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## **IX. RESPONSES TO COMMENTS ON THE DRAFT EIR**

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### **STATE AND REGIONAL AGENCIES**

1. State of California Governor's Office of Planning and Research (Nov. 14, 2006)  
Terry Roberts, Director, State Clearinghouse  
State Clearinghouse and Planning Unit  
1400 Tenth Street, P.O. Box 3044  
Sacramento, CA 95812
  
2. California Coastal Commission (Nov. 9, 2006)  
Deanna Christensen, Coastal Program Analyst  
South Central Coast Area  
89 South California Street, Suite 200  
Ventura, CA 93001
  
3. State of California Department of Transportation (Nov. 30, 2006)  
Cheryl J. Powell, IGR/CEQA Program Manager  
Office of Regional Planning  
District 7, Office of Public Transportation and Regional Planning  
IRG/CEQA Branch  
100 South Main Street  
Los Angeles, CA 90012
  
4. Southern California Association of Governments (SCAG) (Nov. 9, 2006)  
Sylvia Patsouras, Manager, Environmental Division  
818 West Seventh Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017-3435
  
5. Santa Monica Mountains Conservancy (Nov. 21, 2006)  
Elizabeth Cheadle, Chairperson  
Ramirez Canyon Park  
5750 Ramirez Canyon Road  
Malibu, CA 90265

### **LOCAL AGENCIES**

6. City of Malibu, Consulting Traffic Engineer (Nov. 10, 2006)  
Katz, Okitsu & Associates

Walter Okitsu, Professional Engineer  
1055 Corporate Center Drive, Suite 300  
Monterey Park, CA 91754

7. County of Los Angeles Department of Public Works (Nov. 13, 2006)  
Donald L. Wolfe, Director  
Rossana D'Antonio, Assistant Division Engineer  
Land Development Division  
900 South Fremont Avenue  
Alhambra, CA 91803-1331
8. Malibu Knolls Property Owners Association (Nov. 12, 2006)  
Steve Uhring, Member  
23722 Harbor Vista Drive  
Malibu, CA 90265

## **INDIVIDUALS**

9. Christian Benjamin, Resident (Oct.12, 2006)  
3216 Colony View Circle  
Malibu, CA 90265
10. Alan Robert Block (Nov. 13, 2006)  
c/o Eric and Tamara Gustavson  
1901 Avenue of the Stars, Suite 470  
Los Angeles, CA 90067

## **COMMENTS RECEIVED FROM LARWQCB – NOVEMBER 5, 2007**

11. Tracy J. Egoscue, Executive Officer (Nov. 5, 2007)  
California Regional Water Quality Control Board, Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

**COMMENT LETTER NO. 1**

Terry Roberts, Director, State Clearinghouse  
State of California Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit  
1400 Tenth Street, P.O. Box 3044  
Sacramento, CA 95812  
November 14, 2006  
[Stamp received November 27, 2006]

**Comment No. 1.1**

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on November 13, 2006, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above- named project, please refer to the ten-digit State clearinghouse number when contacting this office.

**Response No. 1.1**

This comment acknowledges the Lead Agency has satisfied the CEQA requirements with respect to distributing the Draft EIR to state agencies for the 45-day public review period. While no state agencies provided comments to OPR during the public review period, the California Coastal Commission and the California Department of Transportation (Caltrans) submitted comment letters to the lead agency after the close of the public comment period. Nevertheless, these comment letters have been included in this Final EIR and are provided below as Comment Letter Nos. 2 and 3, respectively.

**COMMENT LETTER NO. 2**

California Coastal Commission  
South Central Coast Area  
Deanna Christensen, Coastal Program Analyst  
89 South California Street, Suite 200  
Ventura, CA 93001  
(805) 585-1800  
November 9, 2006  
[Stamp received November 13, 2006]

**Comment No. 2.1**

Commission staff has reviewed the above referenced Draft EIR and are providing the following comments for your consideration. As proposed, the project includes development of 132,058 sq. ft. of retail and commercial office space and a City Hall on two existing Community Commercial-zoned parcels located within the Civic Center area of Malibu. The project site is situated on 15.2 acres of vacant land north of Civic Center Way and directly east from the Civic Center government buildings. A lot line adjustment to reconfigure the existing parcels, and a land division to create a third parcel for the proposed City Hall, are also proposed. The project, as proposed, involves the processing of a Development Agreement between the City and the project applicant to increase the maximum Floor Area Ratio (FAR) allowed under the Malibu LUP to 0.20:1 the maximum allowed if public benefits and amenities are provided to the City. The Development Agreement must be certified by the Commission as an amendment to the LCP. The project will also require a Coastal Development Permit.

**Response No. 2.1**

This comment provides a summary of the proposed project and the discretionary land use entitlements/permits that are required from the City of Malibu and the California Coastal Commission for the project.

**Comment No. 2.2**

1. Development Agreement. The DEIR states that the Development Agreement is currently in the process of being finalized between the City and applicant. Since the Development Agreement is a significant part of the proposed project, it should be included in the EIR as an appendix.

**Response No. 2.2**

The Development Agreement (DA) is a working document and has not yet been approved by the lead agency. Once approved, the DA will be a binding contract between the developer and the City of Malibu and will establish the terms under which the proposed project may occur. It “freezes” the local

regulations applicable to the project for an agreed upon period of time. It specifies the duration of the agreement, the permitted uses of the property, the density or intensity of the use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes (Government Code Sections 65864 and 65865.2). While the DA will become an important contractual agreement between the City of Malibu and the Applicant, its attachment to the EIR is not required. The anticipated development that will result if the DA is adopted is described within the "Project Description," as provided in Section III of this Final EIR and its environmental impacts are analyzed throughout this EIR.

### **Comment No. 2.3**

2. Civic Center Development Criteria. The total development area proposed under the proposed project, for parcels A, B, and C combined, is 132,058 square feet. The overall FAR is 0.20. The LCP provides for a maximum FAR of 0.20:1 within the Civic Center Overlay Area only if public benefits and amenities are provided, including public open space and, where applicable, habitat restoration or enhancement. Section 3.8 (A)(5)(f) of the LIP contains guidelines the City shall use in qualifying public benefits and amenities that are offered by an applicant to increase the maximum allowable FAR for commercial development. The EIR should address which guideline was used for making the proposed project's public benefit and amenity determination.

### **Response No. 2.3**

The City of Malibu LCP Local Implementation Plan grants the City Council the authority to approve an increase in the FAR to a maximum of 0.20:1 for commercial development within the Civic Center Overlay Area if "...public benefits and amenities, including public open space and, where applicable, habitat restoration or enhancement, are provided and the project site is included as part of a planned development or Development Agreement for multiple parcels, approved under a LCP amendment by the Coastal Commission..." This authority to grant additional square footage is provided for in Section 3.8 (A)(5)(e)(4), and not Section 3.8 (A)(5)(f), as identified by the commentor. The proposed project is located within the Civic Center area, and Section 3.8 (A)(5)(f) clearly excepts all commercial development within the Civic Center area from its applicability when it uses the following underlined language:

"The City Council shall have the authority to approve additional square footage for commercial development, except within the Civic Center area, as provided in Section 3.8(A)(5) of the Malibu LIP, where the applicant has offered to the City public benefits and amenities, in connection with a project subject to a Development Agreement processed pursuant to Section 13.28 of the Malibu LIP..."

Section 3.8(A)(5)(f) contains guidelines the City shall use in quantifying public benefits and amenities that are offered by an applicant in exchange for an increase in maximum allowable FAR for commercial development not located within the Civic Center area. Because the proposed project is located within the

Civic Center area, this specific section of the City of Malibu LCP Local Implementation Plan would not apply to the proposed project site.

The Draft EIR evaluated the potential for significant environmental impacts to occur as a result of implementing the proposed project, as required by CEQA. It did not make a determination regarding public benefits and/or amenities included as a part of the proposed project. The determination of public benefit and amenities for a project is vested in the discretion of the City Council. It is a legislative determination, not an environmental impact analyzed under CEQA.

#### **Comment No. 2.4**

3. Wetland Delineation/Biological Surveys. In order to complete an adequate biological impact analysis, the DEIR must be based upon an up-to-date, comprehensive biological inventory. The EIR should also quantify all habitat and native trees to be removed or disturbed. For the purposes of reviewing the LCP amendment, Commission will require recent (completed within 1-2 years of application submittal) biological information, including datasheets and routes for each site visit. In addition, Section 3.8(A)(5)(e)(4) of the Malibu LIP requires submittal of a wetland delineation determination, conducted in accordance with policy 4.4.3(b) of the LIP, prior to Commission approval of a LCP amendment for any Development Agreement in the Civic Center Overlay.

#### **Response No. 2.4**

Pursuant to Section 15125(A) of the State CEQA Guidelines: “an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.” A comprehensive biological resource evaluation of the proposed project site was prepared by TeraCor Resource Management (“Teracor”), and included field surveys over several seasons to include observations of flora and fauna potentially occurring within the project area. This evaluation was included as Appendix D to the Draft EIR and was approved by the City Biologist. The project site was initially surveyed by Teracor biologists on 12 May 2003 and again on 20 August 2003 (see Appendix D-1 Biological Resources Assessment Technical Memorandum – Verification of Conditions and Update Letter). In response to the Coastal Commission’s comment letter, TeraCor biologists revisited the project site on 16 March 2007 to confirm the site conditions, as requested. As noted in the March 27, 2007 technical memorandum prepared by TeraCor documenting the conclusions of this most recent site visit, the conditions on the project site remain consistent with the conditions that were observed in 2003. Teracor evaluated the subject site for the presence of wetlands, “waters of the U.S.,” streambeds, and other water features. Teracor’s update letter notes: “Though sycamore trees are present on-site, they are either ornamental or relictual trees from a period where conditions in the Malibu civic center were more natural.” TeraCor concluded that “...the subject site does not support wetlands and has been substantially modified over many years of human activities.” Thus, a wetland delineation determination is not warranted pursuant to Section 4.4.3 (A) of the Malibu LIP.

The Final EIR has been revised to include reference to, and the conclusions of, this technical memorandum prepared by TeraCor in Appendix D-1. The conclusions regarding impacts to biological resources were correctly stated in the Draft EIR. Noted revisions do not alter the findings or conclusions contained within the Draft EIR

**Comment No. 2.5**

4. Biological Resources and Project Alternatives. The proposed project involves the removal of all native coastal sage scrub habitat, California black walnut and sycamore woodland relic cells on the project site. The preferred alternative involves removal of a portion of the on-site native coastal sage scrub habitat, and removal of all California black walnut and sycamore woodland cells on-site. The EIR should quantify all habitat and native trees to be removed or disturbed under each project alternative. The DEIR indicates that mitigation measures for the loss of habitat is proposed under each alternative in order to render the biological resource impacts less-than-significant. However, the project's biological resource impacts cannot be considered less-than-significant if the proposed project and mitigation measures are not consistent with the biological resource and native tree policies and provisions of the certified LCP. The LCP requires that new development be sited and designed to avoid impacts to environmentally sensitive habitat areas and native trees. Mitigation shall not substitute for implementation of an alternative that would avoid or reduce adverse impacts. It appears that feasible alternatives exist that would avoid or minimize adverse impacts upon biological resources. Commission staff recommends that the EIR address consistency of the proposed project, alternatives, and proposed mitigation with the sensitive habitat and native tree provisions of the LCP and make the applicable findings.

**Response No. 2.5**

The mitigation measures 1 through 7 in Section V.C, Biological Resources are consistent with the biological resource and native tree policies and provisions of the certified LCP. While it is acknowledged that the LCP requires that new development be sited and designed to avoid impacts to environmentally sensitive habitat areas, it should be noted that the project site is not located within or adjacent to an area designated as an environmentally sensitive habitat area or resource protection area (City of Malibu LCP, Land Use Plan, Environmentally Sensitive Habitat Areas Map 3: Dan Blocker to Malibu Pier). The project site is constrained by a number of factors that preclude the total avoidance of biological resource impacts. The proposed project is in compliance with the Native Tree Protection Ordinance, Ch. 5 of the LCP/LIP, Sections 5.4, 5.5. It is infeasible to site buildings 5 and 6, and all other development, so as to avoid encroaching upon and requiring the removal of the sycamore relics. Given the site dimensions, and LCP and other requirements, including setbacks, open space, landscaping, fire department requirements, circulation, etc., it is not feasible to site the development of roads and structures to avoid removal. See also Response to Comment No. 10.8. The City's biologist concurs and has approved a Tree Mitigation Plan. The Applicants propose to remove 6 trees and will replant at a ratio of greater than 10:1 (utilizing more than 60 trees) onsite. Furthermore, as confirmed by TeraCor in their 16 March 2007 Update Letter (see Appendix D-1), the project site contains no California black walnut trees (a native tree species) on

the project site. However, the existence of a sparse distribution of walnut trees off-site and up-slope from the project site was noted. As there are no California black walnut trees on-site, neither the proposed project nor the preferred alternative development would impact this native tree species, and no significant effects on the environment would result. The Final EIR has been revised to delete reference to the California black walnut on the project site, as well as the requirement for mitigation of impacts to this species. The technical memorandum prepared by TeraCor documenting the absence of California black walnut on the project site has been included in Technical Appendix D-1 ((Biological Assessment – Verification of Conditions) to the Draft EIR.

**Comment No. 2.6**

5. Fuel Modification. The project's fuel modification requirements should be incorporated into the biological analysis of the EIR, including an illustration of the approximate fuel modification areas on an aerial photograph overlain with the proposed development footprint(s).

**Response No. 2.6**

An aerial photo depicting the fuel modification envelopes overlain on the project site plan has been added to the Final EIR pursuant to the commentor's request. The project's fuel modification requirements are identified as Mitigation Measure No. 3 in Section V.J, Public Services, Fire Protection of the Draft EIR (Final EIR, page V.J-9). For clarification, Mitigation Measure No. 3 states:

- “3. Upon project approval and prior to the issuance of building permits, the Applicant shall submit to the LACFD for review a fuel modification zone plan which includes all required zones, including:
- a) Zone A – A setback zone of at least 20 feet must be established between structures and the following zone. Zone A may include selected and limited vegetation.
  - b) Zone B – An irrigation zone consisting of thinned native or existing vegetation as well as irrigated vegetation that is fire resistant and drought tolerant may occupy this area.
  - c) Zone C – The fuel load in this area shall be reduced by the removal, thinning and maintenance of existing vegetation. Vegetation may become more highly concentrated as the zone moves away from the built environment.
  - d) Zone D – The interface thinning zone consists of native vegetation maintained to be less hazardous by the thinning but not removal of flora.”

As requested, an illustrative Fuel Modification Plan has been incorporated into the Final EIR (See Figure V.J-1 in Section V.J.1, Fire Protection) and a statement added to indicate that this measure has been complied with. Noted revisions to the Draft EIR do not alter the conclusions or findings stated in the Draft EIR.

**Comment No. 2.7**

6. Development Standards. The DEIR states that land use impacts related to non-conforming yard setbacks and building height would be brought into conformance and be less-than-significant with approval of the proposed Development Agreement. This is incorrect since a project's deviation from applicable land use plan, policies and regulations is considered a significance criteria according to CEQA guidelines and the EIR should evaluate the project's consistency with commercial development and visual resource standards contained in the LCP.

**Response No. 2.7**

Section III, Project Description, of the Draft EIR includes a listing of the various discretionary approvals which would be required for the proposed project. As a part of the Project Description, these actions establish the range of actions that were evaluated for their potential to result in significant environmental impacts in Section V of the EIR. A Development Agreement is identified as one of the discretionary approvals required for the proposed project; it cannot be developed without it. As stated in Response 2.1 above, the purpose of a Development Agreement is to grant contractual vested rights at an early stage of the project. It shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of the use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes (Government Code section 65865.2). Once approved by the City of Malibu and the CCC, the Development Agreement would become the source for specific land use regulations applicable to the proposed project, including building height and setback (yards). The Development Agreement is enforceable regardless of any subsequent change in the general plan, any specific plan, zoning or subdivision regulation of the City of Malibu that would otherwise alter the rules, regulations or policies in effect when the agreement is approved or as provided in the Agreement. Thus, once the Development Agreement is approved, the land use regulations contained within it would be land use regulations applicable to the proposed project. The approval of the Zone Text amendment likewise would change the regulations applicable to the site.

Section V.G, Land Use, evaluates the proposed project's conformance with the existing applicable land use plans, policies and regulations. Where the project is not consistent with existing regulations, such inconsistencies are disclosed. The findings and conclusions contained in the Draft EIR remain the same.

**Comment No. 2.8**

7. Land Division. The proposed project involves a land division in order to create three parcels from two existing parcels. The third parcel is proposed to be conveyed to the City for development of a City Hall. The EIR should evaluate the proposed project's conformance with the applicable provisions of Chapter 15 of the LIP (Land Divisions) and make the required findings. This analysis should be included in the Land Use and Planning section of the EIR.

**Response No. 2.8**

The City of Malibu LCP Local Implementation Plan sets forth specific findings that must be made by the City of Malibu in granting any division of land. These findings are stated in Chapter 15 of the LIP. They are requirements for granting a division of land, not for determining a proposed project's potential to result in significant environmental impacts, as required by CEQA. A determination of whether the proposed project would result in potentially significant environmental impacts was based on determining whether any potential impacts resulting from the project would exceed specific thresholds (State CEQA Guidelines, Section 15064.7). The "significance" thresholds used to evaluate land use and planning impacts from the proposed project were stated in Section V.G of the Draft EIR, and were taken from The City of Malibu General Plan Draft Environmental Impact Report (August 1995), Appendix G of the CEQA Guidelines and relevant sections of the Malibu General Plan.

**Comment No. 2.9**

Commission staff will review future staff reports for the La Paz Development Agreement LCP amendment and coastal development permit(s). Depending on the particular details of the project and LCP amendment, we may provide additional comments or identify additional issues to be addressed. Thank you for the opportunity to review the DEIR at this time.

**Response No. 2.9**

Comment noted. No further response is required.

**COMMENT LETTER NO. 3**

Cheryl J. Powell, IGR/CEQA Program Manager  
Office of Regional Planning  
Department of Transportation, District 7  
Office of Public Transportation and Regional Planning  
IGR/CEQA Branch  
100 South Main Street  
Los Angeles, CA 90012  
November 30, 2006  
[Stamp received December 4, 2006]

**Comment No. 3.1**

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above-mentioned project. Based on the information received, we have the following comments:

Traffic mitigation measures involving State Highways such as PCH (State Route 1) will need to be reviewed and approved by Caltrans. A Caltrans Encroachment Permit will be needed for any work to be performed within the State right-of-way. Any non-standard design features will need a Caltrans approved Exception to Mandatory Design Standards Fact Sheet. Traffic Studies needs to include impact to southbound PCH from the proposed project to the Santa Monica Freeway for summertime traffic, weekend traffic and holiday traffic.

If you have any questions, you may reach me at (213) 897-3747 and please refer to our record number 061001/CS.

**Response No. 3.1**

This comment acknowledges Caltrans' review of the DEIR. As stated, a Caltrans encroachment permit will be sought for all improvements planned within Caltrans's right-of-way.

With respect to Caltrans' request to analyze summer weekend traffic and holiday traffic it should be noted that the traffic study did include an analysis of traffic conditions during typical summer weekends (See Table V.K-8 on page V.K-16). In August 2007, Priority Engineering conducted supplemental baseline traffic counts to capture the summer traffic volumes at all 9 study intersections that were included in the original traffic study for the Draft EIR. These supplemental traffic counts appear in Appendix J of the Final EIR. As shown in the table below, the Saturday Mid-Day comparison between the Spring 2003 traffic count data (adjusted with a 1.5% growth rate for one year) and the August 2007 traffic count data revealed that 2007 summer traffic volumes were lower at 4 of the 9 intersections and higher at 5 intersections. The relative difference in traffic volumes deviated between 2 and 8 percent at 8 of the 9 study intersections and by 20% at Kanan Dume Road, which is not significantly impacted by the proposed project.

ID No.	INTERSECTION		PEAK HOUR COMPARISON				
	N/S Segment	E/W Segment	Baseline Weekday Counts (Spring 2003)		Baseline Saturday Mid-Day peak		Saturday Mid-day Comparison (+/-)
			(AM)	(PM)	(Spring 03)	(Summer 07)*	
1	Kanan Dume Rd	Pacific Coast Highway	2490	2605	3315	<b>4011</b>	696
2	Malibu Canyon Rd	Pacific Coast Highway	3355	3995	3680	<b>3970</b>	290
3	Webb Way	Pacific Coast Highway	3495	4215	4185	<b>4093</b>	(-92)
4	Cross Creek Rd	Pacific Coast Highway	3585	4290	4080	<b>3906</b>	(-174)
5	Las Flores Canyon Rd	Pacific Coast Highway	3140	4025	3590	<b>3755</b>	165
6	Topanga Canyon Rd	Pacific Coast Highway	4760	5775	4395	<b>4594</b>	199
7	Malibu Canyon Rd	Civic Center Way	2605	2685	1700	<b>1675</b>	(-25)
8	Webb Way	Civic Center Way	1175	1670	945	<b>859</b>	(-86)
9	Cross Creek Rd	Civic Center Way	565	730	570	<b>600</b>	30
1	Kanan Dume Rd	Pacific Coast Highway	2490	2605	3315	<b>4011</b>	696

\* Existing Saturday Afternoon Summer data based on counts collected by Priority Engineering on August 8, 2007 and August 13, 2007. All other volumes based on Malibu La Paz Traffic Study, conducted in April and May 2003, adjusted with a 1.5 % growth rate for one year.

An analysis of the proposed project's traffic impacts on holidays, however, is not required or warranted. Traffic patterns on holidays are atypical conditions and occur on an infrequent basis throughout the year. In addition, the commercial office, retail, and City Hall uses proposed are generally closed on holidays, with some exceptions; thus the project would be expected to generate substantially less traffic on holidays as compared to the weekday and summer weekend scenarios evaluated within the EIR. As such, a holiday traffic analysis is not required.

**COMMENT LETTER NO. 4**

Southern California Association of Governments  
Sylvia Patsouras, Manager, Environmental Division  
818 West Seventh Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017-3435  
(213) 236-1800  
November 9, 2006 [stamp received November 13, 2006]

**Comment No. 4.1**

Thank you for submitting the Malibu La Paz Ranch for review and comment. As areawide clearinghouse for regionally significant projects, SCAG reviews the consistency of local plans, projects and programs with regional plans. This activity is based on SCAG's responsibilities as a regional planning organization pursuant to state and federal laws and regulations. Guidance provided by these reviews is intended to assist local agencies and project sponsors to take actions that contribute to the attainment of regional goals and policies.

We have reviewed the Malibu La Paz Ranch, and have determined that the proposed project is not regionally significant per SCAG Intergovernmental Review (IGR) Criteria and California Environmental Quality Act (CEQA) Guidelines (Section 15206). Therefore, the proposed project does not warrant comments at this time. Should there be a change in the scope of the proposed project, we would appreciate the opportunity to review and comment at that time.

A description of the proposed project will be published in SCAG's October 1-31, 2006 Intergovernmental Review Clearinghouse Report for public review and comment.

The project title and SCAG Clearinghouse number should be used in all correspondence with SCAG concerning this project. Correspondence should be sent to the attention of the Clearinghouse Coordinator. If you have any questions, please contact Laverne Jones at (213) 236-1857. Thank you.

**Response No. 4.1**

The comment notes that the Southern California Association of Governments has reviewed the Draft EIR for consistency with the applicable regional plans and has found that the proposed project is not regionally significant according to SCAG Intergovernmental Review (IGR) Criteria and California Environmental Quality Act (CEQA) Guidelines (Section 15206). No further response is required.

**COMMENT LETTER NO. 5**

Santa Monica Mountains Conservancy  
Elizabeth Cheadle, Chairperson  
Ramirez Canyon Park, 5750 Ramirez Canyon Road  
Malibu, CA 90265  
November 20, 2006  
[FAX received November 21, 2006]

**Comment No. 5.1**

The Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the La Paz Development Agreement Project Draft Environmental Impact Report (DEIR). In a letter dated February 24, 2003, the Conservancy commented on the Notice of Preparation (NOP) for this project. We incorporate those comments into this letter by reference.

**Response No. 5.1**

The letter indicates that the Conservancy is responding with comments on the Draft EIR, and that prior comments on the NOP for this project are incorporated by reference. The previously submitted comments on the NOP appear following the Conservancy's original letter, identified as Attachments A and B to Comment Letter No. 5. It should also be noted that the Conservancy's letter dated February 24, 2003 was incorporated into Appendix A (Notice of Preparation [NOP] and Responses to the NOP) of the DEIR.

**Comment No. 5.2**

The Conservancy agrees that the cumulative impacts to biological resources associated with the project remain potentially significant (DEIR, p. V.C-27). For example, the Malibu Bay Company DEIR (2002) identified numerous sensitive wildlife species (notably birds, including raptors) potentially using the Civic Center sites. The La Paz project site is probably utilized by many of these same species. The DEIR (p. V.C-25) states that the cumulative degradation to regional biological resources in the Malibu area from development of existing residential lots, intensification and improvement of existing land use, and development of existing commercial lots such as that proposed, may be regionally significant. The DEIR (p. V.C-27) states that the loss of open space can only be mitigated for by creating new open space where none exists now, and that this is not a practical or viable measure. Although creation of new open space may not be viable, protection of existing open space is viable. Project applicants in various jurisdictions routinely set aside open space for protection in perpetuity to help offset significant adverse project-related or cumulative impacts to biological resources. Given that the cumulative impacts to biological resources will remain significant, an open space dedication is warranted in this case as a feasible means for the lead agency to substantially reduce impacts.

**Response No. 5.2**

The commentor concurs with the Draft EIR conclusions regarding cumulative impacts to biological resources from the proposed project, and recommends protection of existing open space as viable mitigation for cumulative impacts to biological resources. See Responses to Comments No. 2.5 which explains why an open space easement is not a feasible mitigation measure. Mitigation Measures C-1 through 7 provide adequate feasible mitigation for biological resource impacts.

**Comment No. 5.3**

Any avoidance on the project site will preserve at least some of the habitat for the wildlife species potentially using the site, including raptors and mammals. The California Environmental Quality Act (CEQA) dictates and the Conservancy recommends that some open space be left undisturbed onsite. This should include approximately 250 feet measured from the northern tip of the property southward, encompassing the coastal sage scrub onsite. In addition, the coastal sage scrub located at the northwest portion of the site should be avoided. These areas should not be disturbed by fuel modification or any development, and fencing should not be allowed. A conservation easement should be recorded prior to, or concurrent with, the issuance of the first grading permit, in favor of an appropriate public park agency such as the Mountains Recreation and Conservation Authority.

**Response No. 5.3**

See Responses to Comments Nos. 2.5 and 5.2.

It should be noted that CEQA does not dictate that open space be left undisturbed on-site. To clarify, Chapter 1 (Policy), Section 21001.1 (Approval of Projects; Feasible Alternatives or Mitigation Measures) of the CEQA statutes state that "...public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects..." and conclude (in the same Section) with the following policy: "The legislature further finds and declares that in the event that specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant environmental effects thereof."

As noted in the EIR, the proposed project will necessitate grading and landform alteration including the on-going maintenance of a fuel modification program for the life of the project. As characterized in Section V.C Biological Resources of the EIR, the extent of native vegetation on the project site is limited to isolated and relic cells of Coastal Sage Scrub, and western Sycamore. The establishment of a conservation easement is not a feasible or beneficial option from a biological resource protection perspective. The extent of grading, increased human activity, and ongoing fuel modification requirements of the proposed development would interfere and compromise any beneficial impacts of establishing a conservation easement in the northern territory of the project site.

**Comment No. 5.4**

Inadequate range of alternatives

Clearly the environmentally superior alternative, which saves an undisclosed amount of coastal sage scrub, does not represent an adequate range of development-oriented alternatives. For the environmental document to have an adequate range of alternatives, the Final Environmental Impact Report must include a project disturbance footprint and related protected open space area more or less equivalent to those recommended by the Conservancy in this letter.

**Response No. 5.4**

See Responses to Comments Nos. 2.5, 5.2, 5.3, 10.6, and 10.7.

Pursuant to Section 15126.6(a) of the State CEQA Guidelines, the EIR “shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” As stated on page VII-39, the preferred alternative would avoid disturbance of the CSS habitat located in the northwestern-most area proposed for the City Hall development under the proposed project. Due to the topographical and hydrological constraints presented on site, it is not a feasible option to avoid disturbance to the relictual sycamore woodland area mapped in the center of the site. The removal of this isolated stand of sycamore trees would be mitigated to a less than significant level under both the proposed project and the preferred alternative (See Mitigation Measure No 6 on page V.C-27).

**Comment No. 5.5**

Other comments regarding biological resources

Mitigation Measure 6 (DEIR, p. V.C-26) should be modified to require a 2:1 impact to creation mitigation ratio for impacts to coastal sage scrub. Coastal sage scrub is a very threatened plant community as identified by the California Department of Fish and Game, and it has been reduced by about 80-90 percent of its former range. Creation results in a temporal loss of habitat values (i.e., it may take a decade for the created coastal sage scrub to function similarly to mature stands that have been impacted). Also, there is a level of uncertainty that the created coastal sage scrub will be successful. In addition, the habitat quality may not match the naturally occurring coastal sage scrub proposed to be destroyed. For these reasons, a ratio higher than 1:1 is warranted.

**Response No. 5.5**

The EIR recommends mitigating the loss of CSS habitat by a contribution to a restoration program for CSS in the Santa Monica Mountains on a 1:1 creation (2:1 enhancement) per acre basis; or contribution to

an established conservation organization or governmental agency in the Santa Monica Mountains on a 2:1 per acre basis or replanting native vegetation at a 10:1 ratio. See page V.C-27.

**Comment No. 5.6**

The buffers proposed for construction around nests are not appropriate (DEIR, p. V.C-26). Buffer requirements are variable for non-raptor nests, but may be on the order of 300 feet. The California Department of Fish and Game letter on the NOP (February 26, 2003) recommends a minimum 500 foot buffer for all raptor nests.

**Response No. 5.6**

The EIR recommends a number of protective measures to mitigate the projects' impacts to biological resources. Mitigation Measure No. 1 on page V.C.-26, in Section V.C., Biological Resources, calls for a qualified biologist or ecologist to survey the site prior to any tree removal to ensure exclusionary fencing at a 50-foot radius around any nests (200 feet for raptors). These distances represent minimum requirements and may be expanded to a larger radius setback on a case-by-case basis based on the conditions present at the time of construction activities. Furthermore, in accordance with Mitigation Measure No 1, on V.C-26, no tree removals shall be permitted during bird nesting season (February 1 through August 30) unless the tree has been thoroughly inspected by a qualified biologist to determine that no nesting of migratory birds are present in the canopy.

**Comment No. 5.7**

It is critical that the lighting plan be carefully designed and implemented so as to achieve the goals stated in Mitigation Measure 5 (p. V.C-27), which states that it will (be) designed to protect nocturnal biological resources. We urge that the lighting plan be available for the City's and public review, prior to final action on this project.

Thank you for your consideration. Please direct any questions to Judi Tamasi of our staff at the above address any by phone at (310) 589-3200, ext. 121.

**Response No. 5.7**

This comment is noted for the record and will be forwarded to the decision makers for their consideration.

**COMMENT LETTER NO. 6**

City of Malibu, Consulting Traffic Engineer  
Katz, Okitsu & Associates  
Walter Okitsu, Professional Engineer  
(Calif. Regis. Civil 52655, Traffic 1406)  
1055 Corporate Center Drive, Suite 300  
Monterey Park, CA 91754-7642  
(323) 260-4703  
November 10, 2006

**Comment No. 6.1**

I have reviewed the traffic-related portions of the Draft Environmental Impact Report for the La Paz Development Agreement Project, dated September 28, 2006. I had previously submitted comments based on the 4th screencheck draft report in August of this year, and all of my comments have been adequately addressed. I have no further comment regarding traffic or parking.

**Response No. 6.1**

The comment acknowledges that the respondent has reviewed the traffic-related portions of the Draft EIR, identifies that comments on an earlier screencheck version of the Draft EIR were previously submitted, and that all comments previously submitted on that earlier screencheck have been adequately addressed. No response is required.

**COMMENT LETTER NO. 7**

Donald L. Wolfe, Director of Public Works  
Rossana D'Antonio, Assistant Division Engineer, Land Development Division  
County of Los Angeles Department of Public Works  
900 South Fremont Avenue  
Alhambra, CA 91803-1331  
[address all correspondence to:  
P.O. Box 1460  
Alhambra, CA 91802-1460]  
(626) 458-5100  
November 13, 2006

**Comment No. 7.1**

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the Malibu La Paz Ranch Development. The proposed project involves the development of three parcels; Parcel A consisting of 68,997 square feet of retail/commercial office space, Parcel B consisting of 43,061 square feet of retail/commercial office space, and a 20,000-square feet City Hall will be built on Parcel C. We offer the following comments for your considerations as you finalize the DEIR:

**Response No. 7.1**

This comment provides a summary of the proposed project, and identifies the content of the letter to include comments for consideration in the Final EIR. No response is required.

**Comment No. 7.2**

Hydrology/Water Quality and Drainage:

The DEIR is not clear as to what entity will be providing long-term maintenance of the proposed drainage improvements. Should it be the City's intent to transfer the flood control facilities to the Los Angeles Flood Control District, all drainage improvements, including all retention and/or debris basins should be designed with sufficient details and plans submitted to Public Works for review before certifying the EIR. Any water quality basins should be constructed off-line of the main drainage system. Also, 24-hour access to all facilities must be provided, access must be over properly sized roads, and the roads must be constructed for H20 traffic loading. Street access to a retention and/or debris basin must allow two-way truck traffic. Where necessary, the turnaround areas for Public Works equipment must be able to handle a minimum 40-foot-turning radius. Should it be the intent of the City to maintain the drainage facilities, the applicant will need to furnish Public Works with sufficiently detailed hydrology and hydraulic calculation and design details so that we can determine that the upstream stormwater and debris flow will be

adequately managed and will not adversely impact downstream flood control facilities. These calculations and details should be submitted prior to certifying the EIR.

**Response No. 7.2**

All drainage facilities provided within the project site will be designed, constructed, and maintained by the project Applicant. The City will maintain the infrastructure on Parcel C. The project Applicant will furnish the Los Angeles County Public Works Department with sufficiently detailed hydrology and hydraulic calculation and design details after the project is approved. Preliminary calculations provided by Jensen Design & Survey Inc., indicate that the proposed facilities can accommodate the anticipated flows without resulting in a significant environmental impact to downstream facilities. As the proposed project has not yet been approved, the detailed specifications are likely to change pending project modifications and conditions of approval that may be imposed by the lead and responsible agencies. Therefore, it is appropriate and customary to submit detailed drawings and specifications after the project has been approved.

**Comment No. 7.3**

Transportation/Traffic:

Upon development of all three parcels, the proposed project is estimated to generate approximately 3,140 trips daily, with 130 and 260 vehicle trips during the weekday a.m. and p.m. peak hours, respectively. We agree with the DEIR that the project will have significant impact to the County portion of roadway segment of Malibu Canyon Road between the Hughes Research Lab and Piuma Road. No feasible mitigation measures are available. Therefore, the impacts to this roadway segment would remain significant and unavoidable. However, to address the potential safety issues that may occur on the County portion of Malibu Canyon Road due to the increased traffic, we request the study be revised to include a Highway Safety Study based on Section 148 of Title 23 of the United States Code.

**Response No. 7.3**

With regard to the request to include a Highway Safety Study based on Section 148 of Title 23 of the United States Code, it should be noted that this section of the Code pertains to the development of a national scenic and recreational highway and does not appear to be associated with highway safety. For this reason it is uncertain as to what requirement the comment is referring. The proposed project does not include any federal funding requests and does not propose to modify or improve any federal transportation facilities. Thus, no highway safety study based on Section 148 of Title 23 of the United States Code is required.

**Comment No. 7.4**

Public Utilities-Water:

The proposed project is located in the service area of Los Angeles County Waterworks District 29, Malibu. The discussion on the District's facilities in the vicinity of the project is basically correct, and we are agreeable to the concept of the proposed mitigation measures. However, a complete hydraulic analysis needs to be prepared to determine the detailed requirements for providing water service to the project.

If you have any questions, please contact Mr. Suk Chong at (626) 458-7150.

**Response No. 7.4**

This comment notes the Public Works Department's agreement with the proposed mitigation measures. Detailed calculations and water infrastructure plans will be submitted to the Department for review and approval subsequent to project approval.

**COMMENT LETTER NO. 8**

Steve Uhring  
Malibu Knolls Property Owners Association  
23722 Harbor Vista Drive  
Malibu, CA 90265  
November 12, 2006  
[Stamp received November 13, 2006]

**Comment No. 8.1**

Comment 1

Section Environmental Impacts Noise

Sound studies, the placement of the Noise detectors, were not conducted on homes on Harbor Vista Drive, which abut the proposed development. The amphitheatre type setting of Harbor Vista guarantees that a great deal of the noise generated by the development will find its way to this neighborhood.

The lack of testing of the noise impacts on Harbor Vista displays a large deficiency in this EIR noise study and would render its results unreliable.

**Response No. 8.1**

The letter raises the issue of the location where noise measurements were taken, and questions why noise measurements were not taken on Harbor Vista Drive (the Malibu Knolls residential community), uphill from the proposed development. The noise impacts from the proposed project were evaluated in Section V.H.4 of the Draft EIR. Ambient (baseline) noise levels were recorded at 4 sensitive receptor locations within the immediate vicinity of the proposed project. Sensitive receptors are those land uses which are considered sensitive to noise impacts such as residences, schools, libraries, hospitals, and other care facilities (LaPaz Development Agreement Draft EIR, Appendix C, Air Quality and Noise Technical Report, page 35). Section V.H. of the Draft EIR identified 4 sensitive noise receptor locations to include the closest residential community just north of the proposed project site, as well as the Malibu Public Library, Colin McEwen High School, and St. John's Malibu Urgent Care facility. Ambient noise levels recorded at these locations are representative of the existing noise environment. Because of its proximity to the proposed project site, the adjacent residential community to the north was selected as a sensitive

noise receptor, and not other residential areas located at greater distances from the proposed project (including the Malibu Knolls residential community).<sup>1</sup>

Noise impacts due to the proposed construction and ongoing commercial and office uses at the proposed project site were analyzed by comparing project generated noise to baseline (ambient conditions) at the 4 sensitive receptor locations. A worst-case construction noise impact scenario was also included in the analysis (Final EIR, page V.H-5 to V.H-9). The noise impact analysis concluded that a significant impact due to construction noise would occur at the first sensitive noise receptor location (closest residential community to the north), and that mitigation measures would be required. These measures were identified on page V.H-11 in the Draft EIR (Final EIR, page V.H-11). However, even with mitigation measures, the Draft EIR concluded that a significant and unavoidable temporary noise impact during construction would remain at the first sensitive receptor site (closest residential community to the north), and that (in the event the proposed project is approved) a statement of overriding considerations would be required by the decision makers for this construction noise impact. Importantly, the long-term noise impacts of the proposed project (i.e., ongoing use of the commercial and office buildings) was found to generate less than significant levels of noise to the adjacent residential community to the north. Operational noise impacts at greater distances, including the Malibu Knolls residences, would be even less than the less than significant levels assessed in the Draft EIR. The amphitheater type setting referenced by the commentor does not alter this conclusion, as the hills, landscaping/vegetation, and intervening buildings proposed as part of the project would further attenuate noise impacts. No mitigation measures were required for the operational phase. The conclusions regarding noise were correctly stated in the Draft EIR. No addition or correction to the EIR is required.

## **Comment No. 8.2**

### Comment 2

#### Section Public Utilities/Water

The EIR in section V.I states that water resources for the site are not available and need to be constructed.

La Paz states that a steel Reservoir, a booster pumping station, and pressure regulator, Off site water mains connecting the booster pumping station to the existing distribution infrastructure and to the steel reservoir, distribution mains to the project area and other possible needs must be constructed in order to

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<sup>1</sup> *Factors considered in selecting sensitive noise receptors included: a) the anticipated decline in noise level as distance from the (stationary) source of noise increases (approximately 6 decibels over hard surfaces and nine decibels over soft surfaces for each doubling of the distance); b) the buffering influence of the topography between the noise source and adjacent residences; and, c) the absence of acoustically "hard" surfaces between the noise source and adjacent residences.*

adequately serve the Project. Additionally this project will place more demands on the single pipeline that runs along PCH and provides water to all of Malibu.

The EIR does not identify the impact of this project upon the single water feeding line Malibu. Will the project impact the community in the form of diminished water services?

The EIR also does identify if community is in any way required to bear a portion of the financial burden required to construct the water infrastructure needed to support the project,

The following information should be included in the EIR.

Where is the land where this infrastructure would be constructed?

What is the projected cost, including the cost of land, to construct the needed infrastructure?

Which entity, (e.g. The City of Malibu, La Paz, or the County) would be responsible for paying for and constructing this infrastructure?

### **Response No. 8.2**

The Draft EIR evaluated the proposed project for its potential to "...Alter the demand for public services causing increased costs or service delivery limitations." This threshold takes into account the commentors concern over diminished water services within the existing community, and was identified as a threshold of significance (Final EIR, page V.I-10). The Draft EIR identified project related impacts, stating "...While adequate water supply in the project area exists, (the existing storage and) the distribution infrastructure does not currently exist to adequately serve the proposed project" (Final EIR, page V.I-11). The Draft EIR identified the need for water mains and on-site water distribution infrastructure (Final EIR, page V.I-11) in order to adequately serve the project site.

On February 27, 2007, the Fire Department issued a revised fire flow approval for the project. The fire flow requirements have been reduced from 5,000 gallons/minute for 3 hours to 2,625 gallons/minute for 2 hours. On May 10, 2007, the Fire Department performed a flow test on the nearest hydrant to the project on Civic Center Way to verify the existing flows and pressure and to determine if the existing supply can serve the proposed project. The flow test demonstrated an effective flow rate of 3,453 gallons per minute (at more than 20 PSI) which exceeded the required fire flow requirements required by the Los Angeles County Fire Department. Water will be distributed on-site under a pressure of at least 20 pounds per square inch (psi), as required by the Los Angeles County Fire Department. The Fire Accessibility Site Plan for the proposed project (see Figure V.J-2) identifies 11 fire hydrants and access roadways, and approves the revised fire flow for the proposed project (from 5,000 gpm at 20 psi pressure for three hours, to 2625 gpm at 20 psi pressure for two hours). It should be noted that the Fire Department also approved a revised fire flow and Accessibility Site Plan for the preferred alternative project. It identifies 10 fire hydrants, 26-foot wide access roadways, and approves a revised fire flow (from 5,000 gpm at 20 psi

pressure for three hours, to 2000 gpm at 20 psi pressure for two hours) (See Figure VII-23). The revised Fire Department approvals are included in the Final EIR. Since the circulation of the Draft EIR, it has been demonstrated to the satisfaction of the Los Angeles County Fire Department and Los Angeles County Waterworks District 29 that adequate water pressure and supply needed to assure the required fire flow to the Proposed Project can be accommodated by existing water mains and required water infrastructure improvements.<sup>2</sup> Section V.J-1 Public Services – Fire Protection, of the Draft EIR has been revised to clarify the required on-site water infrastructure improvements, and to specify revised mitigation measures requiring both on-site and off-site water infrastructure improvements. The Applicant is solely responsible for payment and installation of these infrastructure improvements. The system will be compliant with Title 32 of (Fire Code) and Title 20 (Utilities Code) of Los Angeles County. Thus, the referenced on-site and off-site infrastructure will adequately serve the project. Accordingly, the project impacts after mitigation have been determined to be less than significant. The Draft EIR text (Final EIR, Section V.I-3 Public Utilities - Water and V.J-1 Public Services – Fire Protection) has been modified to reflect these changes.

### **Comment No. 8.3**

Comment 3

Section: Traffic

Comment A:

Malibu Canyon is the only egress available to three residential streets on Malibu Knolls. These streets are Malibu Crest, Harbor Vista Drive and Malibu Knolls Drive. Nothing in the EIR discusses the impact the development's proposed traffic increases will have on the ability of homeowners living on these streets to safely egress on Malibu Canyon Drive.

The EIR does not comment on the traffic impacts to these residential areas nor does it propose mitigation measures for these residential intersections to insure we will have safe entry and exit from our neighborhoods.

### **Response No. 8.3**

The intersections of Malibu Canyon and Malibu Crest, Harbor Vista Drive and Malibu Knolls Drive were not evaluated within the traffic study because these residential streets do not provide direct access to the project site and would not be used as cut through streets to access the project site. Traffic on these

<sup>2</sup> *E-mail communication from Michael L. Moore, Deputy County Counsel, Los Angeles County Counsel's Office to Tamar C. Stein, Cox Castle & Nicholson LLP representing the Project Applicant, dated June 4, 2008.*

roadways would be limited to the residents living within these areas. The proposed project's impact upon Malibu Canyon in terms of overall traffic volumes, however, was evaluated in the EIR. As noted in Figure V.K-6, Project Only Weekday Peak Hour Traffic Volumes, the proposed project will generate a negligible increase in traffic volumes along Malibu Canyon Road during the a.m. and p.m. peak hours. The proposed project is anticipated to generate 20 southbound and 5 northbound trips on Malibu Canyon Road during the a.m. peak hour. During the p.m. peak hour, the proposed project is anticipated to generate 15 southbound trips and 30 northbound peak hour trips. As compared to the cumulative base weekday trip counts for Malibu Canyon Road (i.e., 2,400 southbound trips during the a.m. peak hour and 2,785 northbound trips during the p.m. peak hour), the project increase is 1.0 percent and 1.6 percent, respectively during the a.m. and p.m. peak hours. The DEIR notes that due to physical constraints, no feasible mitigation has been identified for the roadway segment of Malibu Canyon Road between Hughes Research Lab and Pluma Road, see p. V.K-29 of the EIR.

#### **Comment No. 8.4**

Comment B:

Appendix G Traffic and Circulation study, page 21 under Ambient Growth in Traffic states that files from Caltrans indicate that traffic in the study area has historically grown by approximately 1.5% per year.

The EIR does not provide a reference for the Caltrans study used to support this ambient growth rate and without one it is impossible to access the accuracy of this computation.

#### **Response No. 8.4**

This comment challenges the lack of evidence to support the accuracy of the traffic methodology used in the cited study with respect to the historical traffic volume growth rate. The project Traffic Study has been reviewed by the City's Traffic Engineering Consultant, Katz Okitsu Associates (See Comment Letter No. 6) and Caltrans (See Comment Letter No. 3) and neither authority has questioned the validity of the 1.5% ambient growth rate. Furthermore, the supplemental summer traffic counts conducted in August 2007 (see Response to Comment No. 3.1) have verified that the 1.5% ambient growth rate is accurate. This study is included as Appendix J of the Final EIR.

#### **Comment No. 8.5**

Comment C

The EIR does not provide any information on what the actual growth rates on Malibu's roads, such as PCH, and Civic Center Way, have been since 2000, nor is the actual traffic growth rate used to compute the future impacts of traffic. Our data shows that actual growth rates are substantially higher than the 1.5% and that the projected traffic growth rates identified in the EIR are materially understated.

**Response No. 8.5**

This comment challenges the accuracy of the traffic growth rates used to calculate impacts from the proposed project, but does not provide the data the commentor states verifies substantially higher growth rates. As provided in Section 15024(c) of the State CEQA Guidelines, “*Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of comments.*” It should be noted that the methodology utilized in the Traffic Study was approved by the City’s consulting traffic engineer prior to the completion of the Traffic Study. In addition, upon review of the DEIR and Traffic Study, Caltrans (See Comment Letter No. 3) did not have any comments regarding the adequacy of the methodology, findings or conclusions presented in the EIR. Therefore, without any substantial evidence to the contrary, the 1.5% ambient growth rate is appropriate and justified. Please see Response to Comment No. 3.1 and 8.4 explaining that the 1.5% ambient growth rate has been verified in recent supplemental summer traffic counts.

**Comment No. 8.6**

Comment D

Traffic studies for this project were conducted in April and May of 2003. This period is not typical of summer traffic (July and August) nor is it representative of the fall and spring timeframes when schools (both Malibu Schools and Pepperdine) are in session.

Adjustments to the April and May traffic counts were not included in the EIR to account for summer and school in session traffic which would be considerably higher than the numbers included in the existing EIR. The result is the traffic impacts for the roadways and intersections identified in the EIR are materially understated.

**Response No. 8.6**

The weekday traffic data counts were conducted in April of 2003 when schools were in session. The representative summer traffic count data was collected on a Saturday in May 2003. The Saturday count is reflective of summer conditions as (1) local schools and college classes are not in session during weekends, and (2) the warm weather conditions experienced in May tend to attract the number of beachgoers and weekend visitors that are typically experienced during the summer months. For these reasons, the summer traffic counts are representative of summer traffic conditions in the Malibu area. Nevertheless, in response to this comment, updated summer traffic numbers were obtained in August 2007. See Response No. 3.1 above.

**Comment No. 8.7**

Comment E

Traffic mitigation measures proposed in the EIR require changes to Pacific Coast Highway. Modifications to PCH will require agreement by Caltrans. There is no indication in the EIR that Caltrans approval has been obtained.

**Response No. 8.7**

As noted in Comment Letter No. 3, Caltrans, a responsible agency, did not object to any of the improvements planned within the state right-of-way. CEQA Guidelines § 15091(a)(2) provide for mitigation under the jurisdiction of another public agency, such as Caltrans which is a responsible agency, a finding that the mitigation by the other agency “can and should be adopted” is legally sufficient to support project approval. Caltrans, as a responsible agency, will process its permits based upon this EIR.

**Comment No. 8.8**

Comment F

There are additional development projects scheduled for the Civic Center not included in the EIR Traffic study. These projects include the Santa Monica College Campus, Redevelopment of the Malibu Lumber Yard, proposed development on the IOKI property, the development of two restaurants on PCH- The Windsail and PierView, the potential movement of City Hall to the new development and the impacts of renting out the existing space used for city hall to additional tenants, to name but a few.

Excluding the impacts of these projects from the Traffic Study, materially understates the conclusion reached in the EIR.

**Response No. 8.8**

The Traffic and Circulation Study for the Malibu La Paz project evaluated the potential traffic and circulation impacts of the proposed project by developing estimates of future traffic conditions both with and without the project. Future traffic conditions without the proposed project were identified as the cumulative base condition, and reflected “...traffic increases due to general regional growth, as well as ...traffic increases generated by other specific developments in the vicinity of the project site.” (Appendix G, Traffic and Circulation Study, page 21). As specified in the CEQA Guidelines, Section 15130(b), which identifies the elements necessary for an adequate discussion of significant cumulative impacts, a cumulative impacts analysis may be based upon either a list of past, present, and probable future related projects, or a summary of projections of regional traffic conditions contained in an adopted planning document. Because the cumulative base traffic projections in the Traffic Study assumed both a regional growth rate of 1.5% per year as per Caltrans, and included traffic generated by specific cumulative projects within or near the study area (identified on Table 6 and shown on Figure 7 in the Traffic and Circulation Study for the Malibu La Paz project) it captured a worst case scenario of cumulative traffic impacts in accordance with the requirements of CEQA.

Regarding the list of related projects identified by the commentor, no application for development has been filed with the City of Malibu for the Santa Monica College Campus. The Malibu Lumber Yard project was not on file with the City of Malibu at the time the NOP was circulated, thus it was not included in the project traffic study. No application for development has been filed with the City of Malibu for the IOKI property. The two restaurants on PCH (The PierView and Windsail) are included as projects numbered 12 and 13 (respectively) on Table IV-2, Cumulative Projects List, of the Draft EIR (Final EIR, page IV-19). The potential movement of the City Hall complex was addressed in the Draft EIR as part of the proposed project. Specifically, Section III Project Description includes the proposed City Hall complex on Parcel C, and describes it in detail therein. The City has not set forth a plan for the present City Hall space. In addition, several of the "Related Projects" included in the cumulative base traffic conditions have not gone forward, and are therefore not anticipated to be constructed. These include the following numbered projects listed on Table IV-2 "Related Projects" List in the Draft EIR: Forge Lodge (No. 3); Pepperdine Office Development (No. 4), Proposed Senior Housing (No. 5), Adamson Self Storage (No. 7), and Schultz (No. 8). As such, daily trips from these developments originally anticipated to be a part of future traffic conditions would not occur.

The CEQA Guidelines provide that the lead agency should limit its examination of the significant environmental effects of the proposed project to changes in the existing physical conditions in the affected area as they exist at the time the Notice of Preparation was published (CEQA Guidelines Sections 15125(a) and 15126.2). Consistent with this requirement, the list of "Related Projects" used in the Traffic Study for the Draft EIR was compiled at the time the NOP was released. Nevertheless, as noted, the Traffic Study projections have proved to be sound.

#### **Comment No. 8.9**

Comment G

The Traffic Study identifies that mitigation measures require that Webb Way be converted to a six-lane road. The Study does not identify the party (The developer or the city) that will bear the costs for this modification.

The EIR should clearly identify the party responsible for paying for modifications to Webb Way.

#### **Response No. 8.9**

The Applicant is responsible for implementing the mitigation measures that are ultimately adopted by the lead agency when approving the project. Unless otherwise specified, all mitigation measures are the responsibility of the Applicant. However, it is not a function of the EIR, or of CEQA, to specify or assure financing mechanisms for mitigation measures.

**Comment No. 8.10**

Comment H

The existing traffic counts in the EIR are significantly less than traffic counts taken by Caltrans for the same roads. These traffic counts are available at the Caltrans website.

The development should be required to reconcile its existing traffic accounts with those provided by Caltrans and to explain any differences.

**Response No. 8.10**

The project Traffic Study has been reviewed by the City's Traffic Engineering Consultant, Katz Okitsu Associates (See Comment Letter No. 6) and Caltrans (See Comment Letter No. 3). Neither has questioned the validity of the traffic counts used in the EIR. The commentor has provided no data or specification of the traffic counts to which he refers. Accordingly, no further response can be provided. See also Response to Comment No. 8.4.

**Comment No. 8.11**

Comment 4.

Protection of nearby neighborhoods.

The hillsides that separate Malibu Knolls from the commercial activity in the Civic Center have acted as a barrier preventing individuals from accessing the Knolls from below.

This development project will move the commercial activity in the City closer to the Knolls and will in fact make entry to the Knolls via the hillsides relatively easy.

The EIR should include measures to prevent individuals who enter the project footprint from gaining access to the Knolls via the hillsides.

**Response No. 8.11**

The Applicant has modified the proposed project even though this impact as described by the commentor is not considered significant. The Applicant proposes to construct a 6' high wrought iron perimeter fence along the northern portions of the property to prevent pedestrian traffic from entering the Knolls via the hillsides. This requirement has been added as an Applicant Proposed Mitigation Measure in Section V.J-2 Public Services – Police Protection at page V.J-15 of the Final EIR.

**Comment No. 8.12**

Comment 5:

Civic Center Specific Plan.

Malibu's General Plan requires that a Civic Center Specific Plan be approved, prior to development in the Civic Center.

A Civic Center Specific Plan must be developed before any aspect of this project can be approved.

**Response 8.12**

The City of Malibu LCP Local Implementation Plan specifies at Section 3.8.A(5)(e)(1) "No development shall be approved on any parcel located within the Civic Center Overlay Area (LIP Zoning Map 5), other than improvements to existing uses, for a period of two (2) years commencing September 15, 2002, or until a Specific Plan, or other comprehensive plan encompassing all parcels located within the Civic Center Overlay Area is adopted by the City and certified by the Coastal Commission as an LCP amendment." This section prohibits development on the subject parcel until such time as either a Specific Plan is adopted, or two years from September 15, 2002 have expired. Because the two year time period has expired, a Specific Plan is not required. In addition, Section 3.8(A)(5)(e)(4) provides further clarification, stating that "...subsequent to September 15, 2004, if no specific plan, Development Agreement, or other comprehensive plan has been approved by the Coastal Commission as an LCP amendment, commercial uses shall be allowed on individual parcels located in the Civic Center Overlay area..."

**COMMENT LETTER NO. 9**

Christian Benjamin  
3216 Colony View Circle  
Malibu, CA 90265  
October 12, 2006  
[Stamp received October 16, 2006]

**Comment No. 9.1**

I am a resident of Malibu Knolls. I have seen the information provided to me by neighbors, regarding the measuring of sound from this development. Why was the area uphill of this development ignored in the sound studies? We are affected in a material way as the sound travels up into the canyon and into our homes.

**Response No. 9.1**

See Response No. 8.1, above.

**Comment No. 9.2**

Additionally, lights from commercial structures light up our homes. The Malibu Country Mart is a prime example of parking light glare that keeps us illuminated. Lastly, the skate board park is a constant source of noise, and when in use, overwhelms the sound of the surf, which we used to hear.

The center where the Ralph's market exists, with its nighttime lighting on the roof, now obscures the view of the ocean at night.

### **Response No. 9.2**

The letter states that proximity to existing commercial structures in the community is the source of ambient nighttime light and glare (illumination) experienced in the residential community. Lighting for the proposed project was evaluated for its potential to result in significant environmental impacts in Section V.A. Aesthetics/Views of the Draft EIR. The EIR concluded that the proposed project would introduce a greater amount of nighttime lighting to the project site, and that "[l]ight and glare impacts would be potentially significant but can be mitigated to less than significant levels by implementing the (following) proposed light and glare mitigation measures below" (Final EIR, page V.A-13).

These measures are as follows:

1. "All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan, with native plant species, to the satisfaction of the City Planning Department. The final Landscape Plan shall be in substantial compliance with the Conceptual Landscape Plan illustrated in Figure V.A-6 and shall include a row of sycamore trees, which shall be planted 15 feet apart trunk to trunk on center along the northeasterly property boundary and Australian willow and coast live oak around buildings 10 and 11, west of the road.
2. Outdoor lighting shall incorporate low-level lighting fixtures and shall be designed and installed with directional shields so that the light source cannot be seen from adjacent land uses.
3. The exterior of the proposed buildings shall be constructed of non-reflective building materials."

The letter also identifies the (existing) skateboard park as a source of noise that contributes to ambient noise in the community, and states that sound travels up the canyon to the Malibu Knolls residential area. It should be noted that the skateboard park and the center where the Ralph's market is located are located off-site on an adjacent property and are not part of the project. Noise generated from the skateboard park is part of the existing ambient noise levels. Thus, it was included in the baseline noise conditions against which project impacts were analyzed in the Draft EIR. The comment has been noted and will be forwarded to the decision makers for their consideration.

**Comment No. 9.3**

I trust if a development goes forward, the restrictions will take into consideration: lighting which will terminate at 8 PM, operating hours likewise; truck delivery hours from 8 to 5, and not on weekends; lighting standards with glare not over 2 ft. candles beyond the property line; parking areas closed to other businesses at 8 PM; and any dedication to skate boarding limited to daylight hours, with no lighting.

Any questions? Phone 456-2736

**Response No. 9.3**

The comment suggests the need for consideration of various conditions of operation for the proposed project to include hours of operation, lighting restrictions, delivery hour restrictions, and photovoltaic limitations for lighting standards. The suggested conditions provided in this comment will be forwarded to the decision makers for their consideration. For clarification, it should be noted that the existing skateboard park is located on an adjacent property and is not a part of the proposed project. Thus, regulation of the skateboard park is beyond the scope of this project.

**COMMENT LETTER NO. 10**

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(310) 552-3336  
November 13, 2006  
[Stamp received November 13, 2006]

**Comment No. 10.1**

This office represents Eric and Tamara Gustavson, the owners of the property located at 3657 Cross Creek Road, in Malibu. I am writing to you to share our comments and concerns regarding the Draft Environmental Impact Report (“DEIR”) for the proposed development on Assessor’s Parcel Nos. 4458-022-023 and 4458-022-024, commonly known as the La Paz Ranch project (“project”).

**BACKGROUND INFORMATION**

The Gustavsons and their children reside on a large single family residence at 3657 Cross Creek Road. Their residence is located towards the rear of the property at the end of a long driveway that connects to Cross Creek Road, northeast of the intersection of Cross Creek Road and Civic Center Way. The Gustavson property is located adjacent to the east to what is proposed to be Parcel B of the project. The Gustavson residence is located near what is proposed to be the site for buildings 10 and 11 on Parcel B of the project.

The Gustavsons have been aware for many years that the La Paz Ranch property is zoned for commercial use, and they have no objection to the fact that commercial retail and office use is proposed. The Gustavsons believe, however, that the density and design of the proposed project leaves too many potentially unmitigated adverse impacts, for them specifically and for the community at large, and that the DEIR does not adequately address certain issues which are vital to the successful integration of the proposed project into the civic center complex.

**Response No. 10.1**

The letter identifies the respondent Mr. Alan Block, Attorney at Law, as representing the property owners (Gustavsons') of the land immediately east of the proposed project site. It clarifies the nature of the Gustavson's objection to the proposed project is one of density, design, and unmitigated impacts, and not the proposed commercial retail and office land uses. No response is required.

**Comment No. 10.2****SUMMARY OF ISSUES REGARDING THE LA PAZ RANCH DRAFT ENVIRONMENTAL IMPACT REPORT**

The Gustavsons take issue with the DEIR with regard to the following:

1. The DEIR fails to offer adequate mitigation for identified adverse impacts and improperly postpones analysis of necessary mitigation measures to future approvals.
2. The DEIR fails to consider an adequate array of project alternatives. Specifically, the DEIR fails to consider the viability of a project that complies with the City's existing height and density limitations.
3. The DEIR does not address the impacts of groundwater migration and increased groundwater levels to the south of the La Paz Ranch property, specifically the leach fields beneath and adjacent to the Chili Cook-off Site.
4. The DEIR proposes no mitigation measures for adverse traffic impacts to the intersection of Cross Creek Road and Civic Center Way.
5. The DEIR fails to address potential adverse impacts from the water elements of the proposed project including noise from the fountains and impacts from standing water, including odors and insect breeding.
6. The DEIR fails to provide adequate mitigation measures to prevent noise, light, air and view blockage from buildings 10 and 11 on Parcel B.

**Response No. 10.2**

The comment provides a numbered summary listing of issues and objections that the Gustavson's have with the La Paz Ranch Draft EIR. Each of these issues is addressed below in response to Mr. Block's letter. See below Responses to Comment Nos. 10.3 through 10.14.

**Comment No. 10.3****ANALYSIS OF ISSUES REGARDING THE LA PAZ RANCH DRAFT ENVIRONMENTAL IMPACT REPORT****Lack of Adequate Discussion of Mitigation for Identified Adverse Impacts**

According to the CEQA Regulations, at 14 Cal. Admin. Code §15126.1(a), “[a]n EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.”

CEQA regulations, at 14 Cal.Admin.Code §15126.4(a)(1) provides, “[a]n EIR shall describe feasible measures which could minimize significant adverse impacts.” The discussion of mitigation measures shall...identify mitigation measures for each significant environmental effect identified in the EIR. 14 Cal.Admin.Code §15126.4(a)(1)(A). Where several measures are available to mitigate an impact, each should be discussed and the basis of selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. 14 Cal.Admin.Code §15126.4(a)(1)(B).

**Response No. 10.3**

The comment summarizes various sections of the CEQA regulations pertaining to the purpose of an EIR, and the requirements for formulation of mitigation measures. This comment does not raise any issues regarding the adequacy of the Draft EIR. No response is required.

**Comment No. 10.4**

Here, the DEIR is faulty because it all too frequently defers the formulation of mitigation measures into the future. The DEIR correctly states that future approvals will be required for various aspects of the project. However, it cannot properly state that these subsequent approvals are, in and of themselves, mitigation measures. As a result, the Gustavsons and all others reviewing the DEIR are left clueless as to what types of mitigation measures, if any, may be adopted in connection with those future approvals. The future approvals which the developer has cited as mitigation measures include: (1) the approval of a landscape plan in the future to mitigate aesthetic/view blockage impacts; (2) the approval of “complete grading plans that include existing and proposed grades, grading yardages, proposed subterranean parking, the limits and depths of removals under the structures and flatwork areas, and grading cross-

sections” to mitigate geology and soils impacts; (3) the approval of a final feasibility approval of the onsite wastewater treatment system (“OWTS”) by the City Environmental Health Specialist, which will address the cumulative impacts upon groundwater levels to mitigate environmental health impacts; (4) the approval of a water quality mitigation plan (“WQMP”) to mitigate environmental health impacts; (5) the approval of grading and drainage plans by the City Environmental Building and Safety Division to mitigate geology and environmental health impacts; (6) approval of “detailed plans for the OWTS” by the City Environmental Building and Safety Division to mitigate environmental health impacts; and (7) approval of “permits from the RWQCB prior to the installation of any temporary and/or permanent dewatering systems” to mitigate the impacts on groundwater levels from construction and maintenance of the subterranean garages.

#### **Response No. 10.4**

The responses to the commentor’s seven points are set forth below.

1. A conceptual landscape plan which provides additional landscaping to buffer the project from the Gustavson’s property has been approved. The plan is illustrated at Figure V.A-6A through V.6C, in Section V.A, Aesthetics, of the Final EIR and clearly identifies the location, type and extent of landscaping that must be reflected in future landscape plan approvals and for the proposed project. Mitigation Measure 1 has been revised to require that the final landscaping plan be in substantial conformance with Figure V.A-6A through V.A-6C, and shall include a row of coast live oak trees, which shall be planted 15 feet apart, trunk to trunk, along the northeasterly property boundary, with Australian willows and coastal live oak trees planted around buildings 10 and 11 to the west of the road, to further buffer and screen the Gustavson’s property.

2. The EIR, beginning at page V.E-19 through 22, sets forth preliminary grading estimates and conceptual grading plan sections, and areas of raw, cut and fill and remedial grading earthwork estimates (See Figures V.E-9 through V.E-12). The grading plan sections identify four subterranean parking structures and assume that shoring and temporary dewatering during the construction process will be required. The submission of these plans is sufficient to support the conclusions in the EIR. Mitigation measures have been revised to require that such grading plans submitted during the final plan check shall substantially reflect the concept plans in the EIR. Therefore, the EIR clearly identifies the extent and nature of mitigation that must be reflected in (future) final grading plans. Nevertheless, final plans have been submitted and received concept approval from the City.

3. On July 16, 2008, the Applicant obtained a revised Conformance Review of the proposed Alternative On-Site Wastewater Treatment System (AOWTS) from the City of Malibu Environmental Health Administrator (see Appendix K to this Final EIR). This review establishes that the proposed onsite wastewater treatment system is in conformance with the requirements of the City of Malibu Plumbing Code, Ordinance No. 242 Amendments (MPC), and Local Coastal Plan/Local Implementation Plan (LCP/LIP) for both the project and its preferred alternative, and imposed conditions that must be met prior to approval of the final plans for the onsite wastewater treatment system. They set forth

performance based standards which must be met, thereby assuring that no potentially significant impacts would result. They do not defer analysis of potentially significant impacts to the future. Rather, they clearly identify in the present what specific standards and conditions must be met in the future by the proposed project in order to assure that no significant impacts would result. A copy of the conformance review is included herein (See Appendix K to this Final EIR), and is also available for public review at the City of Malibu Environmental and Building Safety Division, 23815 Stuart Ranch Road, Malibu, California 90265.

The Site Evaluation Report (SER) has been completed. It includes: (1) plot plans for the project and the preferred alternative; (2) percolation and infiltration testing and accompanying laboratory soils analysis conducted by EPD Consultants, Inc. demonstrating that the site can accommodate the effluent without mounding or system failure; (3) Fugro Hydrogeologic Studies/Groundwater Mounding Studies; (4) geology and soils report and addenda; and, (5) a follow-up report on the feasibility of two independent septic systems conducted by Ensitu on July 9, 2007. All of the foregoing are part of this Final EIR and are available for public review at the City of Malibu, 23815 Stuart Ranch Road. Mitigation Measure 9 in the Hydrology/Water Quality Section of the EIR has been revised to reflect that the applicant has obtained a Conformance Review for the proposed project. It should be noted that the AOWTS final design is required to be engineered to meet the effluent limits specified in WDRs, taking into account the Malibu Lagoon bacteria and nutrient Total Maximum Daily Load (TMDL) requirements of the Regional Water Quality Control Board and the United States Environmental Protection Agency, and that the City of Malibu has deemed this to satisfy City of Malibu Environmental Health requirements for the LCP/LIP cumulative impact analysis of groundwater. The Final EIR identifies at page V.F-14 that the proposed project and related projects have the potential to result in cumulatively significant impacts to water quality, and concludes that because each would be required to meet the TMDL standards set forth in the WDR (issued by the RWQCB), (which is considered a vehicle for moving towards attainment of federal and state water quality standards in the Civic Center Area), potential impacts would be reduced to less than significant levels. See also Response to Comment 11.5 regarding the required analysis of cumulative impacts associated with the Regional Water Quality Control Board permitting process as separate and distinct from the analysis of cumulative impacts pursuant to the CEQA process. See also Final EIR at page V.F-14 through 16 for a listing of the applicable mitigation measures for potential impacts to water quality. Thus, the specific mitigation measures that are applicable to the proposed project, including those related to future approvals, have been clearly identified in the Final EIR.

4. The EIR identified potentially significant impacts to water quality (from surface water runoff carrying sediment and pollutants into the storm water system during construction and/or operation of the proposed project) in Section V.F Hydrology/Water Quality. The EIR concluded that implementation of mitigation measures (specifically, number 1 and 5) in Section V.F Hydrology/Water Quality would reduce identified impacts to less than significant levels. These mitigation measures are performance based and require that effective and proper standards be met through compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit, and (specifically) the

preparation of a Water Quality Management Plan (reviewed in concept by the City of Malibu on October 10, 2006). Thus, these performance based mitigation measures do not constitute deferral of mitigation.

5. As provided on page V.E-23-24 of Section V.E Geology and Soils, specific mitigation measures that must be complied with to ensure that project impacts are reduced to insignificant levels, including the approval of grading and drainage plans by the City Environmental Building and Safety Division, are clearly identified. These approvals require that the proposed project meet specific performance standards to the satisfaction of the City geotechnical staff. The Mitigation Measures have been revised to reflect the Applicant's submittal of grading plans after circulation of the Draft EIR, and the requirement that plans submitted during final plan check shall substantially reflect the concept plans in this EIR. Thus, the specific mitigation measures that are applicable to the proposed project, including those related to future approvals, have been clearly identified in the Final EIR.

6. A Conformance Review of the AOWTS design was completed by the City of Malibu Environmental Health Department on July 16, 2008. It requires the proposed project to meet specific conditions including obtaining all necessary permits and approvals from the RWQCB. The EIR includes adequate environmental analysis that identified potentially significant impacts in relation to the requirements of the LCP/LIP. The subsequent approvals identified in the EIR as mitigation measures may require more detailed analysis to demonstrate that the Project would meet performance based standards prescribed by the regulatory agencies responsible for issuing permits. Mitigation measures that are applicable to the proposed project, including those related to future approvals, have been identified in the Final EIR. The Draft EIR has been revised to clarify details regarding issuance of the Conformance Review by the City of Malibu for the AOWTS (see Section V.I-4 Public Utilities – Wastewater).

7. The Regional Water Quality Control Board is a responsible agency. A responsible agency means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project (Public Resources Code Section 21069). A responsible agency complies with CEQA by considering the EIR prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved (CEQA Guidelines Section 15096(a)). It is neither necessary nor required that the lead agency await permits from a responsible agency such as the RWQCB. Nevertheless, Mitigation Measure 3 found at page V.E-25 of the Final EIR requires that temporary dewatering and discharge activities shall be monitored by the dewatering contractor and conducted in strict accordance with the Los Angeles Regional Water Quality Control Board Order No. R4-2003-0111 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Water in Coastal Watersheds of Los Angeles and Ventura Counties) (General Permit No. CAG994004). Thus, the specific mitigation measures that are applicable to the proposed project, including those related to future approvals, have been clearly identified in the Final EIR.

**Comment No. 10.5**

The Gustavson's recognize that the project, as proposed, cannot proceed without the foregoing approvals. However, that is beside the point for purposes of determining the adequacy of an EIR as an informational document. At this point in time, no one knows what types of mitigation measures might be required, what effects they might have, and whether any of the project alternatives might be preferable to the proposed project with those future mitigation measures that might be imposed. The DEIR, as currently written, leaves too much open speculation and future resolution. For that reason, it is inadequate.

**Response No. 10.5**

The various approvals listed in the EIR are mitigation measures that are required to reduce potentially significant impacts from the proposed project to insignificant levels. The EIR would not be adequate without them, as significant impacts from the proposed project were identified in Section V, Environmental Impact Analysis, of the Draft EIR. A comprehensive listing of all mitigation measures, including those at question here, is included in Section II, Executive Summary of the Draft EIR (Final EIR, pages II-8 through II-34). These pages contain a summary table listing each environmental impact identified in Section V of the EIR, the required mitigation measure(s), and the level of significance remaining for each impact after the listed mitigation measure(s) is applied. The environmentally superior alternative is identified in the Draft EIR as the no project alternative, "...as it would not generate any additional activity or development on the vacant project site" (Final EIR, page VII-72). Because the environmentally superior alternative is the no project alternative, the EIR further identifies the preferred alternative as the environmentally superior alternative (Guidelines Section 15126.6(e)(2)) because it "...would be able to mitigate traffic impacts to levels below significance at the intersection of Malibu Canyon Road and PCH, which would be unmitigable under the proposed project" (Final EIR, page VII-72). In addition, refer to Response No. 10.4 above.

**Comment No. 10.6****Lack of Adequate Project Alternatives**

According to the CEQA Regulations, at 14 Cal. Admin. Code §15126.6(a), "[a]n EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature of scope of the alternatives to be discussed other than the rule of reason (Citizens of Goleta Valley v. Board of Supervisors (1990) 52

Cal.3d 553 and Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376.”

According to the CEQA Regulations, at 14 Cal. Admin. Code §15126.6(c), “[t]he range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency’s determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (I) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.”

#### **Response No. 10.6**

The comment summarizes various sections of the CEQA regulations pertaining to selection of a reasonable range of alternatives, the type of alternatives it must consider, and the use of project objectives in establishing the range of alternatives, the alternatives that were considered but rejected as infeasible, and the reason for rejecting any considered alternative. No response is required.

#### **Comment No. 10.7**

Here, the DEIR identified only two proposed project alternatives, one of which is mandated by CEQA and involves no discretion or consideration as to whether it should be included, i.e., the so-called “no project” alternative. The Gustavson’s do not challenge the analysis of the no-project alternative, and recognize the right of the property owner to make a reasonable use of its land. Therefore, it appears to the Gustavson’s that there are only 2 alternatives for the La Paz Ranch property either the project as proposed, or the project as proposed without the City Hall element. This is hardly a full and fair analysis of potential project alternatives. Without any explanation, the DEIR fails to consider as a project alternative a development which complies with the City’s existing General Plan, Zoning Laws, and Local Coastal Program. The DEIR is silent on the issue of why this property can only be feasibly used if all of the City’s laws regarding it are rewritten.

#### **Response No. 10.7**

The EIR considers a reasonable range of alternatives in compliance with CEQA. Under CEQA, the EIR need only include alternatives which are “potentially feasible.” (CEQA Guidelines, § 15126.6 (a)). Under CEQA, an alternative must “feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project” (CEQA Guidelines, § 15126.6 (a)). The significant and unavoidable effects of the project are: (1) traffic impacts on a segment of Malibu Canyon Road between Hughes Research Lab and Piuma Road and the following two intersections:

Malibu Canyon Road & PCH, and Cross Creek Road and Civic Center Way; (2) construction noise and (3) cumulative impacts to biological resources.

The Draft EIR addressed two alternatives: a No Project alternative and the 0.15:1 FAR alternative. The Draft EIR dismissed other alternatives, explaining, “[a]lternatives involving residential and/or industrial land uses were dismissed as being infeasible because the project site is not zoned for such uses, and such proposals would not meet any of the project objectives and may not be compatible with existing commercial and civic center land uses in the surrounding area” (DEIR, p. VII-1). Rejection of these alternatives as infeasible based upon the City’s existing land use constraints is appropriate.

The limitations of the general plan and the LCP are constraints which make an alternative infeasible and which an agency can consider in limiting its range of alternatives (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 569-573; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1141-1142; *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4<sup>th</sup> 1745, 1751-1754). A narrow range of alternatives is permitted where, due to legal, planning and other constraints, the agency does not have a broader range of potentially feasible alternatives to choose from (See *Marin Mun. Water Dist. v. KG Land California Corp.* (1991) 235 Cal.App.3d 1652, 1664-1666; *Remy & Thomas* (11<sup>th</sup> Ed. 2007), § p. 567, citing *Mountains Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4<sup>th</sup> 105, 135-136).

Taking into account the requirements of the City’s General Plan, Zoning Code, and Local Coastal Plan that strictly limit the uses and FAR of any development proposed for the site, the EIR’s alternatives analysis considers a “reasonable range” of alternatives. The applicable constraints dictate that any alternative would have substantially the same impacts as the project and/or the alternatives already considered in the EIR.

The City has one of the most restrictive FAR requirements for commercial projects in the entire state. The LCP specifies that the maximum FAR in the Civic Center is 0.15, except that the project FAR may be increased to 0.20 if public benefits and amenities are provided pursuant to a Development Agreement or planned development (LCP, Land Use Policy 5.18; LIP, §3.8(A)(5)(e)(4)).

The project site itself is constrained by its irregular “Z” shape, narrow width and significant depth. The LCP requires that all commercial projects in the Civic Center provide at least 25% open space and at least 40% landscaping (LIP, § 3.8(A)(5)(b)). Collectively, this requirement alone prevents the development of 65% of the project site. Furthermore, the LCP includes broad front, rear, and side yard requirements (LIP, § 3.8 (A)(2)).

The General Plan and LCP require that the project incorporate recreational opportunities and allow for pedestrian and bicycle circulation (See General Plan Land Use Goal 3 and Land Use Policies 2.1.6, 4.3.5, and 4.3.6; LCP Land Use Policies 5.8 and 5.14). The project and the 0.15 FAR alternative dedicate a significant portion of the project site to a trail along the front of the site and a multi-use veloway for biking, pedestrian, and equestrian use throughout the property.

The Malibu General Plan Land Use Policies 4.1, 4.3.2 and Implementation Measure 36 require commercial buildings to be equivalent in height and bulk with adjacent residences. The LCP also requires that the project be designed to “minimize conflicts with adjacent residential uses” (LCP, Land Use Policy 5.9). Therefore, the project and the 0.15 FAR alternative cluster development, and the retail component in particular, are located as far to the south as possible and away from residential areas. These uses cannot be moved any further away from residences nor can they be located elsewhere on the project site without creating new impacts to residential areas and resulting in an inconsistency with LCP policies.

There are additional site constraints. The Fire Department requires 26 foot wide access roads with appropriate turn-arounds and that any structures be reached within a 150 foot fire access radius (Uniform Fire Code, § 902.2.1). The project is required to have 527 parking spaces. Furthermore, in order for the retail component of the project to be economically feasible, a portion of these spaces must be above ground. This further limits options for developing the site.

During the scoping phase, an alternative was considered which utilized surface level parking except for one small subterranean parking lot. In contrast, the Project increased open space and landscaped areas and reduced hardscape. Therefore, the surface level parking alternative (see Section VII. Alternatives to the Proposed Project) was rejected as infeasible because it did not comply with applicable open space and landscaping requirements and it did not reduce environmental impacts when compared to the project.

In response to this comment (10.7), the EIR has been revised to include the following additional alternatives considered but rejected (see Section VII. Alternatives to the Proposed Project) because they would fail to reduce or eliminate the project’s significant environmental impacts.

#### “Big Box” Alternative

The “big box” alternative would include construction of a very large building or a series of large buildings which could accommodate businesses such as a Home Depot, Kmart, Sav-On, or a large supermarket. The positive aspects of the “big box” alternative were considered. Combining 12 buildings into 1-3 buildings would allow for the buildings to be combined and moved further to the south away from surrounding residential neighborhoods to the north. This would provide for greater buffers from adjacent residential neighborhoods and possibly allow a reduction in the number of on-site drive aisles and hardscaping as well as a reduction in the off-site clearance of coastal sage scrub.

The “big box” alternative was rejected as infeasible because it would violate the City’s General Plan, Zoning and LCP and would have significant growth inducing and visual impacts. A “big box” structure would be inconsistent with the Malibu General Plan which requires commercial structures to be “small scale” or “low rise,” subordinate to the setting, and consistent with the size and character of surrounding residential homes and other development. A “big box” store would be out of scale with surrounding residential homes and commercial development.

The concept of a “big box” development project or something similar in nature, scope and size would be inconsistent with the following sections of the Malibu General Plan and LCP:

- Land Use Policy 4.1: Commercial structures must be limited in height and bulk equivalent to the adjacent residences.
- LU Policy 4.1.1: Encourages park-like settings by requiring that structures be oriented towards open plaza areas rather than streets and parking areas and incorporating additional amenities such as benches and play areas for children.
- LU Policy 4.1.3: Prohibits strip center commercial development.
- LU Policy 4.3.2: Requires buildings within the City Center Area to reflect the (a) the uniqueness of this location as the City’s town center, (b) its close proximity to the beach and ocean, and (c) a “community village” character with small-scale, low rise buildings.
- LU Policy 4.3.6: Civic Center Area shall be developed so that it is pedestrian oriented.
- LU Policy 2.1.1: Promotes an aesthetically pleasing and visually stimulating environment whose architecture, common and open spaces inspire and uplift the human spirit.
- LU Policy 2.1.3: Commercially zoned properties should be proportioned based on community need.
- LU Policy 2.1.6: Encourages pedestrian friendly design in concentrated commercial areas.
- LU Implementation Measure 36: Requires commercial development to be designed with a residential scale compatible with the surrounding residential neighborhoods.
- LCP Policy 5.9: New commercial development shall be designed to minimize conflicts with adjacent residential uses, including preserving the character and integrity of the adjacent residential areas.

In addition, the “big box” alternative would not avoid or substantially lessen any of the significant effects of the project. The construction impacts and cumulative biological impacts of the big box alternative would be the same as or greater than that of the project. Furthermore, the “big box” alternative would generate more traffic. The September 20, 2007 “Malibu La Paz Project Alternatives Analysis,” analyzed the traffic impacts from a “big box” retail store. This study is included in Appendix J of the Final EIR and available for public review at the City of Malibu Planning Department. The study concludes that the “big box” alternative generates significantly more trips in the AM, PM and Saturday peak hours when

compared to both the 0.20:1 FAR project and 0.15:1 FAR preferred alternative (See Tables 19 & 20 of the Malibu LaPaz Alternatives Analysis – Appendix J). This additional traffic would further impact the studied intersections.

In addition, because the “big box” alternative would be open for longer hours, it would create additional operational noise impacts when compared to the project. “Big box” stores are likely to be open from at least 9 AM to 9 PM with many special days having extended hours late into the evening. These extended hours could increase noise and nighttime lighting impacts to the neighbors who live adjacent to the project site.

#### Additional Alternatives

Additional alternatives were considered that modify the proposed office to retail ratio of the project. The three alternatives considered were:

- 40% Office / 60% Retail Alternative
- 50% Office / 50% Retail Alternative
- 60% Office / 40% Retail Alternative

These three alternatives are potentially feasible because they comply with the requirements of the General Plan, LCP and Zoning Code. The construction impacts and cumulative biological impacts of the three alternatives would be the same as that of the project. The September 20, 2007 “Malibu La Paz Project Alternatives Analysis” evaluated the traffic impacts of these three alternatives (see Appendix J). It compared the trip generation and resulting level of service (“LOS”) associated with each alternative to that of the 0.20:1 FAR proposed project and the 0.15:1 FAR preferred alternative. Section VII Alternatives to the proposed project has been amended to include additional analyses of these alternatives. As concluded for each analysis, none of the supplemental alternatives would be successful in reducing or avoiding a significant traffic impact.

Furthermore, none of the above alternatives would meet the basic project objectives. These include the objectives listed in the EIR as well as the community amenities and public benefits provided by the Development Agreement. These benefits include: (1) a new 20,000 square foot City Hall located on 2.3 acres of land to be donated by the applicant; and (2) \$500,000 donated by the applicant to construct the new City Hall.

#### **Comment No. 10.8**

The DEIR does not address the issue of how much commercial square footage is required to make the project feasible and whether overall density can be decreased by an increase in commercial square footage and a decrease in office square footage. Before this developer is granted an increase in FAR

(floor area ratio) which exceeds the level currently set forth in the City's General Plan, some type of analysis should be depicted in the DEIR demonstrating why this project cannot be made feasible without the increase in FAR. The FAR proposed by the developer can only be supported, given current parking requirements, by the construction of subterranean parking garages. These garages, in turn, result in structures which exceed the City's current structure height limit. A reduction in density, by the elimination of the second story of the offices on Parcel B, for example, would decrease the parking required for those structures, decrease FAR and increase permeable lot area. It is not clear from the DEIR why a reduction in density or the reduction of oversized structures to current limits is unfeasible. For this reason, the DEIR is inadequate as an informational document.

### **Response No. 10.8**

It should be noted that a decision to allow an FAR of 0.20:1 is a political determination vested in the discretion of the City Council. It is also a legislative determination based upon the City Council's assessment of the benefits provided in the proposed Development Agreement and is not a CEQA issue. The EIR thoroughly analyzes all environmental impacts of the proposed project, including the proposed .20 FAR. A reduced density alternative was included in the Draft EIR as the preferred alternative in Section VII. Specifically, the preferred alternative proposes a total of 99,117 square feet (FAR of 0.15:1) of commercial and retail office use (Table VII-2, page VII-15 of the Final EIR), as compared to the proposed project, which would include a total of 132,058 square feet (FAR of 0.2:1) of commercial retail/office, and City Hall complex (Table III-1, page III-7 of the Final EIR). The preferred alternative is compliant with the policies, rules and regulations of the City of Malibu. It should be noted (with respect to the proposed project) that only buildings 5 and 6 are greater than 28' in height, and that the second story of these buildings is the location where the requested density bonus of 0.05:1 FAR would be located. Thus, under the proposed project it is not feasible to minimize building heights by eliminating the second stories on buildings 5 and 6. Buildings 5 and 6 are located in a mapped FEMA floodplain, requiring finished floors to be located 3 feet above existing grade. The building footprints are oriented from north to south with finished floor elevations set by the highest existing level of existing grade plus 3 feet. The site topography rises in elevation from south to north. As a result, certain southerly portions of the building ridgelines would exceed 28 feet. It is not feasible to locate the pads lengthwise from west to east given required sideyard setbacks and the irregular shape of the parcel, which is very narrow from east to west. Thus, the 0.05 FAR density bonus needs to be located on a second floor. If the second floor is eliminated, the proposed project is infeasible because there is no other feasible configuration that would accommodate the 05 FAR bonus given the aforementioned issues and constraints. Without this density bonus, the City would not receive public benefits provided in the Development Agreement, such as land and \$500,000 for a new City Hall, and open space, park and public recreation areas.

### **Comment No. 10.9**

Lack of Adequate Discussion of Impacts From Increased Ground Water Levels

CEQA Regulations, at 14 Cal. Admin. Code §15126.2(a), provides that “[a]n EIR shall identify and focus on the significant environmental effects of the proposed project...Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.”

#### **Response No. 10.9**

The comment summarizes the CEQA regulations pertaining to the requirement of an EIR to identify and focus on the significant environmental effects of the proposed project. The comment does not raise any issues regarding the adequacy of the Draft EIR. No response is required.

#### **Comment No. 10.10**

According to the DEIR, the demand for water supply will be at the estimated rate of 43,370 gallons per day. It is reasonable to estimate that water discharge will be at a comparable rate. The proposed OWTS will discharge all of this wastewater by two means: via leach fields located beneath the surface parking lots and via an evapotranspiration (“ET”) system, which will provide subsurface irrigation, presumably at locations on the property other than the location of the leach fields.

The City’s Chili Cook-Off site, located on the south side of Civic Center Way, is the likely destination of migrating groundwater emanating from the La Paz Ranch property. The fact that the proposed leach fields are located beneath impermeable surfaces virtually guarantees that the discharged wastewater will increase groundwater levels at the Chili Cook-Off site and seaward as the wastewater migrates to the ocean. Unfortunately, the Chili Cook-Off site is already subjected to increased groundwater levels from wastewater discharges from Malibu Country Mart, and it is widely known that on rainy winter days, the smell of raw sewage emanating from the Chili Cook-Off site is very apparent, even to passersby on Pacific Coast Highway. The impact of additional groundwater increases at this site are not addressed in the DEIR, nor are any mitigation measures proposed.

This is one of the most a critical issues for this project because much of the property lies within a flood plain and the project’s water elements can be expected to reach their maximum capacity as a result of surface water run-off during the wet season. At this time of year, the ET system will also provide little benefit because subsurface soils will be saturated from surface waters, and even more discharge into the leach fields can be reasonably anticipated. The DEIR does not identify how expansive the soil is in the location of the leach fields, but expansive soils can be reasonably anticipated to cause cracking and sink holes in the surface driveways, which will produce more construction activities at the project site.

Given the seriousness of the impacts associated with increased groundwater levels produced by the reasonably anticipated daily wastewater discharge, the treatment it received in the DEIR is grossly inadequate and much more analysis should be required of the developer before serious consideration to the certification of a final EIR can be given.

**Response No. 10.10**

The Draft EIR analyzed the impacts from wastewater generation associated with the proposed project using generation factors based on land use. As shown in Table V.I-7 in the Draft EIR, 37,120 gpd of wastewater are anticipated from the proposed project. Water consumption rates (43,370 gallons per day) identified in Table V.I-5 of the Draft EIR were assumed to be 120% of wastewater generation rates. As stated in the Draft EIR, this "...effluent would be processed to meet the requirements of the City of Malibu Uniform Plumbing Code and disposed of into a system of leach fields and subsurface drip disposal areas" (Final EIR, page V.I-17). The EIR identifies the potential for cumulative impacts (including "groundwater mounding" and groundwater quality impairment) related to wastewater discharge in the vicinity of the proposed project from the combined effects of several private OWTS' operating within the Malibu Lagoon watershed. Specifically, the Draft EIR concluded that, because there is a "...relatively shallow groundwater table in the project vicinity, the effects of effluent from the proposed on-site wastewater treatment system could result in 'groundwater mounding,' which may cause existing septic systems to fail.". The Draft EIR identified that this "...could adversely alter the characteristics of the soil, thus affecting the liquefaction potential of the soil beneath the proposed structures." (Final EIR, page V.I-21). However, based on studies performed by the project hydrologic consultant, Fugro West Inc., and Ensitu Engineering, it has been "...demonstrated that the proposed AOWTS would not result in a significant rise in groundwater levels across the site including the areas adjacent to the subterranean parking structures" (Final EIR, page V.I-21). In addition, the project is required to obtain an operating permit from the City of Malibu Environmental and Building Safety Department prior to construction.

Fugro West, Inc. completed a hydrogeologic report entitled "A Steady-State Groundwater Flow Model for the Proposed Malibu La Paz Ranch Development" dated March 2005, a subsequent report entitled "Supplemental Report/Response to Comments for a Steady-State Groundwater Flow Model" dated May 2005 and an Addendum to the hydrogeologic report dated October 7, 2005. The Steady State Groundwater Analysis includes Figures 11 through 13 thereof, which show graphically precisely where the groundwater would go, and that only de minimis mounding would occur. Subsequent analyses revealed that the anticipated groundwater mounding anticipated from the WMSMP proposed by Lombardo Associates (July 2008) indicates that the maximum groundwater rise from dispersal of the estimated average annual daily wastewater for up to 60 days would be less than 1 foot at and beyond the property boundary, and less than 3 feet within the property boundary beneath dispersal areas.<sup>3</sup> The soils

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<sup>3</sup> City of Malibu Hydrogeology Review Sheet (Comment #11), June 26, 2008 (See Appendix M).

and percolation report<sup>4</sup> for the proposed project noted that the wastewater disposal system would not result in a significant rise in the groundwater level at, or adjacent to, the project site. These studies indicate that there would be no issue with expansive soil in the area because of the leach fields so long as the earth beneath roadways is compacted to at least five feet deep and 90% or greater density. Compaction would also prevent wet season cracking and sinkholes in the project surface driveways. No additional construction activities would be necessary. Most of the effluent would be evapotranspired and would not leach into the groundwater. The disposal of the treated wastewater involves the use of a subsurface drip system. The subsurface drip system is planned for use in irrigating landscape at the site, thereby consuming most of the wastewater through evapotranspiration (ET) processes and minimizing percolation to the water table. The design also incorporates the use of a 50,000 gallon dosing/surge tank to provide storage for rainy time periods when treated wastewater would not be consumed by landscape ET. The tank would allow about 5 days of rainy day storage. ET calculations indicate that the 50,000-gallon storage tank could be drained at a rate of about 2,000 gpd in winter during non-rainy days. It is likely there would be a few days each year when treated wastewater would percolate to the water table. However, this would be less than 10% of the total treated wastewater generated during the course of one year, or a maximum of 33 days, based on a wet year. Given that the effluent would be solely discharged via ET/soil horizon leaching, with the exception of a maximum of 33 days per year during the wet season, the amount of treated water reaching groundwater would be less than significant. Accordingly, no mitigation measures are needed with respect to the Chili Cook-Off property. A copy of all technical studies performed for the proposed project, including the findings from Fugro West, Inc. and Ensitu Engineering regarding hydrology, have been held on file and made available for public review at the City's Planning Department public counter, located at 23815 Stuart Ranch Road, Malibu, CA 90265.

#### **Comment No. 10.11**

##### **Lack of Mitigation Measures for Traffic Impacts at the Intersection of Cross Creek Road and Civic Center Way**

At present, the intersection of Cross Creek Road and Civic Center Way has no controls for vehicles turning from one street to the other, or for vehicles heading northbound on Cross Creek Road crossing Civic Center Way. However, for those heading southbound on Cross Creek Road, there is a stop sign giving all turning traffic the right-of-way. The developer's own traffic study identified significant adverse impacts to this intersection during afternoon hours. It is likely, depending on the hours of operation of businesses at the La Paz Ranch property, that there will be significantly more traffic passing through this intersection at other times of the day as well.

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<sup>4</sup> *Soils Analysis and Testing Report for Proposed Wastewater Systems, Gold Coast Geologic Services, Inc, August 1, 2006 and. Revised Transient Groundwater Modeling results for the Proposed Malibu La Paz Ranch Development, Fugro West, April 1, 2008.*

No attempt at mitigation is proposed in the DEIR and no explanation for leaving this impact unmitigated is offered. That is unacceptable. Traffic impacts could be lessened by providing more controls at the intersection, or by directing traffic from the proposed project to the west, through use of a right-turn only exit. Further study of this issue by the developer's traffic engineer is warranted to determine what type of mitigation measure is best suited for this intersection. At present, the DEIR is inadequate in its treatment of this issue.

**Response No. 10.11**

This comment asserts that no attempt at mitigation (for the intersection of Cross Creek Road and Civic Center Way) is proposed in the DEIR, and no explanation for leaving this impact unmitigated is offered. This statement is not correct. See page V.K-29 of the Final EIR. The Malibu City Council adopted the Cross Creek Road Improvement Project in September 2004, under which the intersection of Cross Creek Road has been stop-controlled and narrowed to a single lane on all approaches. The Cross Creek Road Improvement Project has been fully funded by the City Council through this year, contracts have continued to be let and construction has been, and is, under way. Therefore, mitigation is infeasible pursuant to CEQA Guidelines § 15091(a)(3). (See page V.K-29, Final EIR). CEQA requires the lead agency to make a statement of overriding considerations (CCR Chapter 3, Section 15093) with respect to impacts at this intersection in the event the project is approved despite the significant and unavoidable traffic impacts identified in the EIR.

**Comment No. 10.12****Lack of Consideration of Impacts From the proposed project's Water Elements**

The water elements are touted in the DEIR as a means to mitigate impacts associated with surface water run-off. The developer proposes a series of water elements which include fountains, flowing "streams" and two man-made "wetlands," which will hold standing water. While this mitigation measure may procure some benefits in controlling surface water run-off, potential adverse impacts are not discussed.

CEQA Regulations, at 14 Cal.Admin.Code §15126.4(a)(1)(D), provides, in relevant part, that "[i]f a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed." The DEIR fails to do this.

The impacts that are of greatest concern to the Gustavsons are the extent that the running water in the fountains and streams will produce unwanted noise, odors from standing water, and increases in insect populations as a result of the introduction of the wetland breeding grounds. No report from the County Vector was submitted and no analysis of impacts regarding the spread of West Nile virus was made.

Because the wetlands are designed to hold standing water year-round, impacts regarding increased insect and animal populations should be addressed. While the introduction of wetlands may, in concept, appear

to be a laudable goal, the impacts of water fowl populations should be considered, such as increased droppings from ducks and other large water birds in and around the La Paz Ranch property.

**Response No. 10.12**

While the potential for the spread of West Nile virus was not specifically included, the potential for pathogens to cause impacts as a result of the proposed project was evaluated in the Draft EIR in the Water Quality Section (Final EIR, page V.F-13). Specifically, wetlands were identified to be capable of removing "...suspended solids and pathogens, organic matter, and sediment-attached nutrients and metals" because they "...host a number of biological processes that serve to clean pollutants from water" (Final EIR, page V.F-13). Wetlands were also identified to "...provide a natural setting for disinfection" in that "...the sun's rays destroy the cellular walls of some viral and microbial pollutants in a process known as photolysis." Long term, indefinite and regular maintenance of the treatment wetlands was stated as "critical to sustain treatment capacity and optimize the habitat value provided" and was provided for in mitigation measure 8 (Final EIR, page V.F-15). Maintenance actions were clearly specified to include cleaning of pretreatment areas, harvesting of plant biomass, removal of exotic species, and replanting of desired species. These maintenance actions would be also be expected to aid in the prevention of unwanted odors and insect populations. In addition to mitigation measure #8 specified on that requires the regular maintenance of wetland features, regular and ongoing general property maintenance would provide a means of ensuring that droppings from ducks and other large birds would not cause an impact. This comment will be forwarded to the decision makers for their consideration.

Regarding the potential for running water to produce unwanted noise, running water is not generally considered a source of unwanted noise. Nevertheless, the proposed wetlands are not expected to produce any potentially significant noise impacts above and beyond the ambient noise levels in the Civic Center area, which is dominated by traffic, birds, and the ambient sounds generated by the beach and Malibu Lagoon. Furthermore, the sound from commercial water features would not be audible from adjacent properties because the sound would be buffered by the proposed buildings, which are situated around the interior courtyard where the water features are proposed.

**Comment No. 10.13**

Lack of Adequate Mitigation Measures to Prevent Noise, Light and View Blockage From buildings 10 and 11 on Parcel B

Buildings 10 and 11 on Parcel B are located in very close proximity to the Gustavson residence. They are the only structures in the proposed project that is in close proximity to existing residence. Accordingly, mitigation measures for these structures should be greater, because the impacts of that structure are likely to be greater to the project's neighbors, i.e., the Gustavson's, than structures that do not abut existing residential development. As presently designed, Building 10 will have two levels totaling 7,258 square feet. Building 11, which is set back further from the Gustavson's property and more landward, is only 4,863 square feet. Fifteen parking spaces are located on the property line dividing the La Paz Ranch

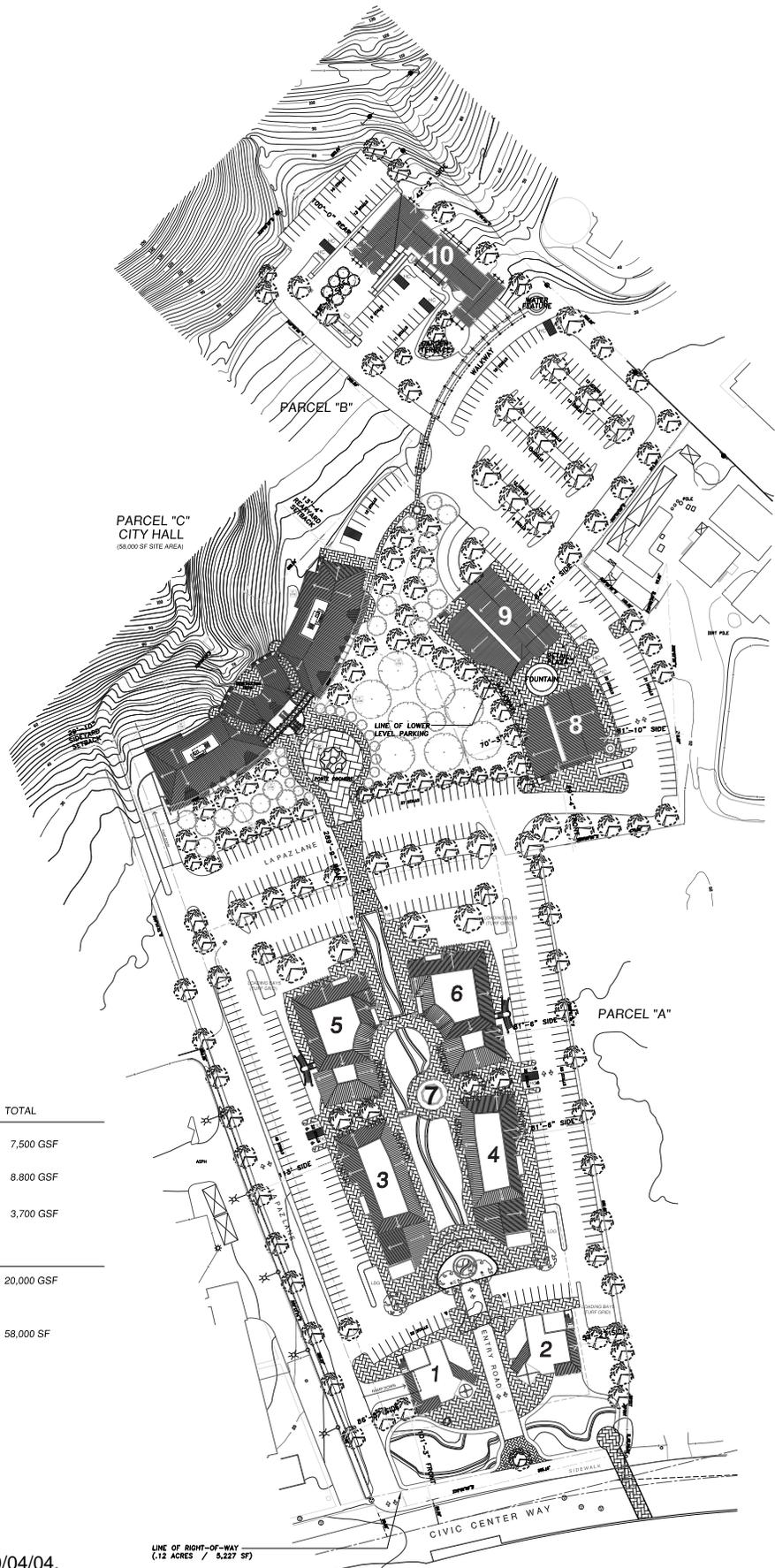
property and the Gustavson property. Those spaces are at an elevation approximately 12 feet higher than the elevation at the front of building 10 and will be accessible via driveways which have an incline in elevation. Vehicles entering this parking area at night would shine their headlights onto the Gustavson residence. Vehicles parking in this area would produce noise and exhaust which could be significant given the proximity of these parking spaces to the Gustavson residence.

These impacts are significant to the Gustavsons, and should have been addressed in the DEIR. Proposed mitigation measures are likewise absent from the DEIR. For example, the locations of buildings 10 and 11 could be switched, along with the parking required for those buildings, so that the larger building is located further from existing residential development. Likewise, the relocation of parking spaces away from the property line might decrease the impacts created by building 10. These mitigation measures, and others proposed by the Developer, should be addressed prior to certification of a final EIR.

### **Response No. 10.13**

The comment identifies concern over the proximity of proposed project buildings 10 and 11 to the Gustavson's residence, and the associated potential for noise and light pollution to adversely impact the Gustavson's. It should be noted that the Applicant's property is zoned Community Commercial which, under the City's Zoning Ordinance, provides for the most intense commercial density and use. It should also be noted that buildings 10 and 11 were relocated from their originally proposed location, just 38 feet from the northeastern property line abutting the Gustavson's property, to their current location shown on Figure III-3, "Illustrative Site Plan" in the Draft EIR. This relocation sets building 10 back approximately 100 feet from the northeast property line, and building 11 approximately 130 feet from the northeastern property line. These buildings (10 and 11) were also redesigned from their original configuration as one single large building, into their current configuration as two buildings. A new Figure IX-1 "Working Draft Site Plan - Proposed Project" has been provided in response to this comment to show the original location of building 10, which was later split into the two smaller buildings 10 and 11, as currently shown under the proposed project and the preferred alternative project. The single building was more bulky and massive and would have required a significant increase in the total amount of earthwork. The two separate buildings are sited as far west as is feasible. The commentor's suggestion that buildings 10 and 11 be switched is not feasible because it would result in significantly more grading for relocated building 10, higher retaining walls given that the topography is steeper the farther north one proceeds on the site, and building 10 would require a larger pad area. Moreover, as sited, building 11 allows for the construction of the Fire Department's required turnaround, which would not be feasible if the buildings were switched. Additionally, switching buildings 10 and 11 would expand the amount of fuel modification to the north of the property, requiring the removal of a greater amount of previously undisturbed coastal sage scrub. The landscape screening required in the project's landscaping plans provides mitigation for noise and light impacts (see Mitigation Measure 1 in Section V.A Aesthetics/Views). The proposed use of buildings 10 and 11 was also revised to include only office square footage, as opposed to a combination of both retail and office square footage, placing the least intensive uses adjacent to existing residential development, including the Gustavson's property. This

revision appears in Table III-1 (Proposed Project Development Summary) and Table VII-2 (Preferred Alternative Development Summary) of the Draft EIR, and does not change any findings or conclusions contained in the Draft EIR.



## Legend

### BUILDING AREAS

BLDG#	TOTAL
1	7,500 GSF
2	8,800 GSF
3	3,700 GSF
<b>TOTAL</b>	<b>20,000 GSF</b>

SITE AREA - PARCEL C 58,000 SF

### SHEET INDEX

- 1-C SITE PLAN / PROJECT DATA
- 2-C GROUND FLOOR PLAN / LOWER PARKING
- 3-C ELEVATIONS / SECTIONS



Source: DCA Architects, Inc., 10/04/04.

LINE OF RIGHT-OF-WAY  
(12 ACRES / 5,227 SF)



CHRISTOPHER A. JOSEPH & ASSOCIATES  
Environmental Planning and Research

Figure IX-1  
Working Draft Site Plan  
Proposed Project

Noise impacts from the proposed project on the adjacent land uses were evaluated in Sections V.H. Noise, and V.A. Aesthetics/Views, respectively in the Draft EIR. As discussed in Response to Comment No. 10.1 above, the potential for noise impacts to significantly affect sensitive land use receptors, including the Gustavson's residence, was evaluated in the Draft EIR. The conclusions of this analysis were that construction noise from the proposed project would remain significant after mitigation measures were applied, and that a statement of overriding considerations would be required by the decision makers in the event that the proposed project is approved. No significant impacts from the operational phase of the proposed project due to noise were found in the analysis. See the Response to Comment No. 10.1 above.

Light impacts from the proposed project were evaluated for their potential to result in significant environmental impacts in Section V.A. Aesthetics/Views of the Draft EIR. As discussed in Response to Comment No. 10.3 above, the potential for lighting impacts to significantly affect adjacent land uses, including the Gustavson's residence, was evaluated in the Draft EIR. The conclusions of this analysis were that the proposed project would introduce a greater amount of nighttime lighting to the project site, and that "...light and glare impacts would be potentially significant but can be mitigated to less than significant levels by implementing the (following) proposed light and glare mitigation measures" (see Response to Comment 9.2 above for the specific measures) (Final EIR, page V.A-12). Because the mitigation measures are performance based (i.e., they specify a standard that must be achieved) the outcome of their use is certain. Thus, light impacts on the Gustavson's property would not be significant. See Response to Comment No. 10.3 above for a list of applicable mitigation measures. The commentor suggests that vehicles pulling into the parking lot between buildings 10 and 11 at night would flash their lights into the Gustavson's residence. This is inaccurate for several reasons. First, vehicles pulling into the parking lot would be facing west, 180° away from the Gustavson's residence. Second, sycamore trees would block light from vehicles exiting the lot at night. Third, there are only 15 surface parking spaces serving the proposed office use which would generate fewer vehicle trips than a retail use, and would generally close in the evening. Fourth, the Gustavson's residence is located to the southeast of this surface parking area such that cars exiting the lot would only spill headlight toward the residence momentarily in the middle of a right turn out of the parking area. Once on the roadway, headlights would be pointing south, 90° away from the residence. It should be noted that the parking area is located between the two buildings in a relatively flat area in order to minimize grading and comply with LCP policies and development standards.

The project's landscaping plan requires the use of sycamore trees (15 foot-on-center) along the easterly property line between the proposed project and the Gustavson's property to further buffer any nighttime glare from the headlights of vehicles going to and from the parking area between buildings 10 and 11. The trees will be placed 15 feet to 20 feet apart from trunk to trunk. The landscape plan utilizes Australian willows and coastal live oaks surrounding buildings 10 and 11 to the west of the road to further screen them from view of the Gustavson's residence. The EIR has been revised to include this plan, identified as Figure V.A-6 in Section V.A Aesthetics/Views of the Final EIR and required pursuant to Mitigation Measure 1 in Section V.A Aesthetics/Views.

Consideration was given in the Draft EIR to sensitive receptors, defined by the California Air Resources Board to include: residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. Four sensitive receptors were identified within one-quarter mile of the project site, and one of these (the residential area north of the project site) included the Gustavson's residence. The Draft EIR used CO emissions as an indicator of impact to this sensitive receptor group. To provide a worst case analysis, CO concentrations were modeled at sidewalk locations adjacent to study area intersections that were anticipated to have very high traffic volumes (corresponding to LOS of E or F under "project" conditions). The results of this analysis were reported in Tables V.B-9 and V.B-10 of the Draft EIR, which show that CO concentrations (at the sidewalk locations) from vehicle traffic on these highly traveled intersections would not exceed the State one-and eight-hour concentrations on weekdays and weekends. Specifically, of the 5 intersections listed in Table V.B-9, the 1-hour weekday carbon monoxide concentrations (from roadway traffic including the proposed project) ranged from a low of 5.4 parts per million (ppm) at Webb Way and Civic Center Road, to a high of 7.1 ppm at the intersection of Topanga Canyon Road and Pacific Coast Highway. These carbon monoxide concentration levels are well below the 1-hour state standard for carbon monoxide of 20.0 ppm. The 8-hour weekday carbon monoxide concentration (from roadway traffic including the proposed project) ranged from a low of 3.3 ppm at the intersection of Webb Way and Civic Center Road, to a high of 4.3 ppm at the intersection of Topanga Canyon Road and Pacific Coast Highway. These carbon monoxide concentration levels are well below the 8-hour state standard for carbon monoxide of 9.0 ppm.

Consideration was given in the Draft EIR to sensitive receptors, defined by the California Air Resources Board to include: residential areas, hospitals, daycare facilities, elder care facilities, elementary schools, and parks. Four sensitive receptors were identified within one-quarter mile of the project site, and one of these (the residential area north of the project site) included the Gustavson's residence. The Draft EIR used CO emissions as an indicator of impact to this sensitive receptor group. To provide a worst case analysis, CO concentrations were modeled at sidewalk locations adjacent to study area intersections that were anticipated to have very high traffic volumes (corresponding to LOS of E or F under "project" conditions). The results of this analysis were reported in Tables V.B-9 and V.B-10 of the Draft EIR, which show that CO concentrations (at the sidewalk locations) from vehicle traffic on these highly traveled intersections would not exceed the State one-and eight-hour concentrations on weekdays and weekends. Specifically, of the 5 intersections listed in Table V.B-9, the 1-hour weekday carbon monoxide concentrations (from roadway traffic including the proposed project) ranged from a low of 5.4 parts per million (ppm) at Webb Way and Civic Center Road, to a high of 7.1 ppm at the intersection of Topanga Canyon Road and Pacific Coast Highway. These carbon monoxide concentration levels are well below the 1-hour state standard for carbon monoxide of 20.0 ppm. The 8-hour weekday carbon monoxide concentration (from roadway traffic including the proposed project) ranged from a low of 3.3 ppm at the intersection of Webb Way and Civic Center Road, to a high of 4.3 ppm at the intersection of Topanga Canyon Road and Pacific Coast Highway. These carbon monoxide concentration levels are well below the 8-hour state standard for carbon monoxide of 9.0 ppm.

Because CO concentrations on sidewalks adjacent to these highly traveled intersections would be below State Standards, the CO concentrations at locations further away from these intersections, proximate to internal roadways (within the proposed project) having far less traffic volumes would be expected to be even lower. In addition, CO is a localized gas that disperses quickly, so concentrations are highest in close proximity to the traffic volumes, and would be substantially lower at the sensitive receptor locations, including the Gustavson's property.

**Comment No. 10.14****CONCLUSION**

The La Paz Ranch project, if approved as proposed, would have significant adverse impacts which have not been properly and adequately addressed in the DEIR. These impacts could have serious consequences for the environment and for Malibu's citizens. Until all of the potentially significant adverse impacts have been addressed, and mitigation measures proposed that will reduce these impacts to levels of insignificance, the La Paz Ranch project should be disapproved.

**Response No. 10.14**

As required by the CEQA in Section 15126.2(b), the Draft EIR identifies significant unavoidable impacts to include cumulative biological resources, construction noise, and transportation/circulation (Final EIR, pages VI-1 and 2). The Draft EIR goes on to state that these significant impacts would remain even after all feasible mitigation measures have been imposed. CEQA requires that the EIR "...identify the significant effects on the environment...identify alternatives to the project...and indicate the manner in which those significant effects can be mitigated or avoided." (California Public Resources Code Section 21001.1(a). The Draft EIR has complied with this requirement. This same section at (b) states that ..."Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so..." and establishes at (d) of that same section that the project may nonetheless be carried out or approved at the discretion of a public agency if economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment. The Draft EIR discloses this requirement for a statement of overriding considerations to be made by the decision makers in the event that the proposed project is approved, despite these unavoidable significant impacts.

**COMMENT LETTER NO. 11**

Tracy J. Egoscue, Executive Officer  
California Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013  
(213) 576-6600  
November 5, 2007  
[FAX received November 7, 2007]

**Comment No. 11.1**

The Regional Water Quality Control Board-Los Angeles (Board) comments on the Malibu La Paz Development Agreement for Retail and Restaurant Use Draft Environmental Impact Report (DEIR) are summarized below. We appreciate the recent steps taken by the City of Malibu (City) to keep us informed of ongoing environmental and planning activities at the City so we may participate in your review process in a timely manner.

**Response No. 11.1**

The comment identifies that the Regional Water Quality Control Board-Los Angeles (RWQCB) has provided summarized comments on the Draft EIR in its letter, and that the RWQCB appreciates the recent steps taken by the City to involve the Board in the review process. No response is required.

**Comment No. 11.2**

**Project Summary**

The September 28, 2006, DEIR describes a project on the 15.03 acre La Paz Ranch site immediately adjacent to the City Library in the City of Malibu on Legacy Park. Seven buildings are proposed with 112,508 square feet of commercial, retail and office space, a 20,000 square foot City Hall and 609 subsurface parking spaces. The site is about 1,000 feet west of Malibu Creek.

The December 22, 2006, Engineering Design by ENSITU describes a waste water treatment system to dispose of a maximum of 29,620 gallons per day (gpd) of domestic waste. The collection and treatment system consists of sanitary sewer lines, a grease interceptor, a primary settling tank, flow equalization tank, a High Strength FAST treatment using fixed media bacteria with odor control, chlorine tablet disinfection and average subsurface disposal of 7,500 gpd through on-site irrigation.

A hydrology model of the impact of the discharge to receiving groundwater was completed by FUGRO with reports submitted on August 2005, March 2005, and May 2005. A revised interpretation of the model assuming irrigation disposal and only 38 days of discharge to groundwater, was submitted to the project proponent on October 7, 2005, and April 10, 2006, and only received by Regional Board staff on October 31, 2007.

### **Response No. 11.2**

The comment provides a summary of the proposed project (including design aspects of the proposed wastewater treatment system), identifies the dates that the hydrology model reports were prepared and subsequently received by the RWQCB, and identifies specific details of the hydrology model assumptions with regard to irrigation disposal and the number of days of discharge to groundwater. No response is required. For a description of the revised Wastewater System Management Master Plan, See Section V.I-4, Wastewater.

### **Comment No. 11.3**

#### Project Status

Board staff Ms. Elizabeth Erickson met with Ms. Stacey Rice, City Planning Director, on October 15, 2007, to express concerns about the cumulative effects of new projects on existing septic systems and Legacy Park commitments in the Civic Center Area. Ms. Erickson talked with Ms. Stefanie Edmondson of City Planning on October 29, 2007, who provided assurance that Regional Board comments on the La Paz DEIR would be accepted, evaluated and the results incorporated, even though the comment period closed on November 13, 2006. Mr. Don Schmitz of Schmitz and Associates, the project proponent, also expressed a desire to respond to the concerns of Regional Board staff during a teleconference with Mr. David Bacharowski, Assistant Executive Officer, Ms. Wendy Phillips, Chief of Groundwater Permitting, and Ms. Elizabeth Erickson, geologist in Groundwater Permitting on October 29, 2007. Mr. Craig George from the City of Malibu also participated on that date in support of planning staff that were performing other critical duties.

We learned on October 15, 2007, that the City Council will be meeting to discuss the project very soon. Specifically, we understand that the Council may consider Conditional Approval for the La Paz Final EIR pending a plan check, without further public review, on a schedule as follows:

- November 6, 2007: Planning Commission initial review of the La Paz Draft EIR,
- December 4, 2007: Planning Commission vote on La Paz Final EIR, and
- January 28, 2008: City Council Vote on Malibu La Paz Development Agreement for Retail and Restaurant Use.

**Response No. 11.3**

The comment reviews the project status to date. Specifically, it identifies that the RWQCB expressed concern to the City of Malibu and the Applicant in a meeting on October 15, 2007 regarding the cumulative effects of the proposed project on existing septic systems and Legacy Park commitments in the Civic Center Area. It also acknowledges the Applicants stated desire to respond to the RWQCB's concerns regarding these matters. The comment presents the Board's understanding of the City's proposed Planning Commission and City Council hearing schedule for the proposed project. No response is required.

**Comment No. 11.4**

## Comments

These technical comments are based on all technical documents provided by the date of this letter. Mr. Schmitz assured us on October 29, 2007, that he would ensure we promptly received all technical reviews.

**Response No. 11.4**

This comment identifies that the basis of the comments made includes all technical documents received by the RWQCB to date (as of November 5, 2007). It also states that the Applicant assured the RWQCB on October 29, 2007 that the Board would promptly receive all technical reviews. No response is required.

**Comment No. 11.5**

## Groundwater Separation

We reviewed the 2005 hydrology model submitted with the Draft EIR. The model shows increases in groundwater elevations of 1.5 to 2 feet resulting from discharges to ground water averaging 9,200 gpd. Discharge occurs at 1-2 feet below the surface. The maximum groundwater elevation of 8 feet is described for the site in the City's Stone Report. These values represent the most critical conditions, and they could result in only 4 feet of separation between the discharge point and groundwater. The Regional Board generally requires at least 10 feet of separation, and in special cases a minimum of 5 feet of separation, between the base of the disposal system and groundwater.

**Response No. 11.5**

The comment reviews specific information and conclusions asserted in the hydrology model, and notes that the result could be a 4-foot separation between the discharge point and the groundwater. The

comment further identifies that the RWQCB generally requires a minimum 10-foot separation distance between the discharge point and groundwater, and in special cases, a reduced requirement of a minimum 5 foot separation distance between the base of the disposal system and groundwater. The City of Malibu has reviewed the subject hydrology model and has accepted it as meeting City standards including those impact thresholds applicable and relevant to the analysis of potential impacts to groundwater pursuant to the CEQA (see thresholds of significance in Section V.F Hydrology/Water Quality, page V.F-6, and Section V.I.4 Public Utilities – Wastewater, page V.I-17). On that basis, it was used in the impact analysis and as the source for conclusions reported in the Draft and Final EIR regarding potential impacts to wastewater service. Specifically, the Draft EIR identified that “The project hydrologic consultant Fugro West Inc., and Ensitu Engineering have demonstrated that the proposed AOWTS will not result in a significant rise in groundwater levels across the site including the areas adjacent to the subterranean parking structures” (Final EIR, page V.I-21). To ensure that no significant impacts to wastewater service occur, mitigation measures are also specified in the Final EIR, Section V.I.4. Public Utilities – Wastewater, as follows:

1. “Detailed plans for the OWTS shall be submitted to the City of Malibu Environmental and Building Safety Department for review and approval.
2. The project Applicant shall obtain a Waste Discharge Permit from the Los Angeles Regional Water Quality Control Board (LARWQCB) prior to building permit issuance.
3. The project Applicant shall obtain an Operating Permit from the City of Malibu Environmental and Building Safety Department prior to construction.
4. Effluent for gray water/re-use irrigation in designated areas on-site shall at all times be a disinfected, high quality, filtered reclaimed water and shall not exceed the effluent quality limits of the RWQCB’s Total Daily Maximum Load (TDML) requirements for the Malibu Creek Watershed.”

Separate from the impact disclosure requirements of CEQA accomplished by the Draft and Final EIR, the EIR also identifies the requirement to obtain a Waste Discharge Requirements (WDR) permit from the RWQCB as mitigation (see mitigation measure 2 above). In issuing this Permit, the RWQCB will apply performance based standards that implement the state and federal Total Maximum Daily Load<sup>5</sup> (TMDL) requirements for bacteria and nutrients. These standards can include adherence to minimum separation distance requirements referenced in Comment 11.5. The proposed project will be required to meet all performance based standards to the satisfaction of the RWQCB in order to obtain the

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<sup>5</sup> TMDL’s identify the maximum amount of wastewater allowed to be discharged into a given body of water each day.

required WDR permit. Potential impacts of the proposed project's wastewater treatment system have been disclosed in the Draft EIR, as required by CEQA.

The Regional Board has commented that during "critical conditions" ground water separation from dispersal areas may be reduced to 4 feet. This potential "critical condition" area occurs at the southern most sector of the development. The La Paz property rises topographically to the north. These contour elevation rises are at a greater rate than the groundwater contour elevations within the subject property, therefore the potential for "critical conditions" only exists in this specific area. The lowest grade elevation in this southeastern sector is 16.35 within the area of proposed wastewater dispersal. Groundwater is at approximate elevation 8. Groundwater mounding analysis for the site suggests that under critical conditions groundwater may rise 1.5 – 2.0 feet, to elevation +/- 10 in this area. The bottom of the dispersal area may be assumed to be 18 inches below ground, at elevation 14.85. This results in a potential groundwater separation of 4.85 feet. The potential rise is groundwater within this specific zone is also reduced by the fact that the infiltration rate for this sector is only 0.1 Gallons Per Square Foot Daily (GPSFD), whereas the majority of the dispersal areas within the proposed project are at a higher infiltration rate, calculated at 0.2 GPSFD. Therefore, it is unlikely that this "critical condition" area would encounter conditions that may cause the separation to groundwater to be less than 5 feet, the generally accepted minimum for advanced tertiary level treatment systems requiring s Specific WDR.

Proposed mitigation measures would ensure that no significant impacts result. No further analysis or mitigation is required.

#### **Comment No. 11.6**

##### Disposal Capacity

The engineering and modeling documents contend that onsite irrigation in rainy winter days can dispose of the average flow of 9,200 gpd through evapotranspiration (ET). It does not document disposal of the maximum discharge of 29,620 gpd during winter days. The April 10, 2006, model letter states that "there will be 38 days with all treated wastewater percolating to the water table (rainy days in excess of ET demands) and 90 days when 450 gpd will percolate (non-rainy days in excess of ET demands)." A 50,000 gallon holding tank is planned to contain 450 gpd of treated and disinfected wastewater. The flow for each of the remaining 38 days is assumed to be the average value of 9,200 gpd, not the maximum flow.

#### **Response No. 11.6**

The comment identifies various assumptions regarding the proposed wastewater treatment system design, and asserts that the engineering and modeling documents for the proposed wastewater treatment

system do not document disposal of the maximum discharge of 29,620 gpd during winter days. The specific example cited is the assumed average flow value of 9,200 gpd (and not 29,620 gpd) on the 38 days when all treated wastewater would percolate to the water table, and no evapotranspiration would occur. The Regional Board questions the assumptions made in the engineering and modeling documents for evapotranspiration rates for the La Paz project. The Regional Board "...contends that evapotranspiration rates can vary widely and are best documented in site specific pilot studies." Board staff also offers a more conservative evapotranspiration factor to calculate the total volume of water. These differences are contentions based on opinion regarding the methodology employed by the consultant to derive numerical conclusions from their model. As with most analytical models, opinions will vary as to the attributes assigned to derive specific conclusions. These differences are philosophical in nature and are not direct environmental impacts. As discussed above in Response to Comment 11.5, as mitigation, the applicant is required to obtain a WDR from the RWQCB. The Regional Board may require more stringent and conservative assumptions for the evapotranspiration model during their review process for the issuance of the WDR.

The potential impacts of the proposed project's wastewater treatment system have been disclosed in the EIR, as required by CEQA. Proposed mitigation measures would ensure that no significant impacts result. No further analysis or mitigation is required.

#### **Comment No. 11.7**

The model conclusions are based on an evapotranspiration rate of 11,400 gpd in the winter and 27,700 gpd in the summer. The values were derived between June 2004 and May 2005 in an undocumented study. However, our staff contends that evapotranspiration rates can vary widely and are best documented in site-specific pilot studies. The volume of waste water which can be discharged over the 202,000 square feet of vegetation at the site, using a more conservative ET factor of 0.8 ft/year, is only 3,312 gpd. In addition, while the letter says the calculations are based on a wet period from 2004-2005, measured rainfall, in Los Angeles, was low. If evapotranspiration was estimated during a dry year, a lower than average humidity would provide an artificially high ET rate.

#### **Response No. 11.7**

The referenced evapotranspiration rates (11,400 gpd in the winter and 27,700 gpd in the summer) are identified in an Addendum Letter (dated October 7, 2005 on file with the City of Malibu) prepared by Fugro West, Inc. at the request of the Applicant in response to a revision in the proposed method of wastewater treatment and disposal for the proposed project. A subsequent revision to the proposed wastewater treatment and disposal system (involving changes to the location and area of the subsurface drip dispersal fields, the location of wastewater treatment system components, and total area of subsurface drip dispersal fields) was addressed in a second Addendum Letter (dated April 10, 2006 on file with the City of Malibu) also issued by Fugro West, Inc. This second Addendum Letter identified

revised evapotranspiration rates (i.e., 8,750 gpd in the winter and 21,150 gpd in the summer) as warranted by the noted revisions to the proposed system. As stated above in Response to Comment 11.5 and 11.6 above, the City of Malibu has reviewed and accepted the subject hydrology model, as well as supplemental technical memos and information, including the April 10, 2006 Addendum Letter from Fugro West, Inc (see Appendix F-1), and has concluded that the City standards have been met including those impact thresholds applicable and relevant to the analysis of potential impacts to groundwater mounding and liquefaction pursuant to the CEQA. On that basis, the analysis and conclusions in these reports, including the evapotranspiration rates, was used in the analysis of secondary effects of the proposed on-site wastewater treatment system presented in Section V.E Geology and Soils of the Draft EIR. The Applicant will be required to obtain a Waste Discharge Permit from the RWQCB prior to building permit issuance. In issuing this Permit, the RWQCB can require the Applicant to demonstrate that wastewater from the proposed project can be adequately assimilated using an alternate evapotranspiration rate. The potential impacts of the proposed project's wastewater treatment system have been disclosed in the EIR, as required by CEQA. Proposed mitigation measures would ensure that no significant impacts result. No further analysis or mitigation is required.

**Comment No. 11.8**

## Mounding

The FUGRO Letters state that due to irrigation disposal, the modeled rise in groundwater is reduced everywhere to 10% of the previously predicted total mounding because the number of discharge days is reduced to 10% of the total. However, our staff contends that this conclusion is not sufficiently prudent as the discharge is not distributed over a year, but occurs during the most critical days with the highest groundwater levels and precipitation.

**Response No. 11.8**

The comment asserts that the conclusion in the FUGRO Letters regarding the modeled rise in groundwater is "not sufficiently prudent" because the discharge would occur on days with the highest groundwater levels and precipitation, and not averaged over the course of a year. This observation is an opinion. See Response to Comments 11.5 and 11.6 above, with regard to the City's acceptance of the referenced technical reports and the ability of the RWQCB to require that the proposed project meet specific performance standards prior to the issuance of the required Waste Discharge Permit. The potential impacts of the proposed project's wastewater treatment system have been disclosed in the EIR, as required by CEQA. Proposed mitigation measures would ensure that no significant impacts result. No further analysis or mitigation is required.

**Comment No. 11.9**

Further, the hydrology reports do not make a conclusion about the how groundwater levels elevated during critical conditions might affect adjacent septic systems or future plans for disposal at Legacy Park. The City's plans for the park include disposal of 1,400 gallons per minute of storm water flows, disposal of 17,000 gpd for the Malibu Lumber development, and disposal of 15,000 to 30,000 gpd for a future wastewater treatment system providing tertiary treatment for the Civic Center and Malibu Colony. Additional developments are currently being processed by the Planning Department, including the Whole Foods complex with proposed flows into the Civic Center area of up to 30,000 gpd.

#### **Response No. 11.9**

The comment raises the question of cumulative impacts to groundwater from the proposed project and other projects including Legacy Park, the Malibu Lumber development, the Civic Center, Malibu Colony, and Whole Foods. Cumulative impacts from implementation of the proposed project and related projects were identified and disclosed in the Draft EIR as follows:

- Section V.F. Hydrology/Water Quality at page V.F-14: "In addition, the properties within the Civic Center area are served by private on-site wastewater treatment systems, effluent from area OWTS's would contribute to adverse cumulative water quality impacts within the Malibu Lagoon watershed. The RWQCB is charged with implementing the Total Maximum Daily Load (TMDL) program, through the issuance of Waste Discharge Requirements (WDRs), to address chronic water quality problems in the Malibu Lagoon, which is a federally designated Impaired Water Body (Section 303d) impacted by bacteria and nutrients. The Civic Center Risk Assessment Study, performed by Questa Engineering Corp. for the City of Malibu, has shown that portions of the subject property contribute to the regional groundwater discharge into Malibu Lagoon. Because the subsurface discharge of OWTS effluent from the proposed project could contribute a significant cumulative impact on water quality in the Malibu Lagoon, the RWQCB will review the OWTS final design (to be reviewed during the issuance of WDR) to ensure compliance with the TDML/Clean Water Act Section 303d requirements. The wastewater discharge generated by the related projects, as well as the Proposed Project would therefore be required to meet the TMDL standards set forth in the WDR, which is considered a vehicle for moving towards attainment of federal and state water quality standards in the Civic Center Area. Because the TMDL program requires the RWQCB to set water quality limits in the WDR based on an analysis of cumulative impacts, the City of Malibu will consider the project to be in conformance with the LCP Chapter 18 requirements for a Cumulative Impact Analysis, provided that this condition is met. The City Environmental Health Administrator has found that the proposed system is feasible and meets the requirements of the City of Malibu. Based on the foregoing, the Proposed Project's contribution to cumulative wastewater impacts would be less than significant."

- Section V.I. 4. Public Utilities – Wastewater, at page V.I-12: “Cumulative impacts related to wastewater in the project vicinity involve the combined effects of several private OWTSs operating within the Malibu Lagoon watershed. Potential adverse effects include “groundwater mounding” and groundwater quality impairment. Due to the relatively shallow groundwater table in the project vicinity, the effects of effluent from the proposed on-site wastewater treatment system could result in “groundwater mounding”, which may cause existing septic systems to fail. Groundwater mounding could adversely alter the characteristics of the soil, thus affecting the liquefaction potential of the soil beneath the proposed structures. The project hydrologic consultant Fugro West Inc., and Ensitu Engineering have demonstrated that the proposed OWTS will not result in a significant rise in groundwater levels across the site including the areas adjacent to the subterranean parking structures. Similar to the proposed project, other developments proposed within the Civic Center would be reviewed and evaluated to determine the cumulative effect on adjacent properties. Therefore, cumulative impacts relative to soil stability would be less than significant.

With respect to water quality, the wastewater discharge of the related projects, as well as the proposed project, would be required to meet the TMDL standards set forth in the Waste Discharge Requirements which is considered a vehicle for moving towards attainment of federal and state water quality standards in the Civic Center area. Because the TMDL program requires the RWQCB to set water quality limits in the WDR based on an analysis of cumulative impacts, the City of Malibu Environmental Health Administrator will consider the project to be in conformance with the LCP Chapter 18 requirements for a cumulative Impact Analysis, provided that this condition is met. Therefore, the proposed project’s contribution to cumulative wastewater impacts would be less than significant.”

This cumulative analysis did not include the projects listed (in comment 11.9) because they were either not planned at the time, or the City of Malibu had no application for them on file at the time the Notice of Preparation for the Draft EIR was prepared<sup>6</sup>. However, the Cumulative Project list (Table IV-C.1) in Section IV.C lists some development projects that have not been developed and are not anticipated to be constructed (see Response No. 8.8), but whose impacts were considered in the EIR required cumulative impact analysis. In some cases development is proposed on the same parcel with an ownership change (i.e. Shultz to Whole Foods). Projects proposed after publication of the Notice of Preparation would be expected to further contribute (incrementally) to the cumulative impacts identified in the Draft and Final EIR. Just as the related projects used for the cumulative impact analysis in the Draft EIR are required to obtain required City and RWQCB approvals and permits, and meet the TMDL standards set forth in the WDR, so too would these other related projects identified in comment 11.9. As stated above, the TMDL standards, and their implementation through WDR permits, are

<sup>6</sup> *CEQA Guidelines Section 15130 Discussion of Cumulative Impacts.*

considered to be a vehicle for moving towards attainment of federal and state water quality standards in the Civic Center Area.

The EIR disclosed the potentially significant cumulative impacts to water quality and wastewater service, and concluded that with mitigation, impacts would be reduced to insignificant levels. To comply with the required mitigation, the Applicant must obtain the following permits and approvals:

- (Mitigation Measure 9, Section V.F-16 Hydrology/Water Quality) The Applicant has obtained final feasibility approval for the proposed onsite wastewater treatment systems (OWTS) for Parcel A, Parcel B, and the City Hall Projects from the City Environmental Health Administrator. In accordance with Chapter 18.4(D) of the City's Local Coastal Plan- Local Implementation Plan (LCP-LIP) the proposed OWTS shall be engineered to meet the effluent limits specified in WDRs, taking into account the Malibu Lagoon bacteria and total maximum daily load requirements (TDMLs) of the RQWCB and the USEPA.
- Mitigation Measure 2, Section V.I.4. Public Utilities – Wastewater) The project Applicant shall obtain a Waste Discharge Permit from the Los Angeles Regional Water Quality Control Board (LARWQCB) prior to building permit issuance

Separate from the requirement to determine and disclose if potentially significant impacts would result pursuant to the provisions of CEQA, these permits and approvals will require an auxiliary analysis of cumulative impacts as a part of the permitting process. As previously stated, a cumulative impact analysis that identified reasonably foreseeable impacts from the proposed project and related projects has been disclosed in the Draft and Final EIR.

#### **Comment No. 11.10**

##### **Recommendation**

A hydrology study, considering all basin inflows (including storm water retention) for the Civic Center, would determine the remaining assimilative capacity for tertiary treated water and septic effluent in Legacy Park. Representatives from the City have been discussing such a study with consultants and with Regional Board staff. Most recently, a teleconference was initiated by Malibu Lumber proponents on October 29, 2007.

We recommend that the City not proceed with the approval process until the City has specified the steps required to address our concerns on its cumulative assessment of wastewater disposal issues.

If you have any questions on the findings, please contact Ms. Elizabeth Erickson (213) 620 2264 or Ms. Wendy Phillips (213) 576 6618.

**Response No. 11.10**

The comment identifies the benefit of a cumulative hydrology study of the Civic Center to aid in identification of the remaining assimilative capacity for tertiary treated water and septic effluent in Legacy Park and the Civic Center Area. The City is undertaking the task of developing a groundwater mounding analysis and model for the Civic Center area and the Regional Board will be involved in the development of this effort. The continuation of the approval process for the DEIR does not negate any requirements of other agencies. The issue of cumulative assessment of wastewater disposal was discussed above in Response to Comment 11.9, including the requirement for the proposed project, and related projects to demonstrate compliance with performance standards applied by the RWQCB in order to obtain the required Waste Discharge Permits.

Comments received on the DEIR during and after the public review period show that there may be disagreements among experts, in this case, with regard to wastewater. The Final EIR includes additional clarifying narrative and exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and clarifying exhibits in the Final EIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement among experts regarding conclusions in the EIR is acceptable, and perfection is not required.