the First Amendment to the United States Constitution.

B. The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech.

C. On November 9, 2020, the City Council adopted Resolution No. 20-60, initiating a Local Coastal Program Amendment (LCPA), to consider the challenged provisions of the LIP in light of private property owners' constitutionally protected rights, as recognized in the California Coastal Act, and to determine if amendments to the Malibu LCP are necessary.

D. City Council Resolution No. 20-60 also directed the Planning Commission to schedule a public hearing on the proposed amendment in accordance with the requirements of LIP Chapter 19.

E. On February 18, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation in the City of Malibu.

F. On March 15, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 20-001, at which time it reviewed and considered the Commission Agenda Report, public testimony, and related information in the record, and adopted Planning Commission Resolution No. 21-22, recommending that the City Council adopt LCPA No. 20-001, which includes amendments to both the LIP and the LCP Land Use Plan (LUP).

G. On March 25, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu, stating that the City Council would hold a public hearing on April 15, 2021 to consider the proposed amendments.

H. On April 12, 2021, the City Council held a duly noticed public hearing on LCPA No. 20-001, including Resolution No. 21-16 and Ordinance No. 483, and reviewed and considered the staff report, written reports, public testimony, and other information in the record.

**Exhibit 4**  
**City LCPA Final Resolution and Final Ordinance**  
**LCP-4-MAL-21-0049-1-Part B (Signs)**

SECTION 2. Local Coastal Program Amendment No. 20-001

Pursuant to Section 19.5(A) of the Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the LCP Land Use Plan (LUP) is amended as follows:

A. Section 2.80 of the LUP is hereby amended to read as follows:

“In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed.”

B. Section 2.81 of the LUP is hereby amended to read as follows:

“No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit.”

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that LCPA No. 20-001 meets the requirements of, and is in conformance with, the LCP and the policies of Chapter 3 of the California Coastal Act (the Act) as follows:

A. Section 30210 of Chapter 3 of the Act requires the State to advance the public right of access to coastal resources, including through local coastal programs, in a manner consistent with the rights of private property owners.

B. As relevant here, the Legislature’s statement of goals in Section 30001.5(c) of the Act also declares an intent to maximize public access to the coast “consistent with . . . constitutionally protected rights of private property owners.”

C. Chapter 2 incorporates the Act’s public access policies, including Section 30210, as qualified by a concern to protect property owners’ constitutional rights.

D. Section 2.80 and Section 2.81 of the LUP contain restrictions on property owners’ right to post signs on private property that are substantially similar to the restriction in LIP section 3.15.3(X), and removing these restrictions is not inconsistent with the LCP or with Chapter 3 of the Act.

SECTION 4. Environmental Review.

The City Council has analyzed the project proposal described herein and makes the following findings. 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 thus does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission before it takes effect.

SECTION 5. Approval.

Subject to the contingency set forth in Section 7, the City Council hereby adopts the amendments to the LUP in this Resolution as part of LCPA No. 20-001.

SECTION 6. Submittal to California Coastal Commission.

Pursuant to Section 19.7.1 of the LIP, the City Council hereby directs the City Planning Director to submit this Resolution as part of LCPA No. 20-001 for certification by the California Coastal Commission.

SECTION 7. Effectiveness.

As part of LCPA No. 20-001, this Resolution shall become effective only upon certification by the California Coastal Commission.

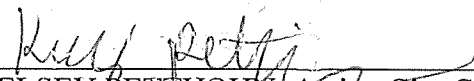
SECTION 8. Certification.

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 12<sup>th</sup> day of April 2021.

  
\_\_\_\_\_  
MIKKE PIERSON, Mayor

ATTEST:

  
\_\_\_\_\_  
KELSEY PETRIJOHN, Acting City Clerk  
(seal)

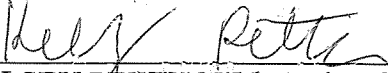
APPROVED AS TO FORM:

  
\_\_\_\_\_  
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. 21-16 was passed and adopted by the City Council of the City of Malibu at the Regular meeting thereof held on the 12<sup>th</sup> day of April 2021 by the following vote:

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

  
\_\_\_\_\_  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

ORDINANCE NO. 483

AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SIGN REGULATIONS AS PART OF LOCAL COASTAL PROGRAM AMENDMENT NO. 21-001 AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Findings.

A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that the sign regulations in the Malibu Local Coastal Program (LCP)—specifically, Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) of the LCP Local Implementation Plan (LIP)—violate residents’ rights to speech under the First Amendment to the United States Constitution.

B. The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech.

C. On November 9, 2020, the City Council adopted Resolution No. 20-60, initiating a Local Coastal Program Amendment (LCPA), to consider the challenged provisions of the LIP in light of private property owners’ constitutionally protected rights, as recognized in the California Coastal Act, and to determine if amendments to the Malibu LCP are necessary.

D. City Council Resolution No. 20-60 also directed the Planning Commission to schedule a public hearing on the proposed amendment in accordance with the requirements of LIP Chapter 19.

E. On February 18, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation in the City of Malibu.

F. On March 15, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 20-001, at which time it reviewed and considered the Commission Agenda Report, public testimony, and related information in the record, and adopted Planning Commission Resolution No. 21-22, recommending that the City Council adopt LCPA No. 20-001, which includes amendments to both the LIP and the LCP Land Use Plan (LUP).

G. On March 25, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu, stating that the City Council would hold a public hearing on April 15, 2021 to consider the proposed amendments.

H. On April 15, 2021, the City Council held a duly noticed public hearing on LCPA No. 20-001, including Resolution No. 21-16 and Ordinance No. 483, and reviewed and considered the staff report, written reports, public testimony, and other information in the record.

SECTION 2. Local Coastal Program Amendment.

Pursuant to Section 19.5(B) of the Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the LIP is amended as follows:

- A. Subsection (X) of Section 3.15.3 of the LIP is hereby repealed and will be marked as such: “[Repealed]”.
- B. Paragraphs 3, 5, and 9 of Subsection (C) of Section 3.15.4 of the LIP are hereby repealed and will be marked as such: “[Repealed]”.

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that LCPA No. 20-001 meets the requirements of, and is in conformance with, the LCP and the policies of Chapter 3 of the California Coastal Act (the Act) as follows:

- A. Section 30210 of Chapter 3 of the Act requires the State to advance the public right of access to coastal resources, including through local coastal programs, in a manner consistent with the rights of private property owners.
- B. As relevant here, the Legislature’s statement of goals in Section 30001.5(c) of the Act also declares an intent to maximize public access to the coast “consistent with . . . constitutionally protected rights of private property owners.”
- C. Chapter 2 of the Malibu LUP incorporates the Act’s public access policies, including Section 30210, as qualified by a concern to protect property owners’ constitutional rights.
- D. LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of LIP Section 3.15.4(C) restrict property owners’ right to post signs on private property, and removing these sections is not inconsistent with the LCP or with Chapter 3 of the Act.

SECTION 4. Environmental Review.

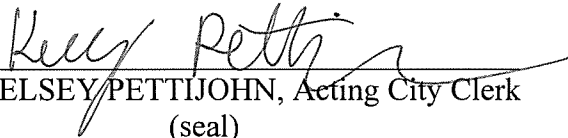
The City Council has analyzed the project proposal described herein and makes the following findings. Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA, and thus does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission before it takes effect.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts the amendments to the LIP in this Ordinance as part of LCPA No. 20-001.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 483 was passed and adopted at the Regular City Council meeting of April 26, 2021, by the following vote:

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

  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

SECTION 6. Submittal to California Coastal Commission.

Pursuant to Section 19.7.1 of the LIP, the City Council hereby directs the City Planning Director to submit this Ordinance as part of LCPA No. 20-001 for certification by the California Coastal Commission.

SECTION 7. Severability.


Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 8. Effectiveness.


As part of LCPA No. 20-001, this Ordinance shall become effective only upon certification by the California Coastal Commission.

SECTION 9. The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this 26<sup>th</sup> day of April 2021,

  
\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

  
\_\_\_\_\_  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

Date: 5/21/21

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.