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W10a

DATE: February 29, 2024

TO: Commissioners and Interested Persons

FROM: Steve Hudson, District Director
Barbara Carey, District Manager

SUBJECT: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0049-1-Part B (Sign Regulations) for March 13, 2024 Commission Meeting

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SUMMARY OF STAFF RECOMMENDATION

The City of Malibu's ("City") proposed Local Coastal Program (LCP) Amendment No. LCP-4-MAL-21-0049-1-Part B consists of changes to the both the Land Use Plan (LUP) and the Local Implementation Plan (LIP) portions of its certified LCP to delete policies and provisions prohibiting certain types of signs and requiring the removal of a specific group of signs. The full text of the City's proposed amendment is included as Exhibit 1 of this report. Staff recommends, first, that the Commission, after public hearing, **deny** the proposed LUP amendment as submitted and **approve** the proposed LUP amendment subject to suggested modifications. The modifications are necessary to ensure that the proposed LUP amendment is consistent with the Chapter 3 policies of the Coastal Act. Staff further recommends that the Commission, after public hearing, **deny** the proposed LIP amendment as submitted and **approve** that proposed amendment with suggested modifications as well. The modifications are necessary to ensure that the proposed LIP amendment conforms with, and is adequate to carry out, the provisions of the certified LUP, as amended. The motions to accomplish these recommendations are found on Pages 6-9 of this staff report.

The City LCPA staff report states that the amendment was initiated in November 2020 in response to the lawsuit *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu* filed in October 2020, alleging that LIP Section 3.15.3(X) is an unconstitutional regulation of sign content (and that LIP Sections 3.15.4(C) (subparagraphs 3, 5, and 9)) require broadly subjective determinations and are an unconstitutional prior restraint on speech.

Staff recommends four modifications to the proposed LCPA. Given that the subject LUP policy and three LIP provisions contain very similar wording, the suggested modifications do too. Following is the existing certified wording the LCPA proposes to delete from LUP Policy 2.81:

> **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.~~

This policy is meant to apply to two different types of signs that can each impact public access. The first case ("signs which purport to identify the boundary between state tidelands and private property") is meant to address the issue of signs that contain inaccurate or false claims about the boundary between private property and lands to which the public has the right of access (public trust lands and lateral public access easements). For instance, a sign that purports to identify a boundary between private and public property on a beach as a fixed line would not be accurate (absent a boundary agreement between the property owner and the State Lands Commission or a fixed boundary adjudicated by a court of law) because the boundary is in fact ambulatory, being located where the plane of mean high water intersects with the land, and thus changing both with sea level and with the changes in beach profiles. *See Lechuza Villas West v. Coastal Commission* (1997), 60 Cal.App.4th 218. Similarly, a sign that does not acknowledge an existing vertical or lateral public access easement or deed restriction affecting the private property portion of a beachfront lot would also be inaccurate. The second case ("signs… which indicate that public access to state tidelands or public lateral access easement areas is restricted shall not be permitted) relates to signs that don't identify a boundary but indicate falsely or inaccurately that public access is not available or subject to restrictions.

Suggested Modification 1 revises the language of LUP Policy 2.81 to be more clear and specific. The policy, as modified, requires that signs do not restrict public access to lands where the public has a right of access. This can include state tidelands or private property where there is an existing vertical or lateral public access easement or deed restriction. The requirement means that signs cannot state that there is a restriction to public access where none exists. The State has a compelling interest in ensuring that speech is not used to mislead the public by denying the existence of existing public rights. The policy, as modified, also details requirements for signs that are intended to identify a boundary between lands where the public has a right of access and private property where the public has no right of access. Such signs are required to be accurate and not misleading, including that if a boundary is ambulatory, that fact along with the existence and nature of the public rights must be clearly conveyed. Again, the State has a compelling interest in ensuring that such information is not conveyed in a manner that is inaccurate and falsely denies the public the exercise of their legal rights.

The requirements of Policy 2.81, as modified by **Suggested Modification 1** are written as standards that a proposed sign needs to meet rather than a prohibition of a sign that doesn't meet the standard. This is a subtle difference but one that makes clear that the purpose and impact of these provisions is not to prohibit signage or prevent speech, but only to ensure that it is not misused in a manner that is false and results in a denial of public rights. In short, there is a path forward to CDP approval for signs that avoid unacceptable impacts to legitimate public access rights and recreational opportunities by

conforming to the requirements of the LCP. Further, modifying Policy 2.81 in this way will provide the City decision maker, general public, and CDP applicants with clarity on what signs can be approved.

The City's proposed deletion of LIP Section 3.15.3(X) from the list of prohibited signs is appropriate when coupled with the addition of a new criterion for review of signs as a new LIP Section 3.15.4 (C)(12). The addition of this section is required by **Suggested Modification 2**.

It is necessary to make changes to LIP Section 3.15.6 (B)(3) to ensure internal LCP consistency (even though the LCPA proposed no change to this section). **Suggested Modification 3** modifies sign requirements and retains the certified section's inclusion of trails and parklands as lands where the public's right of access cannot be restricted. Finally, **Suggested Modification No. 4** requires changes to the sign requirements in LIP Section 12.9(D) to again ensure internal LCP consistency (even though the LCPA proposed no change here).

The LCPA, as suggested to be modified, will provide a clear, objective policy and development standard basis for the City's review of sign CDP applications. So, staff recommends that the Commission find that the LUP amendment, only if modified as suggested, will meet the requirements of, and be in conformity with, the access and recreation policies of Chapter 3 of the Coastal Act; and the LIP amendment, only if modified as suggested, conforms with, and is adequate to carry out, the access and recreation policies of the certified Land Use Plan, as amended.

The standard of review for the changes to the Land Use Plan is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the Local Implementation Plan is whether the amendment conforms with and is adequate to carry out the provisions of the Land Use Plan portion of the certified City of Malibu LCP as amended.

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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 local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter… (Section 30513)
>
> …The Commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out together with its reasons for the action taken… (Section 30513)
>
> The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director... (Section 30513)
>
> Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513… (Section 30514(b))

Pursuant to Section 30512(c) and 30514(b), the standard of review that the Commission utilizes in reviewing the adequacy of the proposed amendment to the City's certified land use plan (LUP) is whether the proposed amendment is consistent with, and meets the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the City's certified local implementation plan (LIP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the LUP portion of the City's certified local coastal program (LCP).

B. Procedural Requirements

If the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City Council, and the LCP amendment is not effective, pursuant to Section 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City Council's acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final when the Executive Director reports the determination that the local government's action is legally adequate to the Commission at its next regularly scheduled public meeting. If the City Council does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective.

C. Public Participation

Section 30503 of the Coastal Act requires public input in the 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 LAND USE PLAN AMENDMENT AS SUBMITTED

MOTION I:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-21-0049-1-Part B 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 Land Use Plan amendment as submitted and the 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 City of Malibu Land Use Plan Amendment No. LCP-4-MAL-21-0049-1-Part B as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the amendment 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 amendment 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 amendment as submitted.

B. CERTIFICATION OF THE LAND USE PLAN AMENDMENT IF MODIFIED

MOTION II:

I move that the Commission certify Land Use Plan Amendment No. LCP-4-MAL-21-0049-1-Part B 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 SUGGESTER MODIFICATIONS:

The Commission hereby **certifies** the City of Malibu Land Use Plan Amendment No. **LCP-4-MAL-21-0049-1-Part B**, if modified as suggested, and adopts the findings set forth below on the grounds that the 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. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS FOR THE LOCAL IMPLEMENTATION PLAN AMENDMENT

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

A. DENIAL OF THE LOCAL IMPLEMENTATION PLAN AS SUBMITTED

MOTION I:

I move that the Commission reject Local Implementation Plan Amendment No. LCP-4-MAL-21-0049-1-Part B as submitted by the City of Malibu.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **YES** vote. Passage of this motion will result in denial of the Implementation Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY AS SUBMITTED:

The Commission hereby **denies** certification of the Local Implementation Plan Amendment No. LCP-4-MAL-21-0049-1-Part B as submitted by the City of Malibu and adopts the findings set forth below on the grounds that the Local Implementation Plan Amendment, as submitted, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan, as amended. Certification of the Local Implementation Plan Amendment 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 local implementation plan amendment as submitted.

B. APPROVAL OF THE LOCAL IMPLEMENTATION PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

MOTION II:

I move that the Commission certify Local Implementation Plan Amendment No. LCP-4-MAL-21-0049-1-Part B 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

local implementation plan 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 Commissioners present.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby **certifies** the Local Implementation Plan Amendment No. LCP-LCP-4-MAL-21-0049-1-Part B for the City of Malibu, if modified as suggested, and adopts the findings set forth below on the grounds that the local implementation plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of the Land Use Plan as amended. Certification of the local implementation 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 the 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 local implementation plan amendment may have on the environment.

IV. SUGGESTED MODIFICATIONS ON THE LAND USE PLAN AMENDMENT

The Commission finds and suggests that the following **suggested modification** to the proposed LUP amendment is necessary to ensure the LUP is consistent with the Coastal Act. Existing language of the certified Local Implementation Plan is shown in straight type. Language proposed to be deleted by the City of Malibu in this amendment is shown as ~~strikethrough~~. The Commission's additions are double underlined, and language the Commission is proposing be deleted is shown in ~~double strikethrough~~.

Suggested Modification No. 1

LUP Policy 2.81 shall be modified 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.~~ Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

V. SUGGESTED MODIFICATIONS ON THE LOCAL IMPLEMENTATION PLAN AMENDMENT

The Commission finds and **suggests three modifications** to the proposed LIP amendment to ensure consistency with the LUP, as amended, as shown below. Existing language of the certified Local Implementation Plan is shown in straight type. Language proposed to be deleted by the City of Malibu in this amendment is shown as ~~strikethrough~~. Language recommended by the Commission to be inserted is shown in double underlined. Language recommended by the Commission to be deleted is shown in ~~double strikethrough~~.

Suggested Modification No. 2

LIP Section 3.15.4 (C) Criteria shall be modified as follows to add a new subpart 12:

> 12. Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

Suggested Modification No. 3

LIP Section 3.15.6 (B)(3) shall be modified as follows:

> 3. ~~Any sign which purport to restrict public access to State tidelands or public vertical and lateral easement areas, trails or parklands or to identify the boundary between State tidelands and private property shall not be permitted.~~ Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, deed restricted areas that grant public access, trails, or parklands). Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

Suggested Modification No. 4

LIP Section 12.9 (D) shall be modified as follows:

> D. No signs shall be posted on a beachfront 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 or vertical access easement areas is restricted shall not be permitted.~~ Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access). Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

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

The following findings support the Commission's denial of the proposed Land Use Plan and Local Implementation Plan amendment as submitted, and approval of the Land Use Plan and Local Implementation Plan Amendment if modified as suggested (detailed in Sections IV. and V. Suggested Modifications above).

The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The City of Malibu's ("City") proposed Local Coastal Program (LCP) Amendment No. LCP-4-MAL-21-0049-1-Part B consists of changes to both the Land Use Plan (LUP) and the Local Implementation Plan (LIP) portions of its certified LCP to delete or modify policies and provisions regarding signs. The proposed amendment would delete a portion of two LUP policies and delete subparts of two LIP sections that the City concluded would constitute an unconstitutional regulation of the content of signs. The full text of the City's proposed amendment is included as Exhibit 1 of this report.

The City of Malibu submitted the subject LCP Amendment (LCPA) to the Commission on July 7, 2021, and the submittal was determined to be incomplete. After receiving additional information from the City, the amendment submittal was deemed complete and filed on November 15, 2022. At its February 2023 meeting, the Commission extended the deadline for action on this Part B of the LCP amendment submittal for a period not to

exceed one year from the original deadline of March 29, 2023.

The City LCPA staff report states that the amendment was initiated in November 2020 in response to the lawsuit *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu ("Seider v. City of Malibu")* filed in October 2020, alleging that LIP Section 3.15.3(X) is an unconstitutional regulation of sign content (and that LIP Sections 3.15.4(C) (subparagraphs 3, 5, and 9)) require broadly subjective determinations and are an unconstitutional prior restraint on speech. That litigation is described in more detail below.

The City Council adopted Resolution 21-16 and Ordinance 41-83 on April 12, 2021, to approve the LUP and LIP amendments. In each, the City made the general finding that: "The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech".

Additionally, the City Council adopted the following Local Coastal Program Amendment findings in support of its action on the LUP amendment (and substantially the same findings for the LIP amendment):

> 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.

In addition to the staff report, resolution and ordinance, the City submitted a Coastal Act Consistency Analysis for the LCPA on October 20, 2022.

Related City of Malibu Permit History[1]

In 2020, Dennis Seider contacted Bonnie Blue, the City Planning Manager at that time, to inquire about obtaining CDP approval for a sign that would say, as Mr. Seider put it: "…something like "PRIVATE PROPERTY FROM THIS SIGN __ FEET SEAWARD AFTER

[1] The discussions between Mr. Seider and City staff noted in this section were detailed in the *Seider v. City of Malibu* complaint. Commission staff were not a party to any of the discussions.

WHICH THE PUBLIC HAS A LATERAL ACCESS ALONG THE SHORE or something similar that is unambiguous and is still useful to the beach going public". The Planning Manager replied that: "[a]ccording to the LCP, a sign like this is not allowed. I've included the code section below. If you wanted to apply anyway, a CDP would be needed." The cited code section was LIP Section 3.15(X).

Mr. Seider considered submitting a CDP application to the City, and he and Ms. Blue exchanged additional email correspondence about the application process. He did not ultimately apply for a CDP to place a sign on his property. He stated that he was unwilling to do so because the City's Uniform Application requires that an applicant sign an indemnification clause that states that:

> The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees, and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

Mr. Seider refused to agree to this clause but was informed by the Planning Manager that an application could not be accepted without the agreement. As such, the Seiders did not apply to the City for a CDP to allow a beachfront sign.

Staff notes that the City staff provided Mr. Seider with City staff's perspective on the correct interpretation of LIP Section 3.15.3(X) with regard to a sign idea without having the specific information that would otherwise be provided in a CDP application. The Seiders did not apply for a CDP, so no analysis or recommendation was carried out and no decision was made by the City. As such, it remains unknown how the City decision-making body would have interpreted the policies and provisions in question or applied them to a specific proposal, or whether, had the City found the proposal to be unapprovable as submitted, it could have required feasible alternatives or mitigation measures to achieve consistency of the proposed sign with the LCP.

Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu

In October 2020, the Seiders filed a complaint in Federal District Court against the City challenging LIP Section 3.15.3(X) and LIP Sections 3.15.4(C) (subparagraphs 3, 5, and 9) as unconstitutional, alleging that LIP Section 3.15.3(X) is an unconstitutional regulation of sign content and that LIP Sections 3.15.4(C) (3, 5, and 9) require broadly subjective determinations and are an unconstitutional prior restraint on speech. Further, the complaint alleges that the City's indemnification clause substantially burdens the Seider's free speech rights because they cannot apply for a sign CDP without agreeing to incur an unknown liability.

Specifically, the complaint [*Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu ("Seider v. City of Malibu")]* includes five claims: (1) violation of the First Amendment, on the basis that Section 3.15.3(X) of Malibu's LIP is a content based speech restriction; (2) violation of the First Amendment, on the basis that Section 3.15.4(C) of Malibu's LIP is an unconstitutional prior restraint on speech; (3) unconstitutional condition imposed by the permit application's indemnification clause; (4) unconstitutional infringement on Plaintiffs' free speech rights imposed by the permit application's indemnification clause; and (5) ultra vires (if the LIP does not prohibit the Seider's potential signs, then the City acted outside its authority).

As is explained above, the City indicated that it began its efforts related to this LCPA in response to that litigation.

B. Malibu LCP Background

The LCP was adopted by the Commission in 2002. Prior to that time, the Commission had CDP authority and primary responsibility to enforce the Coastal Act within the City. In the period leading up to the certification of the LCP, the Commission was aware of numerous unauthorized postings of signs illegally attempting to limit, or erroneously indicating restrictions on, public access that was legally allowed on beachfront private properties in the Malibu area, for example as a result of a public access easement. The Commission routinely conditioned CDPs for new development on beachfront parcels to prohibit the placement of such false or misleading signs. The LCP includes policies and provisions (including those that are part of the subject LCPA) that establish standards for signs in order to prohibit such false statements and protect public access and recreation, as well as to protect visual resources.

In certifying the LCP, the Commission made the following findings regarding public access impacts from unpermitted signs and other development:

> Public access to beaches and trails in Malibu would also be facilitated by the removal of unpermitted physical development, like signs and fences on the beach which inhibit public use of state tidelands as well as dedicated public lateral and vertical easements. Many beaches in Malibu contain numerous signs stating "Private Beach" or "Private Property". Such signs mislead and intimidate the public from legal beach access. In particular, 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. In some cases, these signs may be placed on public land. In recent permit decisions for beachfront development, the Commission has imposed a special condition which forbids the placement of any sign containing language which can be interpreted as limiting access to the public beach. In addition, existing signs, fences, or other obstacles which have been illegally placed on a beach or on state tidelands need to be identified and removed, where necessary to protect public access.

C. Public Access and Recreation

Article X, Section 4 of the California Constitution states:

> No individual or partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof.

Section 30001.5 of the Coastal Act states, in part, that:

> The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:
> …
> (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners…

The following Chapter 3 policies of the Coastal Act are applicable.

Section 30210 of the Coastal Act states:

> 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.

Section 30211 of the Coastal Act states:

> Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30214 of the Coastal Act states:

> (a) the public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
> (1) Topographic and geologic site characteristics.
> (2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

…

In addition, the following Land Use Plan (LUP) policies of the City's certified LCP are applicable in this case.

Land Use Plan Policy 2.1 states:

> The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

Land Use Plan Policy 2.2 states:

> New development shall minimize impacts to public access to and along the shoreline and inland trails…

Land Use Plan Policy 2.3 states:

> Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access when there is substantial evidence that prescriptive rights exist.

Land Use Plan Policy 2.5 states:

> New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the

> project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.

Land Use Plan Policy 2.6 states:

> Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.

Land Use Plan Policy 2.73 states:

> Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.

Upon California's admission to the Union as a sovereign state on September 9, 1850, the state became the owner of the beds of all navigable waters to hold in trust for the public (hence the names "Public Trust lands" or "sovereign lands"). As part of the Act for the Admission of the State of California into the Union, Congress included the condition that: "…all navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States…"[2] This provision has been implemented by subsequent state constitutional provisions, statutes, and judicial decisions aimed at protecting the public's right to access and use navigable waters.[3] For coastal and other tidally influenced waters, the public has the right to access and use lands waterward of the ordinary high water mark as located by the mean high tide line except where there has been fill or artificial accretion. Acceptable uses of sovereign (Public Trust) lands include but are not limited to scientific study, preservation of lands in their natural state, passive and water-related recreation, such as walking, hiking, wading, swimming, boating, etc.[4]

The protection of these public trust lands and the assurance of public access to them lies at the heart of Coastal Act policies requiring the implementation of a public access program, the minimization of impacts to access, and the provision of access, where applicable, through the regulation of development. To carry out the requirement of Section 4 of Article X of the California Constitution: "that access to the navigable waters of this State shall be always attainable for the people thereof", Coastal Act Section 30210 provides that maximum access and recreational opportunities be provided consistent with public safety, public rights, private property rights, and natural resource protection. Coastal Act Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through the enumerated means. Furthermore,

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[2] Act of Sept. 9, 1850, ch. 50, 9 Stat. 452, 453

[3] California State Lands Commission, A Legal Guide to The Public's Rights to Access And Use California's Navigable Waters, 2017

[4] https://www.slc.ca.gov/public-engagement/#pubtrust

Coastal Act Section 30212 requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects with certain exceptions such as public safety, military security, resource protection, and where adequate access exists nearby. Certain minor types of development also do not require the provision of access. Finally, Coastal Act Section 30214 provides that the implementation of the public access policies shall take into account the need to regulate the time, place, and manner of public access depending on such circumstances as topographic and geologic characteristics, the need to protect natural resources, proximity to adjacent residential uses, etc. Further, Coastal Act Section 30214 states that it is the intent of the Legislature that the public access policies of Chapter 3 be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution.

Notwithstanding the public's rights to access public trust lands, there are often impediments to reaching those lands from public roads, trails, or paths, or to passing along the shoreline. These include topography; hazardous areas; existing patterns of permitted development such as residential, commercial, or other types of structures; as well as unpermitted development. Unpermitted development that has impeded public beach access in Malibu includes: the placement of fences, gates, and other physical obstructions (such as structures, walls, trees, and landscaping); the use of private security services (including with off-road vehicle patrols) to instruct people to leave the beach; the placement of signs that restrict public access; red-curbing and placement of no parking signs that eliminate public parking that would otherwise be available to beach visitors. The placement of signs on beachfront structures which state: "Private Beach' or "Private Property" or contain any similar message prohibiting public use of the beach, while often inaccurate, have caused members of the public to believe that they do not have the right to use the shoreline. In effect, these signs have served to undermine the public's rights to use public lands that are protected by the California Constitution and the Coastal Act.

As discussed above, the public has the right to access and use lands waterward of the ordinary high water mark as located by the mean high tide line. So, a sign on a beach that states "private beach" is inaccurate because it does not acknowledge that parts of the beach are in fact not private. Similarly, a sign that purports to identify a boundary between private and public property on a beach as a fixed line would not be accurate (absent a boundary agreement between the property owner and the State Lands Commission or a fixed boundary adjudicated by a court of law) because the boundary is in fact ambulatory, being located where the plane of mean high water intersects with the land, and thus changing both with sea level and with the changes in beach profiles. *See Lechuza Villas West v. Coastal Commission* (1997), 60 Cal.App.4th 218. Similarly, a sign that does not acknowledge an existing vertical or lateral public access easement or deed restriction affecting the private property portion of a beachfront lot would also be inaccurate.

It should also be acknowledged that there are areas, including some sandy beach areas, that are fully private, in the sense that the public has no right to access them, and the

owners of such property have a right to indicate as much in a truthful way, both based on property law and free speech principles. Additionally, Coastal Act Policies 30210 and 30214 state that public access is to be implemented in a manner that respects private property rights.

The LCP as it currently exists contains many LUP policies and LIP standards that require the provision of maximum public access and protection of existing public access, including, but not limited to, the removal of unpermitted development from public trust lands, as well as the siting and design of new development so it is located as far landward as feasible, is not located on public trust lands, and does not adversely impact public access.

The public access policies and standards that are specific to signs state that signs posted on beachfront properties or on a beach must be authorized through a CDP. Additionally, signs that purport to identify the boundary between public trust lands and private property shall not be permitted. Further, signs that indicate that public access to public trust lands is restricted cannot be permitted.

Proposed Change to LUP Policy 2.80

The LCPA includes changing LUP Policy 2.80 to delete the second sentence as shown here:

> 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.~~

The City proposes to delete this part of LUP Policy 2.80 because it contains language (“purport to identify the boundary between State tidelands and private property”) that the City’s consistency analysis states regulates the content of signs. The City also proposes to delete similar language in Policy 2.81 and LIP Section 3.15.3 (X).

The Commission agrees that it is appropriate to delete the subject requirement to remove existing (at the time of LCP certification in 2002) unpermitted signs at Broad Beach, but for a different reason. The unpermitted signs in question included multiple signs and posts on the beach that detailed a purported fixed location for the MHTL. The sign posts were often within the wave uprush zone presenting a public safety hazard. These signs were removed or destroyed since that time and so the specific reference to them in Policy 2.80 is no longer needed. No modifications to the City’s proposal are suggested for LUP Policy 2.80.

Proposed Changes to LUP Policy 2.81, LIP Sections 3.15.3 (X), 3.15.6(B)(3), and 12.9(D)

The City proposes to delete the following language which comprises both the second of two sentences in LUP Policy 2.81 and the entirety of LIP Section 3.15.3 (X):

> ~~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.~~

Further, there are two other certified LIP sections [3.15.6(B)(3) and 12.9.(D)] that contain requirements similar to the LCPA proposed changes in LIP Section 3.15.3(X). The City Council did not adopt changes to these two additional sections as part of its action on the subject LCPA. City staff subsequently recognized the similarity in these two sections and requested that Commission staff consider adding suggested modifications to make these changes:

> 3.15.6 (B)(3) ~~Any sign which purport to restrict public access to State tidelands or public vertical and lateral easement areas, trails or parklands or to identify the boundary between State tidelands and private property shall not be permitted.~~
>
> 12.9 (D) No signs shall be posted on a beachfront 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 or vertical access easement areas is restricted shall not be permitted.~~

The language in these two LIP subsections is closely related to that contained in LUP Policy 2.81 and LIP Section 3.15.3(X), which the proposed LCPA would delete. The Commission agrees that in order to ensure internal LCP consistency, modifications should be suggested for LIP Sections 3.15.6(B)(3) and 12.9.(D) (although not the ones that City staff requested). In order to avoid repetition, suggested modifications to the LCPA proposed changes and these two LIP sections will be discussed together here.

As described in detail above, the City proposes the LCPA in response to the *Seider v. City of Malibu* case, in which the plaintiffs allege that LIP Section 3.15.3(X) violates residents' rights to speech under the First Amendment to the United States Constitution. The City Council found that: "The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech", although no findings were made about how this provision or LUP Policies 2.80 or 2.81 violate resident's rights or if there are feasible alternatives beside wholesale deletion of the existing policies. In approving the LCPA, the City Council found that it is consistent with the policies of the Coastal Act and the LCP, because these policies require maximum public access, consistent with the constitutionally protected rights of private property owners, citing the state's goals in Coastal Act Section 30001.5(C), Section 30210 of Chapter 3 of the Coastal Act, and LUP Chapter 2, which incorporates the Coastal Act's public access policies, including Section 30210, as qualified by a concern to protect property owners'

constitutional rights.

Additionally, the consistency analysis provided by City staff states that the proposed changes would remove language that regulates signs based on content and instead regulates, through the CDP process, beachfront signs using time, place, and manner restrictions. The analysis further states that retaining the requirements for signs on beachfront properties to obtain a CDP will allow the City to ensure that any approved sign will be located on private property and will not impact public access. The analysis states that the City's review of a sign CDP could include conditions and/or mitigation measures to avoid impacts to public access, such as locating signs inland of the MHTL, monitoring signs over time to ensure they remain on private property, and:

> … to avoid potential confusion and the perception that access is restricted on that part of the beach, the CDP could be conditioned to require the proposed sign to indicate both the area to be used only by the private property owner, as well as clearly stating the areas available for use by the public, including hours and contact information for the agency with jurisdiction over that beach area. This additional information on the sign would serve to avoid any potential adverse impacts on the right to public access by informing visitors and residents that public access is not restricted on the public beach.

Section 30210 does require that maximum public access be provided consistent with private property rights. Further, Coastal Act Section 30214 states that it is the intent of the Legislature that the public access policies be carried out in a way that balances the rights of the individual property owner with the public's constitutional right of access. This balance can be provided without restricting public access to state tidelands, or to other lands where the public has a right of access, such as public trust lands, vertical or lateral public access easements, or deed restricted areas that grant public access.

The Commission finds that the LUP amendment, as proposed, is not consistent with the access and recreation policies of the Coastal Act because deleting sign policies and standards will not ensure that maximum public access will be provided or that existing public access will be protected. As proposed, the LCPA would remove the existing LCP policies and standards that are most specific to signs. So, while the LCPA would still include the requirement that signs require a CDP, the deletion of any actual sign standards from the LCP would make it less clear how sign proposals are to be reviewed and less objective how the decision-making bodies would interpret and apply the remaining access and recreation policies and standards to sign CDP applications. The Commission also finds it is not necessary to completely delete the subject standards regarding beachfront signs to address constitutional issues regarding free speech. The Commission finds that it is necessary to instead clarify the existing policy and provisions to guide the City in its consideration of sign CDPs to ensure that both public access rights and private property rights are protected. This approach is taken in the suggested modifications.

Suggested Modifications to proposed LUP Policy 2.81, LIP Sections 3.15.3 (X), 3.15.6(B)(3), and 12.9(D)

The Commission suggests four modifications to the proposed LCPA. Given that the subject LUP policy and three LIP provisions contain similar wording, the suggested modifications do too. Following is the existing certified wording the LCPA proposes to delete from LUP Policy 2.81:

> **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.~~

This policy is meant to apply to two different types of signs that can each impact public access. The first case ("signs which purport to identify the boundary between state tidelands and private property") is addressing the issue raised by the Commission in its findings for LCP adoption: "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…". The use of the verb "purport" in this policy is important to note. Purport as a verb has the meaning of making a claim when the claim may not be true. So, this part of the policy means that a sign that includes a boundary that is false or inaccurate shall not be permitted. The second case ("signs… which indicate that public access to state tidelands or public lateral access easement areas is restricted shall not be permitted) relates to signs that don't identify a boundary but indicate falsely or inaccurately that public access is not available or subject to restrictions.

Suggested Modification 1 revises the language of LUP Policy 2.81 to be more clear and specific. As modified, the language would be as follows (the sentences are numbered for ease of reference but would not appear this way in the LCP):

1. No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit.
2. Signs shall not restrict public access to lands to which the public has a right of access (including, but not limited to, state tidelands, vertical or lateral public access easements, or deed restricted areas that grant public access).
3. Signs on beachfront properties which purport to identify the boundary between lands to which the public has a right of access and private property over which there are no such rights must be accurate and not misleading, and where such boundary is ambulatory (such as where it is defined based on the location of the MHTL) the ambulatory nature of the boundary and the existence and nature of the applicable public rights must be clearly conveyed.

The first sentence is existing certified language that the City is not proposing to alter and that will be retained in this policy. Sentence 2 requires that signs do not restrict public

access to lands where the public has a right of access. This can include state tidelands or private property where there is an existing vertical or lateral public access easement or deed restriction. The requirement means that signs cannot state that there is a restriction to public access where none exists. The State has a compelling interest in ensuring that speech is not used to mislead the public by denying the existence of existing public rights. Sentence 3 details requirements for signs that are intended to identify a boundary between lands where the public has a right of access and private property where the public has no right of access. Such signs are required to be accurate and not misleading, including that if a boundary is ambulatory, that fact along with the existence and nature of the public rights must be clearly conveyed. Again, the State has a compelling interest in ensuring that such information is not conveyed in a manner that is inaccurate and falsely denies the public the exercise of their legal rights.

Both Sentence 2 and Sentence 3 are written as standards that a proposed sign needs to meet rather than a prohibition of a sign that doesn't meet the standard. This is a subtle difference but one that makes clear that the purpose and impact of these provisions is not to prohibit signage or prevent speech, but only to ensure that it is not misused in a manner that is false and results in a denial of public rights. In short, there is a path forward to CDP approval for signs that avoid unacceptable impacts to legitimate public access rights and recreational opportunities by conforming to the requirements of the LCP. Further, modifying Policy 2.81 in this way will provide the City decision maker, general public and CDP applicants with clarity on what signs can be approved.

The City's proposed deletion of LIP Section 3.15.3(X) from the list of prohibited signs is appropriate when coupled with the addition of Sentences 2 and 3 as criteria for review of signs as a new Section 3.15.4 (C)(12). The addition of this section is required by **Suggested Modification 2**.

It is necessary to make changes to LIP Section 3.15.6 (B)(3) to ensure internal LCP consistency (even though the LCPA proposed no change to this section). **Suggested Modification 3** adds Sentences 2 and 3 and retains the certified section's inclusion of trails and parklands as lands where the public's right of access cannot be restricted. Finally, **Suggested Modification No. 4** requires changes to LIP Section 12.9(D) to again ensure internal LCP consistency (even though the LCPA proposed no change here). In this section, the certified Sentence 1 is retained and Sentences Number 2 and 3 are added.

Conclusion

The Commission finds that **Suggested Modification One (1)** is necessary to ensure that the proposed LUP amendment will ensure that maximum public access is provided consistent with the rights of private property owners, consistent with Section 30210 of the Coastal Act, and that signs will not interfere with the public's right to access the sea, consistent with Section 30211 of the Coastal Act. Further, **Suggested Modifications 2 through 4 (2-4)** are necessary to ensure that the proposed LIP amendment will conform with and be adequate to carry out the policies of the LUP, as amended. The Commission further finds that the LCPA, as suggested to be modified, provides a clear, objective

policy and development standard basis for the City's review of sign CDP applications.

With regard to the issue of the consistency of content-based sign restrictions in the LCPA, as suggested to be modified, with First Amendment rights to free speech, the Commission finds that the policy and provisions are necessary to strike the proper balance between allowing private property owners to protect their rights and ensuring that the public can access lands where they have rights of access. The Commission further finds that there is a compelling state interest in protecting public access to sovereign lands, as evidenced by the Congressional condition of statehood that "…all navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States…", and by the California Constitution that requires in Section 4 of Article X that:

> No individual or partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet estuary, or other navigable water in this State, shall be permitted… to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof.

Further, the compelling state interest is demonstrated in the Legislature's declaration of the State's goal (found in Coastal Act Section 30001.5) to "Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners…". Finally, the Commission finds that the amended LUP policy and LIP provisions with the suggested modifications are narrowly drawn to achieve the protection of public access. The purpose and impact of these provisions is not to prohibit signage or prevent speech, but only to ensure that it is not misused in a manner that is false and results in a denial of public rights.

For the reasons stated above, the Commission finds that the LUP amendment, only if modified as suggested, will meet the requirements of, and be in conformity with, the access and recreation policies of Chapter 3 of the Coastal Act; and the LIP amendment, only if modified as suggested, conforms with, and is adequate to carry out, the access and recreation policies of the certified Land Use Plan, as amended.

D. Hazards and Scenic and Visual Resources

The following Chapter 3 policies of the Coastal Act are incorporated in their entirety into the City's certified Land Use Plan.

Section 30251 of the Coastal Act states:

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

> character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 of the Coastal Act states:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
> …

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

Land Use Plan Policy 4.2 states:

> All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

Land Use Plan Policy 6.1 states:

> The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

Land Use Plan Policy 6.5 states:

> New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent…

Land Use Plan Policy 6.12 states:

> All new structures shall be sited and designed to minimize impacts to visual resources by:
> a. Ensuring visual compatibility with the character of surrounding areas.
> …

Land Use Plan Policy 6.30 states:

> Signs shall be designed and located to minimize impacts to visual resources. 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 that ensure that signs are visually compatible with surrounding areas and protect scenic views.

Land Use Plan Policy 6.31 states:

> Placement of signs other than traffic or public safety signs, utilities, or other accessory equipment that obstruct views to the ocean, beaches, parks, or other scenic areas, from public viewing areas and scenic roads shall be prohibited.

As part of the subject LCPA, the City proposes to delete subsections 3, 5, and 9 of LIP Chapter 3.15.4 (C) as follows:

> C. Criteria. The following criteria shall be used in reviewing an application for a sign permit:
>
> 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~~;
> 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~~.

The City found that these three criteria for the review of sign CDPs: “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”. *Seider v. City of Malibu* alleges that the criteria contained in subsections 3, 5, and 9 are “broadly subjective determinations” that give City officials “unbridled discretion to deny a sign CDP,” and thereby result in an unconstitutional prior restraint on speech. The LCPA staff report and findings don’t provide any detail on whether the City agrees with this allegation, but the City does propose to delete these criteria to “avoid any implementation that might infringe on residents’ constitutional rights”. Staff notes that even though the City proposes to delete these three criteria from the LIP, they remain as part of the separate Malibu Municipal Code and are therefore still part of the standard of review for non-CDP sign permits.

The Commission finds that the three criteria are arguably not overly broad in that they relate (with the possible exception of public health or welfare) to LUP policies regarding hazards and visual resources. Nonetheless, the Commission finds that these provisions may be deleted because LIP Section 3.15.4 (C)(2) will remain as part of the LCP. This criterion requires that any sign is consistent with the certified LCP. The LCP contains other policies and provisions (e.g., LUP Policies 6.30 and 6.31, LIP Sections 6.5 and 9.4) related to protecting life from hazards and visual resources that, when met, will ensure that signs do not affect public safety and will ensure visual compatibility with the character of surrounding areas. As such, no modifications are suggested for the proposed changes to LIP Section 3.15.4 (C).

For the reasons stated above, the Commission finds that the LIP amendment conforms with and is adequate to carry out the hazards and visual resource policies of the certified Land Use Plan.

E. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local governments 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 not obligated 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).

The City’s proposed LCP amendment consists of a Land Use Plan amendment and Local Implementation Plan amendment. As discussed above, the Land Use Plan amendment has been found not to be in conformance with Chapter 3 policies of the Coastal Act. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. With the incorporation of the suggested modifications, the Land Use Plan amendment is in conformity with the Coastal Act. The proposed Local Implementation Plan amendment is not in conformance with and is not adequate to carry out the Land Use Plan. With the incorporation of the Commission’s suggested modifications, the Local Implementation Plan amendment is in conformity with the Land Use Plan as amended. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the LCP amendment. If modified as suggested, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.