

Planning Interpretations and Policies

City of Malibu Planning Department

City of Malibu Planning Department
Malibu Municipal Code & Local Coastal Program
Interpretations and Policy Manual

Updated May 4, 2015

Table of Contents

Zoning Code Interpretations and Policies

Zoning Code Policies

1. Story Pole Policy
2. Substantial Conformance

Zoning Code Interpretations

1. Setback from Private Streets
2. Substantial Conformance and Revision to Approved Plans
3. Determining Setbacks
4. Response Time to Incomplete Letters
5. Off-site Alcohol Sales
6. Parking Requirements for Remodeled or Expanded Single-Family Residences
7. Vaulted Ceilings with Roofs Above 18 Feet in Height
8. Criteria for Entry Gates
9. Covered Porches Excluded from Calculations of Total Development Square Footage (TDSF) – Pending
10. Measurement of the 40 Foot Building Envelope in the La Costa Overlay District for “C” Type Lots
11. Applicable Development Standards
12. Storage Tanks
13. Landscaping Requirements
14. Conditional Use Permits – Retail Food Uses

Local Coastal Program Interpretations and Policies

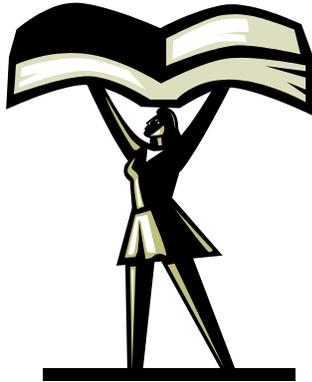
LCP Policies

1. Story Pole Policy
2. Accessory Structures
3. Remodels and Additions
4. Basement, Subterranean Garage, and Cellars

LCP Interpretations

1. Interior Remodels Where No Exterior Work to the Structure or Site, Change in Use that Increases the Intensity of the Use or Modification of a Septic/Water System
2. Vegetation Removal for Fire Protection
3. Native American Cultural Resource Manager
4. Improvements to Non-conforming Structures
5. LCP Applicability
6. Least Environmentally Damaging Alternative
7. Non-Conforming Structures
8. Biology Study Exemptions
9. Coastal Bluffs (Retracted)
10. Frontloading of Application Submittal Requirements
11. Planning Commission Review of Administrative Coastal Development Permits
12. Definition of Multi-Family Development as it Pertains to the Transfer of Development Credit
13. Measurement of the 40 Foot Building Envelope in the La Costa Overlay District for "C" Type Lots
14. Stormwater Retention
15. Treatment of Variances, Site Plan Reviews, Minor Modifications, and Coastal Development Permits
16. Ridgelines
17. Point Dume ESHA

18. Covered Porches Excluded from Calculations of Total Development Square Footage (TDSF) – Pending
19. Applicable Development Standards
20. Park Administrative Offices



Zoning Code Interpretations and Policies

City of Malibu Planning Department



City of Malibu

Planning Division

Effective Date: June 25, 2008

Story Pole Policy

Story poles are placed to demonstrate height, bulk and location of a proposed project that may potentially impact public and/or private views. The placement of story poles shall be required for all Coastal Development Permits and for certain discretionary requests associated with Administrative Plan Review applications (i.e., all projects reviewed by the Planning Manager and/or the Planning Commission).

Purpose

During review of certain discretionary projects, story poles are installed to demonstrate the height and location of proposed development. Review of the story poles ensures that permitted development is sited and designed to protect public views to and along the ocean and scenic coastal areas consistent with the Malibu Local Coastal Program and to protect private primary views in accordance with Malibu Municipal Code Section 17.40.040(A)(17).

Waiver of Requirement

In some cases, the story poles requirement may be waived by the Planning Manager where it is determined through onsite investigation, evaluation of topographic maps, photographic evidence, or by other means that there is no possibility that the proposed development will create or contribute to adverse impacts upon Scenic Areas.

Procedure

Prior to installation of story poles, the applicant shall consult with the case planner to prepare the story pole plan. The plan shall be on a minimum of an 8.5-inch by 11-inch reduction of the roof plan showing all locations at which story poles will be placed. The story pole plan shall be approved by the case planner prior to story pole placement.

Typically, story poles may not be placed at a property until the case planner confirms that all reviewing departments have completed their reviews. In some cases, the case planner may allow early installation of story poles if view issues are anticipated.

Prior to notification of a public hearing, or 10 days prior to the mailing of the public notice of application (for those projects not requiring a hearing), story poles shall be placed on the site unless waived by the Planning Manager.

Location

The number of story poles required will vary with each specific project. The case planner shall review proposed story pole location to ensure that the plan adequately demonstrates the proposed height, mass, and bulk of the portion of the project under review. Story poles showing roof overhangs, eaves, chimneys, balconies, decks, patios, and accessory structures may be required. The plan should be kept as simple as possible to accurately reflect the proposal and to minimize visual clutter in potential view areas.

Materials

The material of the story pole shall be indicated on the story pole plan. Story poles shall be constructed of 2-inch by 4-inch lumber or other sturdy building material (PVC pipe is not acceptable). Story poles should be

braced at the base by use of guy wires or supporting beams to ensure that they will withstand weather and will remain correctly positioned. The guy wires should be flagged for safety purposes.

Story Pole Plan Requirements

The story pole plan is subject to the following criteria:

Plan Scale – The story pole plan shall be at the same scale as the roof plan.

Indication of Story Pole Height – The elevations of the height of each story pole and the natural and finished grades shall be indicated on the plans. If requested by the case planner, the applicant shall also provide a detail on the plans showing the elevation of a typical story pole.

Markings – The story pole plan shall include the following plan note:

“The top one foot of the story poles shall be painted with a clearly visible black paint. Markings shall also be made at 18 feet above finished or natural grade, whichever results in a lower building height, and at one foot increments above 18 feet. Bright orange construction mesh approximately one foot in width shall be placed connecting poles to show all proposed roof and ridgelines.”

Safety Provisions – All story poles shall be placed to ensure the health, safety and general welfare of the public. The story pole plan shall include the following plan note:

“If at any time the story poles become unsafe, they shall be repaired and reset immediately. The story poles shall be removed immediately if determined by the City to be a public safety risk.”

Waiver of Risk – The applicant must sign and submit a waiver absolving the City of any liability associated with construction of, or damage by the story poles. This waiver will be provided by the case planner and shall be copied on the story pole plan. The applicant shall not install the story poles until the waiver form is submitted to the City.

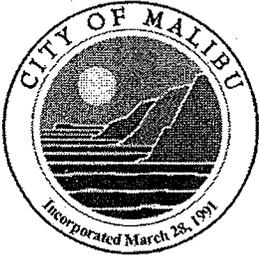
Certification

For projects including construction of a new, single-family residence, a new commercial building, projects with a primary view issue, or those which are located in a scenic area; certification of the story poles is required. Once the story poles are placed, a licensed surveyor, civil engineer, or architect¹ must certify that the story poles have been placed in accordance with the approved story pole plan. The property owner may not certify the story pole height or position. After receiving the certification, the case planner will visit the site to verify and photograph the story poles. Public notification shall not begin until certification is complete and the case planner verifies the placement of the story poles.

Removal

The story poles shall be removed immediately if determined by the City to be a public safety risk or at the discretion of the Planning Manager. Story poles shall remain in place for the duration of the approval process and shall be removed within seven calendar days after the final appeal period expires, unless other arrangements are made with the Planning Division.

¹ Story poles certified by an engineer or an architect may require a follow-up certification by a licensed surveyor if the placement of the poles is challenged.



City of Malibu

Zoning Code Policy 2: Substantial Conformance

It is common for applicants to request revisions to approved plans. The Planning Manager may authorize minor changes to the approved plans or any of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions. In cases where the Planning Manager cannot find a revision in substantial conformance with the previously approved plans, a new application or supplemental information will be required.

Purpose

This policy clarifies the threshold for substantial conformance and indicates how much change can occur for a revision to be considered in substantial conformance and not require a new application.

Procedure

Generally, a substantial conformance finding may be made if no project condition, representation, feature, facility, or amenity is changed or deleted that had been considered essential to the project's design, quality, safety, or function. Conversely, a revision to a previously approved project shall be required if any project condition, representation, feature, facility, or amenity is changed or deleted that had been considered essential to the project's design, quality, safety, or function.

More specifically, revisions to previously approved plans may be considered, subject to the Planning Manager's review and approval, under the following conditions:

- The proposed changes do not result in expansion of the building footprint beyond that originally approved.
- The proposed changes do not result in expansion of the building envelope beyond that originally approved (NOTE: This aspect is particularly important when considering portions of structures over 18 feet in height that were previously reviewed by the public and approved with regards to view impacts).

If the proposal does not meet these criteria, then the applicant will generally be required to submit a new application or supplemental information. However, even if the proposed revision

meets these criteria, under unusual circumstances, revisions that result in reductions in building footprint and/or envelope characteristics may not be considered in substantial conformance. Project approvals must remain current and valid in order to obtain a substantial conformance determination. Specific situations may require relaxation of the criteria and may be reviewed on a case-by-case basis by the Planning Manager to determine if the proposed revision meets the substantial conformance rule.

The following examples are provided.

Substantial Conformity

- Additional floor area is proposed inside of the previously approved footprint and envelope
- A flat roof under 18 feet is proposed, instead of the previously approved pitched roof
- A condition imposed by the City or other public agency requires a minor change in the location of a structure but does not result in other changes affecting zoning conformance (i.e., no increase in envelope above 18 feet in height, no encroachment into setbacks or ESHA, etc.)
- A change in the architectural treatment or design scheme of a structure is proposed, such as exterior materials or colors in conformance with the LCP, that does not change the structure's envelope or footprint
- Minor changes to landscaping, small fences and walls, and/or hardscape are proposed that do not affect conformance to the Zoning Ordinance or the LCP
- Minor changes to grading plans are proposed that reduce the amount of grading and/or do not substantially change the location of grading or the height of cut and fill slopes.
- The number of plumbing fixtures and/or bathrooms are proposed to be redistributed or reduced within the structure

New Application or Supplemental Information Required

- Additional area is proposed outside of the previously approved footprint or envelope
- A flat roof over 18 feet is proposed, instead of and outside of the previously approved pitched roof envelope
- A condition imposed by the City or other public agency requires a change in the location of a structure that results in other changes affecting zoning conformance (i.e., additional or changed envelope above 18 feet in height, encroaching or further encroaching into setbacks or ESHA, etc.)
- A change in the architectural treatment of a structure is proposed, like new tower elements over 18 feet in height, that does change the structure's envelope and footprint
- Major changes to landscaping, fences and walls, and/or hardscape are proposed that affect conformance to the Zoning Ordinance or the LCP, including new landscaping over 18 feet in height, fences, walls, and/or hardscape in ESHA, etc.
- Major changes to grading are proposed, such as substantial increases in exempt or non-exempt grading, changes in location of cut and/or fill, and/or changes to the height of cut and fill slopes
- Additional plumbing fixtures and/or bathrooms are proposed, requiring upgrading of the on-site wastewater treatment system

Substantial Conformity

New Application or Supplemental Information Required

- Small basement additions under approved structures in compliance with all other relevant standards, including basement size requirements, that do not result in geologic instability or other potential impacts
- Large basement additions and/or basement additions outside of the footprint of the approved structure and/or basement additions that result in potentially significant impacts in regards to geologic stability or other environmental issue areas
- Upgrades to basements, foundations, and caissons to meet current safety standards
- Substantial alterations to basements, foundations, and/or caissons not necessary to meet current safety standards

For purposes of this interpretation, the following definitions are generally applicable:

Building Footprint – the location of the exterior walls of a structure at the foundation level.

Building Envelope – the buildable portion of a specific site that takes into consideration the planned setbacks, volume, and overall three-dimensional characteristics of a structure.

Fees may be required for substantial conformance determinations. Applicants will be required to return previously stamped plans to the Planning Division when seeking substantial conformance determinations.

Justification

The Planning Manager retains the authority to review proposed revisions for substantial conformance with previously approved plans. Under limited circumstances, changes may occur to a proposed project may be appropriately evaluated within the context of the original planning approval. Such a scenario may be particularly relevant when the building plan check process results in minor changes to a project. However, building footprint and envelope are the primary characteristics that are analyzed by the City when approving projects. Therefore, changes to these characteristics after an initial approval may require additional review, consultation with other agencies, and/or public noticing.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 1

Amendment Information: April 2005,
Staff _____
(Date, Interpreting Body)

Original Planning Manager: Ewing

Original Date: February 1998

Original Interpreting Body: Planning Commission

Code Section: 17.40

Title: Setbacks from private streets

Issue:

Many properties have frontages on private streets or accessways, which technically are part of the subject properties. Setbacks generally are measured from the parcel line, not the edge of the easement.

Interpretation:

When measuring setbacks, certain private streets and accessways shall be excluded from the setback measurement, similar to setbacks from public streets. When measuring the required yard from a private street or accessway, the setback shall be the distance between the edge of the road easement (not the parcel line) and a building. An accessway (easement) or private street can be regarded as a driveway when the existing accessway is 20 feet or less in width, unimproved to road standards, is a dead-end, non-through lane, the underlying road is easement issued by the County, and is not or unlikely to be accepted by the City.

Justification:

Any private street or accessway recorded in an easement wider than 20 feet is anticipated to be developed to its ultimate width. Therefore, setbacks should be measured from the edge of the easement, rather than the property boundary, to encourage consistent setbacks and neighborhood character.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: <u>2</u>	Amendment Information: <u>N/A</u> <i>(Date, Interpreting Body)</i>
-------------------------	--

Original Planning Manager: Teruya **Original Date:** April 2005
Original Interpreting Body: Staff

Code Section: <u>N/A</u>
Title: <u>Substantial Conformance and Revisions to Approved Plans</u>

Issue:

It is common for applicants to request revisions to approved plans. The Planning Manager may authorize minor changes to the approved plans or any of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions. What is the threshold for substantial conformance? How much change can occur for a revision to be considered in substantial conformance and not require a new application?

Interpretation:

Revisions to approved plans generally may be considered, subject to the Planning Manager's review and approval, under the following conditions:

- The proposed changes do not result in expansion of the building footprint beyond that originally approved.
- The proposed changes do not result in expansion of the building envelope beyond that originally approved (NOTE: This aspect is particularly important when considering portions of structures over 18 feet in height that were previously reviewed by the public and approved with regards to view impacts).

If the proposal does not meet these criteria, then the applicant will generally be required to submit a new application. Under unusual circumstances, revisions that result in reductions in building footprint and/or envelope characteristics may not be considered in substantial conformance. Specific situations may require relaxation of the criteria and may be reviewed on a case-by-case basis by the Planning Manager to determine if the proposed revision meets the substantial conformance rule.

For purposes of this interpretation, the following definitions are applicable:

Building Footprint – the location of the exterior walls of a structure at the foundation level.

Building Envelope – the buildable portion of a specific site that takes into consideration the planned setbacks, volume, and overall three-dimensional characteristics of a structure.

Justification:

The Planning Manager retains the authority to review proposed revisions for substantial conformance with previously approved plans. Building footprint and envelope are the primary characteristics that are analyzed by the City when approving projects. Changes to these characteristics after an initial approval may require additional review, consultation with other agencies, and/or public noticing.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 3

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: N/A

Original Date: N/A

Original Interpreting Body: N/A

Code Section: 17.40

Title: Determining Setbacks

Issue:

The following setback standards are specified for non-beachfront lots:

- The front yard setback shall be at least 20 percent of the lot depth or 65 feet, whichever is less.
- The rear yard setback shall be at least 15 percent of the lot depth or 15 feet, whichever is greater.
- The side yard setbacks shall be cumulatively at least 25 percent of the lot width; in no event, shall a single side yard setback be less than 10 percent of the lot width or five feet, whichever is greater.

The following standards are specified for beachfront lots:

- The front yard setback shall be 20 feet maximum or the average of the two immediate neighbors, whichever is less.
- The rear yard setback shall be determined by the stringline rule.
- The side yard setback shall be 10 percent of the lot width, and shall be three feet minimum and five feet maximum.

As indicated, certain setback standards are dependent in the calculation of either lot depth or width. The Code does not provide a definition for these terms.

Interpretation:

The following steps and examples will assist in determining the lot depth and width and thus the minimum setbacks for most properties in Malibu.

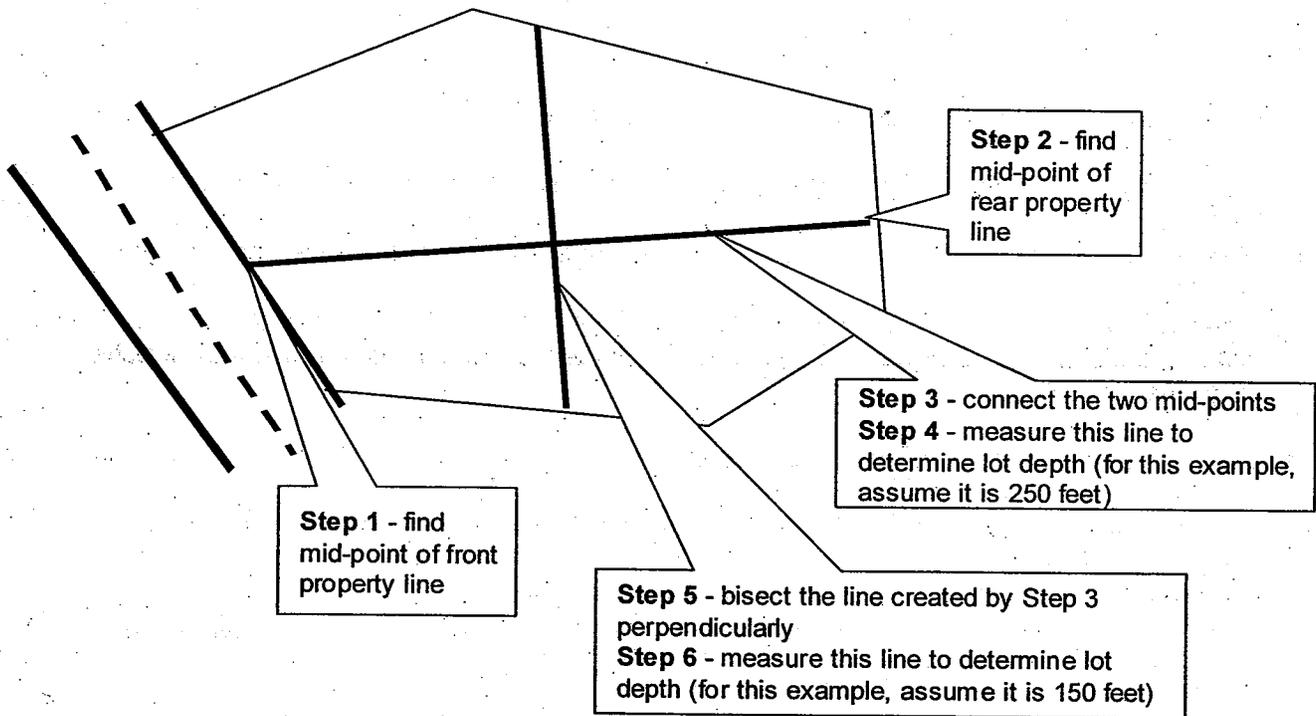
- Step 1** Find the midpoint of the total distance of the front property line.
- Step 2** Find the midpoint of the total distance of the rear property line.
- Step 3** Draw a straight line connecting the two midpoints of the front and rear property line.
- Step 4** Measure the distance of the line from step 3 – in most cases the length of this line is utilized to determine the front and rear yard setbacks for non-beachfront lots, and is considered the lot depth.
- Step 5** Find the midpoint of the total distance of the line resulting from step 3 and draw a perpendicular line to the one created in step 3.
- Step 6** Measure the distance of the line from step 5 – in most cases the length of this line is utilized to determine the side yard setbacks, and is considered the lot width.

An example is provided below.

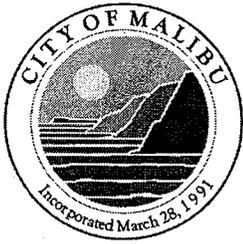
Justification:

Many properties in Malibu are irregularly shaped; therefore, it is difficult to ascertain in many cases what is the lot depth and width. The interpretation provides a consistent manner in which to make such a determination.

Example



In this example, the lot depth is 250 feet and the lot width is 150 feet. Therefore, the required front yard is 50 feet (or 20 percent of the lot width), the required rear yard is 37.5 feet (or 15 percent of the lot depth), and the required side yard a minimum of 37.5 feet total (or 25 percent of the lot width), with a minimum on each side yard of 15 feet (or 10 percent of the lot width).



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 4

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: Ewing

Original Date: February 1998

Original Interpreting Body: Staff

Code Section: N/A

Title: Response Time To Incomplete Letters

Issue:

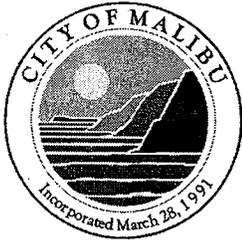
The Planning Division determines whether certain types of applications are complete or incomplete, and based on that determination, mails a letter to the applicant within 30 days of the application's submittal either deeming the application complete or incomplete. If the project is deemed incomplete, then a process to make the application complete is provided. In some instances, the applicant may provide no further response to the incomplete letter. These resulting applications are an administrative burden for the City.

Interpretation:

Applicants who do not respond to incomplete letters with written information within 45 days will be required to resubmit a new application if they wish to proceed with the project. If 45 days passes after having been sent a notice of incomplete application, a letter will be issued to the applicant informing them that they have ten days to submit the requisite information or the project application will be administratively withdrawn. If no response is received within ten days, the project will otherwise be administratively withdrawn.

Justification:

Inactive open applications are an administrative burden for the City. A 45-day time limit to provide information requested in an incomplete letter or otherwise inform the City of an intent to proceed is more than adequate.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 5

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: N/A

Original Date: July 1998

Original Interpreting Body: Staff

Code Section: General Plan Land Use Policy 4.1.5

Title: Off-site Alcohol Sales

Issue:

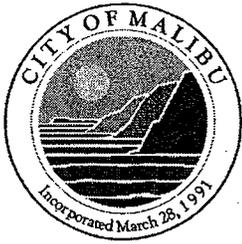
The Code does not specifically list the sale of alcoholic beverages for off-site consumption as a use requiring a Conditional Use Permit (CUP). However, General Plan Land Use Policy 4.1.5 states that the City shall prohibit undue concentration of businesses that sell alcohol for off-site consumption.

Interpretation:

The sale of alcohol for off-site consumption may only be permitted in zones in which liquor stores are permitted, and only with a valid a CUP.

Justification:

General Plan Land Use Policy 4.1.5 states that the city shall prohibit undue concentration of businesses that sell alcohol for off-site consumption. Accordingly, liquor stores may be permitted in certain zones with a CUP; the CUP process works to ensure that an undue concentration of business that sell alcohol does not develop, among other factors. A CUP is the appropriate mechanism to review such uses and ensure orderly neighborhood development.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 6

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: Ewing

Original Date: June 1998

Original Interpreting Body: N/A

Code Section: 17.48.030

Title: Parking Requirements for Remodeled or Expanded Single-Family Residences

Issue:

Do current parking requirements apply when remodeling or expanding a single-family residence?

Interpretation:

The following standards shall apply when remodeling or expanding a single-family residence:

1. Parking must be provided in accordance with the zoning code standards in effect at the time the residence was constructed.
2. Any legal residence for which parking is provided according to the standards in effect at the time the residence was constructed may be expanded without requiring that parking be upgraded to the current standard.
3. Any significant modification to or expansion of an existing parking structure, or demolition of the existing residence, will require that parking be provided at the current standard.

The following bullets provide a summary of past Los Angeles County standards:

- 1943 - no parking requirement
- Effective 11/11/43 – one car, anywhere on lot;
- Effective 1/13/50 – one car, behind front setback;
- Effective 6/22/56 – one car in carport or garage;
- Effective 9/15/62 – two cars, in carport or garage;

Justification:

According to MMC Section 17.60.020, a non-conforming structure may be maintained and expanded, as long as the expansion complies with Code. A remodel or expansion of an existing single-family home that does not conform to current parking requirements does not further worsen the non-conformity since parking requirements are based on number of units and not the size of the unit. Therefore, remodels and additions to single-family structures that do not conform to current parking requirements may be permitted without upgrading to current parking standards.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 7

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: Hogan

Original Date: February 2001

Original Interpreting Body: Staff

Code Section: 17.40.040(A)(13)(b)

Title: Vaulted Ceilings with Roofs above 18 Feet in Height

Issue:

Do vaulted ceilings that do not exceed 18 feet in height, but for which the roof exceeds 18 feet in height, count towards the 2/3 rule described in MMC Section 17.40.040(A)(13)(b)?

Interpretation:

If the roof over vaulted ceilings exceed 18 feet in height, then the area of the vaulted ceiling below that portion of the roof exceeding 18 feet in height shall be counted in the 2/3 rule. This area also shall be designed so as to minimize view blockage from adjacent properties.

Justification:

The intent of the regulation is to treat all area above 18 feet in height as if it were a second floor area and to limit that area to 2/3rds of the first floor area. If the area above the first story is disregarded in the 2/3rds calculation because the ceiling is reduced to 18 feet, and the roof is left at a higher height, it could potentially create visual impacts.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 8

Amendment Information: April 2005,
Staff
(Date, Interpreting Body)

Original Planning Manager: N/A

Original Date: August 1995

Original Interpreting Body: City Council

Code Section: 17.40

Title: Criteria for Entry Gates

Issue:

How shall entry gates and booths be processed?

Interpretation:

Prior to approval or approval-in-concept, all applicable development standards as well as the following conditions must be satisfied:

1. The Homeowners Association (HOA) shall provide verification to the City of its legal right to install the gate/booth. If a vote of the neighborhood is required, the results of this vote shall be presented to the City.
2. A legally formed HOA must act as the applicant. This Association will be required to indemnify, defend, and hold the City harmless from any loss or damage arising from the City's approval of a gate across a private street. In addition, the Association will be responsible for all maintenance and repair of the gate, including insurance, and will be required to comply with any other conditions of approval established by the City.
3. The applicant shall demonstrate to the satisfaction of the Public Works Department that the street is privately owned and maintained, and if gated, will not affect the through-traffic flow or access to or from public streets.
4. The proposed entry gate/booth shall not preclude access to public parks and public trails that are legally accessed through the proposed gate.

5. The height limit shall be six feet for the gate, related walls, and other features. A guard booth shall not exceed 18 feet in height and 120 square feet in size.
6. Entry gates/booths shall be subject to the review and approval by the City of Malibu, Los Angeles County Sheriff and Fire Departments, the Coastal Commission, and any other public agencies deemed necessary by the City.

Justification:

The City Council approved this procedure to process applications for entry gates and booths.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 9

Amendment Information:

ZORACES
(Interpreting Body)

Planning Manager: Stacey Rice, Ph.D., AICP **Date:** April 24, 2007

Code Section: Municipal Code Section 17.40.040(13)

Title: Covered Porches and Calculations of Total Development Square Footage (TDSF)

On April 24, 2007, an interpretation was implemented to exclude covered porches from calculations of total development square footage (TDSF) (Attachment 1). Subsequently, on March 20, 2008, the interpretation was retracted (Attachment 2). A resolution to this interpretation is pending.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 9

Amendment Information: N/A

(Date, Interpreting Body)

Planning Manager: CJ Amstrup, AICP

Date: April 24, 2007

Interpreting Body: ZORACES

Code Section: Title 17.40.040 (13)

Title: Covered Porches Excluded from Calculations of Total Development Square Footage (TDSF)

Issue:

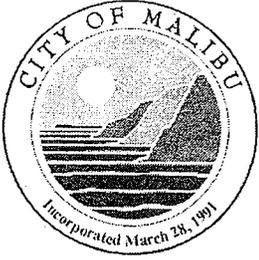
The Malibu Municipal Code (M.M.C.) does not specifically state that covered porches, balconies, terraces or similar should be excluded from calculations of total development square footage (TDSF). However, in defining TDSF, the M.M.C. states (on page 364) that "decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides." Title 17.40.040 (13) (page 409) further stipulates that when calculating TDSF, only "arbors or trellis open to the sky" shall be excluded. A covered porch cannot (by design) be "open on all sides" and attached to a primary or accessory structure. Logically, the structure would have to share at least one wall with the primary residence/accessory structure in order to be considered "a part" of the building as stated in the M.M.C. The language is vague at best; consequently Planning staff has previously interpreted the standard as intending to exclude only roofed structures "open to the sky" (trellises, etc.). Conversely, staff practice has previously been to include all patios, porches, etc. covered by solid, non-permeable rooftops in calculations of TDSF. Going forward however, it is the contention of Planning staff that the intent of the M.M.C. is in fact to exclude covered porches, trellis, patios, decks and the like ("outdoor living spaces") - whether covered by an open, permeable rooftop such as the lattice-work of a trellis or by a solid, impermeable rooftop - from calculations of total development square footage.

Interpretation:

Where a project includes a covered porch, trellis, patio, deck or balcony and whether that space is covered by an open, permeable rooftop or solid, impermeable rooftop; the square footage of that covered space shall be excluded from calculations of TDSF.

Justification:

While the M.M.C. does not specifically exempt covered porches from calculations of TDSF, it does exempt arbors and trellis open to the sky, and any deck, terrace or balcony that is a part of a primary or accessory structure and open on all sides. That latter requirement amounts to a paradox, and so staff must interpret the intent of the ordinance. In references to terraces, balconies, etc., the M.M.C. is broadly describing "outdoor living spaces," and exempts such from TDSF calculations by references to roof type ("open to the sky") as well as construction ("open on all sides"). Further support for this interpretation is provided through the M.M.C. definition of "floor area ratio (FAR)," where it states that FAR is "the sum of the gross horizontal areas of the several floors of a building (and shall be) measured from the interior face of exterior walls." Balconies, terraces, etc. cannot (by definition) have solid exterior walls, and so must be considered exempt from any calculations of development area. The intent of the M.M.C. is to include only those areas of a structure enclosed by solid walls and rooftops in calculations of TDSF.



City of Malibu

MEMORANDUM

To: Members of the City Council
From: Stephanie Danner, Associate Planner *SD*
Date: March 12, 2008
Re: Local Coastal Program Interpretation No. 18

Local Implementation Plan (LIP) Chapter 2 defines total development square footage (TDSF) as:

“the calculation of the interior space of the primary and accessory structures (including interior and exterior walls). Accessory structures shall include, but are not limited to, guest houses, garages, barns, sheds, gazebos, cabanas. Decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides.”

In an attempt to better define areas which “are open on all sides”, staff put forth Interpretation No. 18, dated April 24, 2007, which included a TDSF exemption for all outdoor covered areas.

Local Coastal Program (LCP) Interpretation Number 18 allows the square footage of all outdoor covered areas to be exempt from a property's TDSF calculation. This interpretation does not include any maximum size limits and does not prohibit violations of the two-thirds rule described in LIP Section 3.6(K)(2).

Approximately one year after the implementation of Interpretation No. 18, staff completed an evaluation of the effects of the interpretation on actual planning projects. Staff concluded that because there were no square footage limits on outdoor covered area, some projects were proposing more square footage than was previously considered allowable for the size of the property. Additionally, staff concluded that the two-thirds rule was being violated, as the covered areas were not included in that calculation.

At the February 26, 2008 ZORACES meeting, staff brought its findings forward to the Subcommittee. At the conclusion of the meeting, the Subcommittee directed staff to retract Interpretation No. 18, create a revised interpretation based upon LIP Section 3.5.3(B)(1), and begin work on a Zoning Text Amendment (ZTA) to implement new standards which exempt certain types of covered area from the TDSF calculation.

LIP Section 3.5.3(B)(1) states: “architectural projections including eaves, awnings, louvers, and similar shading devices; sills, belt courses, cornices, and similar features, may not project more

than six (6) feet into a required yard, provided that the distance between an architectural projection and a property line shall not be less than three (3) feet.”

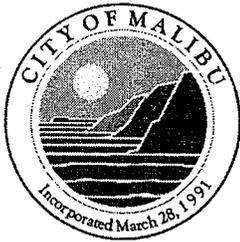
A new interpretation will be written which will use this section of the LIP to allow covered areas up to six feet to be exempt from the TDSF calculation. If the covered area square footage exceeds the six foot projection, the entire covered area will be included in TDSF. Furthermore, the volume of the covered area will be included when calculating the two-thirds rule for a proposed structure in order to prevent a box-like appearance.

LCP Interpretation No. 18 was officially retracted at the ZORACES meeting of February 26, 2008. All project applications submitted prior to and including that date will retain the TDSF exemption for any covered area proposed. Project applications submitted after February 26, 2008 will be required to comply with the provisions set forth in the new TDSF Interpretation.

LCP Interpretation Number 18 will be removed from the City Website and will be replaced with the new interpretation when it is available. Please remove this interpretation from your Interpretations Manual as well.

cc: Planning Commission
Environmental Review Board
Architects and Engineers Advisory Committee
City Manager
City Attorney's Office
City Clerk
ECD Division Manager
Planning Division
Code Enforcement Office





Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 10

Amendment Information:

ZORACES
(Interpreting Body)

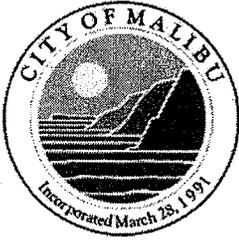
Planning Manager: Stacey Rice, Ph.D., AICP Date: May 27, 2008

Code Section: Municipal Code Section 17.42.020(B)(5)(c)(iv)

Title: Measurement of the 40 Foot Building Envelope in the La Costa Overlay District for "C" Type Lots

Issue: The La Costa Overlay District implements custom design and development criteria. In regards to the allowable structure height on properties designated as "C" type lots (those properties which slope downhill from the street) M.M.C. Section 17.42.020(B)(5)(c)(iv), states, "The structure shall project laterally into the lot a maximum of 40 feet, any projection past this point shall not exceed 18 feet in height above natural grade." This standard allows a portion of a building measuring no more than 40 feet horizontally to have a height of up to 50 feet as measured from the structure's midpoint above natural grade. Portions of the structure outside this horizontal envelope can not exceed 18 feet in height. What is not specified by this provision is where the 40 foot horizontal measurement begins.

Interpretation: Staff has determined that to maintain the neighborhood character of the La Costa Overlay District, the front property line should be utilized as the point from which the 40 foot projection into the lot must be measured from. If the 40 foot projection begins at the property line, development will remain tucked in and along the street which it abuts thereby preserving views from properties located above and across the street from the proposed development.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 11

Amendment Information:

Staff
(Interpreting Body)

Planning Manager: Stacey Rice, Ph.D., AICP

Date: August 4, 2008

Amended: n/a

Code Section: 17.04.070(A)

Title: Applicable Development Standards

Issue: Competing development regulations and policies may occur between the Malibu Municipal Code (M.M.C.), Local Coastal Program (LCP), General Plan or any other City-adopted plan, resolution or ordinance. It can be unclear which development standards are applicable to the type of development proposed.

Interpretation: Pursuant to Land Use Policy (LUP) Section 1.3.1, if there is a conflict between a provision of the LCP and a provision of the M.M.C., General Plan or any other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

However, pursuant to M.M.C. Section 17.04.070(A), where a conflict occurs between the regulations and policies of the M.M.C., LCP, General Plan or any other City-adopted plan, resolution or ordinance effective within the city, the more restrictive provision of any such regulations shall apply.



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 12 Amendment Information: N/A
Staff
(Date, Interpreting Body)

Original Planning Manager: Lundin Original Date:

Original Interpreting Body: Staff

Code Section: N/A
Title: Storage Tanks, Generators and Trash Enclosures

Issue:

The Malibu Municipal Code (M.M.C.) is silent regarding any development standards for storage tanks, generators and trash enclosures. Storage tanks include: water storage tanks, rain harvesting tanks, gas tanks, propane tanks and other similarly used tanks.

Interpretation:

Planning Division staff has determined that storage tanks, generators, and trash enclosures that occupy less than 120 square feet may project into required yards, provided that they are not located closer than three feet to any property line and are screened with a solid fence or wall corresponding with the heights specified below:

- Front yard setback – storage tanks, generators and trash enclosures located within the front yard setback shall not daylight more than 42 inches in height above finished grade.
- Corner Side Yards – storage tanks, generators and trash enclosures located within a required corner side yard shall not daylight more than 42 inches in height above finished grade where closer than five feet to the right-of-way line, nor daylight more than six feet in height where five feet or more from the right-of-way line.
- Interior Side and Rear Yards – storage tanks, generators and trash enclosures shall not daylight more than six feet in height above finished grade; provided, however, that on the street or highway side of a corner lot, storage tanks and generators shall be subject to the same requirements as for a corner side yard.

Storage tanks, generators, and trash enclosures that exceed the specified maximum height or exceed 120 square feet shall be located out of required yards.

Entitlements:

Administrative Plan Review (APR) - Storage tanks, generators, and trash enclosures that occupy more than 120 square feet with referrals to appropriate agencies.

Site Plan Review (SPR) – Pursuant to M.M.C. Section 17.62.040, property owners/applicants may apply for a site plan review to reduce the required front yard setback by 50 percent, and rear and side yard setbacks by 20 percent in conjunction with an APR.

Over-the-Counter Permit (OC) - Storage tanks, generators, and trash enclosures that occupy 120 square feet or less. Appropriate agencies will review the application during the Building Plan Check process.

Justification:

The M.M.C. is silent regarding any provisions that address storage tanks, generators, and trash enclosures. However, M.M.C. Section 17.40.030(B)(7) provides a provision for ground-mounted pool equipment, air conditioners, and built-in barbecues which are considered accessory structures and equipment. The structures considered in this interpretation are of a similar use.

M.M.C. Section 17.40.030 (B)(7)(a) states that ground-mounted pool equipment, air conditioners and built-in barbecues may be located in the side and rear yards; “provided that the equipment shall not be located closer than three feet to the property line. Ground-mounted pool and air conditioning equipment must be screened by a solid wall or fence on all sides, except in cases where the equipment is located next to a dwelling, in which case the equipment must be screened on the three sides not adjacent to the dwelling.”

Allowable heights for storage tanks, generators, and trash enclosures were based upon M.M.C. Section 17.40.030(A) which provides provisions for fences, hedges, and walls within required yards and states:

- Fences and walls within a required front yard shall not exceed a height of forty-two (42) inches with the exception of open/permeable, non-view-obscuring fencing which may extend to a maximum height of six feet.
- Corner Side Yards. Fences and walls within a required corner side yard shall not exceed forty-two (42) inches in height where closer than five feet to the right-of-way line, nor exceed six feet in height where five feet or more from the right-of-way line.
- Interior Side and Rear Yards. Fences, walls and hedges forming a barrier and serving the same purpose as a fence or wall within a required interior side or rear yard shall not exceed six feet in height; provided, however, that on the street or highway side of a corner lot such hedge, fence or wall shall be subject to the same requirements as for a corner side yard and the provisions of Section 17.40.040(A)(17).



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 13

Amendment Information: _____

Staff
(Date, Interpreting Body)

Original Planning Manager: Lundin
Original Interpreting Body: Staff

Original Date: February 20, 2009

Code Section: N/A

Title: Landscaping Requirements

Issue:

When is a landscaping plan required?

Interpretation:

Planning staff has determined that landscaping plans are required for modifications to an existing landscaping plan, hedges, and landscaping with the potential to exceed six feet in height.

This interpretation is **NOT** a view restoration policy and applies to all new landscaping proposed on or after the effective date.

Code enforcement complaints related to new landscaping shall be submitted during the time of planting or be accompanied with date-stamped photographs of new landscaping being planted.

This interpretation is effective on the date of circulation.

Entitlement:

Landscape plans will be processed with a minor Administrative Plan Review application with a referral to the City Biologist. Projects that consist of only landscaping are exempt from a Categorical Exemption fee or a Coastal Development Permit Exemption fee.

Justification:

M.M.C. Section 17.62.030 states that an administrative plan review shall be required for "landscape/hardscape plans, fuel modification and grading plans."

All hedges are required to be reviewed and conditioned to be in compliance with M.M.C. Section 17.40.030(A) which provides provisions for fences, hedges, and walls within required yards:

- Fences and walls within a required front yard shall not exceed a height of forty-two (42) inches with the exception of open/permeable, non-view-obscuring fencing which may extend to a maximum height of six feet.
- Corner Side Yards. Fences and walls within a required corner side yard shall not exceed forty-two (42) inches in height where closer than five feet to the right-of-way line, nor exceed six feet in height where five feet or more from the right-of-way line.
- Interior Side and Rear Yards. Fences, walls and hedges forming a barrier and serving the same purpose as a fence or wall within a required interior side or rear yard shall not exceed six feet in height; provided, however, that on the street or highway side of a corner lot such hedge, fence or wall shall be subject to the same requirements as for a corner side yard and the provisions of Section 17.40.040(A)(17).



Zoning Code Interpretation

(Interpretation of the provisions of the Malibu Zoning Ordinance as permitted under §17.02.050)

Number: 14

Dated: January 20, 2010

Amended: n/a

Planning Manager: Joyce Parker-Bozylinski, AICP

Interpreting Body: ZORACES

M.M.C. Sections: §17.02 (Definitions); §17.22 (CN); §17.24 (CC); §17.26 (CV-1); §17.28 (CV-2); §17.30 (CG); and §17.66 (Conditional Use Permits)

Title: Conditional Use Permits – Retail Food Uses

Issue: Malibu Municipal Code (M.M.C.) Chapter 17.02 defines a “Restaurant” as “*any building, room, space or portion thereof where food is prepared and sold for consumption primarily to persons seated within the building. A restaurant does not include incidental food service.*” Similarly, the M.M.C. provides definitions for “Restaurant, Carry Out” and “Restaurant, Waitered”. A common provision in each definition is that a food retail use is a “restaurant” when: 1) the food sold is intended for onsite consumption at designated seats or tables, or for take out (such restaurants are characterized generally by a limited menu, disposable wrapping for food and rapid turnover in customers); and 2) the use is not considered incidental food service. Otherwise, the use does not qualify as a restaurant (i.e., a non-restaurant). Restaurants are permitted subject to a conditional use permit (CUP) in all five commercially-designated zones within the City: Commercial Neighborhood (CN); Community Commercial (CC); Commercial Visitor Serving 1 (CV-1); Commercial Visitor Serving 2 (CV-2); and Commercial General (CG).

Some retail food uses do not meet the definition of a restaurant. For example, a bakery with no onsite seating is considered a permitted use pursuant to §17.22.020(C)(2)(f). Therefore, it does not require a CUP. Other types of “non-restaurants” not specifically referenced in the M.M.C. may include the sale of frozen yogurt, ice cream, smoothies, sweets and coffee.

In addition, Section 17.66.60 describes two types of CUPs available – major and minor. The M.M.C. specifies that major CUPs are decided upon by the Planning Commission, while minor CUPs are decided upon by the Planning Manager, unless referred to the Planning Commission at the Planning Manager’s discretion. It has been standard practice by the City that all CUP applications, both major and minor, are reviewed by the Planning Commission. Pursuant to the requirements contained in Sections 17.04.160 through 17.04.230, all CUP applications require a public hearing with noticing requirements.

While the M.M.C. requires CUPs for restaurants subject to the provisions in Sections 17.22.040 and 17.24.030 et al., it does not provide clear parameters for when major and minor CUPs are required for all types of retail food uses.

Interpretation: The M.M.C. presumes three types of retail food uses within the City: 1) non-restaurants without seating; 2) non-restaurants with incidental food service; and 3) restaurants as defined in Chapter 17.02. For the purposes of determining appropriate processing requirements, retail food uses shall be considered as follows.

▪ **Permitted; No CUP Required:** Non-Restaurants without Seating

Retail food uses are permitted within all commercial zones and are not required to obtain a CUP provided that all of the following apply:

- 1) No indoor or dedicated outdoor seating is proposed;
- 2) The hours of operation are limited from 7 a.m. to 11 p.m. (Section 17.22.020(C) et al.);
- 3) The proposed use involves no new construction or expansion over 500 square feet (Section 17.22.020(C) et al.); and
- 4) The proposed use does not meet the definition of "Restaurant, Carry Out" (Section 17.02.060).

Examples of these uses may include, but are not limited to, the sale of frozen yogurt, ice cream, smoothies, sweets, coffee and baked goods. These uses are primarily engaged in the retail sale of products for consumption offsite. In addition, the products may be prepared either on or offsite. Typically, an Over-the-Counter (OC) Level I application for tenant improvements (TI) will be required. However, if the proposed use is determined to require review by the City's Environmental Health Administrator or any other applicable City or County agency, the proposed use would require an OC Level II application.

▪ **Permitted Subject to a Minor CUP:** Non-Restaurants with Incidental Food Service¹

Retail food uses are permitted subject to a minor CUP when they include incidental food service and subject to all applicable provisions in Chapter 17.66 (CUPs). The products may be prepared either on or offsite. It has been standard practice by the City that all minor CUP applications are reviewed by the Planning Commission.²

For purposes of this interpretation, "Incidental Food Service" is defined as any use of a building, room or space for the on-site sale and consumption of food and/or beverages where all of the following apply:

- 1) The proposed use does not meet the definition of "Restaurant, Carry Out"; or "Restaurant, Waitered" as defined in Section 17.02.060;
- 2) Less than 250 square feet (interior and exterior) is utilized for onsite consumption of any food and/or beverage, including seating, counter space, or other eating arrangement;
- 3) The number of seats does not exceed 20; and
- 4) The consumption area does not exceed 33 percent of the total floor area for the use.

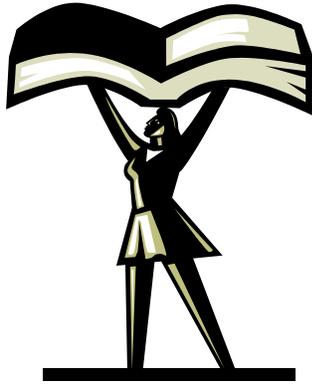
▪ **Permitted Subject to a Major CUP:** Restaurants

Retail food uses are permitted subject to a major CUP when considered a restaurant pursuant to the definitions provided in Section 17.02.060, including "Restaurant, Carry Out" and "Restaurant, Waitered".³ These uses shall be subject to all applicable provisions in Chapter 17.66 (CUPs).

¹ Since "Incidental Food Service" is not specifically defined in the M.M.C., staff has referenced a neighboring jurisdiction's definition. The definition will be added to the Planning Division's future code-related housekeeping items.

² Per Section 17.66.060(B), "Applications for minor conditional use permits may be referred to the planning commission at the discretion of the director."

³ Per Section 17.02.060, "Restaurant, Carry Out" is defined as any restaurant with prepared food or quickly cooked food for consumption on-site at provided seats and tables or for take out. Such restaurants are characterized generally by a limited menu, disposable wrapping for food and rapid turnover in customers. "Restaurant, Waitered" is defined as any restaurant with waiters/waitresses providing table service, where food is prepared and served at tables for consumption on-site at provided seats and tables.



Local Coastal Program Interpretations and Policies

City of Malibu Planning Department



City of Malibu

Planning Division

Effective Date: June 25, 2008

Story Pole Policy

Story poles are placed to demonstrate height, bulk and location of a proposed project that may potentially impact public and/or private views. The placement of story poles shall be required for all Coastal Development Permits and for certain discretionary requests associated with Administrative Plan Review applications (i.e., all projects reviewed by the Planning Manager and/or the Planning Commission).

Purpose

During review of certain discretionary projects, story poles are installed to demonstrate the height and location of proposed development. Review of the story poles ensures that permitted development is sited and designed to protect public views to and along the ocean and scenic coastal areas consistent with the Malibu Local Coastal Program and to protect private primary views in accordance with Malibu Municipal Code Section 17.40.040(A)(17).

Waiver of Requirement

In some cases, the story poles requirement may be waived by the Planning Manager where it is determined through onsite investigation, evaluation of topographic maps, photographic evidence, or by other means that there is no possibility that the proposed development will create or contribute to adverse impacts upon Scenic Areas.

Procedure

Prior to installation of story poles, the applicant shall consult with the case planner to prepare the story pole plan. The plan shall be on a minimum of an 8.5-inch by 11-inch reduction of the roof plan showing all locations at which story poles will be placed. The story pole plan shall be approved by the case planner prior to story pole placement.

Typically, story poles may not be placed at a property until the case planner confirms that all reviewing departments have completed their reviews. In some cases, the case planner may allow early installation of story poles if view issues are anticipated.

Prior to notification of a public hearing, or 10 days prior to the mailing of the public notice of application (for those projects not requiring a hearing), story poles shall be placed on the site unless waived by the Planning Manager.

Location

The number of story poles required will vary with each specific project. The case planner shall review proposed story pole location to ensure that the plan adequately demonstrates the proposed height, mass, and bulk of the portion of the project under review. Story poles showing roof overhangs, eaves, chimneys, balconies, decks, patios, and accessory structures may be required. The plan should be kept as simple as possible to accurately reflect the proposal and to minimize visual clutter in potential view areas.

Materials

The material of the story pole shall be indicated on the story pole plan. Story poles shall be constructed of 2-inch by 4-inch lumber or other sturdy building material (PVC pipe is not acceptable). Story poles should be

braced at the base by use of guy wires or supporting beams to ensure that they will withstand weather and will remain correctly positioned. The guy wires should be flagged for safety purposes.

Story Pole Plan Requirements

The story pole plan is subject to the following criteria:

Plan Scale – The story pole plan shall be at the same scale as the roof plan.

Indication of Story Pole Height – The elevations of the height of each story pole and the natural and finished grades shall be indicated on the plans. If requested by the case planner, the applicant shall also provide a detail on the plans showing the elevation of a typical story pole.

Markings – The story pole plan shall include the following plan note:

“The top one foot of the story poles shall be painted with a clearly visible black paint. Markings shall also be made at 18 feet above finished or natural grade, whichever results in a lower building height, and at one foot increments above 18 feet. Bright orange construction mesh approximately one foot in width shall be placed connecting poles to show all proposed roof and ridgelines.”

Safety Provisions – All story poles shall be placed to ensure the health, safety and general welfare of the public. The story pole plan shall include the following plan note:

“If at any time the story poles become unsafe, they shall be repaired and reset immediately. The story poles shall be removed immediately if determined by the City to be a public safety risk.”

Waiver of Risk – The applicant must sign and submit a waiver absolving the City of any liability associated with construction of, or damage by the story poles. This waiver will be provided by the case planner and shall be copied on the story pole plan. The applicant shall not install the story poles until the waiver form is submitted to the City.

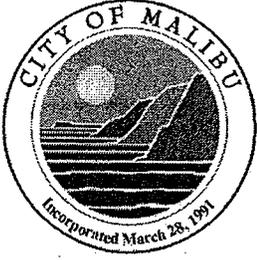
Certification

For projects including construction of a new, single-family residence, a new commercial building, projects with a primary view issue, or those which are located in a scenic area; certification of the story poles is required. Once the story poles are placed, a licensed surveyor, civil engineer, or architect¹ must certify that the story poles have been placed in accordance with the approved story pole plan. The property owner may not certify the story pole height or position. After receiving the certification, the case planner will visit the site to verify and photograph the story poles. Public notification shall not begin until certification is complete and the case planner verifies the placement of the story poles.

Removal

The story poles shall be removed immediately if determined by the City to be a public safety risk or at the discretion of the Planning Manager. Story poles shall remain in place for the duration of the approval process and shall be removed within seven calendar days after the final appeal period expires, unless other arrangements are made with the Planning Division.

¹ Story poles certified by an engineer or an architect may require a follow-up certification by a licensed surveyor if the placement of the poles is challenged.



City of Malibu

May 27, 2008

LCP Policy 2: Accessory Structures

Pursuant to Local Implementation Plan (LIP) Section 3.6(N), a maximum of one second residential unit may be permitted as an accessory to a permitted or existing single-family dwelling. Other accessory structures may also be permitted as an accessory to a permitted or existing single-family residence.

Secondary Residential Units (LIP Section 2.1)

Second Unit - an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation situated on the same parcel as the single family dwelling. The maximum living area of a second unit shall not exceed 900 square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed 400 square feet. The square footage of the garage shall not be included in the maximum living area.

Guest House - attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a separate dwelling. The maximum living area of a guest house shall not exceed 900 square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed 400 square feet. The square footage of the garage shall not be included in the maximum living area.

The difference between a second unit and a guest house is a second unit contains a kitchen while a guest house does not.

Parking:

A minimum of one on-site parking space shall be provided for the exclusive use of a second unit or guest house.

Other Accessory Structures

Pursuant to LIP Section 3.6(N), other accessory structures include, but are not limited to, a stable, workshop, gym, studio, pool cabana, and office. It is staffs' interpretation that these accessory structures are intended to provide areas of recreation or additional workspace and

shall not contain areas designed for sleeping, eating, and cooking. Therefore, staff believes that by prohibiting the following improvements, accessory structures would be designed to prevent its use as second residential units.

Accessory structures should be designed so rooms are not easily usable as an additional bedroom due to its location, layout, and, or, amenities. A room is considered a bedroom if it is a separate room that provides privacy, has an associated closet, and is in close proximity to a bathroom with shower fixtures.

An accessory structure shall not contain:

1. Kitchens; includes stoves, oven ranges, and range hoods;
2. kitchettes;
3. bedrooms;
4. dishwashers;
5. bathtubs; and
6. electric wiring or plumbing for permanent kitchen appliances, such as dishwashers, stoves, oven ranges, and range hoods

Selective sanitation fixtures are permitted, including:

- a. small bar sinks;
- b. toilets;
- c. hand sinks;
- d. shower fixtures;
- e. steam rooms;
- f. jacuzzis;
- g. swimming pools; and
- h. saunas

Location

Accessory structures shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

Deed Restriction

For properties with a secondary residential unit AND another accessory structure, a deed restriction shall be recorded against the title of the property as a condition of approval. The deed restriction shall state no more than one secondary residential unit is permitted to exist on the subject property. Said document shall include the definitions of a second unit and guest house as defined by the LIP Section 2.1, and shall be recorded with the Los Angeles County Recorder's Office. The applicant shall submit a copy of the recorded document to Planning Division staff.



City of Malibu

Planning Department

December 17, 2014

LCP Policy 3: Remodels and Additions

The Local Coastal Program (LCP) considers a replacement structure when it involves the replacement of 50 percent or more of an existing structure, as measured by 50 percent of the existing structure's linear feet of exterior walls.¹ However, the LCP does not expand upon this definition or provide a detailed methodology as to what level of development may or may not factor into the 50 percent wall threshold.

The remodel definition also states that a building may be upgraded "without altering the existing foundation, footprint or building envelope." However, LCP Local Implementation Plan (LIP) Section 13.5(C) permits the repair and maintenance of a non-conforming structure provided it is not enlarged or expanded, and LIP Section 13.5(D) permits additions and improvements provided they comply with current LCP policies and standards.

Purpose

To provide expanded definitions and a detailed methodology as to what level of development may (or may not) factor into the 50 percent wall threshold and result in a project being considered a "replacement structure." With the implementation of the policy, it would improve efficiency of processing projects through the City's Planning review process, promote project transparency, and would reduce staff time and cost.

Procedure

- A. A structure shall be considered a *replacement structure*, and forfeit any legal non-conforming status, if more than 50 percent of the linear footage of exterior walls are removed and/or replaced. Such structures shall be brought into conformance with the current policies and standards of the LCP pursuant to LIP Section 13.5(C) and be processed as a coastal development permit. Additions may be made to legal non-conforming structures provided that the addition to the structure complies with applicable development standards.
1. In general, an exterior wall segment per story shall be considered removed if any of the framing members are removed/replaced at any point from the top of the foundation to the top plates of the wall. The following examples constitute removal of exterior walls and shall count against the 50 percent threshold:
 - a. Removing, replacing, "sistering in," or adding new frame materials (such as, but not limited to, studs, king studs, headers, window sills, green sill, top plates, upper cripples, except as described in subsection C.2.a – see *diagram for reference*);

¹ LCP Local Implementation Plan (LIP) Section 2.1 defines a "remodel" as "the upgrade of the interior or exterior faces of a building or structure without altering the existing foundation, footprint or building envelope. Remodeling may include the replacement of exterior walls within the limitations described herein [such as the 50 percent threshold] and according to the requirements of the Building Code provided that such remodeling can meet the standards for zone clearance or plot plan review."

- b. Adding a new or enlarging an existing door frame (passage, sliding or garage) or window, except as described in Section C.2.c below;
- c. Increasing / decreasing the height of an exterior wall or altering the roofline unless it can be demonstrated that no structural alterations to the existing walls are proposed or required nor the removal of any of its frame materials. Note that in cases where the height increase or roofline alteration adds to the volume of a non-conformity (such as, but not limited to, primary view and ocean view impacts, setback, height, or total development square footage) the project would also require a discretionary request;
- d. Other types of construction deemed to constitute a replacement by Planning Department staff in consultation with the City Building Official; and
- e. The use of a moment frame².

2. Notwithstanding the provisions described above, the following alterations will not count against the 50 percent threshold of legal non-conforming buildings:

- a. Exterior and interior finish materials (such as, but not limited to, siding, plaster, sheathing, drywall, insulation, casework) and electrical, mechanical and plumbing systems may be removed and/or replaced.
- b. Retrofitting an exterior wall for seismic movement as required by the California Building Code. These improvements may include wall shearing, replacing a green sill plate and/or replacing or modifying end studs. These improvements are considered necessary for safety purposes and do not generally extend the life of a building. Prior to retrofitting a building in accordance with this subsection, the Planning Director must be satisfied that these improvements are necessary. The applicant must submit pictures and/or structural plans to the Planning Department for review by the Building Official indicating which frame materials need to be modified for this purpose.
- c. Filling in a wall segment that was previously a door (passage, sliding or garage) or a window.
- d. A window can be vertically enlarged as long as the header and header supporting studs are not modified. In addition, the "like for like" replacement of doors and windows shall not be counted against the 50 percent threshold, so long as the replacement does not alter the location of existing framing members around the doors and windows.

B. A structure shall be considered a *replacement structure*, and forfeit any legal non-conforming status, if any modification to the structure requires or proposes the alteration of the existing foundation. However, the following activities shall not be considered alterations to an existing foundation:

- 1. Repair and maintenance of an existing foundation; or
- 2. Physically tying the foundation of an addition to an existing foundation solely to provide lateral load support, particularly for second floor additions. In such cases, it must be demonstrated to the satisfaction of the Planning Director that the foundation for the addition will not upgrade the existing foundation.

² A moment frame is a box-shaped frame with special moment connections or joints. Moment frames are often used in remodels to avoid replacing existing walls or to allow for large window openings, glass panels, etc. A moment frame is a common method for keeping existing walls but actually removing their structural function/reliability.

C. Methodology for Determining Linear Feet:

1. Measure the linear feet around the perimeter of exterior walls only on a per structure basis. Interior walls are not included. If the structure is multi-story, calculate the perimeter of each story separately and then combine the measurements for a total of the structure's linear footage of exterior walls. Use the same methodology to measure the total linear footage of exterior walls to be removed/replaced. To determine if the project meets the 50 percent threshold of walls retained, calculate the total linear footage to be removed and divide by the total linear footage of the existing structure. A primary structure and any detached accessory structures are counted independently of each other, even if the project proposes to merge them into one structure.
2. Exterior walls that become interior walls shall be counted against the 50 percent threshold, unless the interior wall remains loadbearing or as otherwise determined by the Planning Director for an unusual circumstance.
3. When one or more studs are removed, replaced or sistered in, the removed portion of the wall shall include half the distance to the next stud on both sides of the affected stud(s).

D. Required Submittal Items and Fees:

1. Complete the Substantial Remodel Agreement
2. Demolition Plan

Clearly show and label the existing (E) and proposed new (N) exterior walls, doors and windows. Highlight those sections to be removed and/or replaced, both in plan view and itemized in a table noting the existing and proposed linear feet of each exterior wall, door and window. Account for the removal/replacement of anticipated framing members necessary for the project due to age and/or weathering as "discovering" of such items during construction would require recalculation of the 50 percent threshold.

3. Elevation Plans

Elevation Plans must clearly depict with shading the additions, sections of exterior walls to be removed, existing doors and windows to be filled in, new exterior walls and increase in height and roofline alterations.

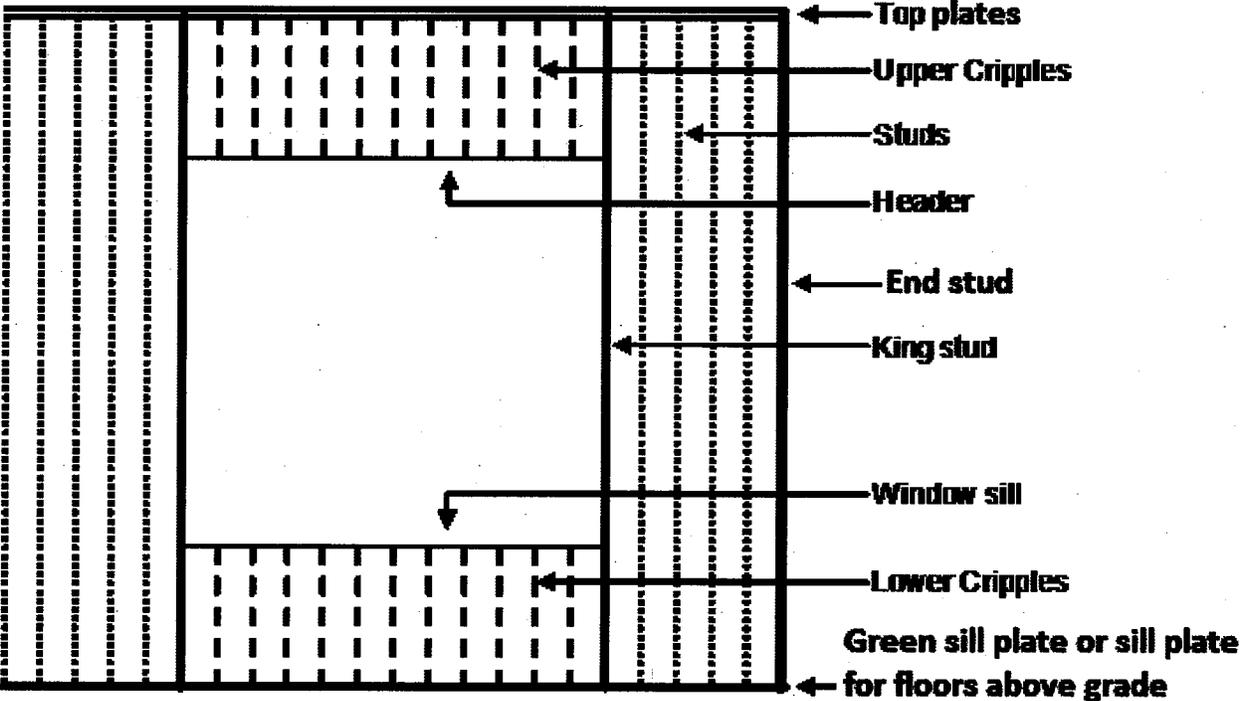
4. Preliminary Foundation Plans

Account for anticipated structural elements necessary for the project including, but not limited to, shear walls, foundation pads and supports, depths of understructure excavation and underpinning.

5. Structural Plans or Letter from Structural Engineer

On an as-needed basis, structural plans or a letter from a structural engineer may be required to demonstrate whether improvements to a building will require full or partial demolition of exterior walls, particularly in the case of non-conforming buildings.

Diagram – Example Wall Segment with Reference Labels





City of Malibu

Planning Department

May 4, 2015

LCP Policy 4: Basement, Subterranean Garage and Cellar

For purposes of this policy, the term “basement” is used interchangeably with the terms “subterranean garage,” “cellar,” and “combination basement/subterranean garage.”

Originally, basements in the City were completely excluded from total development square footage (TDSF) calculations and could have a walk-out design in which one or more exterior walls could be exposed. This type of design often resulted in the appearance of a three-story structure, conflicting with the City’s two-story limit.

In 2004, City Council adopted new basement rules allowing basements to daylight no more than three feet, and to exclude only 1,000 square feet from the TDSF. Square footage over 1,000 is counted at a 2:1 ratio. The primary objective of the amendment was to reduce the overall visual impact of buildings, specifically, the appearance of three-story buildings while still encouraging portions of structures to be located below grade.

Basements have always been used as both habitable and non-habitable spaces. Lightwells have been used to provide light, ventilation and emergency egress to meet Building Code requirements. The Building Code requires bedrooms to have a second means of egress. Therefore, any bedroom in a basement requires a lightwell. In this context, the term “bedroom” is interpreted broadly and generally includes rooms that could be used for sleeping.

Malibu Municipal Code (M.M.C.) Section 17.02.060 defines “basement” as “that portion of a building or an area enclosed by walls located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than three vertical feet at all points around the perimeter of all exterior walls. A basement does not constitute a story...”

Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 2.1 defines “basement” as “that portion of a building or an area enclosed by walls located below finished grade and beneath or partially beneath the first floor footprint above, where the vertical distance from finished grade to the bottom of the finished floor above is no more than three (3) vertical feet at all points around the perimeter of all exterior walls. A basement does not constitute a story.”

“Cellar” is defined as “any structure located entirely outside of the first floor footprint of a building, and located entirely below grade, except for an opening for pedestrian ingress and egress that shall have a minimum clear width of at least thirty (30) inches and a maximum clear width of forty-eight (48) inches.

Interpretation: Consistent with the definitions of “basement” and “cellar,” the exterior walls of a lightwell are considered the exterior walls of the basement provided the finished grade adjacent to the exterior of the lightwell walls to the bottom of the finished floor above the basement is no more than three vertical feet and shall have a maximum clear width of four feet (48 inches). A lightwell is similar to the required pedestrian opening of a cellar and provides an important safety feature.

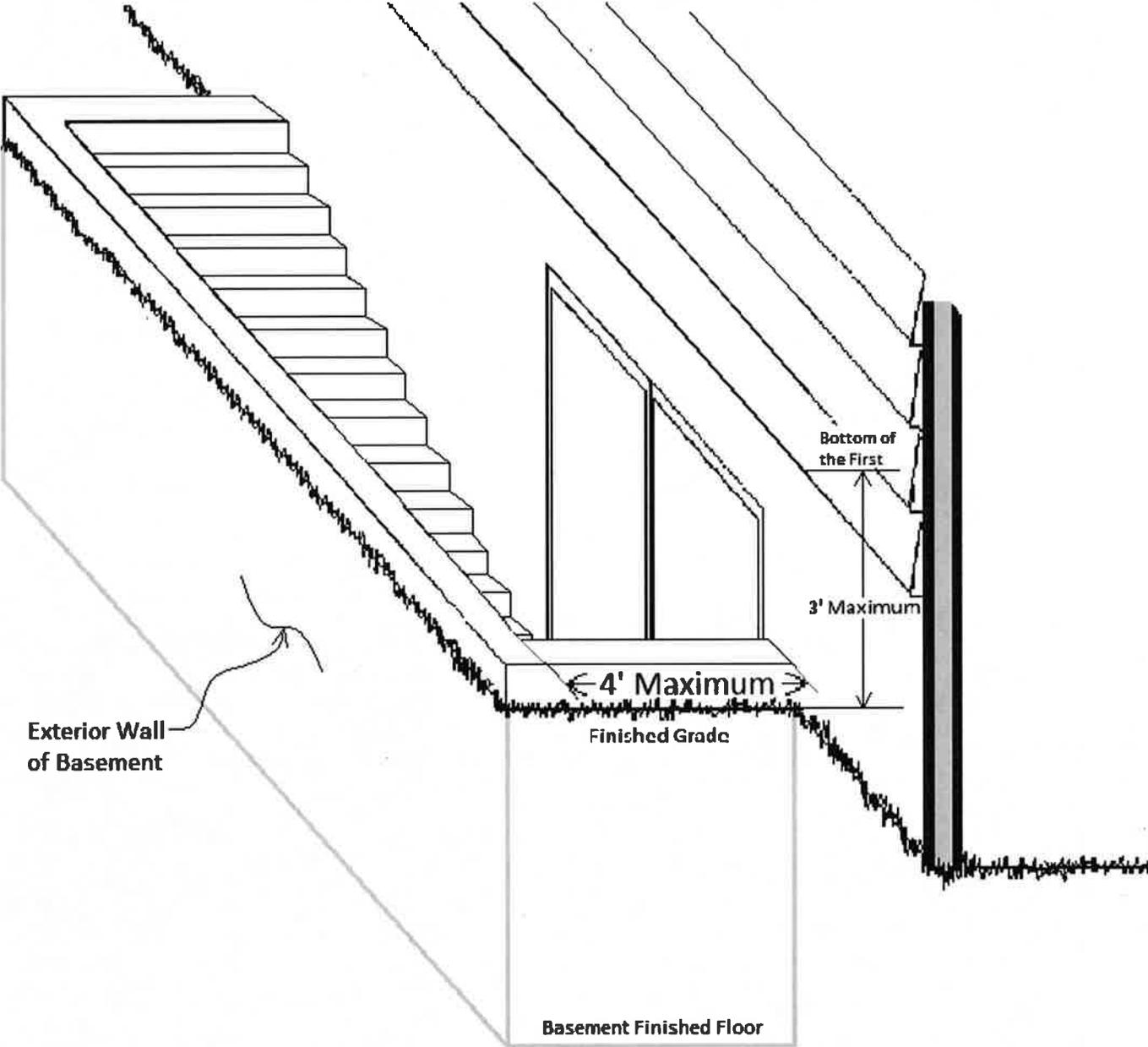
Lightwells are not specifically regulated in the M.M.C. and LCP. A policy is necessary to provide greater certainty for applicants and staff about the intent of the code and what types of lightwell features are acceptable, until such time as code amendments can be processed. Ideally, lightwells would provide light, ventilation, meet emergency egress requirements and would not add visual impacts contrary to the objective of the code. Additional uses for lightwells can be acceptable as long as they remain consistent with these objectives. The *Procedure* section below is necessary to minimize the potential visual impacts of basements consistent with the current basement rules and intent.

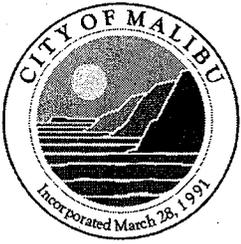
Procedure

Basements shall be subject to the following limitations:

- A. Lightwell width (perpendicular to the building wall) shall be a maximum of forty-eight (48) inches;
- B. Combined length (parallel to the building wall) of all lightwells shall not exceed 25 percent of the exterior perimeter of the basement;
- C. Emergency egress out of the lightwell may be via a staircase (preferred), or by a vertical ladder system;
- D. Lightwells located in a required yard shall maintain a minimum setback of five feet to the property line;
- E. Any grading associated with lightwells must be counted as non-exempt grading;
- F. The maximum vertical distance between the finished grade adjacent to the exterior of a lightwell wall to the bottom of the finished floor above the basement may not exceed three (3) vertical feet at all points around the perimeter; and
- G. The square footage of lightwells shall be included in the total development square footage of basements pursuant to M.M.C. Section 17.40.040(A)(13)(c) and LIP Section 3.6(K)(3).

Basement Lightwell Diagram





LCP Interpretation

Number: 1

Dated: March 28, 2005

Amended: n/a

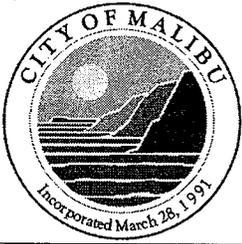
Planning Manager: Michael M. Teruya

Code Section: Chapter 13 LIP (13.3, 13.4)

Title: Interior remodels where there is no exterior work to the structure or site, change in use that increases the intensity of the use (such as retail to restaurant), or modification of a septic/water system

Issue: Do interior remodels that do not involve any exterior work or modification of septic/water systems require a Coastal Development Permit (CDP)?

Interpretation: No. Interior remodels are not "development" and, therefore, do not require a CDP provided there is no exterior work to the structure or site, change in use that increases the intensity of the use (such as retail to restaurant), or modification of a septic/water system. Because Interior remodels meeting these criteria are not considered development, they would also not require a CDP Exemption. A "No Planning Issues" or "Over-the-Counter" review is still required.



LCP Interpretation

Number: 2

Dated: March 28, 2005

Amended: n/a

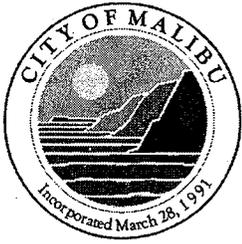
Planning Manager: Michael M. Teruya

Code Section: Chapter 4 LIP (4.5, 4.6)

Title: Vegetation Removal for Fire Protection

Issue: Is removal of vegetation around existing buildings for fire protection purposes permitted?

Interpretation: Yes. Vegetation removal around existing buildings for fire protection is permitted when required by the Los Angeles County Fire Department. There are inherent conflicts between fire protection and preservation of ESHA and ESHA buffers in rural settings. The City's duty to protect public safety takes precedence over the protection of ESHA when required for fire protection of existing buildings. Therefore, vegetation removal is permitted when required by the Los Angeles Fire Department.



LCP Interpretation

Number: 3

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

Code Section: Chapter 11 LIP

Title: Native American Cultural Resource Manager

Issue: Designation of Native American Cultural Resource Manager

Interpretation: Where the LCP refers to the City Native American Cultural Resource Manager, the City Planning Manager shall have those responsibilities.



LCP Interpretation

Number: 4

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

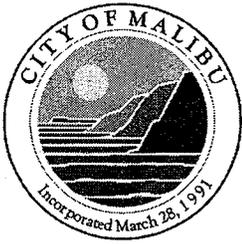
LCP Section: LIP Chapter 13.5

Title: Improvements to Non-conforming Structures

Issue: How much may be added to non-conforming structures before they must be brought into conformity with LCP? How much of non-conforming structures may be demolished before they must be brought into conformance with the LCP?

Interpretation: Improvements to single-family residences, such as additions, are normally exempt from the requirements to obtain a Coastal Development Permit (see LIP Section 13.4.1). Therefore, unless the LCP specifically requires that additions be in conformance with the LCP, then the size of the addition is irrelevant to the issue of whether or not the subject structure must be brought into compliance with the LCP. LIP Section 13.5(D) indicates that additions and/or improvements to non-conforming structures may be authorized, provided that the additions and/or improvements themselves comply with current policies and standards of the LCP. LIP Section 13.5(F) indicates that additions that increase the size of the structure by 50 percent or more to non-conforming structures relative to blufftop or beach setbacks **only** initiate a requirement that such structures be brought into conformance with the LCP.

LIP Section 13.5(C) indicates that demolition and/or reconstruction that results in replacement of more than 50 percent of the non-conforming structure is not permitted unless such structures are brought into compliance with the policies and standards of the LCP. LIP Section 6.5(E)(3) indicates that structures that do not comply with LIP Section 6.5(E) must be brought into conformance with this section when 50 percent or more of a structure is replaced. Therefore, the replacement of more than 50 percent of a structure is the threshold to determine whether or not a project should be brought into conformance with the LCP.



LCP Interpretation

Number: 5

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael Teruya

LCP Section: N/A

Title: LCP Applicability

Issue: Do LCP policies, such as tree protections, apply when a project is exempt for the requirements to obtain a Coastal Development Permit (CDP)?

Interpretation: No. LCP policies generally only apply if a CDP is required. If a project is deemed exempt from the requirements to obtain a CDP, then most LCP standards and policies, such as tree protection policies, do not apply. Specific exceptions to this maxim include projects that meet the thresholds identified in Section 13.5 (Non-Conforming Use or Structures).



LCP Interpretation

Number: 6

Dated: March 28, 2005

Amended: n/a

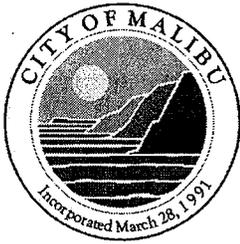
Planning Manager: Michael M. Teruya

LCP Section: Various Findings

Title: Least Environmentally Damaging Alternative

Issue: A required finding for the issuance of a Coastal Development Permit is that the project is the least environmentally damaging alternative. How does the City make these findings?

Interpretation: As part of the submittal package, the applicant is required to submit a project alternative analysis. Staff will utilize this analysis to make the requirement findings.



LCP Interpretation

Number: 7

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

Code Section: LIP Section 13.5.C

Title: Non-Conforming Structure

Issue: Existing non-conforming structures may be the subject of an expansion and require a Coastal Development Permit. There has been some confusion in interpreting Section 13.5.C of the LIP with regard to enlargements of existing non-conforming structures. This section provides that, "replacement of more than 50 percent of non-conforming structures...is not permitted unless such structures are brought into conformance with the policies and standards of the LCP."

Interpretation: When a non-conforming structure is proposed to be expanded and requires a Coastal Development Permit, additions that increase the size of the structure by 50% or more shall not be permitted unless the entire structure is brought into conformance with the policies and standards of the LCP.



LCP Interpretation

Number: 8

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

LCP Section: LIP Section 4.4.4

Title: Biology Study Exemptions

Issue: LIP Section 13.6.4.E (submittal requirements) requires a biological inventory to be submitted with all applications for Coastal Development Permits. However, Section 4.4.4 of the LIP excludes certain types of projects from the requirements of completing biological study and the requirement of review by the Environmental Review Board.

Interpretation: The following types of projects shall not require a biologic inventory, a biological study or review by the Environmental Review Board:

- A. Remodeling an existing structure that does not extend the existing structure footprint.
- B. Additions to existing structures that are within the lawfully established graded pad area, or the existing developed/landscaped area if there is not graded pad, and that do not require additional fuel modification.
- C. Demolition of an existing structure and construction of a new structure within the existing building pad area where no additional fuel modification is required.
- D. New structures and landscaping proposed within the permitted graded pad or permitted development area if there is no graded pad, authorized in a previously approved coastal development permit.
- E. New structures within existing, developed neighborhoods where the parcel is not within 200 feet of an ESHA, as shown on the ESHA overlay map.



LCP Interpretation

Number: 9

Dated: March 28, 2005

Retracted: October 6, 2014

Planning Director: Joyce Parker-Bozylinski, AICP

Code Section: LIP reference to Coastal Bluffs

Title: Coastal Bluffs

On September 23, 2014, Planning Department staff presented to and considered comments from the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) regarding the removal of LCP Interpretation No. 9. In agreement with the comments, LCP Interpretation No. 9 was retracted.

Attachments:

1. Memorandum to City Council
2. Retracted LCP Interpretation No. 9



City of Malibu

MEMORANDUM

To: Members of the City Council

From: Adrian Fernandez, Senior Planner *A.F.*

Date: October 6, 2014

Re: Local Coastal Program Interpretation No. 9

Local Coastal Program (LCP) Interpretation No. 9 lists the definitions of bluff edge, cliff, coastal bluff and sea cliff found in the LCP and concludes that based on all definitions, a coastal bluff is a slope affected by coastal erosion processes related directly to wave action, without an existing shoreline protective device. This means that slopes that were historically created from wave action but are no longer subject to wave action would not be considered coastal bluff and therefore, these so-called non-coastal bluffs would be excluded from bluff-related provisions. This is especially problematic for cases where a bluff property is protected from coastal hazards by an existing shoreline protective device or bluff stabilization measures. The interpretation gives property owners the impression that if their property is already protected by these measures, then bluff-related development standards do not apply.

The City of Malibu General Plan and LCP Land Use Plan (LUP) include implementation measures and policies that prohibit development on a bluff face, and require development to be sited outside of bluff retreat and set back from the edge of the bluff to avoid and minimize visual impacts from the beach and ocean below. Although it makes sense from a geologic instability standpoint to factor in whether a bluff is subject to wave action, it should not be the sole determining factor. Other slopes that were historically created by wave action but are no longer subject to it may still be prone to erosion or stability hazard. Additionally, visual impacts from the beach and ocean below may be the same whether or not a bluff is subject to wave action. Finally, native habitat on bluff faces is considered environmentally sensitive habitat area (ESHA) and may exist whether or not a bluff is directly subject to wave action.

City codes need to be updated to further clarify the definitions and standards related to bluffs. Staff is pursuing a Malibu Municipal Code update that is intended to address this and other similar issues. In the meantime, LCP Interpretation No. 9 will be retracted so that bluff-related provisions be applied strictly based on existing code and eliminate confusion as to whether wave action is the sole determining factor in the applicability of bluff standards.

cc: Planning Commission ERB
City Manager City Attorney's Office
City Clerk Planning Department
ESD



LCP Interpretation

Number: 9

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

LCP Section: LIP references to Coastal Bluffs

Title: Coastal Bluffs

Issue: What is the definition of a coastal bluff? The LIP provides the following definitions:

BLUFF EDGE - for coastal and canyon bluffs, the bluff edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff, the bluff edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the bluff edge. Where a coastal bluff curves landward to become a canyon bluff, the termini of the coastal bluff edge, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the coastal bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the canyon facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.

CLIFF – any high, very steep to perpendicular or overhanging face of rock, a precipice.

COASTAL BLUFF – a high bank or bold headland, 10 feet or more in vertical extent, with a broad, precipitous, sometimes rounded cliff face overlooking a body of water.

SEA CLIFF – a cliff or slope produced by wave action, situated at the seaward edge of the coast or the landward side of the wave-cut platform, and marking the inner limit of beach erosion.

Interpretation: Any cliff, sea cliff, bluff, or bluff edge that is directly affected by wave action is a “coastal bluff”. If there is a road or structures that require, or use, coastal protection, between the “bluff” and the “body of water” then it is not considered a coastal bluff, because at that point it is no longer affected by coastal erosion processes related directly to wave action.



LCP Interpretation

Number: 10

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

Code Section: LIP Sections 13.6.4 and 17.4

Title: Frontloading of Application Submittal Requirements

Issue: The LCP requires many documents to be submitted concurrently with an application. However, many of these items are more appropriately addressed and evaluated at the "building plan check stage" and should not impact the ability of staff to find that a project is in conformance with the policies/regulations of the Local Coastal Program or the issuance of a Coastal Development Permit.

Interpretation: Where appropriate, certain requirements shall be included as conditions of approval to be satisfied prior to the issuance of a building permit.



LCP Interpretation

Number: 11

Dated: March 28, 2005

Amended: n/a

Planning Manager: Michael M. Teruya

Code Section: LIP Sections 13.13.6

Title: Planning Commission Review Administrative Coastal Development Permits

Issue: LIP Section 13.13.6 indicates that three members of the Planning Commission may request that the issuance of an Administrative Coastal Development Permit (CDP) not become effective, but instead, be treated as a regular or full CDP. Section 13.13.6 does not, however, set forth the standards the Commission should apply when deciding whether to transform an Administrative CDP into a regular or full CDP.

Interpretation: LIP Section 13.13.1 differentiates between Administrative CDPs and full or regular CDPs. The Planning Commission should use the criteria contained in LIP Section 13.13.1 to determine whether or not to transform an Administrative CDP into a full or regular CDP. In other words, the Planning Commission should only consider whether or not the Planning Manager made the correct determination in treating an Administrative CDP as such.



LCP Interpretation

Number: 12

Dated: February 6, 2008

Amended: N/A

Planning Manager: Stacey Rice

LCP Sections: LUP Policy 5.29 and LIP Chapter 2 (Definitions)

Title: Definition of Multi-Family Development as it Pertains to the Transfer of Development Credit

Issue:

There is a contradiction between the language of the LCP Local Implementation Plan (LIP) and the LCP Land Use Plan (LUP) regarding the definition of multi-family development. This issue has a direct impact on the implementation of the transfer of development credit (TDC) for projects that meet the definition of multi-family residence within the City of Malibu.

LIP Section 7.2(A)(2) (Transfer of Development Credits) states that the requirement for the transfer of development credit "applies to any action to authorize a coastal development permit for multi-family residential development in the MF or Multi-Family, Beachfront (MFBF) zones."

It is standard practice for the Planning Division to apply the restrictions set forth in the LIP when making the determination as to which projects require TDCs. Past practice has dictated that Planning staff does not apply the requirement for TDCs to projects for the development of two residential units on a single parcel.

Recently, the California Coastal Commission (CCC) staff submitted a letter to Planning staff which argues that transfer of development credits are required for all development of more than one residential unit per property based upon a section found in the LUP. The letter further acknowledged a discrepancy between the LUP and LIP in regards to this issue.

The discrepancy is as follows:

1. LUP Policy 5.29 states:

"Any coastal development permit for a land division resulting in the creation of additional lots or for a multi-family use resulting in the *development of more than one unit per existing lot* in the project site, excluding affordable housing units, shall be conditioned upon the retirement of development credits prior to issuance of the permit. The development potential of the qualifying parcel(s) shall be retired

through the recordation of an offer to dedicate an open space easement and the merging or recombination of the retired parcel(s) with a contiguous parcel where the development potential is not retired."

The CCC staff contends in its letter that "the TDC requirement is intended to apply to new multi-family development, which is anything greater than one unit."

2. LIP Chapter 2 states:

A multi-family residence is a "building or portion thereof used for occupancy by two or more families living independently of each other and containing three or more dwelling units. It is important to note that multi-family is defined by containing *three or more units*."

According to the LUP, the requirement for TDCs is applied to projects which develop more than one residential unit per property. Conversely, the LIP states that TDCs are only required in instances where three or more residential units are created on a single property.

Interpretation:

The intent of the LIP is to implement the policies set forth in the LUP. As a result, multi-family residential development is considered to be any project for the creation of more than one unit per existing lot. Therefore, the transfer of development credit will be required for all projects which propose to create more than one unit on a single property.



LCP Interpretation

Number: 13

Dated: May 27, 2008

Amended: N/A

Planning Manager: Stacey Rice, Ph.D., AICP
Reviewed by: ZORACEES

LCP Section: Local Implementation Plan (LIP) Section 3.4.1(B)(5)

Title: Measurement of the 40 Foot Building Envelope in the La Costa Overlay District for "C" Type Lots

Issue: The La Costa Overlay District implements custom design and development criteria. In regards to the allowable structure height on properties designated as "C" type lots (those properties which slope downhill from the street) LIP Section 3.4.1(B)(5), states, "The structure shall project laterally into the lot a maximum of 40 feet, any projection past this point shall not exceed 18 feet in height above natural grade." This standard allows a portion of a building measuring no more than 40 feet horizontally to have a height of up to 35 feet as measured from the structure's midpoint above natural grade. Portions of the structure outside this horizontal envelope can not exceed 18 feet in height. What is not specified by this provision is where the 40 foot horizontal measurement begins.

Interpretation: Staff has determined that to maintain the neighborhood character of the La Costa Overlay District, the front property line should be utilized as the point from which the 40 foot projection into the lot must be measured from. If the 40 foot projection begins at the property line, development will remain tucked in and along the street which it abuts thereby preserving views from properties located above and across the street from the proposed development.



LCP Interpretation

Number: 14

Dated: July 15, 2005

Amended: n/a

Planning Manager: CJ Amstrup

Code Section: LIP Section 17.4.2(B)

Title: Stormwater Retention

Issue: LIP Section 17.4.2(B) requires storm drainage improvement measures to mitigate any off-site/downstream negative impacts due to proposed development. Such measures may include, but are not limited to, attenuation and staged release (i.e., detention) of ½ inch of rainfall falling on permeable surfaces and one inch of rainfall falling on impermeable surfaces. It is not clear if this requirement applies to the entire site, or just the area disturbed development.

Interpretation: Only areas disturbed by the project will require detention. The disturbed area will consist of impermeable and permeable areas, as determined by the Public Works Director or his/her designee. For disturbed permeable areas, ½ inch will be required to be detained. For disturbed impermeable areas, one inch will be required to be detained. Areas not disturbed will not require detention.



LCP Interpretation

Number: 15

Dated: July 15, 2005

Amended: N/A

Planning Manager: CJ Amstrup

LCP Section: LIP Sections 13.13, 13.26, and 13.27

Title: Treatment of Variances, Site Plan Reviews, Minor Modifications, and Coastal Development Permits

Issue: According to LIP Section 13.13.4, the Planning Director is the decision-maker for Administrative Coastal Development Permits (ACDP). According to LIP Section 13.7, the Planning Commission is the decision-maker for all other CDPs. According to LIP Section 13.26.3, variances require a public hearing in the same manner as for regular CDPs. According to LIP Section 13.27.5, the Planning Director is the decision-maker for site plan reviews (SPR) and minor modifications (MM). How are variances processed with ACDPs? How are MMs and SPRs processed with full CDPs?

Interpretation: If a regular CDP is required for a project, then MMs and SPRs associated with the project shall be decided upon by the Planning Commission. If a project qualifies for an ACDP, and requires a MM and/or SPR, then the approval for the MM and/or SPR requests shall be processed by the Planning Manager concurrently with the ACDP. If a variance is required for project, and the project qualifies for an ACDP, the project will be processed as a regular CDP and decided upon by the Planning Commission.



LCP Interpretation

Number: 16

Dated: November 2, 2005

Amended: N/A

Planning Manager: CJ Amstrup *[Signature]*

LCP Section: LIP Sections 13.13, 13.26, and 13.27

Title: Ridgelines

Issue: Primary and secondary ridgelines are defined in LIP Chapter 2. LIP Section 6.5(C)(1) regulates development on primary and secondary ridgelines. LIP Section 6.2 and LUP Section 6.4 describe how scenic resources are applied. However, these LCP sections provide inconsistent direction about how to implement protection of primary and secondary ridgelines.

Interpretation: On October 24, 2005, the City Council concurred with the following procedure regarding ridgelines.

1. First, if a ridgeline feature is present in the vicinity of the project site, staff will determine if potentially significant adverse effects on scenic resources could result from the project. According to LIP Section 6.3, ridgeline standards only apply if the ridge is visible from scenic areas, scenic roads, or public viewing areas and the project site is visible from scenic areas, scenic roads, or public viewing areas and the project could result in potentially significant adverse impacts regarding scenic resources.
2. Second, staff will determine if a project site is located within a largely developed or built out area. According to LUP Section 6.4, ridgeline development standards are not applied to largely developed or built out areas.
 - Staff will work with applicants to determine neighborhood boundaries, utilizing the criteria described in LIP Section 3.6(L) (Neighborhood Standards) to guide development of the neighborhood boundaries.
 - A percentage of the parcels within the neighborhood that are developed will be determined. In order to be considered developed, the parcel must accommodate uses normally related to human activities. All parcels with primary uses are considered developed. In addition, parcels with accessory structures (such as swimming pools, tennis courts, second residential units, etc.), parcels with structures under construction, or other parcels actively utilized on a consistent basis for human activities (such as sports fields) are considered developed.

- If at least 65 percent of the parcels within a neighborhood are developed, it will be considered largely developed or built out.

Parcels in neighborhoods that are considered largely developed or built out will not be subject to ridgeline standards, unless development of the project site could result in potentially significant impacts on visual resources.

3. Third, staff will determine if the LCP's ridgeline standards apply. According to LIP Section 6.2, ridgeline development standards do not apply to existing flat, undeveloped building pads, existing flat developed sites, or other gently sloping areas (i.e., exhibiting slopes less than 20 percent) on landform features that may exhibit ridgeline qualities. In these cases, development may proceed without a variance to ridgeline standards, provided that such development could comply with all other LCP development standards, and the project site does not include any areas exceeding 20 percent in slope. The "project site" includes any areas disturbed to accommodate structures for the development. Ridgeline standards only apply to those portions of the parcel that meet the definition of ridgeline, and not the entire parcel. In order to not count holes, rocks, and other small topographic changes, applicants may be required to submit a color-coded slope analysis map based on 10-foot contour intervals.
4. Fourth, staff will determine if the ridgeline feature meets the LCP's ridgeline definitions. For project sites on ridgeline features that include areas exceeding 20 percent slope, and meet all other LCP applicability thresholds for scenic resource protection, ridgeline development standards apply. In such cases, an analysis shall be submitted by the applicant to determine if a ridgeline feature meets the LCP ridgeline definitions. If the ridgeline feature does not meet the LIP's ridgeline definitions, then development may proceed without a variance. In such cases, conditions of approval could be imposed to minimize potentially significant adverse impacts. However, if the analysis determined that a structure would be placed on a primary or secondary ridgeline, then a variance or resiting of the structure would be required. Such structures would be limited to one story in height. In these cases, conditions of approval could be imposed to minimize potentially significant adverse impacts.



LCP Interpretation

Number: 17

Dated: November 14, 2006

Amended: N/A

Planning Manager: CJ Amstrup

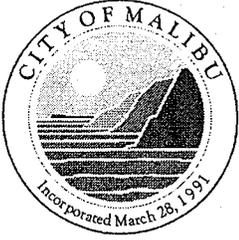
LCP Section: LIP Section 4.6.1(A)

Title: Point Dume ESHA

Issue: The LCP previously designated all streams and riparian corridors as ESHA which, pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 4.6.1(A), require a buffer of no less than 100-feet. Subsequently on October 12, 2006, the California Coastal Commission (CCC) considered and approved City of Malibu Local Coastal Program Amendment No. 1-06, where the designation of all streams and riparian corridors in Point Dume as ESHA was deleted, with the exception of the canyon adjacent to Birdview Drive. With the CCC's recent approval of City of Malibu LCPA No. 1-06 (also known as City designated case number Local Coastal Program No. 05-001), which included the deletion of the ESHA designation for streams and riparian corridors in Point Dume, the 100-foot buffer from streams is no longer applicable in the Point Dume area, except for the canyon adjacent to Birdview Drive. Staff recommends that in order to ensure the protection of natural resources in Point Dume, clarification of the language in LIP Section 4.6.1(A) regarding stream buffers in Point Dume is needed.

Interpretation: On November 14, 2006, the Zoning Ordinances Review and Code Enforcement Subcommittee concurred with the following procedure regarding ESHA in Point Dume:

1. Within the Point Dume area, new development on canyon-side properties that slope toward a drainage course, shall be sited to avoid slopes of 25 percent or steeper. The avoidance of 25 percent or steeper slopes shall serve as the stream buffer regardless of distance between proposed development and the nearest edge of the state jurisdictional limits of the stream. In no case shall development be allowed within the state jurisdictional limits of the drainage.



LCP Interpretation

Number: 18

Dated: April 24, 2007

Amended: March 20, 2008

Planning Manager: Stacey Rice, Ph.D., AICP

LCP Section: LIP Section 3.6(K)

Title: Covered Porches and Calculations of Total Development Square Footage (TDSF)

On April 24, 2007, an interpretation was implemented to exclude covered porches from calculations of total development square footage (TDSF) (Attachment 1). Subsequently, on March 20, 2008, the interpretation was retracted (Attachment 2). A resolution to this interpretation is pending.



LCP Interpretation

Number: 18

Dated: April 24, 2007

Amended: _____

Planning Manager: CJ Amstrup, AICP

Interpreting Body: ZORACES

LCP Section: Section 3.6 (K)

Title: Covered Porches to be Excluded from Calculations of Total Development Square Footage (TDSF)

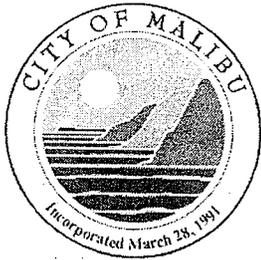
Issue: The Local Coastal Program (LCP) does not specifically state that covered porches, balconies, terraces or similar should be excluded from calculations of total development square footage (TDSF). However, in defining TDSF, the LCP (on page 25) stipulates that "decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides." Section 3.6 (K) (page 64) further stipulates that when calculating TDSF, "arbors or trellis open to the sky" shall be excluded. A covered porch cannot (by design) be "open on all sides" and attached to a primary or accessory structure. Logically, the structure would have to share at least one wall with the primary residence/accessory structure in order to be considered "a part" of the building as stated in the LCP. The language is vague at best; consequently Planning staff has previously interpreted the standard as intending to exclude only roofed structures "open to the sky" (trellises, etc.). Conversely, staff practice has previously been to include all patios, porches, etc. covered by solid, non-permeable rooftops in calculations of TDSF. Going forward however, it is the contention of Planning staff that the intent of the LCP is in fact to exclude covered porches, trellis, patios, decks and the like ("outdoor living spaces") - whether covered by an open, permeable rooftop such as the lattice-work of a trellis or by a solid, impermeable rooftop - from calculations of total development square footage.

Interpretation:

Where a project includes a covered "outdoor living space," (porch, trellis, patio, deck or balcony) and whether that space is covered by an open, permeable rooftop or solid impermeable rooftop; the square footage of that covered space shall be excluded from all calculations of total development square footage (TDSF).

Justification:

While the LCP does not specifically exempt covered porches from calculations of TDSF, it does exempt arbors and trellis open to the sky, and any deck, terrace or balcony that is a part of a primary or accessory structure and open on all sides. That latter requirement amounts to a paradox, and so staff must interpret the intent of the ordinance. In references to terraces, balconies, etc., the LCP is broadly describing "outdoor living spaces," and exempts such from TDSF calculations by references to roof type ("open to the sky") as well as construction ("open on all sides"). Further support for this interpretation is provided through the LCP definition of "floor area ratio (FAR)," where it states that FAR is "the sum of the gross horizontal areas of the several floors of a building (and shall be) measured from the interior face of exterior walls." Balconies, terraces, etc. cannot (by definition) have solid exterior walls, and so must be considered exempt from any calculations of development area. The intent of the LCP is to include only those areas of a structure enclosed by solid walls and rooftops in calculations of TDSF.



City of Malibu

MEMORANDUM

To: Members of the City Council
From: Stephanie Danner, Associate Planner *SD*
Date: March 12, 2008
Re: Local Coastal Program Interpretation No. 18

Local Implementation Plan (LIP) Chapter 2 defines total development square footage (TDSF) as:

“the calculation of the interior space of the primary and accessory structures (including interior and exterior walls). Accessory structures shall include, but are not limited to, guest houses, garages, barns, sheds, gazebos, cabanas. Decks, terraces and balconies shall not be included in total square footage calculations when they are a part of a primary or accessory structure and are open on all sides.”

In an attempt to better define areas which “are open on all sides”, staff put forth Interpretation No. 18, dated April 24, 2007, which included a TDSF exemption for all outdoor covered areas.

Local Coastal Program (LCP) Interpretation Number 18 allows the square footage of all outdoor covered areas to be exempt from a property’s TDSF calculation. This interpretation does not include any maximum size limits and does not prohibit violations of the two-thirds rule described in LIP Section 3.6(K)(2).

Approximately one year after the implementation of Interpretation No. 18, staff completed an evaluation of the effects of the interpretation on actual planning projects. Staff concluded that because there were no square footage limits on outdoor covered area, some projects were proposing more square footage than was previously considered allowable for the size of the property. Additionally, staff concluded that the two-thirds rule was being violated, as the covered areas were not included in that calculation.

At the February 26, 2008 ZORACES meeting, staff brought its findings forward to the Subcommittee. At the conclusion of the meeting, the Subcommittee directed staff to retract Interpretation No. 18, create a revised interpretation based upon LIP Section 3.5.3(B)(1), and begin work on a Zoning Text Amendment (ZTA) to implement new standards which exempt certain types of covered area from the TDSF calculation.

LIP Section 3.5.3(B)(1) states: “architectural projections including eaves, awnings, louvers, and similar shading devices; sills, belt courses, cornices, and similar features, may not project more

than six (6) feet into a required yard, provided that the distance between an architectural projection and a property line shall not be less than three (3) feet.”

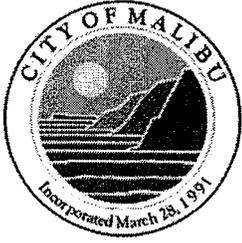
A new interpretation will be written which will use this section of the LIP to allow covered areas up to six feet to be exempt from the TDSF calculation. If the covered area square footage exceeds the six foot projection, the entire covered area will be included in TDSF. Furthermore, the volume of the covered area will be included when calculating the two-thirds rule for a proposed structure in order to prevent a box-like appearance.

LCP Interpretation No. 18 was officially retracted at the ZORACES meeting of February 26, 2008. All project applications submitted prior to and including that date will retain the TDSF exemption for any covered area proposed. Project applications submitted after February 26, 2008 will be required to comply with the provisions set forth in the new TDSF Interpretation.

LCP Interpretation Number 18 will be removed from the City Website and will be replaced with the new interpretation when it is available. Please remove this interpretation from your Interpretations Manual as well.

cc: Planning Commission
Environmental Review Board
Architects and Engineers Advisory Committee
City Manager
City Attorney's Office
City Clerk
ECD Division Manager
Planning Division
Code Enforcement Office





LCP Interpretation

Number: 19

Dated: August 4, 2008

Amended: n/a

Planning Manager: Stacey Rice, Ph.D., AICP

LCP Section: LUP Section 1.3.1

Title: Applicable Development Standards

Issue: Competing development regulations and policies may occur between the Local Coastal Program (LCP), Malibu Municipal Code (M.M.C.), General Plan or any other City-adopted plan, resolution or ordinance. It can be unclear which development standards are applicable to the type of development proposed.

Interpretation: Pursuant to Land Use Policy (LUP) Section 1.3.1, if there is a conflict between a provision of the LCP and a provision of the M.M.C., General Plan or any other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision.

However, pursuant to M.M.C. Section 17.04.070(A), where a conflict occurs between the regulations and policies of the M.M.C., LCP, General Plan or any other City-adopted plan, resolution or ordinance effective within the city, the more restrictive provision of any such regulations shall apply.



LCP Interpretation

Number: 20

Dated: March 10, 2014

Amended: N/A

Planning Director: Joyce Parker-Bozylinski

LCP Section: LIP Sections 3.3(M) [Public Open Space] Appendix 1 TABLE B PERMITTED USES
Title: Park Administrative Offices

Issue: The LIP sets forth the permitted uses in the OS zone, the purpose of which is to provide for publicly owned land which is dedicated to recreation or preservation of the City's natural resources, including public beaches, park lands, and preserves. Generally speaking, uses that are not permitted are prohibited. Table B of Appendix 1 sets forth the permitted uses in the OS Zone: Equestrian and hiking trails (public and private); Wildlife preserves; Camping; Parks, beaches, and playgrounds; Public Beach Accessway; Recreation facilities (swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts and similar uses); and Educational (non-profit) activities. Emergency communication and service facilities are conditional permitted (require a CUP). Government facilities and professional offices are expressly prohibited uses in the OS Zone. The LUP describes the Public Open Space land use designation and lists the allowable uses to "include passive recreation, research and education, nature observation, and recreational and support facilities." The LCP section provides inconsistent direction about how to implement OS uses for the purposes of recreation and preservation and research and education because the permitted uses require supervision and administrative support, including some office facilities.

Interpretation: The purpose of the permitted uses is to assure that publicly owned property designated and zoned OS is predominately used for the limited uses set forth in Table B of Appendix 1 of the LIP. In order to support that purpose, some portion of public property may be used for offices or other administrative support. These park administrative offices are not government facilities or professional offices within the meaning of the LIP because such offices are not the primary uses of property. Instead, park administrative offices are subordinate and ancillary uses that support the primary OS use. Here are examples of park administrative uses: a pool manager's office at a public pool (such as the city's use of the Malibu High School pool for recreation programs), administrative offices of park employees that also manage the schedule of use of park facilities or otherwise administer recreation programs (such as the Parks and Recreation Department's use at Michael Landon Center in Bluff's Park), caretaker or arson watch offices (such as the City's caretaker mobilehome in Charmlee Park) or regional park administrative offices that plan, operate, manage, and enhance the primary OS uses (such as SMMC's headquarter offices at Ramirez Canyon Park). To assure that park administrative offices do not dominate the primary use of an OS zoned property, such uses may not occupy more than 5% of the total area of the OS Zoned property in which they are located. For the purposes of calculating the percentage of area, the total property will be considered, whether located inside or outside the City limits. Offices uses in excess of 5% of the park property are professional offices or government facilities within the meaning of the LIP and they are not permitted in the OS zone.