8.0 RESPONSES to COMMENTS on the DRAFT EIR

This section of the Final EIR for the 2008-2014 Housing Element Update project contains all of the written comments received in response to the Draft EIR during the 45-day public review period of May 15, 2013 through June 28, 2013. Each comment received by the City of Malibu has been included and responses to all comments have been prepared to address the concerns raised by the commenters and to indicate where and how the EIR addresses environmental issues.

The comment letters and responses follow. Each comment letter has been numbered sequentially and each separate issue raised by the commenter has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter 1).

Letter 1

From: Blankenship, Daniel@Wildlife [mailto:Daniel.Blankenship@wildlife.ca.gov]
Sent: Friday, June 21, 2013 4:35 PM
To: Richard Mollica
Subject: GP Housing Element Update SCH 2011051027

Dear Mr. Mollica,

Thank you for the opportunity to review the above referenced DEIR for potential significant biological impacts. The biological mitigation measures look good with the following recommendations:

1. Sensitive plant survey reports prepared for the City will also be provided to the CDFW for review.
2. The consulting biologist will coordinated with CDFW staff prior to the clearance survey.

1.1

Department staff are interested in the special status species observations and will assist City and Consulting staff in reporting any observations to the CDFW Natural Diversity Database.

Please contact me if you have any questions. Thanks again for the opportunity to work with the City in reviewing this DEIR.

Daniel Blankenship
Staff Environmental Scientist
24848 Quigley Canyon Road
Newhall, CA 91321
661-259-3750

Letter 1

COMMENTER: Daniel Blankenship, Staff Environmental Scientist, California Department of Fish and Wildlife

DATE: June 21, 2013

Response 1.1

The commenter states concurrence with the biological mitigation measures, but recommends that the sensitive plant survey reports prepared for the City also be provided to CDFW for review and that the consulting biologist coordinate with CDFW staff prior to the clearance survey.

The following text was added to Page 4.3-22 of the FEIR in response to this comment:

> **BIO-2** **Special-Status Plant Surveys.** Prior to any vegetation removal, grubbing, or other construction onsite, **s**easonally-timed special-status plant surveys shall be conducted by a City-approved biologist no more than two years before initial ground disturbance. As appropriate, the consulting biologist shall coordinate with CDFW staff and provide surveys to CDFW for review. The purpose of these surveys is to document the location(s) and number(s) of special-status plant species within construction and mitigation areas so that mitigation can be accomplished. The surveys shall coincide with the bloom periods for each species listed above and all special-status plant species identified onsite shall be mapped onto a site-specific aerial photograph and topographic map. Surveys shall be conducted in accordance with CDFW and USFWS protocols (California Department of Fish and Game 2009, United States Fish and Wildlife Service 2000). Areas containing special-status plant species shall be considered ESHA per the LCP.

DEPARTMENT OF TRANSPORTATION
DISTRICT 7, OFFICE OF TRANSPORTATION PLANNING
IGR/CEQA BRANCH
100 MAIN STREET, MS # 16
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Letter 2

Flex your power!
Be energy efficient!

June 28, 2013

Mr. Richard Mollica
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: 2008-2014 Housing Element Update
Draft Environmental Impact Report (DEIR)
IGR#130531/EA, SCH#2011051027
Vic: LA/001/47.09

Dear Mr. Mollica:

The California Department of Transportation (Caltrans) has reviewed the Draft Environmental Impact Report prepared for the proposed General Plan Housing Element Update. The proposed housing element update would establish new housing goals, policies, and programs for the entire City of Malibu.

Based on the information contained in the DEIR, Caltrans has the following comments:

- As you are aware, Caltrans is the State agency with jurisdiction over Pacific Coast Highway (State Route 1) which is the main highway through the City of Malibu. As such Caltrans requests inclusion in the preparation of traffic studies involving Pacific Coast Highway (PCH). Please include policies that require collaboration with Caltrans in the planning and implementation of transportation improvements that may affect PCH. Caltrans may provide assistance in the areas of traffic modeling, operations analysis, data collection, environmental and community impact assessment, as well as identifying critical operational deficiencies. 2.1

- Table 2.1 indicates the Regional Housing Needs Assessment for the City of Malibu is 441; however, the traffic study analyzed transportation impact associated with 212 units. It seems that the traffic study only accounts for the very-low and low income housing allocation, please explain. 2.2

- The traffic study follows City and County of Los Angeles' criteria to determine whether significant impacts would occur. Please include a policy that requires that Caltrans' criteria are also considered in the process to determine whether potential significant traffic impacts would occur on PCH. 2.3

- We understand that individual project will be required to prepare a separate environmental report and traffic study pursuant to the California Environmental Quality Act (CEQA). Please instruct traffic engineers to consult with Caltrans to obtain information as to what information it wants the study to include. For your information Caltrans follows Highway Capacity Manual (HCM) methodology to analyze its facilities. Caltrans has developed a Guide for the Preparation of Traffic Impact Studies for the benefit of local agencies in preparing their traffic impact studies. The Guide can be downloaded from the Internet at: www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf 2.4

- Please require that any land-use development which needs direct access to/from Pacific Coast Highway coordinate with Caltrans early, as it would need an encroachment permit. 2.5

- Please consider access related improvements such as deceleration and acceleration lanes at Ramirez Mesa Drive, Zuma View Drive, and Zumirez Drive for candidate sites #1 and #2. In addition, please consider a signal or roundabout at Cross Creek Road and Civic Center Way. These improvements may prevent vehicles queues from extending to PCH. A queue analysis of Cross Creek Road traffic from Civic Center Way to PCH is requested. 2.6

- Caltrans acknowledges that PCH intersections at Cross Creek Road, Malibu Canyon Road, and Topanga Canyon Road would likely be significantly impacted daily by future residential development. Mitigation measures are proposed at Cross Creek Road and Malibu Canyon Road. Mitigation improvements at PCH and Topanga Canyon Road are deemed unfeasible due to right-of-way constraints. It is recommended the City consider mitigation improvements even though additional right-of-way acquisition may be needed, especially since the traffic study extends to 2030. It may not be feasibly for any one individual development project to implement those improvements; however, they should not be discarded altogether. Caltrans recommends the City develop a funding mechanism that would address cumulative transportation impacts on PCH that are not currently feasible for individual projects to implement. Other Cities have developed traffic mitigation fee programs where developments contribute commensurate with their impacts. More comprehensive improvements may involve funding from private and public sources. 2.7

- Intersections and segments of PCH that are projected to exceed acceptable standards in the City should be considered cumulative significant. Transportation impacts can be cumulative significant when added to already deficient conditions and to future foreseeable development. It is recommended the City update its circulation element to address projected deficiencies on PCH. 2.8

If you have any questions regarding these comments, you may reach Elmer Alvarez, project coordinator at (213) 897-6696 or by e-mail at elmer.alvarez@dot.ca.gov and please refer to our record number 130531/EA.

Sincerely,

Elmer Alvarez for:

DIANNA WATSON
IGR/CEQA Branch Chief

Letter 2

COMMENTER: Dianna Watson, IGR/CEQA Branch Chief, California Department of Transportation

DATE: June 28, 2013

Response 2.1

The commenter requests policies that require collaboration with Caltrans in the planning and implementation of transportation improvements that may affect Pacific Coast Highway (PCH). The City's normal practice is to coordinate with Caltrans regarding implementation of improvements to state facilities such as PCH.

Response 2.2

The commenter notes that the Regional Needs Housing Assessment (RNHA) for Malibu is 441; however, the traffic study only analyzed transportation impacts associated with 212 units. As is noted in Section 2.0, *Project Description,* the City has demonstrated that it has the land use capacity to meet the RHNA allocation for moderate and above moderate income households and therefore is not required by the State to provide additional land use capacity for these income groups. As a result, the City needs to only provide land use capacity for low and very-low income households, which total 188 units of the City's 441-unit RNHA. The 2008-2014 Housing Element Update would apply an Affordable Housing Overlay to three parcels, which combined could accommodate 212 units, exceeding the City's 188-unit RHNA allocation requirement for very-low and low-income households.

Response 2.3

The commenter requests that the traffic study consider Caltrans criteria in determining whether potential significant traffic impacts would occur on PCH. All study area intersections are within the City of Malibu and the City is acting as lead agency for the EIR; therefore, significance criteria established by the City of Malibu were used to assess the potential for significant project impacts at the study intersections. The City of Malibu traffic impact study guidelines provide significance criteria for roadway segments.

Response 2.4

The commenter requests that traffic engineers on projects facilitated by the Housing Element Update consult with Caltrans. As noted in Response 2.1, the City's normal practice is to coordinate with Caltrans regarding projects that affect state facilities.

Response 2.5

The commenter requests that land-use developers that need access to/from PCH coordinate with Caltrans early and receive an encroachment permit. As necessary, future developers in the City will obtain encroachment permits from Caltrans for projects requiring access along PCH.

Response 2.6

The commenter requests that access related improvements be considered at Ramirez Mesa Drive, Zuma View Drive, and Zumirez Drive for Candidate Sites #1 and #2. The commenter also requests a signal or roundabout at Cross Creek Road and Civic Center Way and a queue analysis of Cross Creek Road traffic Civic Center Way to PCH. The project traffic study (see Appendix E) analyzes site access and circulation issues. Although a significant impact was identified for the Cross Creek Road/PCH intersection, the FEIR includes mitigation that would reduce this impact to below a level of significance under City criteria. Significant impacts were not identified at any of the other locations; therefore, implementation of improvements at those locations is not warranted.

Response 2.7

The commenter requests that the City develop a funding mechanism that would address cumulative transportation impacts on PCH that are not currently feasible for individual projects to implement. Although the DEIR identifies unavoidably significant traffic impacts at one location along PCH, the FEIR includes mitigation that would reduce these impacts to below a level of significance under City criteria; therefore, development of an additional funding mechanism is not warranted.

Response 2.8

The commenter requests that the City update its circulation element to address project deficiencies on PCH. Please see Responses 2.6 and 2.7. The FEIR does not identify any unavoidably significant traffic impacts.

manatt
manatt | phelps | phillips

Letter 3

Victor De la Cruz
Manatt, Phelps & Phillips, LLP
Direct Dial: (310) 312-4305
E-mail: VDelaCruz@Manatt.com

June 28, 2013

Client-Matter: 42531-032

VIA E-MAIL AND MESSENGER

Mr. Richard Mollica
Associate Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Comments on the 2008-2014 Housing Element Update Draft Environmental Impact Report

Dear Mr. Mollica:

On behalf of Trancas PCH, LLC, thank you for the opportunity to provide our comments on the Draft Environmental Impact Report (the "DEIR") for the City of Malibu's 2008-2014 Housing Element Update (the "Housing Element Update" or "Update"). In reviewing the DEIR, it is apparent that the City has selected sites that are not capable of accommodating the density that the Housing Element Update purports to facilitate. Specifically, as will be discussed in this letter, the City has selected sites to create the illusion of compliance with its Regional Housing Needs Assessment ("RHNA") requirements by hiding the ball with respect to the planned Housing Element Update development regulations, obfuscating the feasibility and environmental impacts of development at the selected sites, and passing over multiple other properties in the City that could be developed with affordable housing without significant harm to the environment. In connection with this scheme, the City's DEIR runs roughshod over the environmental analysis required by the California Environmental Quality Act ("CEQA") and therefore must be revised and recirculated. Set forth below are our detailed objections.

A. The DEIR Is Inconsistent, Incomplete, and Fails to Describe the Full Range of Environmental Impacts Caused by the Housing Element Update.

1. Given the Challenges to Developing Multifamily Affordable Units in the City, the DEIR Does Not Accurately Describe the Full Extent of Regulatory Changes That Will Be Required to Implement the Housing Element Update. 3.1

It is extraordinarily difficult, if not impossible, to develop multifamily housing in Malibu given the complex web of development regulations in the City, the state of public infrastructure, and the vehement public opposition to nearly all forms of development in the City – especially

affordable multifamily housing. As a result of these regulatory and political obstacles, ***zero*** very-low or low-income multifamily residential units have been built in the City since its incorporation.

However, notwithstanding these regulatory and political obstacles to the development of multifamily housing in Malibu, under state law the City is required to adopt a General Plan Housing Element that demonstrates the City's ability to accommodate its fair share of the region's projected housing needs, as determined by the California Department of Housing and Community Development ("HCD") and the Southern California Association of Governments ("SCAG"). This projected housing needs analysis, known as the RHNA, identified a required housing allocation of 441 units for the City for the period of 2008-2014. Of these 441 housing units that the City is required to accommodate during this period, 188 units must be affordable to very-low and low income households. The City cannot opt out of providing the capacity for these units – state law mandates that this housing need be accommodated, and that jurisdictions make the necessary regulatory changes to permit the by-right development of these units.

Despite its long history of challenging its legal obligation to provide for its RHNA allocation, the City has finally conceded that changes to its existing development regulations are necessary in order to accommodate the development of 188 affordable units. Accordingly, the City is now proposing to change the existing zoning on three candidate development sites ("Candidate Sites") in order to allow development at a density of 25 units per acre, which will allegedly accommodate the future by-right development of up to 212 affordable units. The DEIR purports to analyze the anticipated environmental impacts of this rezoning scheme, as well as the impacts resulting from additional regulatory changes that will be required to permit the by-right development of these units. However, as detailed below, the DEIR's analysis fails to recognize the true extent of the changes that will need to be made to the City's existing development regulations and policies at the Candidate Sites.

3.1

Developing the proposed multifamily units on the Candidate Sites will require extensive grading and re-contouring of the sites, construction of extensive stormwater and wastewater treatment infrastructure, and the construction of tall, multistory buildings. To permit this development, the City must amend its regulations regarding height limits, grading quantities, development square footage, setbacks, amount of impermeable coverage, stormwater and wastewater treatment facilities, parking requirements, ingress and egress requirements, landscaping requirements, and other land use restrictions. By failing to acknowledge and analyze all of these wide-ranging changes that must be made in order to allow by-right development of the proposed units, the project analyzed by the DEIR represents a merely illusory zoning scheme that is intended to comply with the letter, but not the spirit, of state housing law.

In contrast to the significant impacts that will necessarily result from the contemplated development on each of the Candidate Sites, there exist other large properties in the City, including the property owned by our client, that offer the possibility of multifamily development with significantly fewer environmental impacts. Specifically, our client's property is large (approximately 35 acres), gently sloped at its southern portion, and has legal access from the Pacific Coast Highway. Given these features, it is one of the only potential development sites in the City that could accommodate a significant number of multifamily residential units ***and*** could comply with several important City development policies that the proposed development on the Candidate Sites would not comply with (for example, those related to aesthetics, geology, and wastewater treatment). Furthermore, Trancas PCH, LLC was the only property owner in the City that was ready and willing to build a project with an affordable housing component when the City finalized its list of sites that would be rezoned in connection with the Housing Element Update. However, instead of capitalizing on this opportunity, the City excluded our client's property from consideration for such rezoning because of public opposition to the notion that our site could actually be developed with multifamily units. By capitulating to such public opposition, and excluding our client's property from consideration for multifamily development in the Housing Element Update and the DEIR, the City demonstrates its lack of good faith in complying with state housing law.

3.1

2. <u>The Proposed Affordable Housing Overlay Does Not Include the Necessary Amendments to the City's Development Regulations.</u>

The DEIR identifies a category of "site-specific programs" that would be implemented under the Housing Element Update (DEIR, p. 2-6). However, this category consists of only one such program – the proposed creation of a new "Affordable Housing Overlay" ("AHO") designation, which would be created by amending the City's general plan, local coastal program ("LCP"), and Malibu Municipal Code ("MMC") to permit residential density of up to 25 dwelling units per acre on the Candidate Sites. As proposed by the DEIR, the AHO would "accommodate the City's required housing needs allocation. . . in the RHNA," which, as noted above, totals 188 very-low and low income residential units. (DEIR, p. 2-6:7.) The DEIR's project description then includes a table showing that the development of these 188 units can be achieved by simply multiplying the "developable lot size" of each of the Candidate Sites by a density of 25 units/acre, which results in a total of 212 multifamily units, or more than enough to meet the City's RHNA allocation. (DEIR, p. 2-7, Table 2-2.)

3.2

However, this simplistic description of the AHO is flawed. In order to develop the proposed densities on each of the Candidate Sites, many of the City's standard development regulations must be waived or modified. The Housing Element Update itself makes this abundantly clear, as it notes: "Amendments to the MMC and LCP Local Implementation Plan

(LIP) development standards ***will*** be processed as necessary to facilitate affordable multi-family development." (Draft Housing Element Update, p. V-5.)(Emphasis added.) The Update further notes that "these amendments could include revisions to current standards for total development square footage, grading quantities, impermeable coverage, building envelope, minimum unit size, or subterranean parking." (Id.) Notwithstanding the noncommittal language about which specific amendments must be processed in order to achieve the proposed multifamily density, the Housing Element Update recognizes that certain City development regulations are inherently incompatible with the development of multifamily housing units at a density of 20-25 units per acre. Attached as Exhibit A are letters previously written to the City addressing the development regulations that would need to be amended, the amendment of which – particularly as it pertains to the Candidate Sites – would create significant environmental impacts that must be analyzed and mitigated. 3.2

Although a variety of development regulations must be modified in order to allow construction of the proposed density on the Candidate Sites, the DEIR's project description ***makes no mention of these proposed changes to the City's development regulations*** when describing the AHO. Instead, the DEIR's project description treats the AHO as a completely self-contained program that will somehow allow the City to meet its RHNA goal simply by lifting the maximum permitted density limits on the Candidate Sites. Furthermore, the DEIR's project description only discusses the potential amendments to the City's current development regulations as a future "Citywide program," for which ***no specific sites or projects have been proposed***. (DEIR, p. 2-7.)

This language is completely counter to the Housing Element Update itself, which recognizes that both rezoning ***and*** amendments to the City's existing development standards will be required in order for the City to accommodate its RHNA allocation. (Draft Housing Element Update, page V-5.) As a result, the DEIR describes an illusory zoning program for the three Candidate Sites, which will not result in the by-right development of multifamily housing units. This causes the DEIR's project description to conflict with the actual proposed Housing Element Update. Accordingly, the project description must be revised, and the DEIR must be updated to accurately reflect the housing-related programs actually proposed by the Housing Element Update. Without the provision of such information, the DEIR serves no purpose as an informational document.

3. <u>The DEIR's Project Description Does Not Identify The Full Extent of Changes to the City's Development Regulations That Would Be Necessary for the Proposed Development of the Candidate Sites.</u> 3.3

Even if the DEIR accurately stated that both rezoning ***and*** certain modifications to the City's development regulations would be necessary to allow the contemplated density on the

Candidate Sites, another fundamental problem with the project description becomes clear when reviewing the DEIR's environmental impacts analysis section. (*See* DEIR, Chapter 4, *et seq.*) Throughout this section, the DEIR notes that the multifamily housing projects contemplated for the Candidate Sites could potentially create environmental impacts, because such development projects would necessarily have larger development footprints, have greater heights, require more extensive grading, etc. (See, e.g., DEIR, p. 4.1-11 [discussing greater likelihood of aesthetic impacts]; DEIR, p. 4.8-9 [discussing greater likelihood of hydrology and water quality impacts].) However, each time these potential environmental impacts are described, the DEIR invariably denies their relevance by stating that any proposed development project will be required to comply with one LCP policy or another that regulates the exact issue in question.

For example, when analyzing aesthetics, the DEIR notes that the contemplated development of Candidate Site #1 could result in aesthetic impacts because of the hypothetical project's increased height and larger parking areas. But the DEIR then immediately states that any such potential impact would be mitigated by the fact that the project would be required to comply with LCP Policies 6.5 through 6.15, which restrict "building location, height, setbacks, design, and other relevant building parameters, thereby ensuring that visual resources are maintained." (DEIR, p. 4.1-11.) This is not a valid form of analysis under CEQA, for it acknowledges that the anticipated development of Candidate Site #1 with 91 multifamily units would almost certainly be thwarted by various LCP policies that restrict development of the property. This is in direct conflict with the goals of the Housing Element Update and the stated objectives of the DEIR, with no explanation of how this conflict can be reconciled. As a result, it can only be assumed that the City is creating the illusion of by-right multifamily zoning on the Candidate Sites, but is in fact relying upon existing restrictive development regulations to preclude the actual development of affordable housing units. From the standpoint of environmental analysis, it is completely circular to mitigate impacts through development standards that currently exist, but that are currently in the process of being eliminated.

3.3

In short, there is only one appropriate and legal way to proceed with the analysis of the Housing Element Update under CEQA – the City must provide a robust project description that accurately describes the City land use policy and development regulations that must be amended or modified in order to allow the proposed development on the Candidate Sites. Only then will the DEIR's project description and environmental impacts analysis be legally adequate.

4. The DEIR's Citywide Programs Include Modifications to Existing Development Regulations That Would Increase the By-Right Development Potential of Numerous Sites Across the City; However, the DEIR Completely Fails to Provide Any Environmental Impact Analysis of the Resulting Development Potential Created By These Modifications.

The DEIR provides a summary of the Housing Element Update's proposed programs and policies that are intended to encourage and facilitate the provision of adequate housing opportunities in the City. (DEIR, p. 2-8.) Unquestionably, the policy that will be most essential to the facilitation of affordable housing development in the City will be Housing Element Update Program 2.2B, or the proposed revisions to the City's existing development regulations. The City's existing development regulations severely restrict the development potential of nearly all parcels in the City by imposing onerous limits on the total amount of square footage, maximum permissible amounts of grading, and maximum permissible amount of impermeable coverage, among other things. By modifying or eliminating these development regulations on a Citywide basis, the existing development potential of all multifamily zoned parcels in the City will be dramatically increased, suddenly making the development of these sites with multifamily residential units feasible and entirely foreseeable. Yet remarkably, the DEIR contains absolutely no analysis of the likely environmental impacts resulting from such a dramatic change in the development potential of these sites. 3.4

In an apparent attempt to justify this missing analysis, the DEIR's project description discusses the modified development regulations specifically contemplated by the Housing Element Update as a future "Citywide program" for which ***no specific sites or projects have been proposed at this time***. (DEIR, p. 2-7.) This is blatantly impermissible deferred analysis under CEQA, which requires a lead agency to analyze all potentially foreseeable environmental impacts caused by a project. Here, the City's modification of its existing development regulations will essentially constitute a significant upzoning of all multifamily zoned sites in the City, and the foreseeable impacts of the development permitted under this newly created zoning must be assessed. Moreover, the City cannot avail itself of an argument that it would not be feasible to conduct such an analysis – the Housing Element Update itself contains a list of all MF- and MFBF-zoned sites in the City, and each of these sites have been mapped. (Housing Element Update Appendix B.) The maximum permitted unit density that may be permitted on each of these sites under the proposed new development regulations can be calculated, and the resulting foreseeable environmental impacts (e.g., noise, traffic, air quality, etc.) can and must be assessed. To completely abdicate the City's responsibility to acknowledge and analyze these impacts renders the DEIR completely deficient.

5. The Selected Citywide Policies and Programs That Are Identified in the DEIR Are Not Adequately Described, Despite Existing in Draft Form.

Even for the proposed Citywide programs that are identified in the DEIR (e.g., the proposed expansion of second units in the City, modifications to a certain limited number of multifamily development regulations, a new density bonus ordinance, etc.), the DEIR's project description does not disclose the fact that the City has been in the process of drafting the actual language of these programs since March, 2012. These draft documents currently include recommended changes to the City's parking requirements, proposed increases in the amount of impermeable coverage allowed at a development site, and a new proposed density bonus ordinance, among other things. (See Exhibit B.) Staff is preparing to bring final versions of these amendments before the Planning Commission sometime in July, 2013. However, despite the City's substantial efforts to develop these proposed amendments and prepare them for legislative approval, there is no discussion in the DEIR of the specific changes that would be made by these amendments, when these amendments are expected to be adopted, or what the anticipated environmental impacts of some of these changes might be. 3.5

6. The DEIR Fails to Accurately Summarize the Actual Housing Element Update.

Finally, but perhaps most importantly, the DEIR is deficient because it fails to provide the reader with an opportunity to understand what exactly is being proposed by the Housing Element Update. Certain policies and programs (identified as "key" policies) are excerpted from the Update and mentioned in the DEIR, but the full text of the document isn't even included as an appendix to the DEIR. Furthermore, the DEIR's project description states that the full Housing Element Update can be downloaded from the City's website, but then provides a website address that is no longer valid. (DEIR, p. 2-1.) Finally, the DEIR's executive summary claims to provide a summary of the Housing Element Update's proposed programs (DEIR, pp. ES-3:7), but this summary is drawn from an old, unapproved version of the Update, and does not accurately reflect the document that was conditionally certified by HCD in July, 2012. 3.6

By failing to provide any opportunity to locate and review the actual language of the current Housing Element Update, the public is denied the opportunity to understand the actual legislative and policy changes being proposed by the City, thereby hindering public understanding of the proposed project. As a result, the DEIR must be revised to provide an accurate overview of the currently proposed project (and, ideally, include the text of the Housing Element Update as an appendix), and the revised DEIR must then be recirculated.

7. The DEIR Must Be Revised and Recirculated Because These Flaws Thwart the Intended Purpose of the DEIR under CEQA.

As described above, the DEIR inaccurately summarizes the actual programs proposed by the current Housing Element Update. Furthermore, it fails to describe the fact that, at a minimum, rezoning ***and*** extensively modified development regulations will be necessary to potentially allow the proposed development of the Candidate Sites with at least 188 affordable units. Finally, the DEIR does not accurately analyze the full extent of changes to the City's existing development regulations that will be required to allow future development of the proposed multifamily units. As a result, the public is deprived of the opportunity to gain a clear understanding of the true scope of the project being analyzed, and the likely environmental impacts that could result from the project. This is a fatal flaw of the DEIR because CEQA's primary purpose is to disclose a project's anticipated environmental impacts to a lead agency and to the general public. Therefore, an EIR cannot itself serve to hinder CEQA's public disclosure requirements by failing to adequately describe the proposed project. *See County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 198 ("A curtailed, enigmatic or unstable project description draws a red herring across the path of public input"); *see also Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405 ("An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."). 3.7

Furthermore, although extensive detail is not necessarily required for an EIR's project description to be legally adequate, the EIR must describe a project with ***sufficient*** detail and accuracy to permit informed decision-making. (*See* CEQA Guidelines § 15124.) Because it is so important for an EIR's project description to be comprehensive and complete, an inaccurate or incomplete project description causes the EIR's analysis of environmental impacts to be inherently unreliable. This in turn makes it impossible to evaluate any potential benefits of a project in light of its alleged impacts.

Taken together, the multiple flaws in the Housing Element Update DEIR prevent the City, other agencies, and the public from becoming fully informed of the scope of the Housing Element Update's proposed changes and the potentially resulting environmental impacts. Furthermore, the information that ***is*** included in the DEIR appears to show that the goals of the Housing Element Update may be thwarted by various existing development regulations that would limit future housing development opportunities throughout the City. The DEIR and its project description must be revised to fully conform with the Housing Element Update, and the City must perform the required analysis of ***all*** potential environmental impacts resulting from the contemplated multifamily development. Following these revisions, the DEIR must then be recirculated for public comment.

B. The DEIR's Aesthetics Section Is Inadequate

1. The DEIR Fails To Properly Analyze the Conflicts Between the LCP's Visual and Scenic Resources Policies and the Anticipated Development of the Candidate Sites.

As noted above, the DEIR's project description fails to adequately describe the extent of the changes to the City's development regulations that will be required to allow the proposed development on the Candidate Sites. This causes the DEIR's analysis of anticipated aesthetic impacts to be inherently flawed. For example, when discussing the possibility of future development altering the visual character of the Candidate Sites, the DEIR first acknowledges that "[h]igh density residential development would encompass greater lot coverage and result in larger structures, potentially with multiple stories, and larger parking areas." (DEIR, p. 4.1-12.) However, instead of performing any detailed analysis of the size and massing of the anticipated development at the Candidate Sites, the DEIR simply recites various LIP policies that will allegedly mitigate any potential aesthetic impacts by "regulat[ing] the aesthetic design of development." These policies include LIP Policy 6.5, which requires that new development be "sited and designed to minimize adverse impacts on scenic vistas"; if there is no feasible alternative building site for the proposed project, LIP Policy 6.5 requires "siting development in the least visible portion of the site, ***breaking up the mass of new structures***, designing structures to blend into the natural hillside setting, ***restricting the building maximum size***, ***reducing maximum height standards***, clustering development, ***minimizing grading***, [and] incorporating landscape elements." (*Id.*)(Emphasis added.) That is the extent of the DEIR's analysis of potential aesthetic impacts – the language of various LIP policies is simply provided, and the DEIR then asserts that compliance with the referenced LIP policies will prevent any potential impacts to existing visual resources. However, without a discussion of the anticipated size, height, and massing of the 91 residential units that are anticipated to be built on Candidate Site #1, the 64 residential units that are anticipated to be built on Candidate Site #2, or the 57 units that are anticipated to be built on Candidate Site #7, there is simply no way to assess whether it is possible for these LIP policies to be complied with, or how to resolve a conflict between these policies and the proposed Housing Element Update.

3.8

This same cursory treatment of potential aesthetic impacts occurs again with the DEIR's discussion of light and glare for the Candidate Sites. The DEIR states that future development of the Candidate Sites "would increase light and glare," but then LCP Policy 6.23, which "regulates light and glare associated with new development," is cited as an applicable development regulation that will automatically preclude any light and glare impacts. (DEIR, p. 4.1-14.) There is no discussion of potential conflict between LCP Policy 6.23's requirements and the significant

increase in density that is being proposed for the Candidate Sites, making the DEIR's conclusion completely arbitrary. 3.8

2. The DEIR Also Fails to Properly Analyze the Anticipated Future Development of Other Multifamily Zoned Sites in the City.

The Housing Element Update's proposed Citywide programs are also inadequately analyzed with respect to potential aesthetic impacts. The DEIR notes that Housing Element Update Program 2.2.B could remove the maximum permeable coverage and total development square footage limits, thereby allowing other multifamily parcels in the City to be "covered by buildings or other structures to a greater extent," which would have the potential to impact scenic resources within the City if such future development was located near such existing scenic resources. (DEIR, p. 4.1-13.) However, instead of addressing the potential size and height of the development projects that could be built on these parcels, the DEIR once again immediately concludes that no impacts to scenic resources would occur because of the LCP's existing policies that restrict the height, location, and design characteristics of a proposed project – all policies that will need to be amended to allow the housing in the first place. (DEIR, p. 4.1-14.) 3.9

The DEIR makes a similar conclusory statement regarding future anticipated light and glare impacts. Following the Housing Element Update's proposed changes to the City's development regulations, the DEIR acknowledges that the City's multifamily zoned parcels are more likely to be developed with greater building coverage in the future. This will, in turn, increase associated lighting and glare impacts beyond previously anticipated levels. (DEIR, p. 4.1-15.) However, according to the DEIR, the LCP's unchanged light and glare regulations will continue to apply to these properties, automatically eliminating any such light and glare impacts. (Id.) Again, the DEIR acknowledges the increased likelihood of an environmental impact following adoption of certain revised development standards, but then assumes that other, unchanged City regulations will automatically prevent any such impacts from occurring. This is a completely inadequate form of analysis, and does not demonstrate any credible evidence showing that the City has looked at the potential type, size, and shape of the anticipated development on the Candidate Sites or on any other multifamily zoned site in the City. Without such analysis, there is no substantial evidence to support the DEIR's conclusion that such anticipated aesthetic impacts can be avoided through compliance with the LCP's existing policies.

3. The DEIR Fails to Provide An Analysis of Potential Aesthetic Impacts Caused by the Anticipated Future Development of Multifamily Zoned Sites in the City. 3.10

As noted above, the DEIR makes the conclusory statement that no aesthetic impacts will result from any future multifamily projects built under the City's proposed new development

standards because existing LCP policies will prevent any such impacts from resulting. For the reasons stated above, this analysis is completely inadequate. Furthermore, the DEIR errs when it claims that, because the "timing and location of future projects is not known at this time; [] determining the full extent of such [aesthetic] impacts would be speculative." (See e.g., DEIR, pp. 4.1-12, 4.1-14, 4.1-15). It is entirely feasible for the City to prepare such an analysis of anticipated impacts, at least in preliminary form, for this DEIR. All of the City's MF- and MFBF-zoned properties are listed and mapped in Appendix B of the Housing Element Update, and the City has the ability to identify which of these mapped sites are located near existing visual resources, and where conflicts would likely arise between the LCP's Scenic and Visual Resources policies and the Housing Element Update's proposed development regulation modifications. 3.10

Finally, the City cannot defer its analysis of these impacts to an unspecified future date (i.e., "[A]s multifamily residential projects are proposed in the future, they would be subject to individual project review and approval by the City of Malibu, wherein any project specific impacts would be addressed.'")(DEIR, pp. 4.1-12, 4.1-14, 4.1-15.) Such deferred mitigation is impermissible under CEQA, and most importantly, the point of the Housing Element Update is to enable by-right development of affordable housing. No independent CEQA review should be required for such affordable housing if the City seeks to comply with its RHNA obligations under state law. The DEIR must include an analysis of the aesthetic impacts that can be anticipated following adoption of the Housing Element Update in order to adequately inform the public about the proposed project.

C. The DEIR's Analysis of Air Quality Impacts Is Legally Inadequate Because its Conclusion that the Housing Element Update Will Not Create Significant Air Quality Impacts Is Not Supported by Substantial Evidence.

1. Mitigation Measures Contained In AQ-1(B) to Mitigate Construction Emissions Are Vague, Ineffective and Speculative, Violating CEQA's Informational Mandates and Constituting Impermissible Deferred Mitigation. 3.11

The DEIR states that daily construction emissions for Candidate Sites #1 and #2 (analyzed together due to proximity) and #7 will exceed the localized significance thresholds for both PM_{10} and $PM_{2.5}$. CEQA requires that an EIR describe and implement all feasible mitigation (Pub. Res. Code §§ 21002, 21081; CEQA Guidelines § 15126.4), and that such mitigation should not be vague, incomplete, remote or speculative. (*Federation of Hillside & Canyon Assns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.) Here, in direct contravention of this very basic but fundamental rule, the DEIR lists numerous mitigation measures that are so vague, undefined and/or otherwise speculative that it is impossible to gauge their effectiveness. For example, the DEIR describes the following mitigation in impact AQ1(b):

- 4. "The number of pieces of equipment operating simultaneously shall be ***minimized.***" (Emphasis added.)
- 5. "Construction contractors shall use alternatively fueled construction equipment (such as compressed natural gas, liquefied natural gas, or electric) ***when feasible.***" (Emphasis added.)
- 6. "The engine size of construction equipment shall be the ***minimum practical size.***" (Emphasis added.)
- 7. "Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated clean diesel engines) shall be utilized ***wherever feasible.***" (Emphasis added.)
- 8. "During the smog season (May through October), the construction period should be ***lengthened*** so as to ***minimize*** the number of vehicles and equipment operating at the same time." (Emphasis added.)

3.11

The DEIR relies on these and other mitigation measures in order to conclude that, with implementation, the impact would be less than significant. Yet, the public is left to wonder what does "minimize" and "minimum practical size" actually mean, how much longer should the construction period be "lengthened" in order to reduce the number of vehicles and equipment operating at the same time, what factors are to be considered in deciding what is and is not "feasible" – are solely economic considerations allowed to be considered without any regard for the environment impact the measure is designed to address? And importantly, who makes these judgment calls?

The mitigation measures in the DEIR should be certain and specific so that the public can understand and evaluate the impacts of the Housing Element Update, consistent with CEQA's informational mandates. They are not. (*See Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 148 (mitigation measure for active habitat management did not describe anticipated management actions or include management standards or guidelines for actions that might be taken); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (mitigation agreement that called for purchases of replacement groundwater supplies without specifying whether water was available was an inadequate measure for mitigating project's effect on groundwater supplies.)) Furthermore, it is inappropriate to completely defer formulation of specific aspects of the mitigation. (*See Preserve Wild Santee.*) The subject mitigation measures therefore constitute an impermissible deferral of formulation, and the conclusion that such mitigation has reduced the impact to less than significant is not supported by substantial evidence.

2. The DEIR Impermissibly Avoids Analysis of The Air Quality Impacts Associated With Implementation Of The Update's Proposed Programs And Policies That Would Apply To Multifamily Residential Parcels Throughout The City.

CEQA states that an EIR must, among other things, analyze direct and reasonably foreseeable indirect impacts of the entire project, giving due consideration to both short- and long-term impacts. (CEQA Guidelines §§ 15064(d)(3), 15126, 15126.2(a).) In analyzing construction emissions, the DEIR generally acknowledges that certain programs and policies proposed by the Housing Element Update "would have the potential to affect air quality." (DEIR, p. 4.2-11.) It even goes so far as to summarily describe foreseeable air emission impacts of such policies, describing that "[a]mendments to the Malibu Municipal Code (MMC) to remove the maximum total grading allowance of 1,000 cumulative cubic yards per parcel, the total maximum impermeable coverage allowance of 25,000 square feet, and the requirement that all multifamily development be located within a two-acre development envelope on a parcel would allow for additional ground disturbance beyond that currently permitted, which could increase emissions of criteria pollutants, particularly PM_{10} and $PM_{2.5}$." (*Id.*) However, the DEIR stops there, because, allegedly, the full extent of such impacts would be speculative and these projects would likely be subject to future review by the City of Malibu. (Id.) Accordingly, the DEIR concludes, without any support, that "future multifamily residential projects within the City could result in similar levels of construction related emissions. Therefore, impacts related to proposed programs and policies would be significant but mitigable." (DEIR, p. 4.2-11.) The DEIR contains similar conclusory statements with regard to criteria air pollutant impacts and localized CO (hotspot) impacts caused by adoption of the new Housing Element Update policies and programs. (*See* Impacts AQ-2, p. 4.2-13, AQ-5, p. 4.2-17.) 3.12

First, the new proposed programs and policies are not even identified or described, so it is impossible to verify the accuracy of these statements. Second, avoiding impact analysis of the entire Housing Element Update, which necessarily includes adoption of new programs and policies that the DEIR admits will increase criteria pollutants, is clearly unacceptable and in direct contravention of CEQA. These impacts are caused by specific policy changes proposed by the Housing Element Update, reasonably foreseeable, and identifiable. Furthermore, future projects will not necessarily be required to undergo CEQA review (many should not be required to undergo such review in order for the City to comply with its RHNA obligations), making it entirely possible that the impacts caused by these new policies will never be analyzed. The time to analyze these impacts is now – not later.

3. The DEIR's Complete Failure To Analyze The Update's Localized Operational Air Impacts On Nearby Sensitive Receptors Does Not Comply With SCAQMD Guidance And Violates CEQA.

In direct contravention of SCAQMD guidance regarding localized significance thresholds ("LSTs") and CEQA, the DEIR completely omits any analysis of the Housing Element Update's localized operational air impacts. The DEIR explains that such analysis is not required because, purportedly, "SCAQMD's local significance thresholds . . . do not apply to long term operational emissions." (DEIR, p. 4.2-14.) While it is accurate that SCAQMD's LSTs only apply to on-site emission sources, it is entirely incorrect to omit this analysis all together. Importantly, SCAQMD guidance contemplates and CEQA demands that the DEIR analyze the Housing Element Update's net emissions generated by on-site stationary sources (e.g., water and space heaters, cooking appliances, architectural coatings, landscape maintenance equipment, etc.) and onsite vehicular travel against the applicable LSTs. (*See* "SCAQMD Appendix C – Mass Rate LST Look Up Tables" that apply to both construction and operation.[1]) Absent this analysis and appropriate significance findings, the public is left in the dark as to whether the localized air quality impacts resulting from operational emissions associated with the Housing Element Update would be significant. 3.13

4. The DEIR Fails To Analyze Toxic Air Contaminants.

In an effort to protect the State's communities from the health effects of air pollution, the California Air Resources Board ("ARB"), published its Air Quality and Land Use Handbook in 2005 that highlighted the potential health impacts on communities associated with proximity to air pollution sources. (See ARB Land Use Handbook, April 2005.[2]) As described by the ARB, "health effects associated with TACs may occur at extremely low levels. It is often difficult to identify safe levels of exposure, which produce no adverse health effects." (Id. at p. G-5.) Accordingly, the ARB provided recommendations regarding the siting of new sensitive land uses near specific air pollution sources such as freeways and high-traffic roads, which are relevant here. Importantly, it recommends the avoidance of siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day. (Id. at p. 4.) Both Candidate Sites #1 and #2 are immediately adjacent to the Pacific Coast Highway, well within 500 feet. Yet, the DEIR does not attempt to analyze TAC impacts at these sites. Moreover, the cumulative TAC exposure levels experienced by residents located adjacent to Pacific Coast Highway and near the Candidate Sites very well may exceed any reasonable threshold for significant cumulative impacts. Accordingly, the DEIR is required to analyze 3.14

[1] http://www.aqmd.gov/ceqa/handbook/lst/appC.pdf.
[2] http://www.arb.ca.gov/ch/handbook.pdf

whether or not the Housing Element Update's contribution to an existing cumulative impact is considerable. It does no such thing, violating CEQA. 3.14

5. The DEIR Fails To Describe The Environmental Baseline Or Identify A Reasonable Date Upon Which Construction or Operations Will Commence; Without This Information, Meaningful Analysis Of the Update's Air Quality Impacts Cannot Occur.

An EIR's evaluation of environmental impacts should normally measure the changes a project will make in physical conditions in the area affected by the project as they exist when the notice of preparation is published. (CEQA Guidelines § 15126.2(a).) The DEIR fails to describe the environmental baseline in this regard. Moreover, the DEIR does not describe anticipated construction dates or operational dates for the purposes of analyzing the Housing Element Update's potential environmental impacts as compared to the existing environmental baseline. 3.15
Without this, there is no meaningful analysis. For example, in performing a CO hotspot analysis, the DEIR describes that "Table 4.2-12 shows the peak hour CO concentrations at these intersections. As shown therein, CO levels at these intersections in the existing plus project, opening plus project, and cumulative plus project scenarios would not exceed federal or state AAQS for CO. Therefore, impacts would be less than significant." (DEIR, p. 4.2-16.) However, the Air Quality Section never once describes what is believed to be the existing baseline scenario. Moreover, Table 4.2-12 neither identifies, analyzes, nor describes what is considered to be "opening plus project" or "cumulative plus project" scenarios. There is a complete absence of information notwithstanding that these two sentences and the corresponding Table 4.2-12 serve as the DEIR's sole support for the conclusion that Housing Element Update-related vehicle traffic would not increase CO levels above significance thresholds.

D. The Biological Resources Section of the DEIR is Inadequate.

The DEIR's Biology Section fails to comply with CEQA's minimum legal requirements. Attached as Exhibit C is a biology section peer review providing additional detail, and that supplements the comments set forth in this letter.

1. The DEIR's Analysis and Mitigation For the Loss of Native Tree Species Is Not Supported By Substantial Evidence. 3.16

The DEIR notes that native tree species are found on all three Candidate Sites – Southern California black walnut trees are present on all three sites, while Western sycamore and toyon trees are also present on Candidate Site #1. Because the Candidate Sites are anticipated to be fully developed with multifamily housing units, it is foreseeable that these native trees will have to be removed. However, instead of any detailed analysis of the mitigation measures that would

be required to mitigate the impacts caused by the loss of these trees, the DEIR simply refers to several unspecified policies and "project construction measures" contained in the LCP, including a measure that would require a tree replacement ratio of 10:1, and summarily concludes that "implementation of these policies would reduce impacts to a less than significant level." (DEIR, p. 4.3-22.) However, this conclusion is not supported by any substantial evidence – if the Candidate Sites are to be rezoned to allow significantly more density, it is entirely foreseeable that almost the full extent of each of these sites will be developed with new residential buildings, garages, driveways, parking areas, and other components of a multifamily development. There is no proof that tree replacement, at a 10:1 ratio or at any ratio, could be accommodated on these sites. Therefore, the DEIR's analysis of potential impacts from the anticipated loss of these native tree species is completely inadequate. 3.16

2. The DEIR Defers Mitigation For Ground Disturbance Impacts in Violation of CEQA.

The DEIR correctly notes that certain contemplated amendments to the City's development regulations could increase the likelihood of ground disturbance on the City's existing MF- and MFBF-zoned properties, thereby increasing the potential for impacts to sensitive biological resources. (DEIR, p. 4.3-20.) However, consistent with the other sections of the DEIR, there is no analysis, even of the most preliminary nature, of the type and extent of these potential biological impacts. Instead, the DEIR states that as multifamily residential projects are proposed in the future, they would be subject to individual project review and approval by the City, "wherein any project specific impacts would be addressed." (Id.) This is an improper deferral of the analysis that must be included in the DEIR. The purpose of the Housing Element Update is to create a regulatory environment that permits the development of sufficient residential units to accommodate the City's current and future housing needs. To that end, the Update has identified and mapped all of the City's MF- and MFBF-zoned properties (Housing Element Update, Appendix B.) It is completely feasible for the City to analyze existing biological constraints on this limited number of sites for the purpose of identifying potential biological impacts. The City's failure to perform this preliminary analysis in the DEIR renders the existing biology impacts analysis legally inadequate. 3.17

E. The Cultural Resources Section of the DEIR Is Not Supported by Substantial Evidence.

1. It is Not Clear that the DEIR's Field Surveys Captured the Areas Most Likely to Be Developed with Multifamily Uses. 3.18

Figures 4.4-1 and 4.4-2 feature arrows that point to the areas where field surveys were conducted. Oddly, the arrows appear to avoid the flat pad areas of Candidate Sites #1 and #2

where it is more likely than not that future development of multifamily uses, if any, would be constructed. The DEIR needs to clarify the true extent of the field survey and/or include a survey area that more comprehensively analyzes the subject sites. Likewise, in connection with Candidate Site #7, no field surveys were conducted in connection with this DEIR because the Site has purportedly already been captured by previous studies. If this is the case, the DEIR must clarify where on Candidate Site #7 such surveys were actually conducted. 3.18

2. No Information About the Existing Residential Structures Has Been Included in the DEIR.

While the DEIR mentions that there are existing single-family homes on Candidate Sites #1 and #2, no discussion of these structures is provided anywhere in the DEIR to inform the public about whether demolition of these structures would be a significant impact under CEQA or not. Malibu has several homes that have been designed by noteworthy architects, or that have been the residence of important individuals, yet the public is provided no insight on the historic worth of these homes. It is insufficient to merely conduct a records search at the South Central Coast Information Center to determine if there are any registered national or state historic resources, buildings, landmarks or Points of Interest on the subject properties. Many properties of historic worth have not yet been surveyed or registered; however, that is what is required in connection with an environmental document whose purpose is to analyze the impacts of a project that would lead to the demolition of existing buildings. 3.19

F. The DEIR's Geology and Soils Section is Inadequate.

The DEIR's Geology and Soils Section fails to comply with CEQA's minimum legal requirements. Attached as Exhibit D is a geology section peer review providing additional detail, and that supplements the comments set forth in this letter. 3.20

1. The DEIR Fails to Provide a Basic Baseline of Existing Topography.

The DEIR's description of topography notes that Figure 4.5-1 illustrates the topography of Candidate Sites #1 and #2. However, Figure 4.5-1 is complete fiction as the elevations in the Figure bear no relation to the elevations stated in 4.5-1 and actually are not related to any actual contours published by the U.S. Geological Survey, notwithstanding the DEIR's notation under Figure 4.5-1 that "[a]dditional data provided by USGS, 2006." (Figure 4.5-1.) More precision on the contour maps, noting elevations in multiple locations, are necessary to fulfill CEQA's disclosure requirements. In particular, information about the elevations and contours is necessary so that the public can understand the amount of grading that will be necessary to enable multifamily development of the Candidate Sites – all variable that the DEIR currently ignores.

2. The DEIR's Conclusion on Hydroconsolidation Fails to Account for the Project's Introduction of Water to the Project Sites.

As the DEIR notes, hydroconsolidation is the gradual reduction in soil mass resulting from compressive stress increases that result from the introduction of water into a site. The DEIR falsely dismisses the potential for hydroconsolidation on the ground that no introduction of water is proposed as part of the Housing Element Update. (See DEIR, p. 4.5-10.) However, the Project will need to include onsite wastewater disposal, which raises significant concerns about hydroconsolidation. The DEIR completely fails to analyze hydroconsolidation impacts in violation of CEQA. 3.21

3. The DEIR Must Include a Fault Study for Candidate Site #7.

The DEIR acknowledges that the active Malibu Coast Fault passes through Candidate Site #7. (DEIR, p. 4.5-7.) Notwithstanding the fact that an active fault passes through the site, which can create surface displacement "to tens of feet during a rupture event" and the fact that "[t]his can have disastrous consequences, including injury and loss of life, when buildings are located within the rupture zone," the DEIR fails to include a fault study for Candidate Site #7, instead deferring such a study to a future point in time. (See GEO-1.) This is impermissible deferred mitigation and frustrates the City's ability to comply with its RHNA requirements as it may, in fact, be impossible to build any structures suitable for human habitation in Candidate Site #7. As the DEIR states, "[i]t is not practically feasible (structurally or economically) to design and build structures that can accommodate the rapid displacement involved with surface rupture." (DEIR, p. 4.5-7.) The most cursory review of Candidate Site #7 shows that its odd configuration, placement, and geography would only permit development of multi-family residential uses, if at all, in an extremely restricted area. If this area is, in fact, a fault rupture zone, the DEIR has failed to disclose a significant impact that cannot be mitigated and/or has failed to disclose that the City's Housing Element Update will not allow new multifamily uses to be developed. 3.22

4. Mitigation Measures for Liquefaction and Landslides are Illegally Deferred.

While it is acknowledged that the DEIR is a program-level environmental impact report, the DEIR cannot completely shirk its responsibilities under CEQA to provide meaningful, certain, and tangible mitigation. Mitigation Measure GEO-3 is a completely illusory measure in that all "suitable measures" are mere recommendations, a point made clear by the mitigation measure's use of the term "may." (DEIR, p. 4.5-16.)(Emphasis added.) Moreover, the mitigation measure does not even require the liquefaction impact to be reduced to a less than significant level, only that it "minimize potential impacts." (DEIR, p. 4.5-16.) This same critique applies to Mitigation Measure GEO-4. 3.23

G. The DEIR's Analysis of Greenhouse Gas ("GHG") Impacts Is Not Supported By Substantial Evidence.

1. The DEIR Fails To Describe The Existing GHG Baseline.

3.24

To asses the changes to the environment that are caused by the Housing Element Update, CEQA requires that the agency include accurate baseline environmental data in the environmental document, and directs that the agency should consider the extent to which the project may increase or reduce GHG emissions as compared to the existing environmental setting. (CEQA Guidelines §§ 15125, 16064.4(b); *see* also California Resources Agency Final Statement of Reasons for Regulatory Action adopting amendments to the State CEQA Guidelines, p. 24.) Importantly, the DEIR does not describe to the public the GHG baseline for the Candidate Sites nor compare the GHG impacts to this existing environmental baseline.

2. The DEIR Fails To Support The Significance Threshold Applied To The Housing Element Update of 3,500 $MTCO_2E$ Per Year.

The SCAQMD is in the process of preparing recommended significance thresholds for GHGs for local lead agency consideration; however, the SCAQMD Board ***has not*** approved the thresholds and they should not be relied upon without substantial evidence supporting their use. Although CEQA contemplates that local agencies should adopt thresholds of significance to evaluate environmental impacts, such thresholds must be supported by substantial evidence. (Public Resources Code § 21082; CEQA Guidelines §§ 15064.7, 15064.4 (addressing GHG impacts).). There is nothing in the record to support this threshold.

3.25

More importantly, the DEIR arguably is using the wrong draft threshold in determining the significance of the Housing Element Update's GHG impact. The SCAQMD's draft significance threshold for project-related GHG emissions is determined through a tiered analysis process. As currently contemplated, if a project is not categorically or otherwise exempt, and if it cannot be shown that the GHG emissions from the project are within GHG budgets in approved regional plans, then project applicants are required to show that project GHG emissions are below, or mitigated to less than: Option 1: all land uses, 3,000 $MTCO_2e$ per year; or Option 2: residential: 3,500 $MTCO_2e$ per year, if such higher threshold is used consistently. (*See* GHG CEQA Significance Thresholds Working Group Meeting, Main Presentation, September 28, 2010 - http://www.aqmd.gov/ceqa/handbook/GHG/2010/sept28mtg/sept29.html.) The DEIR actually assumes the larger 3,500 $MTCO_2e$ per year threshold without any justification or evidence why this is the appropriate threshold, and even admits that this threshold has not been

consistently applied in the City.[3] One can only presume that this was intentional in order to limit the mitigation required. 3.25

3. The DEIR Fails To Analyze The GHG Impacts Associated With Implementation Of The Housing Element Update's Proposed Programs And Policies That Would Apply To Multifamily Residential Parcels Throughout The City.

CEQA requires that all project components must be considered in the GHG analysis. (CEQA Guidelines, § 15378 ("project means the whole of the action"); *see* also California Resources Agency Final Statement of Reasons for Regulatory Action adopting amendments to the State CEQA Guidelines, p. 24.) Further, CEQA Guidelines section 15064.4(a) states that lead agencies should calculate or estimate the GHG emissions resulting from the proposed project. As in the Air Quality analysis, the DEIR completely ignores the Project's GHG emissions attributed to implementation of the Housing Element Update's proposed programs and policies that would apply to multifamily residential parcels throughout the City. Importantly, CEQA requires quantification and analysis of these emissions to assist in the determination of significance. The new policy changes proposed by the Housing Element Update will cause GHG emissions, such emissions are reasonably foreseeable, and they are identifiable. Furthermore, future projects will not necessarily be required to undergo CEQA review, making it entirely possible that the impacts caused by these new policies will never be analyzed. This becomes even more critical in the GHG analysis where the Housing Element Update already is close to exceeding the 3,500 $MTCO_2e$ per year significance threshold that purportedly applies; any GHG emissions caused by the additional City-wide development of multifamily housing encouraged by the new housing policies will most certainly cause the adoption of the Housing Element Update to exceed the threshold and require implementation of mitigation. 3.26

H. The DEIR's Hazards Analysis is Not Supported By Substantial Evidence.

1. The DEIR Erroneously Relies on Development Standards That May Be Amended in Connection with the Housing Element Update to Conclude That Impacts Would Be Less Than Significant.

In connection with the exposure of future residents to potentially harmful chemicals and materials resulting from accidents along Pacific Coast Highway, the DEIR states that impacts would be reduced to a level less than significant because "setback requirements for multi-family zones would require 20 percent of the lot depth or 65 feet, whichever is less, between residential structures and the roadway (PCH)." (DEIR, p. 4.7-14.) However, the DEIR fails to discuss the 3.27

[3] The DEIR states "[I]t is important to note that the City of Malibu has not recommended this threshold for any other purpose at this time, but that numeric threshold is recommended for this analysis." (DEIR, p. 4.6-11.)

fact that it is precisely development standards such as these which have made multifamily development in the City so difficult, if not impossible. Indeed, this setback regulation may need to be amended in order to not foreclose actual development of multifamily housing – particularly with respect to some of the smaller multifamily-zoned sites in the City. Accordingly, reliance on this provision for mitigation purposes is inappropriate. If anything, this setback regulation illustrates why the DEIR's project description is so incomplete. 3.27

2. The Project Would Expose Future Residents to Significant Risk of Loss, Injury, or Death Involving Wildland Fires.

Despite the fact that all three Candidate Sites are located in Very High Fire Hazard Zones, the DEIR completely brushes off the likely fire and life safety issues posed by the Update without any of the meaningful analysis required by CEQA. The Project would provide zoning for 212 new multi-family units, yet no meaningful discussion of site ingress and egress in case of emergency appears anywhere in the DEIR. In an area where brush fires can enflame entire areas within a few minutes, meaningful analysis of ingress-egress on a timely basis for the anticipated future residents is of the utmost necessity.[4] The DEIR's basis for dismissing impacts as less than significant is that "[e]mergency access would be addressed at the tentative map stage of development and LACFD approval would be required." (DEIR, p. 4.7-20.) However, tentative map approval should not be required for any of the multi-family development that would be enabled by the Project. In order for the City to comply with its RHNA requirements, it may not continue the layer upon layer of discretionary entitlements that the City has used to effectively zone out affordable housing. Accordingly, since tentative maps may not be required for actual development (i.e., the housing must be by-right), ingress-egress must be analyzed in the DEIR now and not deferred to a future point in time. 3.28

I. The DEIR's Hydrology and Water Quality Section Makes Unsupported Assumptions and Ignores Significant Evidence of Likely Environmental Impacts.

1. The DEIR's Analysis of Anticipated Impervious Coverage is Not Supported by Substantial Evidence. 3.29

The DEIR's analysis of potential storm water runoff impacts begins with the statement: "No specific multifamily residential project is proposed at this time on any of the candidate sites." (DEIR, p. 4.8-10.) This statement represents one of the DEIR's fundamental flaws;

[4] A case in point is Candidate Site #2. The DEIR fails to provide any information about how access would be obtained into Candidate Site #2. This is important because both potential Ramirez Mesa Rd. and PCH access-points are noted as having slopes of up to 30 percent, if not 30 to 75 percent, at the property line. (See Figure 4.5-2.) The significant amount of grading necessary for ingress-egress, and potential public safety issues posed by steep access roads have not been analyzed as required by CEQA.

namely, that the DEIR is required to analyze the environmental impacts of developing 91 multifamily units on Candidate Site #1, 64 units on Candidate Site #2, and 57 units on Candidate Site #7. Providing the capacity and opportunity to develop this number of affordable units is a fundamental goal of the Housing Element Update, and consequently, the DEIR must consider the foreseeable impacts of developing this number of units on each of the Candidate Sites.

However, instead of proceeding with a reasonable preliminary analysis of the anticipated type, size, and lot coverage of such presumed residential development projects on the Candidate Sites, the DEIR opts to borrow a "general approximation" utilized by Los Angeles County for a "mixed multifamily land use," which assumes that such a hypothetical use would result in approximately 74 percent impervious lot coverage. (Id.) This is a completely unfounded assumption. What is to say that the resulting impervious coverage on the Candidate Sites will not be 85, 90, or 95 percent? As noted previously, the DEIR is relying upon other LCP policies to reduce the height of any anticipated development in order to reduce aesthetic impacts. As a result, to accommodate the proposed density for each of the Candidate Sites, each project's footprint would have to expand, making it much more likely that a project's impervious coverage would exceed 74 percent. Therefore, the DEIR's assumption regarding the likely impervious coverage at the Candidate Sites is arbitrary, and not supported by substantial evidence.

3.29

2. <u>The DEIR Cannot Rely on Existing MMC Regulations to Mitigate Anticipated Stormwater Impacts Without An Analysis of the Feasibility of Compliance with Those Regulations.</u>

As is the case for multiple other DEIR sections, the hydrology and water quality impacts analysis relies heavily on existing City regulations in order to assert that any future environmental impacts will be able to be mitigated. However, as discussed extensively in this letter, this is not an adequate form of analysis under CEQA. The DEIR assumes that the development of the Candidate Sites will result in impervious coverage of at least 74 percent, and evidence exists that this figure could be even higher. Such a high level of impervious coverage necessarily makes it more difficult to mitigate potential stormwater runoff impacts. However, instead of acknowledging the high likelihood of these anticipated impacts, the DEIR simply cites to various stormwater management regulations contained in the MMC. (DEIR, p. 4.8-10:12.) These MMC regulations require on-site detention basins/facilities that can accommodate two-year, ten-year, and hundred-year flow rates. (DEIR, p. 4.8-10.) However, nowhere does the DEIR show that sufficient room exists on the Candidate Sites to accommodate the anticipated residential development (including all necessary impervious surfaces such as driveways and patios) ***and*** all detention basins and other storm water conveyance and/or treatment facilities that will be required. Without such analysis, even in preliminary form, the DEIR's assertion that

3.30

compliance with MMC regulations will mitigate all potential stormwater impacts is not supported by substantial evidence. 3.30

3. The DEIR Must Identify Source Control Measures That Will Be Implemented by the Project.

The DEIR states that "[s]ource control measures that may be used for development facilitated by the rezone of Candidate Sites #1, #2, and #7 include those that are required by the SUSMP, such as ***conserving natural areas***, minimizing storm water pollutants of concern, ***protecting slopes and channels***, providing storm drain stenciling and signage, properly designing and constructing outdoor material and refuse storage areas, and properly designing and constructing parking lots." (DEIR, p. 4.8-13.)(Emphasis added.) However, given that the Candidate Sites are to be developed with multifamily housing units at a density of 25 units per acre, there is a very high likelihood that the "natural areas," slopes, and channels that currently exist on these sites will not be able to be protected. Therefore, the DEIR's reliance on these areas as a component of potential stormwater mitigation may be unfounded. 3.31

4. The DEIR Completely Glosses Over Issues Posed by Onsite Wastewater Treatment Systems.

So long as the City continues to lack any public sewer system, the DEIR's assertion that any development on the Candidate Sites will require an onsite wastewater treatment system ("OWTS") will remain accurate. (DEIR, p. 4.8-15.) The DEIR also correctly notes that any improperly treated effluent from the Candidate Sites could drain into watersheds or habitat areas, causing significant environmental impacts. (DEIR, pp. 4.8-15:16.) However, in line with its discussion of nearly all other potential environmental impacts resulting from the Housing Element Update, the DEIR simply states that the City's existing regulations regarding the design, installation, and maintenance of OWTSs will result in the mitigation of any potential wastewater impacts. However, the DEIR's wastewater analysis fails to reference the analysis contained in the DEIR's utilities section, which states that the soils found on each of the Candidate Sites have the "greatest limitations for septic suitability."[5] Clearly, developing OWTSs that can successfully treat the effluent from 50-plus residential units on each of the Candidate Sites will be a serious challenge, yet the DEIR's water quality section makes no further mention of this issue. As a result, the DEIR's water quality analysis is significantly flawed, and must be revised to include discussion of the specific site constraints that could preclude successful operation of an OWTS. 3.32

[5] "On a scale of 0.01 to 1.00, with 0.01 having the least limitations and 1.00 having the greatest limitations for septic suitability, the soils present on the candidate sites are rated as 1.00 (NRCS, Web Soil Survey)." (DEIR, p. 4.14-13.)

5. The Project's Placement of Housing Within a FEMA Flood Hazard Area Has Not Been Appropriately Analyzed and Is an Undisclosed Significant Impact.

Candidate Site #7 is a City-designated "Special Flood Hazard Area" or "Zone AO." (DEIR, p. 4.8-16.) The DEIR states that "all development within Zone AO would be required to obtain a development permit from the City's Floodplain Administrator prior to construction." (Id.) In other words, the DEIR tries to mitigate a significant impact away by stating that a development permit may not, in fact, be issued for the very housing that is supposedly being enabled by the Housing Element Update. Once again, the City is attempting to create obstacles to affordable housing by creating illusory zoning that does not, in fact, provide for by right development of multi-family residential housing. The City must do away with a development permit requirement and City Floodplain Administrator sign-off to come into compliance with its RHNA obligations under State law; no discretionary permit of any kind may be imposed on what is supposed to be by-right housing. This means that the DEIR must fully analyze the risks from flooding, identify which parts of Candidate Site #7 (if any) are able to be developed with multifamily residential housing, and make clear if the requisite amount of housing can, in fact, be developed on the site without a significant impact. 3.33

6. The DEIR Must Analyze and Mitigate Impacts from Tsunami or Seiche Events to the Maximum Extent Feasible.

Although Candidate Sites #1, #2, and #7 are at elevations well above the tsunami or seiche inundation line, many multifamily residential properties in the City are not. The DEIR needs to critically examine all sites that would be impacted by changes to development standards and that would put greater amounts of people in danger due to tsunami and seiche. Specifically, the Housing Element Update itself contains a list of all MF- and MFBF-zoned sites in the City, and each of these sites have been mapped. (Housing Element Update, Appendix B.) What the DEIR cannot do is defer analysis to a subsequent point in time (i.e., "Future development within the City located in tsunami zones would be subject to individual project review and approval by the City of Malibu, wherein any project specific impacts would be addressed.")(DEIR, p. 4.8-17.) Although project-level environmental review can more specifically identify the precise risks and project-specific mitigation measures, the point of program-level environmental review is to provide some modicum of the big-picture impacts. This DEIR completely ignores its responsibility to inform the public about the big-picture impacts of the policies being proposed. 3.34

J. The DEIR's Land Use Section Embodies All of the Flaws in the DEIR's Analysis, and is Wholly Inadequate under CEQA.

1. The DEIR's Land Use Section Completely Fails to Discuss the Project's Land Use Impacts, and Instead Recites its Flawed Analysis of Other Potential Environmental Impacts.

The DEIR's land use and planning section represents all that is wrong with the City's review of the project's anticipated environmental impacts. Specifically, the DEIR's land use analysis section discusses the proposed rezoning of the Candidate Sites through the application of the ARO, but fails to describe the fact that extensive amendments to the City's standard development regulations will be required to develop the contemplated densities on the Candidate Sites. This is an obvious fact – there is no way to accommodate the 91 proposed units on Candidate Site #1, the 64 proposed units on Candidate Site #2, or the 57 proposed units on Candidate Site #7 without amending these development regulations.

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However, in apparent denial of the fact that these development regulations must be changed to permit the proposed density on the Candidate Sites, the DEIR's land use section proceeds to cite to those same restrictive development regulations in order to claim that any potential environmental impacts will be reduced to an insignificant level through the application of the regulations and policies. To make things even stranger, the DEIR's land use section repeats the same "analysis" contained in each of the other sections (e.g., aesthetics, air quality, biology, cultural resources, etc.) All of the flaws in those DEIR sections are restated once again in the land use section – for example, under aesthetics, the DEIR states:

> [D]evelopment facilitated by the proposed project would be required to comply with existing City policies of the LCP Land Use Plan which regulate development standards regarding the protection of visual resources. ***These policies restrict building location, height, setbacks, design, and other relevant building parameters, thereby ensuring that visual resources are maintained.*** (DEIR, p. 4.9-7.)(Emphasis added.)

On the same page, the DEIR provides the text of LCP Policy 6.7, which reads:

> The height of structures shall be limited to minimize impacts to visual resources. ***The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower.*** On beachfront lots, or where found appropriate through Site Plan Review, ***the maximum height shall***

> ***be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower.*** Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure. (Id.)(Emphasis added.)

These restrictive height limits are inherently incompatible with affordable multifamily housing development projects and would preclude the development of the Candidate Sites with the number of units contemplated by the Housing Element Update. Yet without any further explanation in the DEIR, these required height limits are relied upon to reduce any potential impacts to existing visual resources. This is an inherently disingenuous form of analysis in that it willfully ignores the fact that this LCP policy restricting building height, along with many other City development policies, would entirely preclude the proposed development of the Candidate Sites at the proposed densities, in direct conflict with the goals of the DEIR and the Housing Element Update itself. Moreover, this form of "analysis" is repeated throughout the DEIR's entire land use section, where instead of actually providing pertinent analysis of foreseeable land use impacts, the DEIR provides references to existing LCP regulations and policies that, if strictly complied with, would preclude the development of multifamily housing units contemplated by the Housing Element Update. 3.35

To remedy the DEIR's flawed land use analysis, the City must perform a realistic analysis of the anticipated characteristics of a 91-unit, 64-unit, and 57-unit project on the respective Candidate Sites. This analysis must identify the specific ***land use*** impacts that are anticipated to occur in conjunction with the likely size, height, footprint, and other characteristics of these multifamily projects. Without this analysis, there is no way for the City, other agencies, or the public to understand how the contemplated development of the Candidate Sites could be achieved, and what the likely environmental impacts would be.

2. <u>The DEIR Improperly Defers Analysis of Potential Land Use Impacts to an Uncertain Future Date.</u>

Furthermore, in connection with the Housing Element Update's Citywide programs (i.e., the amendments to the City's development regulations that ***are*** contemplated in the DEIR, as well as future amendments to allow additional types of housing to be developed by right in the City), the DEIR declines to provide any analysis at all. The stated reason for this is because "the timing and location of future projects is not known at this time," and therefore "determining the full extent of impacts associated with proposed new programs and policies at any individual site throughout the City would be speculative." (DEIR, p. 4.9-16.) As noted previously in this letter, the City's attempt to defer its analysis of potential environmental impacts is not permitted under CEQA. All of the City's multifamily-zoned sites are listed and mapped in the Housing Element Update's analysis. Moreover, the primary purpose of the Housing Element Update is to ensure 3.36

that mixed-income housing development can occur on multiple multifamily-zoned sites in Malibu, and the DEIR is therefore obligated to perform at least preliminary analysis of the anticipated land use impacts that would likely result from such development. The DEIR's failure to provide this analysis necessitates revision and recirculation. 3.36

K. The DEIR's Noise Section Suffers From Multiple Flaws That Render It Noncompliant With CEQA.

1. The DEIR Indentifies Potentially Significant Noise Impacts During Construction on the Candidate Sites, But the Offered Mitigation Measures Are Completely Inadequate.

The DEIR identifies various sensitive receptors in close proximity to the Candidate Sites, including residential uses immediately adjacent to the western boundary of Candidate Site #1, 50 feet from the eastern boundary of Candidate Site #2, 100 feet north of Candidate Site #2, and 100 feet south of both Candidate Sites #1 and #2. (DEIR, pp. 4.10-1:2.) Furthermore, the Malibu Library, another sensitive receptor, is located 60 feet west of Candidate Site #7. (DEIR, pp. 4.10-2.) Each of these receptors could be exposed to significant noise levels during construction on the Candidate Sites – residences to the east and west of Candidate Sites #1 and #2 could experience construction noise of up to 89 dBA, while residences to the north and south of these sites could experience construction noise of up to 83 dBA.[6] (DEIR, pp. 4.10-7:8.) Furthermore, the Malibu Library may experience construction noise of up to 89 dBA. (DEIR, pp. 4.10-8.) Each of these estimated construction noise levels exceeds the City's maximum exterior noise levels, which cannot exceed 55 dBA L_{eq} and 75 dBA L_{max} for residential zones between 7 a.m. and 7 p.m., and cannot exceed 65 dBA L_{eq} and 85 dBA L_{max} for institutional zones between 7 a.m. and 7 p.m. (DEIR, p. 4.10-4.) 3.37

Despite showing that the anticipated construction on the Candidate Sites will produce noise that will exceed the City's threshold limits during the hours of 7 a.m. and 7 p.m., the DEIR then proposes a mitigation measure restricting construction hours to between 7 a.m. and 7 p.m. Monday through Friday, with reduced hours on Saturdays, and no construction allowed on Sundays and holidays. (DEIR, p. 4.10-8.) While this measure would serve to reduce construction noise completely for three hours on Saturdays, and completely reduce it on Sundays and holidays, it would have no mitigating effect on the noise levels occurring each and every weekday that construction is taking place because the proposed "restricted" hours of construction exactly match the period of time during which construction noise will exceed the City's

[6] The DEIR also notes the anticipated construction noise levels that would be experienced by the single-family residences currently existing on Candidate Sites #1 and 2. (DEIR, p. 4.10-8.) This of course is an absurd metric to include in the DEIR, for these residences would be vacant during the contemplated construction activities.

maximum allowable daytime noise levels. This is a wholly ineffective mitigation measure, as it completely fails to achieve its purported goals.

Beyond this ineffective "limitation" of the hours of construction, the DEIR only offers two additional mitigation measures – the use of mufflers on diesel equipment, and the use of electrically powered air compressors and similar power tools. (DEIR, pp. 4.10-8:9.) However, there is no way of knowing what, if any effect these measures would have on the anticipated construction noise. This is because, despite reporting significant noise impacts, the DEIR fails to indicate what the resulting noise impacts will be ***after*** mitigation. This renders the DEIR's proposed mitigation measures completely valueless. Without any post-mitigation noise projections, it is impossible to know with any certainty if the mitigation measures in the DEIR are, in fact, effective in reducing noise levels, and if they are, by how much the project construction noise levels will be reduced. The DEIR must disclose the resulting (i.e., post-mitigation) noise levels at the relevant locations of the identified sensitive receptors so that the City and the public can determine if the proposed mitigation measures truly reduce noise to the maximum extent feasible. Given the massive amount of grading and earthwork that will be required to construct the proposed densities on the Candidate Sites, it is highly doubtful that the use of muffled heavy equipment and electric air compressors will alone result in any significant reduction in construction noise levels.[7] 3.37

L. The DEIR's Transportation and Traffic Analysis Is Not Sufficiently Detailed and Fails to Analyze Potential Impacts Related to Safety Issues on Pacific Coast Highway ("PCH").

3.38

1. Without Access Points Being Defined, It Is Impossible To Gauge the Housing Element Update's True Traffic Impacts.

Urban Crossroads has prepared a peer review of the DEIR's traffic study and related traffic analysis. (See Exhibit E.) They note that the DEIR presumes that project driveways for Candidate Sites #1 and #2 will be located on Ramirez Mesa Drive, and project driveways for Candidate Site #7 will be located on La Paz Lane. The DEIR then makes an unsupported conclusion that because these two roadways carry less vehicular traffic when compared to other

[7] The DEIR makes the unsubstantiated claim that, during construction on the Candidate Sites, the equipment "would be dispersed in various portions of the Candidate Sites in both time and space. . . . [p]hysically, a limited amount of equipment can operate near a given location at a particular time." (DEIR, p. 4.10-7.) This appears to constitute some sort of argument that the anticipated construction noise levels will not be as high as they ***could*** be if multiple pieces of heavy equipment could somehow operate in the exact same location at the exact same time. Regardless, given the substantial amount of grading that will be required to re-contour the Candidate Sites in order to develop the proposed density, a large number of heavy earth-moving vehicles will undoubtedly be working for many hours each day at each of these sites, and the resulting noise levels will be significant.

roadways fronting the properties (Pacific Coast Highway and Civic Center Way, respectively), they are expected to operate at an acceptable level with the addition of project traffic. (DEIR. p. 4.13-33.) However, the DEIR's traffic study does not provide any traffic forecasts to support this conclusion, and therefore there is no substantial evidence supporting this claim. The future development of the Candidate Sites with a specific number of multifamily units is a basic assumption of the Housing Element Update and this DEIR. Given the basic assumptions as to density, the specific project access points for the Candidate Sites should have been established, and potential impacts should have been analyzed in order to make a rational determination whether any traffic impacts would result. 3.38

2. The DEIR Ignores Pedestrian and Traffic Safety Issues.

Moreover, as noted by Urban Crossroads, the DEIR does not take into consideration the recent analysis of safety issues for the PCH corridor (Pacific Coast Highway Safety Study, LSA Associates, Inc., 2013.) As found in that study, PCH is a constrained mobility corridor, and as a result, traffic conditions may be worsened at key intersections as a result of conflicts between pedestrian and vehicular traffic. For example, the intersection of Cross Creek Road/PCH would be expected to operate at Level of Service "D", but the LSA study observed that congested conditions at this intersection are worse as the result of other circumstances. Cross Creek Road provides access to one of the main shopping areas in Malibu. This results in high volumes for eastbound left turns and westbound right turns. The queue for the eastbound left turns has been observed to exceed the pocket provided. This potentially blocks one of the through lanes on PCH. The westbound right turn does not have a dedicated lane. High turn volume for this movement effectively cuts the through capacity on PCH in half. The condition is exacerbated on weekends, when pedestrian use of the crosswalk along PCH is common. Pedestrians receive a walk signal at the same time PCH receives a green light. Pedestrians in the crosswalk prevent westbound right turns, which in turn completely blocks one of the through lanes on PCH. Congestion resulting from inefficient intersection operations builds back from Cross Creek Road and can reach Serra Road or farther on busy days. Sudden, unexpected slowing as a result of this congestion can contribute to rear-end collisions. 3.39

Given these findings of the LSA study, the DEIR's traffic analysis should be revised to examine intersections along PCH using updated Highway Capacity Manual methodologies that can take into consideration the mix of peak season vehicle and pedestrian activities at key locations. Without this analysis, the DEIR's conclusions regarding traffic and transportation impacts resulting from the adoption of the Housing Element Update is arbitrary and legally inadequate.

M. Utilities and Service Systems.

1. The DEIR's Analysis of Water Supply Impacts is Inadequate.

The DEIR identifies the estimated additional demand for water created by the anticipated development of 118 new multifamily residential units, and determines that Los Angeles County Water District 29 ("District 29") has access to sufficient water supply to meet this estimated demand. (DEIR, p. 4.14-10.) However, when discussing the available capacity of the existing water mains in the City, the DEIR completely glosses over the issue of whether adequate fire flow is able to be provided by the existing water system. In 2011, the Fire Department instituted a new policy requiring that a development project's fire flow demand must be provided by a municipal water supply, which in the City is District 29. (See Exhibit F.) In situations where the fire flow requirement could not be met, or the water supply infrastructure was not present, the development applicant was required to upgrade the relevant District 29 infrastructure to meet the fire flow requirements. This policy change effectively halted numerous development proposals in the City because the expenses associated with the new water infrastructure improvements were simply too great. 3.40

Given this very recent conflict over the issues of water supply and fire flow requirements, it is absurd for the DEIR to simplistically state that, pursuant to "a letter submitted by the [] Fire Department," high-density residential development "may require a flow of up to 5,000 gallons per minute at 20 pounds per square inch residual pressure for up to five hours." (DEIR, p. 4.14-11.) This statement does not provide any useful information, the most important issue being whether the water mains in the vicinity of the Candidate Sites can provide this amount of water for this duration. Would the Fire Department be able to approve multifamily projects at the proposed densities on each of the Candidate Sites? The DEIR does not provide any sort of answer to these questions. Instead, it goes on to state that:

> Each candidate site would be sized based on the size of buildings, their relationship to other structures, property lines, and types of construction material used. County of Los Angeles Fire Department requirements are reviewed and addressed during the subdivision tentative map stage as a required step in the development process. Potential developers would be required to consult with Los Angeles County Waterworks Districts and County of Los Angeles Fire Department to determine if adequate capacity exists in the adjacent water mains. (Id.)

First of all, the reference to subdivision map review is erroneous, because no such discretionary entitlement process may be required for the contemplated affordable housing

development on the Candidate Sites. And second, this recitation of the Fire Department's standard development review procedure in no way reflects the reality of the situation in the City, where multiple development proposals ***involving single-family homes*** have been blocked because of a lack of adequate water supply to meet the Fire Department's requirements. This is a critical issue for determining the feasibility of developing the proposed units on the Candidate Sites. The DEIR must perform the necessary analysis of this issue to determine the full extent of all potential environmental impacts. 3.40

2. The DEIR Fails to Analyze the Impacts of Multifamily Development on Candidate Site #7, in Light of the Existing Malibu Civic Center Septic System Ban.

As the DEIR correctly notes, the Malibu Civic Center area, which encompasses Candidate Site #7, is currently subject to a resolution adopted by the Regional Water Quality Control Board ("Regional Board") that prohibits the construction of any new on-site wastewater disposal systems (septic systems). (DEIR, p. 4.14-7.) This prohibition was adopted as a result of the Regional Board finding that past and current discharges from septic systems in the Civic Center area have consistently failed to meet water quality objectives and have impaired both existing and potential beneficial uses of water. (See Exhibit G.) The DEIR also correctly notes that certain specific properties that had previously received land use entitlements were exempted from this prohibition, including Candidate Site #7. (Id.) However, the DEIR does not mention that the entitlements originally in place for Candidate Site #7 at the time of the Regional Board's prohibition bear absolutely no resemblance to the currently contemplated development under the Housing Element Update. Specifically, under the La Paz Development Agreement adopted by the City in 2008, Candidate Site #7 was identified as Parcel C, and was intended to be the site of the City's new approximately 20,000 square foot city hall building. (La Paz Development Agreement, Section 5.1.2.3)(Exhibit H.) Instead of a new municipal building, however, the Housing Element Update now contemplates the development of at least 57 multifamily units on Candidate Site #7. This significantly diverges from the entitled development potential of Candidate Site #7 at the time the Regional Board adopted its septic system ban. Therefore, the DEIR must address the Regional Board's environmental analysis prepared for the septic system prohibition (see Exhibit I), and independently demonstrate that the current development proposal for Candidate Site #7 will not pose any new significant septic-related environmental issues. Moreover, it should be noted that CEQA would still require analysis of the septic issues discussed by the Regional Board, regardless of whether the Regional Board had exempted Candidate Site #7 or not. Any such analysis is completely absent from the DEIR currently. 3.41

3. The DEIR Fails to Adequately Analyze the Foreseeable Environmental Impacts of Large-Scale OWTSs Being Constructed at the Candidate Sites.

As noted earlier, the soils found on each of the Candidate Sites have the "greatest limitations for septic suitability."[8] This is highly significant. Because there are no other options for the treatment of effluent from the proposed multifamily development, each Candidate Site will need to provide an OWTS that can handle the effluent produced by 57 to 91 residential units. This OWTS will also need to somehow work effectively despite being sited in soil that undisputedly has the greatest limitations for such a wastewater system. However, instead of providing any type of substantial evidence that such a potential development hurdle can feasibly be overcome, the DEIR merely states that "limitations can be overcome or minimized by special planning, design, or installation." (DEIR, p. 4.14-13.) It should be apparent by now that the DEIR does not contain any details regarding such "special planning, design, or installation," but simply offers this statement as a truism. To repeat again, this is not legally adequate analysis under CEQA, for there is no substantial evidence that the very likely environmental impacts pertaining to OWTS issues can be resolved at the Candidate Sites, or at other multifamily zoned properties in the City. 3.42

N. The Alternatives Section of the DEIR Fails to Comply With CEQA.

Notwithstanding the DEIR's completely defective project prescription and environmental impacts analysis section, the document's most glaring errors may actually be found in the alternatives section. This is unfortunate because the alternatives analysis of a DEIR is the "core of the EIR." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) 3.43

1. The DEIR Fails to Provide Meaningful Alternatives that Actually Reduce Environmental Impacts as Required.

None of the alternatives eliminate or significantly reduce the significant and unavoidable impacts set forth in the DEIR. This is a fatal error because CEQA requires the DEIR to 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. . . .***" (CEQA Guidelines Section 15126.6(a).)(Emphasis added.)

Despite the Housing Element Update's identification of significant and unavoidable impacts to traffic and land use, the latter of which stem from traffic issues, the DEIR fails to

[8] "On a scale of 0.01 to 1.00, with 0.01 having the least limitations and 1.00 having the greatest limitations for septic suitability, the soils present on the candidate sites are rated as 1.00 (NRCS, Web Soil Survey)." (DEIR, p. 4.14-13.)

include traffic analyses of the alternatives to determine if they would, in fact, mitigate impacts to a level less than significant. For example, in connection with Alternative 2, the DEIR states: "Alternative 2 would result in reduced traffic impacts at this intersection because it would generate 159 fewer vehicle trips per day. ***However, it is not known whether these impacts would be reduced to a less than significant level without a traffic study specifically for [sic] prepared for this site. Because Alternative 2 would result in a similar, but slightly reduced number of units, impacts to study intersections are assumed to remain significant and unavoidable."*** (DEIR, p. 6-7.)(Emphasis added.) This same response is subsequently repeated for all the alternatives.

3.43

The DEIR's conclusory statement that impacts would be less merely because a project has more units is not supported by substantial evidence. First, the DEIR concedes that no traffic analysis for the alternative sites has been conducted (this is particularly strange because traffic analysis for alternatives is standard practice). Second, it is not true that an alternative project with fewer vehicle trips will, as a rule, have less impacts on significantly affected intersections. The ***location*** of that alternative project is critical. For example, had the City chosen an alternative site much further away from Topanga Canyon Road and PCH, such as one in the Trancas area of the City, a significantly smaller portion of total trips would reach the intersection of Topanga and PCH, thereby significantly reducing or eliminating impacts to the affected intersection. Third, many of the alternatives selected by the City are not easily accessible to public transit. Alternatives accessible to public transit would have significantly reduced vehicle trips, especially since the Project contemplates occupancy by low-income households. The City has the obligation under CEQA of providing a range of alternatives that will significantly reduce or eliminate traffic impacts, and there is no evidence indicating that the City ever considered the role of public transit in connection with this.

2. <u>The DEIR Fails to Provide Meaningful Alternatives that Actually Reduce Environmental Impacts as Required.</u>

3.44

The analysis in the DEIR for each alternative is not supported by substantial evidence because the public has not been provided with any idea of what development standards would apply to any given site and the analysis is much too simplistic and conclusory. For example, in connection with the aesthetics analysis for Alternative 2, the DEIR states that impacts would be less because "Alternative 2 would facilitate 24 fewer units as compared to the proposed project and the area of disturbance would be reduced by approximately 1.56 acres." (DEIR, p. 6-3.) However, the DEIR cannot reasonably reach this conclusion if there is no understanding of the applicable development standards pertaining to permitted site coverage, maximum grading, size of units, etc. Just because a property is larger than another in no way means that more impacts

will be created through upzoning; what matters is the buildable area of that site, coupled with the applicable development regulations.

Likewise, in connection with air quality, the DEIR states that alternatives would create fewer construction-related impacts than the proposed Housing Element Update, so long as the sites are smaller (i.e., less ground disturbance). (DEIR, p. 6-3.) Once again, this is too simplistic and conclusory an analysis. If a site has a large, flat pad that can accommodate development without significant grading, then that site will have fewer impacts than a very tiny site that nonetheless requires massive amounts of grading to accommodate development.

3.44

To provide one final example of this simplistic analysis, in connection with the Alternative 3 hydrology analysis, the DEIR states that "Alternative 3 would result in a reduced area of disturbance by approximately 1.13 acres and therefore would result in fewer impacts related to soil erosion, stormwater runoff, and surface water quality as compared to the proposed project." (DEIR, p. 6-10.) Never mind that earlier, the description of Alternative 3 noted that the southwest corner of the site is adjacent to a wetland, and much of the southern portion of the site is classified as "farm wetland" – all factual circumstances that should play a role in the impact determination.

In short, this completely flawed analysis fails to comply with CEQA. The DEIR takes the absurd position for every alternative that the size of the site, and not the practical realities dictating development (location, geography, etc.), will lead to an appropriate impact determination. Such a simplistic approach fails to provide the requisite disclosure obligations and substantial evidence required by CEQA.

3. <u>The DEIR Fails to Provide Meaningful Alternatives that Actually Reduce Environmental Impacts as Required.</u>

The DEIR states that:

3.45

> Additional alternatives were considered for inclusion in the EIR. These alternatives were other combinations of Candidate Sites. Alternative combinations of Candidate Sites (e.g., the combination of Candidate Site #6 and #7) were eliminated because several of the sites selected had already been evaluated in the EIR, or would be insufficient to meet the City's RHNA requirements and thus fail to meet project objectives, or would result in overall increased environmental impacts. (DEIR, p. 6-18.)

This is false. The City initially selected numerous other sites as alternatives, but these sites were ultimately withdrawn because adjacent neighbors did not want affordable housing near their properties. Attached as Exhibit J are documents showing that alternative sites were previously suggested for analysis. Given that the alternatives selected for the DEIR actually fail to significantly reduce and eliminate the Project's significant and unavoidable impacts, the DEIR should analyze these rejected sites as was originally intended. 3.45

* * * * *

Thank you very much for your consideration of the above comments.

Very truly yours,

Victor De la Cruz
Manatt, Phelps & Phillips, LLP

cc: Lisa Specht, Esq., Manatt, Phelps & Phillips, LLP
Todd Nelson, Esq., Manatt, Phelps & Phillips, LLP

Exhibit A

Public Counsel
LAW CENTER

THE PUBLIC INTEREST LAW OFFICE OF THE LOS ANGELES COUNTY AND BEVERLY HILLS BAR ASSOCIATIONS
The Southern California Affiliate of The Lawyers' Committee for Civil Rights Under Law

Sent via electronic mail to gcampora@hcd.ca.gov

January 24, 2012

Mr. Glen A. Campora
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Re: City of Malibu 2008-2014 Draft Housing Element

Public Counsel hereby submits comments to the City of Malibu's 2008-2014 Draft Housing Element (the "Draft") received by the Department of Housing and Community Development ("HCD") on December 16, 2011. Public Counsel is a non-profit legal services agency dedicated to advancing equal justice under the law by delivering free legal services to indigent and underrepresented children, adults, and families throughout Los Angeles County.

1) Inadequate Review and Revisions – Govt. Code §65588

The housing element must evaluate:

(1) The appropriateness of the housing goals, objectives, and policies . . .
(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.
(3) The progress of the city . . . in implementation of the housing element.

Govt. Code §65588(a)(1)-(3)

The substantive evaluation of the City's prior goals, objectives, policies, and accomplishments is inadequate. Although the Draft summarizes the objectives from the prior planning period in Table A-1 of Appendix A, the majority of entries under the "Accomplishments" heading indicate that the City has done little, if anything, to address its affordable housing need. Indeed, not a single affordable unit has been approved by the City in the last ten years. Examples in the Draft illustrating the City's failure to meet prior goals, objectives, policies and accomplishments include:

- Eleven of the twenty-seven implementation measures *(forty percent)* from the 2001 Housing Element Program are dismissed under the "Accomplishments" heading with "[n]ot completed due to staffing limitations" or similar language. Many of the other responses are either inaccurate, or do not point to any concrete accomplishment relative to affordable housing.

- Although Local Coastal Program Section 3.7 is highlighted for allowing density bonuses consistent with State Law at the time of the previous Housing Element Update (Implementation Measure 4), the Draft does not analyze why the density bonus program has never been utilized.

- The Draft states that the City failed to implement the inclusionary housing program set forth in Implementation Measure 18 and then states the City will delete this measure, with the exception of sites rezoned to accommodate lower-income needs identified in the Regional Housing Needs Assessment ("RHNA"). In light of the City's failure to approve a single affordable unit, the City should explore and analyze the use of land use incentives for affordable housing in the Draft.

Given the above, it is of great concern that the Draft fails to evaluate the appropriateness of the prior goals, objectives, policies, and programs in relation to actual results.

Without an adequate review of the prior policies and programs' effectiveness (i.e., an analysis of what went wrong), it is not clear whether they remain appropriate for the current planning period or whether there is a need to strengthen them. For example, the Draft needs to provide an analysis of why no density bonuses have been granted. The Draft should also analyze why so many of the prior implementation measures were ignored. If staffing limitations will continue to be a problem with respect to affordable housing, then the Draft must examine realistic solutions that will otherwise make implementation a priority through strict timetables. Likewise, the Draft deletes the current inclusionary housing program measure for most projects without explaining why this is being done, something which is of great concern since the City has not facilitated a single true affordable unit in recent memory.

Without the requisite analysis the public will have no meaningful assurance that the City actually intends to take any of the actions specified in the Draft.

2) Inadequate Analysis of Housing Characteristics – Govt. Code §65583(a)(2)

The housing element shall contain:

"An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition."

Gov't Code §65583(a)(2)

The Draft fails to identify and analyze the housing needs of extremely-low income ("ELI") households. With respect to this vulnerable group, the Draft states that "[b]ecause the needs of ELI households overlap extensively with other special needs groups, further analysis and resources for ELI households can be found in Chapter II. Needs Assessment, Section E., Special Needs and Chapter IV. Constraints, Section A.d., Special Needs Housing." (Draft, p. II-8). However, these sections fail to describe ELI housing characteristics, living conditions of ELI households, and their ability to pay. Given that the Draft has identified 6.1% of its households as ELI, the City must meaningfully address this group – not just lump it into a much more general discussion.

3) Inadequate Land Inventory and Identification of Sites Suitable for Residential Development – Govt. Code §65583(a)(3) and 65583.2

The housing element shall contain:

"An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites."

Govt. Code §65583(a)(3)

The capacity of housing units per site *"shall be adjusted as necessary, based on the land use controls and site improvements requirement[s]."*

Gov't Code §65583.2(c)(2)

For nonvacant sites identified in the inventory, the city *"shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites."*

Gov't Code §65583.2(g)

a. Inadequate Analysis of Actual Development Potential

To establish the number of housing units that can potentially be accommodated on each site in the City's site inventory, the analysis must include a description of how the capacity of the sites has been established and must show that the inventory can provide for a variety of affordable housing types. Since Malibu has not adopted minimum densities, the Draft must describe the methodology used to establish site capacity, and capacity must be adjusted based on the land use controls and site improvement requirements imposed, such as maximum lot coverage, open space, parking, and FAR. (see Govt. Code §65583.2(c)(1) and June 9, 2005 HCD Memorandum on AB 2348).

As set forth in the "Governmental Constraints" section of this letter, the City's Zoning Code renders the development of multifamily affordable housing practically impossible, so

compliance with this requirement is critical. To represent a parcel's density as merely a function of a "maximum permitted density" calculation ignores the multiple zoning-based impediments to affordable housing development in the City. For example, the Draft fails to analyze the actual development potential on small parcels, which is particularly critical given that the majority of sites identified in Housing Element Table B-4 are less than a quarter of an acre. Because parcels as small as a quarter acre are identified for multifamily purposes, the Draft must describe Malibu's role or track record in facilitating small-lot development and, where necessary, include program actions for lot consolidation and/or parcel assemblage so that the development of multifamily affordable housing on these sites may be possible. (see June 9, 2005 HCD Memorandum on AB 2348).

Finally, the Draft needs to provide an analysis demonstrating how the adopted densities accommodate the low income housing needs. This analysis is required to include, but is not limited to, "factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households." (Govt. Code §65583.2(c)(3)(A); see also June 9, 2005 HCD Memorandum on AB 2348). The Draft does none of this. Indeed, from a practical standpoint, the City must disclose the reality – namely that the majority of the identified parcels (many of which are beachfront properties surrounded by single-family residences) will never be built with multifamily affordable housing.

b. Inappropriate Reliance on Second-Units.

The Draft takes the position that virtually all second-units in Malibu should be categorized as affordable to very-low and low-income households.

Simply stated, Malibu should not be able to rely on a single second-unit to meet its RHNA obligations unless it can demonstrate that those units are, in fact, restricted, or will be restricted, to low income families. While State law does not require second-units to be deed-restricted, in the Malibu context, where "second-units" are more often than not guest houses for multi-million dollar estates, the notion that families are actually renting their guest homes to low-income families is questionable. The City must undertake a good-faith analysis of its existing and projected second-unit inventory as it relates to affordability. As HCD has stated:

> . . . a housing element should provide an analysis of the anticipated affordability of second-units. The purpose of this analysis is to determine the housing need by income group that could be accommodated through second-unit development . . . . The anticipated affordability of second-units can be determined in a number of ways. For example, a community could survey existing second-units for their rents and include other factors such as square footage, number of bedrooms, amenities, age of the structure and general location. The survey could be supplemented with analysis that describes the general range of rents and an estimate of rents for new second-units based on the variables within the survey. (see August 6, 2003 HCD Memorandum on AB 1866).

To credit the recent second-units built, permitted, or in plan check toward the City's share of the regional housing need, the Draft must demonstrate the affordability of the units based on actual rents or other mechanisms ensuring affordability. For any future second-units, the City must create a program to ensure monitoring and actual rental of these properties to low income families. HCD has been very clear in stating that local governments may count the "realistic" potential for new second-units used for affordable housing. (Id.).

Likewise, Government Code §65583.1 provides that HCD may consider "any other relevant factors" in determining whether to count second-units. In that regard, we respectfully request that HCD require the City to demonstrate that any second-units used to meet the City's RHNA obligations are truly being used to address affordable housing needs.

4) Inadequate Analysis of Governmental Constraints – Govt. Code §65583(a)(4)

The housing element shall contain:

"*An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584.*"

Gov't. Code §65583(a)(4)

The development standards in the City's Zoning Code render the development of affordable housing infeasible. Even if the City were to up-zone sites in connection with the Draft, the requisite density for affordable housing production could not occur without a firm commitment by the City to modify or reduce these development standards. Unfortunately, the City has not analyzed these constraints, stating that its development standards "are not considered to be constraints to the development of housing." (Draft, p. IV-2). A closer look indicates otherwise.

a. Land Use Controls

The City of Malibu's zoning districts are set forth in the City's Local Coastal Program ("LCP") and Municipal Code. Of the City's 16 established zoning districts, only two ostensibly allow the development of multifamily affordable housing projects – the MF (Multi-Family Residential) and MFBF (Multi-Family Beach Front) zones. However, in both of these districts, "multiple-family residential uses, including duplexes, condominiums, stock cooperatives, apartments and other similar developments," are not permitted unless a discretionary conditional use permit ("CUP") is obtained from the City. LCP Local Implementation Plan ("LIP") § 3.3 C.2 Table B (Permitted Uses) and Code §§ 17.12.040 and 17.14.040. As such, even the most intense zoning designations currently existing in the City – the MF and MFBF "multifamily" districts – are unable to accommodate future multifamily affordable units in compliance with the City's RHNA requirements. Approval of a CUP is a very expensive, time-consuming process in Malibu, yet this CUP is not analyzed as an impediment in the Housing Element.

Moreover, the City's standard site development requirements (which apply to all zoning districts in the City) are tailored for single-family residential development, and effectively preclude the development of multifamily affordable housing. Some of these restrictive regulations, all of which need to be amended or removed, are identified below:

1. Density and Area Limits.

Density in the MF zone is limited to 6 units per acre (or 1 unit for every 7,260 square feet of lot area) – a far cry from the 20-40 unit per acre density levels that are normally associated with multifamily residential development. LIP § 3.3 C.3.d and Code § 17.12.050 A.4. Density in the MFBF zone is more similar to other jurisdictions' multifamily density designations at 1 unit for every 1,885 square feet of lot area (or approximately 23 units per acre); ***however, in the MFBF zone affordable housing projects are limited to 5 units per lot, regardless of parcel size.*** (LIP § 3.3 D.3.d and Code § 17.14.050 D-E.)

Accordingly, while the City may argue that it is zoning a parcel to accommodate 20 units per acre, the reality is otherwise. The Draft's defense of the per parcel density limitation is quite interesting in that it demonstrates how truly impossible multifamily construction is: "Currently, only the MFBF zone allows development of more than 20 units/acre. While the MFBF zone limits development to four units per parcel, this is not a constraint to development since there are no vacant parcels large enough to accommodate more than four units at the maximum allowable density." (Housing Element, pp. IV-4-5)(Emphasis added). In other words, the City concedes that the density for its MFBF zone is illusory.

Additionally, the City has not analyzed how its limits on "total development square footage" ("TDSF"), or the amount of floor area contained within a building, act as constraints. TDSF is limited by the size of the development site, and ranges from a maximum of 1,885 square feet for lots that are 5,000 square feet or less, to an absolute maximum of 11,172 square feet for any lot that is 5 acres or more. (LIP § 3.6 K and Code § 17.40.040 A.13.) Together with the City's requirement that multifamily residential units be no smaller than 750 square feet, these TDSF limits severely restrict the City's stated density regulations. For example, at 6 units per acre, the City's MF zone should allow 30 affordable units to be built on a 5 acre parcel. At the required minimum of 750 square feet of floor area for each unit, these 30 units would result in at least 22,500 square feet of TDSF. However, under no circumstances may the TDSF on any parcel exceed 11,172 square feet. Therefore, the City's TDSF requirement would limit the density of this hypothetical 5-acre MF-zoned parcel to 14 units (11,172 square feet ÷ 750 square feet = 14.8 units), or less than half the MF zone's stated density.

Similarly, the City's MFBF zone should allow a maximum of 5 affordable units to be built on a hypothetical 9,425 square foot lot. At the required minimum of 750 square feet each, these 5 units would result in at least 3,750 square feet of TDSF; however, a 9,425 square foot lot is only permitted to contain approximately 2,670 square feet of TDSF. Therefore, the City's TDSF requirement would limit the density of this hypothetical 9,425 square foot MFBF-zoned parcel to 3 units (2,670 sf ÷ 750 sf = 3.6 units), or 60 percent of the MFBF zone's stated density.

2. Building Height Limitations

The City also imposes a number of height-related restrictions that it should analyze as a potential constraint to the development of typical affordable apartment buildings. By-right maximum building heights may not exceed 28 feet for beachfront lots, and 18 feet for non-beachfront lots. (LIP § 3.6 E and Code § 17.40.040 A.5.a-c.) To exceed this 18 foot height for non-beachfront lots, another discretionary approval known as site plan review is required. Id. Finally, no residential building is allowed to exceed two stories in height, and any portion of a building that exceeds 18 feet in height cannot exceed two-thirds of the area of the building's first floor. (Id., LIP § 3.6 K.2, and Code § 17.40.040 A.13.b.) These height and area limitations severely restrict the size and shape of proposed multifamily affordable residential buildings.

3. Other Limitations

The LCP and Municipal Code set forth a litany of other onerous site development restrictions that should be analyzed as constraints to the development of multifamily affordable residential buildings. These include:

- The requirement that every residential development be contained in a "convex-shaped enclosure that shall not exceed 2 acres in size," regardless of the overall size of the lot. (LIP § 3.6 H and Code § 17.40.040 A.10.)

- The requirement that for any lot greater than 1/2 acre, no more than 25,000 square feet of impermeable surface may be developed.[1] (LIP § 3.6 I and Code § 17.40.040 A.11.)

- An absolute maximum limit of only 1,000 cubic yards of grading is allowed for any residential lot, regardless of its size. (LIP § 8.3 B and Code § 17.40.040 A.9.)

- Excessive parking requirements, including the requirement that 3.25 parking spaces be provided for each 1- and 2-bedroom unit. This standard requirement is increased by 1 space for each additional bedroom, so that 4.25 spaces are required for a 3-bedroom unit, and 5.25 spaces are required for a 4-bedroom unit. (LIP § 3.12.3 and Code § 17.48.040 A.)

To summarize, the City has placed significant obstacles in the path of applicants who wish to develop multifamily housing in Malibu, rendering the development of affordable multifamily residential development nearly impossible. The Draft must disclose these constraints, treat them as legitimate, and set forth an action plan with strict timetables to resolve them.

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[1] Public Counsel is highly supportive of environmentally friendly development. However, this requirement, as drafted, may have a negative impact on affordable housing development in the City by placing the same cap on ***all*** properties over 1/2 an acre. For example, rather than lead to clustered affordable housing, limiting the impermeable surface of a 50-acre lot to 25,000 square feet is likely to result in such land being subdivided for multiple lots to allow the construction of multiple large single-family homes. A percentage of lot coverage ratio would be more appropriate to ensure environmentally sound construction and the possibility of affordable housing development.

b. Housing for Persons with Disabilities

The Draft fails to analyze constraints to housing for persons with disabilities, including how local land use and zoning regulations impact the siting and development of housing for persons with special needs. It is insufficient to conclude that there are no constraints to housing for persons with disabilities without the required analysis. The Draft should be revised to comply with Govt. Code §65583(a)(4).

Also, recently enacted SB 812 (Chapter 507, Statutes of 2010) requires an analysis of the special housing needs of persons with developmental disabilities. This would apply to a severe and chronic disability attributable to a mental or physical impairment, such as cerebral palsy, epilepsy, or autism that begins before individuals reach adulthood (Welfare and Institutions Code, §4512). As stated by HCD in letters to other cities, the analysis could include the following:

- a quantification of the total number of persons with developmental disabilities, including the number of households and tenure;
- a description of the types of developmental disabilities;
- a description of the housing need, including a description of the potential housing problems, and an assessment of unmet housing needs for persons with developmental disabilities; and
- a discussion of resources, policies and programs including existing housing and services, for persons with developmental disabilities.

5) Adequate Sites To Be Made Available to Address Housing Shortfall – Govt. Code §65583(c)(1)

The housing element shall:

Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, and emergency shelters and transitional housing. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).

The Draft limits up-zoning to the amount of land needed to accommodate 135 RHNA units. As a threshold matter, the City must up-zone for a minimum of 188 RHNA units because the proposed second-units do not meet affordable housing requirements and because the City's existing inventory of sites is inadequate.

The list of candidate sites does not include a sufficient analysis of the adequacy and suitability of the sites to accommodate the regional housing needs of lower-income households. The Draft must describe and evaluate the availability and suitability of these sites to facilitate the development of housing affordable to lower-income households. This is particularly important given the timing in the planning period, potential complexities in making sites available for development due to the City's water problems (i.e., lack of a sewer system), and the possibility that certain properties were excluded from the Draft merely because those properties had a developer ready and able to build affordable housing. Accordingly, the analysis should include, for example, a discussion of opportunities, timing and anticipated steps for development, as well as further subdivision or other methods to facilitate their use for low income housing development. In addition, the analysis should describe the suitability and availability of the sites, including potential constraints, developable acreage (specifically for multifamily housing), access, availability of public transit, and proximity to infrastructure.

For those parcels that are currently occupied – even if there is only one single family home on the parcel – the Draft also must analyze the redevelopment potential. Specifically, and as stated in previous HCD letters to other cities, the Draft should consider the condition of the structure/s and whether the use is operating, marginal or discontinued.

6) Inadequate Statement of Goals and Quantified Objectives – Govt. Code §65583(b)

The housing element shall contain:

"A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing."

Govt. Code §65583(b)

There must be a corresponding goal and policy for each housing need, resource inadequacy, and constraint identified in the Housing Needs Assessment section of the Draft. In addition, there must be a quantified objective for each housing need that is identified. Failing to include an adequate analysis of the City's housing needs, resources, and constraints, the Draft also fails to contain both a complete statement of goals and policies as well as a complete statement of the City's quantified objectives. Furthermore, since the constraints analysis is inadequate, an analysis of the adequacy of the goals and policies section with regards to addressing constraints is impossible.

7) Inadequate Five-Year Schedule of Actions – Govt. Code §65583(c)

The housing element shall contain:

"A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element . . . to make adequate provision for the housing needs of all economic segments of the community . . ."

Govt. Code §65583(c)

As stated above, the Draft's goals, policies, and quantified objectives are deficient – making it difficult to adequately analyze the program of actions upon which these policies and objectives is based. Additionally, without an adequate analysis of constraints, it is difficult to recommend programs to remove these constraints as required by Govt. Code §65583(c). For these and the following reasons, the program of actions stated herein fails to comply with the requirements of the law.

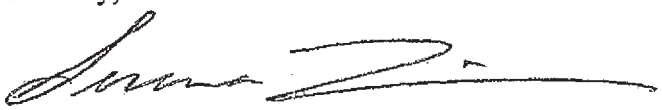
An effective housing program section should also include quantified objectives and proposed measurable outcomes, as well as definite time frames for implementation. None of the Draft's programs articulate true, quantifiable goals. Programs such as "Facilitate New Affordable Housing Development" and "Density Bonus Ordinance" should each have quantified objectives in terms of the number of affordable units/beds the City hopes to be generated as a result of each.

Additionally, the program section must demonstrate the City's firm commitment to implement specific program actions. Several of the programs fail to include sufficiently specific language by which to guide the agencies over the planning period to carry out the programs' intentions. More specific and proactive steps need to be incorporated into the programs and completion dates for each action should be specified. Given Malibu's inability to produce affordable units in the past, it is imperative that the City consider adopting meaningful affordable housing programs like incentive-based zoning to meet the needs of its low-income residents.

****

Thank you very much for your consideration of these comments. Please do not hesitate to contact me at (213) 385-2977, X212 or Slin@publiccounsel.org if you have any questions or concerns or would like to further discuss the contents of this letter.

Sincerely,



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cc: Jess Negrete, HCD Analyst

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February 7, 2012

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VIA E-MAIL AND U.S. MAIL

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Re: Comments on the City of Malibu's Proposed 2008-2014 Draft Housing Element

Dear Mr. Campora:

This firm represents Trancas PCH, LLC, the owner of an approximately 35-acre property at 6155 Trancas Canyon Road and 30999 Pacific Coast Highway in the City of Malibu (the "City" or "Malibu"). Our client is currently proposing a residential project in the City with a 25 percent affordable component that has faced multiple obstacles and concerted opposition. In that regard, we have learned first-hand of the several impediments to affordable housing development in Malibu and offer some comments on the City's 2008-2014 Draft Housing Element (the "Draft").

As I have previously discussed with Mr. Jess Negrete of your office, the Draft suffers from various obvious inadequacies. It inappropriately counts second-units as very-low and low-income housing without any evidence to corroborate that these units do not actually serve as guest homes (the more likely scenario in Malibu). Likewise, the Draft's analysis of governmental constraints fails to adequately discuss the onerous conditional use permit requirement for multiple-family residential uses, as well as the plethora of Code limitations relative to maximum units per lot, height, area, grading, etc. that render it virtually impossible to develop affordable housing in the City at the density ostensibly allowed by the zoning. These governmental constraints, in turn, have resulted in blatantly inflated numbers in the Draft's site capacity analysis, which is meant to provide a true inventory of how Malibu is currently able to provide for multiple housing types.

Rather than reiterate the points I have discussed with Mr. Negrete, this letter focuses solely on one aspect of the Draft – the rezoning scheme that the City would like to implement in order to meet its affordable housing shortfall, a number which is already highly understated given the above concerns.

To our knowledge, Trancas PCH, LLC was the only property owner in the City that was ready and able to build a project with an affordable housing component when the City finalized its list of sites that would be rezoned in connection with the Draft. However, instead of capitalizing on the opportunity presented by our client's property, the City instead excluded it from the Draft because of public outcry that our site could actually be developed with multiple-family uses. As such, our client knows first-hand how the rezoning scheme that the City ultimately arrived at was not geared at enabling the development of multiple-family affordable housing, but rather, at appeasing vocal residents opposed to any additional density.

I. The Rezoning Scheme Proposed By the City All But Assures That No Affordable Housing Will Be Constructed.

In Section 2.B. of the Draft's Housing Plan (Draft, p. V-5), the City sets forth the process by which it would "rezone" property to provide the additional density required to meet the City's Regional Housing Needs Assessment ("RHNA") affordable housing shortfall. The City's plan does not, however, actually propose to rezone properties to allow more by right development than is currently allowed. Instead it merely allows the development of additional units subject to the recordation of an affordable housing deed restriction. The Draft states:

> In order to qualify for the density increase, all 'bonus' units (i.e., additional units allowed above the base density) must be deed-restricted for low- and moderate-income households for a minimum of 30 years. Qualifying projects must accommodate at least 16 units per site, and at least 50% of the additional development potential must be on sites where only residential development (i.e., not mixed use) is allowed. (Draft, p. V-5.)

The City's plan to only provide additional density if a property owner records a deed restriction against the property bears no resemblance to the actual up-zoning required by law. Government Code Section 65583.2(h) states:

> The program . . . shall accommodate 100 percent of the need for housing for very low and low-income households . . . for which site capacity has not been identified in the inventory of sites . . . ***on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit . . . . at least 20 units per acre*** . . . (Emphasis added.)

State law is absolute in its requirement that property be zoned with minimum density and development standards that allow at least 20 units per acre. The Draft fails to zone at this minimum density by severely limiting the potential density scenarios and requiring a deed restriction as a condition precedent.

While our client understands the important role that deed restrictions may play in assuring the development of affordable housing (as opposed to just market-rate units at high densities) the City's plan as currently proposed fails in that regard.

First, the City fails to explain how it would satisfy its RHNA obligation if the owners of the subject properties did not deed-restrict their property. There is nothing in the Draft indicating that any of the selected properties' owners will, in fact, deed-restrict their land in the manner suggested by the City. Without any such assurance, these properties certainly cannot be counted toward meeting the City's RHNA allocation.

Secondly, the deed restrictions are unlikely to result in a single affordable unit on these new "rezoned" properties. The Draft does not provide a single incentive to developers that seek to use the extra density that is granted for affordable units, nor does it require the construction of affordable units. In Malibu, high land costs, coupled with problems posed by the absence of a municipal sewer system, make it highly unlikely that a property owner would actually build affordable units in addition to those market-rate units that would already be allowed by right.

Ultimately, the City must rezone to allow at least 20 units per acre, period. If the City is truly concerned about these units being developed for low-income families, then it needs to legitimately zone for higher densities and provide incentives that will lead to the construction of affordable units and/or require affordable units in connection with the inclusionary zoning ordinance called for by the previous Housing Element.

II. The Draft Mischaracterizes The City's Accomplishments In Supporting Affordable Housing Development.

Ironically, the one accomplishment cited by the Draft in the 2001 Housing Element Program Evaluation relative to density incentives relates to our client's property, a property which, if anything, should serve as a case study of how difficult it is to entitle and develop affordable housing in Malibu. With respect to Implementation Measure 1 (Provide appropriate incentives to encourage the development of housing to meet low- and moderate-income needs), the Draft lists the following accomplishment:

> The City entered in a settlement agreement to work with the Trancas Town developer to provide at least 4 units for low to moderate income out of a 32-unit condominium development. Status of application is pending; in litigation. (Draft, p. A-2.)

This statement fails to mention that the settlement agreement was invalidated many years ago for procedural reasons and that the City has since been less than cooperative in supporting the proposed project or any up-zoning at the site.

Under no circumstances should the Draft point to our client's property as an "accomplishment" relative to the development of affordable housing.

III. The Draft Purposefully Excludes Those Sites That Can Best Support Affordable Housing.

Much of the City's premise for limiting rezonings is that there are insufficient sites for the development of affordable housing. For example, the Draft states that "[a]lthough the City is characterized by a large amount of vacant land, only a small portion of that land is suitable for development due to . . . natural constraints." (Draft, p. IV-20.) Likewise, a November 15, 2011 staff report for the proposed Housing Element states:

> Staff has completed further research . . . and confirmed that there are limited opportunities for multi-family or mixed-use development at the minimum density of 20 units/acre established for affordable housing sites under State law. The reason why the development of small multi-family residential projects distributed around the City is not feasible is that such sites must be large enough to accommodate a minimum of 16 units per site under State law (i.e., at least 0.8 acre or approximately 35,000 square feet at a density of 20 units/acre). (Staff Report, p. 3.)

Notwithstanding several public statements along these lines, the City removed our client's 35-acre property from consideration. Indeed, the reason there may be limited opportunities for multiple-family or mixed-use development at the minimum densities required by State law is that the City has consistently, and purposefully, refused to consider rezoning those large properties that can, in fact, support the required number of affordable units. It is simply false to state that the City has limited sites available for development when the City has made a concerted effort to exclude large properties from the Draft.

IV. Conclusion.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at (310) 312-4305.

Very truly yours,

Victor De la Cruz
Manatt, Phelps & Phillips, LLP

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July 9, 2012

Client-Matter: 42531-030

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VIA E-MAIL AND U.S. MAIL

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Re: Comments on Malibu's Revised Draft 2008-2014 Draft Housing Element

Dear Mr. Campora:

This firm represents Trancas PCH, LLC, the owner of an approximately 35-acre property at 6155 Trancas Canyon Road and 30999 Pacific Coast Highway in the City of Malibu (the "City" or "Malibu"). On February 7, 2012, we wrote to the Department of Housing and Community Development ("HCD") outlining our client's concerns with the City's initial draft of the 2008-2014 Housing Element (the "Initial Draft"). While HCD's February 14, 2012 comment letter to the City (the "HCD Comment Letter") identified many of our concerns relative to the inadequacy of the Initial Draft, as well as other concerns expressed by the Public Counsel Law Center of Los Angeles in a letter dated January 24, 2012, we are very disappointed that the City's revised draft Housing Element (the "Revised Draft") fails to meaningfully address any of those concerns. Simply put, it has become evident that the City has no intention to prepare a document that will actually lead to affordable housing development and/or compliance with State law. The Revised Draft, window dressing at best, continues to suffer from obvious inadequacies and cannot be certified without the City making significant additional changes as set forth below.

A. The City Inappropriately Relies On Second-Unit Guest Houses as Lower-Income Units.

The City has not provided the analysis required by HCD to demonstrate that existing or proposed second units in Malibu are in fact affordable to lower-income households. The Initial Draft reported the results of a survey conducted by the City, which identified a total of nine second units in Malibu (five that were occupied and four that were vacant), and showed that four of the five occupied second units were not charged rent. The City extrapolated broadly from this limited survey, and asserted in the Initial Draft that 80 percent of all second units in the entire

City are "affordable" to lower-income households because 80 percent of the ***five*** surveyed and occupied second units were not being charged any rent. In addition, the City asserted that the survey indicated that 80 percent of all ***future*** second units in the City would also be affordable to lower-income households.

The notion that the owners of multi-million dollar estates in Malibu are making their second units available rent-free to lower-income households seems extraordinarily unlikely, and HCD correctly identified this flaw in the City's interpretation of its survey results. HCD required the City to provide evidence that the survey's occupied second units were actually occupied by a separate household, to show that the four surveyed vacant second units were actually available for rent, and report what the proposed or likely rent would be for those vacant units. (HCD Comment Letter, p. 2.) The City has failed to provide the evidence required by HCD in the Revised Draft, and has instead simply reported an increased number of survey responses, which now indicate that only approximately 75 percent of the City's occupied second units are not being charged rent, and are therefore "affordable." (Revised Draft, p. B-2.) This is not an adequate response, and the City must provide the actual data regarding the rental of these second units that HCD has previously requested. If this data does not show that second units in Malibu are being made available to lower-income households, these units cannot be used to satisfy the City's Regional Housing Needs Assessment ("RHNA") allocation, including the six units from the prior planning period.

B. The City's Response Regarding Environmental and Infrastructure Constraints Is Inadequate.

HCD noted that the Initial Draft identified both environmental and infrastructure constraints that impact development sites throughout the City, and requested additional analysis from the City demonstrating, among other things, whether there are any known environmental constraints on properties that are being used to satisfy the RHNA allocation and if sufficient infrastructure capacity exists for those sites. (HCD Comment Letter, p. 3.) The Revised Draft continues to identify multiple Citywide environmental and infrastructure constraints (Revised Draft, P. IV-20:22), but the City has failed to provide the additional detailed analysis that is required. Instead, the City now simply states that the environmental conditions and infrastructure capacity issues of the potential development sites have been "considered," and concludes, without explanation, that these constraints would not preclude a level of development at the candidate sites that is necessary to meet the City's housing needs. (*Id.*)

The City's responses about environmental constraints are completely contradictory. How can multiple existing environmental and infrastructure constraints not ***constrain*** the development of future housing units? As further evidence that the City knows that these constraints do in fact exist and limit the ability to develop new housing units, in its May 21, 2012 cover letter

transmitting the Revised Draft to HCD, the City explicitly calls out the "severe environmental constraints and infrastructure limitations" as reasons why the City's RHNA allocation is allegedly unreasonable. The City's Revised Draft does not provide HCD, or any future developer of affordable housing in Malibu, with any indication of how feasible the development of housing on any RHNA site might be. After acknowledging the significant constraints to development, the Revised Draft cannot include simplistic project density calculations that multiply site acreage by a fixed unit-per-acre number to project realistic levels of housing development at the sites. A more specific, site-by-site analysis that takes into account the pertinent environmental and infrastructure constraints is required. This is a very important concern given that we believe our client's 35-acre site was specifically excluded from consideration because not only is development feasible on the site, but because it was more likely than not that affordable housing would, in fact, be built there if approved.

C. The City's Proposed Rezoning Scheme is Flawed and Inadequate.

The Initial Draft proposed a rezoning scheme that does not comply with State law, which requires the establishment of a minimum density of 20 units per acre. HCD recognized this fundamental flaw in the City's proposal, and requested that the City "clarify the rezoned sites will ***require*** a ***minimum*** density of 20 units per acre." (HCD Comment Letter, p. 5.)(Emphasis added.) Unfortunately, the City has not provided the requested clarification, and the Revised Draft continues to propose a rezoning scheme that fails to meet the letter or spirit of State law.

The Revised Draft's "rezoning" scheme, set forth as Program 2.2B of the proposed Revised Draft's Housing Plan (Revised Draft, pp. V-5:6), retains the City's existing 6 unit per acre density limit for the Multi-Family zoning district, and only allows the development of additional units (up to a ***maximum*** density of 20 units per acre) so long as each unit above the 6-unit density limit is subject to an affordable housing deed restriction. Specifically, the Revised Draft states:

> In order to qualify for the increased density incentive, all "bonus" units (i.e., additional units allowed above the base density of 6 units per acre) must be deed-restricted for low- and moderate-income households for a minimum of 30 years. (Revised Draft, p. V-5.)

The City's plan to only provide additional density if a property owner records a deed restriction against the property bears no resemblance to the actual up-zoning required by State law. Government Code Section 65583.2(h) states:

> The program . . . shall accommodate 100 percent of the need for housing for very low and low-income households . . . for which site capacity has not been

> identified in the inventory of sites . . . ***on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit . . . . at least 20 units per acre*** . . . (Emphasis added.)

State law clearly requires that property be zoned with minimum density and development standards that allow at least 20 units per acre. The Revised Draft fails to zone at this minimum density by retaining the City's current 6-unit base density and requiring a deed restriction as a condition precedent to increasing that density level. While our client understands the important role that deed restrictions may play in assuring the development of affordable housing (as opposed to just market-rate units at high densities), the City's plan as currently proposed fails in that regard.

Critically, the City fails to explain how it would satisfy its RHNA obligation if the owners of the subject properties did not deed-restrict their property. There is nothing in the Revised Draft indicating that any of the selected properties' owners will, in fact, deed-restrict their land in the manner suggested by the City. Instead, the Revised Draft merely contains a conclusory statement that "[t]his program will create a strong incentive for affordable housing development because of the additional units allowed at 20 units/acre compared to the base density of 6 units/acre." How is additional density ***solely*** for affordable housing a "strong incentive" and what leads the City to believe that any developer that could build six by-right market rate units will volunteer to build additional affordable units without a single true incentive? Density is not always an incentive – especially when that density would add to project costs without any commensurate financial return.

Malibu's response is entirely nonresponsive to HCD's explicit request for an analysis of how the City's proposed rezoning scheme achieves ***minimum*** densities of 20 units per acre, in compliance with State law:

> Describe and evaluate the adequacy of proposed density and incentives to encourage uses and affordability consistent with the AHOZ rather than the base densities. For example, ***while the AHOZ must provide for a minimum density of 20 units per acre*** (e.g., 20 units or more per acre), the Program does not appear to propose any incentives. ***This is particularly important since sufficient incentives to encourage residential development beyond the base zone are necessary to accommodate the regional housing need for lower- and moderate-income households.*** (HCD Comment Letter, p. 5.)(Emphasis added.)

The City has failed to respond to HCD's request, and has provided no compelling evidence of incentives, or any other rationale, that would explain why developers would elect to develop affordable housing projects at a density of 20 units per acre. The Revised Draft does not provide a single development incentive to developers seeking to use the "extra" density that is contemplated, nor does it require the construction of affordable units. Indeed, while the City points to the 35% density bonus allowed by State law in a "smoke and mirrors" attempt to make its proposal appear like it will incentivize affordable housing, the City fails to mention that the 35% State law density bonus exists ***even without the 20 units/acre covenant.*** In Malibu, high land costs, coupled with problems posed by the absence of a municipal sewer system, make it highly unlikely that a property owner would actually build affordable units in addition to those market-rate units that would already be allowed by right. In fact, the Revised Draft explicitly acknowledges that the proposed rezoning scheme may not result in any affordable units, stating that "[t]his program does not represent an 'inclusionary' requirement because property owners who do not wish to take advantage of the density incentive would be allowed to develop market-rate housing at the allowable base density of 6 units/acre." (Revised Draft, p. V-5.)

Without any such incentives to promote the development of affordable units, and without any such assurances that affordable units actually will be constructed on these candidate sites, these properties cannot be counted toward meeting the City's RHNA allocation. The City must rezone these properties, or other properties, to allow at least 20 units per acre, period. If the City is truly concerned about these units being developed for low-income families, then it needs to legitimately zone for higher densities and provide incentives that will lead to the construction of affordable units and/or require affordable units in connection with the inclusionary zoning ordinance called for by the City's previous Housing Element.

D. Many of the City's Other Revisions Are Unresponsive to HCD's Comments.

The City has failed to make a good-faith effort to bring the Revised Draft into compliance with State law, and has failed to adequately respond to many other specific comments and requests contained in the HCD Comment Letter. For example, HCD notes the Initial Draft's lack of analysis regarding the development of a variety of housing types to meet the housing needs of extremely low-income ("ELI") households, and requests that the City's Housing Program be revised or expanded by discussing financial incentives and/or regulatory concessions that could promote this goal. (HCD Comment Letter, p. 7.) In response, the City claims in its summary of responses to HCD ("Response Summary") that the Revised Draft's Housing Program "has been expanded to include additional incentives" for ELI housing (Response Summary, p. 2). However, the City has simply added the following statement to the Revised Draft: "Incentives and concessions for ELI units will include a variety of housing types such as SROs and supportive housing." (Revised Draft, p. V-6.) This statement is nonsensical—specific housing types such as SROs and supportive housing do not serve as

"incentives" to developing ELI units; they are merely forms of housing that may be able to accommodate ELI households.

As another example of unresponsiveness, HCD states that the City must include analyses demonstrating that the small multi-family zoned sites identified in the Housing Element can realistically accommodate new residential development. (HCD Comment Letter, p. 2.) However, the City rejects HCD's request to provide any additional information, and instead states that it does not believe that such a feasibility analysis is required by State law. (Response Summary, p. 1.) This type of dismissive response is indicative of the City's lack of good faith in developing an effective and legally compliant Housing Element.

Finally, the City refuses to commit to the removal of zoning and entitlement development constraints. The letters from HCD and Public Counsel identified specific zoning constraints, for example, that need to be removed for affordable housing to be constructed. The City simply responds that zoning amendments "may" include some of those identified amendments. (Revised Draft, p. V-5.) Given the City's track-record with affordable housing, it is important that the City actually identify what it intends to do so that potential density can be meaningfully evaluated based on the resulting development standards.

E. The Revised Draft Continues to Mischaracterize The City's Accomplishments In Supporting Affordable Housing Development.

Ironically, the one accomplishment cited by the Revised Draft in the 2001 Housing Element Program Evaluation relative to density incentives relates to our client's property. With respect to Implementation Measure 1 ("Provide appropriate incentives to encourage the development of housing to meet low- and moderate-income needs"), the Revised Draft lists the following accomplishment:

> The City entered in a settlement agreement to work with the Trancas Town developer to provide at least 4 units for low to moderate income out of a 32-unit condominium development. Status of application is pending; in litigation. (Revised Draft, p. A-2.)

This statement fails to mention that the settlement agreement was invalidated many years ago for procedural reasons and that the City has since been less than cooperative in supporting the proposed project or any up-zoning at the site. Under no circumstances should the Revised Draft point to our client's property as an "accomplishment" relative to the development of affordable housing. If anything, the property should serve as a case study of how difficult it is to entitle and develop affordable housing in Malibu.

F. Conclusion.

In reviewing the HCD Comment Letter and the letter from Public Counsel, it is evident that the City has not addressed many other concerns and legal deficiencies. This letter is in no way meant to be an exhaustive list of all the problems in the Revised Draft, and we reserve the right to supplement this letter at a later date. At this point, the City would be best served by going back to the drawing board to prepare a ***reasonable*** draft Housing Element. The Revised Draft misses that mark by a long shot.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at (310) 312-4305.

Very truly yours,

Victor De la Cruz
Manatt, Phelps & Phillips, LLP

cc: Jess Negrete, HCD Analyst
Joyce Parker-Bozylinski, City of Malibu Planning Director
Richard Mollica, City of Malibu Associate Planner
Fred Gaines, Esq., Gaines & Stacey, LLP
Lisa Specht, Esq., Manatt, Phelps & Phillips, LLP
Todd Nelson, Manatt, Phelps & Phillips, LLP

Exhibit B

Malibu City Council
Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES)
Special Meeting Agenda

Tuesday, March 27, 2012, 9:00 a.m.
Malibu City Hall – Multipurpose Room
23825 Stuart Ranch Road

Councilmember John Sibert
Councilmember Jefferson Wagner

Call to Order

Approval of Agenda

Public Comment

This is the time for members of the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to 3 minutes each for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.

Discussion Items

1. Comprehensive Update to the City's Zoning Code (Phase I)

   Staff recommendation: Receive an update from staff and Lisa Wise Consulting, Inc. (LWC) regarding Phase I of the comprehensive update to Title 17 (Zoning) of the Malibu Municipal Code (M.M.C.); review the Zoning Code Update Working Paper / Summary of Key Revisions and Formatting; and obtain public comment on the project.

   Staff contact: Associate Planner Smith, 310-456-2489, ext. 336

2. Second Unit Amnesty Program

   Staff recommendation: Provide comments and recommendations to staff regarding the various components that may be implemented into a Second Unit Amnesty Program, with the intent of increasing the City's stock of second units that could provide affordable low income housing opportunities.

   Staff contact: Associate Planner Mollica, 310-456-2489, ext. 346

Adjournment

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 21st day of March 2012.

Mary Linden, Executive Assistant

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 03/27/12

Item 2

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Wagner

Prepared by: Stephanie Danner, Senior Planner
Richard Mollica, AICP, Associate Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: March 21, 2012 **Meeting date:** March 27, 2012

Subject: Second Unit Amnesty Program

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the various components that may be implemented into a Second Unit Amnesty Program, with the intent of increasing the City's stock of second units that could provide affordable low-income housing opportunities.

BACKGROUND: On November 28, 2011, the City Council directed staff to forward a copy of the draft Housing Element Update to the California Department of Housing and Community Development to begin the certification process. As part of the draft Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA).

One of the programs presented to the City Council was a Second Unit Amnesty Program. The Council directed staff to present the components of the Second Unit Amnesty Program to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting an ordinance for the Council to review.

DISCUSSION: The purpose of the Second Unit Amnesty Program is to increase the City's stock of legal and affordable housing by creating incentives to legalize uncounted housing stock. The program is intended to: 1) ensure that existing

residential second units are safe and habitable; 2) implement the goals and objectives of the General Plan Housing Element; 3) assist in meeting the City's housing needs (as determined by the RHNA) by increasing the stock of legal and affordable housing; and 4) encourage the development and permitting of second residential units. The program, if adopted, would provide a limited time frame that would allow owners of unpermitted units to register and legalize their accessory dwellings and ensure that the units are in compliance with the required health and safety codes.

Staff wants to stress that applicants will not get in trouble by applying for the amnesty program, even if it is determined that their proposed space is not suitable to be counted as a housing unit. Staff hopes to work with local Realtors to obtain assistance in identifying potential candidates in a non-threatening way, as well as helping local real estate agents understand some of the details of the program.

This report discusses a number of components that are common to Second Unit Amnesty Programs that have already been implemented throughout the State of California. Based on the outcome of the ZORACES meeting, staff will draft a Second Unit Amnesty Program ordinance for review by the Planning Commission and later adoption by the City Council.

What is a Second Residential Unit?

The Local Coastal Program (LCP) Local Implementation Plan (LIP) Chapter 2 defines a second unit as an "attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. Second units include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. The maximum living area of a second unit shall not exceed 900 square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed 400 sq. ft. The square footage of the garage shall not be included in the maximum living area."

LIP Chapter 2 defines a guesthouse as similar to a second unit with the exception of cooking facilities. A guesthouse is designed to be used as an extension of the primary residence that is not entirely self-sufficient. Guesthouses will not qualify for the Amnesty Program because they do not contain cooking facilities.

Second Unity Amnesty Program:

Staff reviewed existing programs from the City of Sausalito, City of Novato, City of Ojai, City of Martinez, and Marin County, and found that most areas with an amnesty program allow property owners who have second units, such as granny flats, the opportunity to register those units with the city without facing fines for construction that was done without the benefit of permits.

Eligibility Requirements for Second Units

To receive a Second Unit Amnesty Permit, the owner must demonstrate that unit provides a healthy environment for occupants. This will be determined by compliance with specific health and safety standards for building, parking, water, and wastewater treatment facilities as set out in the Amnesty ordinance.

Second Unit Size

Currently the City's LIP limits the size of a second unit to 900 square feet of habitable area. The City can increase the allowable size of a second unit through an amendment to the LCP if larger units are seen as desirable. In addition, the City could establish a minimum size of a second unit. Currently the minimum required size for an efficiency unit as defined in Section 17958.1 of the Health and Safety Code is 150 square feet.

Number of Units Allowed

Occasionally it has been observed that some properties within the City have more than one second unit on the property. In order to facilitate the increase in the number of new units that can be applied towards the RHNA requirement, the City may consider allowing more than one second unit to be located on a property. This option would require amendments to both the LCP and Malibu Municipal Code (M.M.C.).

Use of the Second Unit

The Second Unit Amnesty Program can require that any second unit created under this program cannot be used for short stays, tourists, or Bed and Breakfast purposes. In addition, a deed restriction could be required that ensures the second unit is rented to affordable income levels as determined by the state. The purpose of a deed restriction is to ensure that the newly created unit would be used towards fulfilling the City's RHNA requirement to provide a low-income housing unit.

Non-Conforming Second Units

Permitted structures that were built before Cityhood and were approved by the County of Los Angeles, but were converted into second units may apply for approval as part of this program. It is possible that some properties may contain more square footage than is currently permitted under the City's current zoning ordinance, staff recommends that a previously permitted structure may be considered for this program as long as the non-conformities are maintained (as defined in LIP Section 13.5).

For example, the Amnesty Ordinance that was adopted by the City of Martinez states:

> "An existing structure that is non-conforming to the height limitations, minimum yard and maximum lot coverage requirements of the zoning code may be used for a Second Residential Unit, provided that such units are in compliance with all other standards of this Section, and any modifications made to such a structure do not increase the non-conformity."

Onsite Wastewater Treatment Systems

For second units that require an onsite wastewater treatment system (OWTS) upgrade, the City could permit the installation of a new OWTS that serves only the second unit and not require the upgrade or expansion of the existing system serving the primary residence. However, if the OWTS that serves the property is found to be in failure, a new unit most likely will be required to serve the entire property.

Parking

Currently, second units are required to provide one additional unenclosed onsite parking space. Options that could be included in the Second Unit Amnesty program include a provision that if the parcel is greater than one acre in size, no additional parking is required. For parcels that are less than one acre in size, one unenclosed parking space may be required. Another option could be that properties located adjacent to public streets, which have adjacent offsite parking areas available (e.g. Pacific Coast Highway) the parking requirement waived.

Staff requests that the Subcommittee provide recommendations related to the parking requirements for second units.

Replacement of the Non-Conforming Second Unit

Some amnesty programs restrict the replacement of non-conforming second units. The City can include a provision that requires the unit to be brought into conformance with all current residential development requirements in the event the unit is damaged or destroyed. This policy follows the fire rebuild guidelines set forth in LCP Local Implementation Plan (LIP) Section 13.4.6.

Permit Review Authority

The applications for the approval of second units that were built without the benefit of permits would be reviewed by the City's Planning Department. If the project is located in the appealable jurisdiction of the coastal zone as defined by the LCP, the Coastal Development Permit (CDP) would require approval by the Planning Commission. If the subject property is located outside the appealable jurisdiction, an Administrative Coastal Development Permit would be required and this permit would

be reported to the Planning Commission. After obtaining Planning Commission / Department approval, the applicant could then apply for the required building permits and inspections to complete the legalization of the Second Unit.

Fees

To permit second units under the Amnesty Program, property owners will need approvals from both the Planning Department and Building & Safety Division of the Environmental Sustainability Department (ESD). Applicants would need to apply for a CDP per LIP Section 13.4.1(A) and these permits would be issued through the Planning Department.

Once approved by the Planning Department, the applicant would need to apply for building permits from ESD. The fees for building permits include the fee for the issuance of the permit, a review of the structural engineering plans and developer fees. Some of the developer fees such as the Fire Department Fee and the School Fee are not subject to the City's control. As part of this program, permit fees for both the CDP and building permits could be reduced or waived as an incentive to encourage participation in the amnesty program.

Code Enforcement

To encourage applications for the legalization of unpermitted units, the City's policy could be to not use the information submitted to City departments as the basis for enforcement action unless there is a clear and imminent danger to public and/or environmental health. In addition, active code enforcement cases could be processed without penalty.

Plan to Encourage Public Participation in the Program

The California Department of Housing and Community Development suggests implementing the following provisions to encourage second units.

A. Develop information packets to market second-unit construction. A packet could include materials for a second-unit application, explain the application process, and describe incentives to promote their development.

B. Advertise second-unit development opportunities to homeowners on the community's web page, at community and senior centers, in community newsletters, and in local utility bills, etc.

C. Establish and maintain a second-unit specialist in the Planning Department to assist in processing and approving second-units.

D. Establish flexible zoning requirements, development standards, processing and fee incentives that facilitate the creation of second-units.

Incentives include reduced parking requirements near transit nodes, tandem parking requirements, pre-approved building plans or design prototypes, prioritized processing, fee waivers, fee deferrals, reduced impact fees, reduced water and sewer connection fees, setback reductions and streamlined architectural review. For example, the City of Santa Cruz established pre-approved design prototypes to encourage and stimulate the development of second-units.

E. Monitor the effectiveness of ordinances, programs and policies encouraging the creation of second-unit development.

   Some localities monitor implementation of second-unit strategies through the annual general plan progress report (Government Code Section 65400). Evaluating the effectiveness of a second unit ordinance can assist the local government in determining appropriate measures to improve usefulness and further facilitate the development of housing affordable to lower- and moderate-income families.

Staff anticipates including some or all of these provisions in the Amnesty Program ordinance and requests recommendations from the Subcommittee on the items set forth in this report.

CONCLUSION: Staff will incorporate the Subcommittee's recommendations in the proposed Second Unit Amnesty Program. The proposed program will be forwarded to the Planning Commission for review and recommendation before going to the City Council for adoption.

ATTACHMENTS: None.

Malibu City Council
Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES)
Special Meeting Agenda

Tuesday, September 11, 2012, 9:00 a.m.
Malibu City Hall – Multipurpose Room
23825 Stuart Ranch Road

Councilmember Skylar Peak
Councilmember John Sibert

Call to Order

Approval of Agenda

Public Comment

This is the time for members of the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to 3 minutes each for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.

Discussion Items

1. Second Unit Amnesty Program

   Staff recommendation: Provide comments and recommendations to staff regarding the various components that may be implemented in a Second Unit Amnesty Program, with the intent of increasing the City's stock of second units to provide affordable low-income housing opportunities.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

2. Revisions to Multi-Family Development Standards

   Staff recommendation: Provide comments and recommendations to staff regarding the revisions to existing multi-family development standards that may be included as amendments to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing the programs set forth in the General Plan Draft Housing Element Update.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

3. Reasonable Accommodation Ordinance

   Staff recommendation: Provide comments and recommendations to staff regarding the draft Reasonable Accommodation Ordinance which will be included as an amendment to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 3.2 – Remove Regulatory Barriers to Affordable Housing and Housing for Persons with Special Needs, set forth in the General Plan Draft Housing Element Update.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

Adjournment

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 4th day of September 2012.

Mary Linden, Executive Assistant

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 09/11/12

Item 1

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner
Richard Mollica, AICP, Associate Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: September 4, 2012 **Meeting date:** September 11, 2012

Subject: Second Unit Amnesty Program

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the various components that may be implemented in a Second Unit Amnesty Program, with the intent of increasing the City's stock of second units to provide affordable low-income housing opportunities.

BACKGROUND: The purpose of the Second Unit Amnesty Program is to increase the City's stock of legal and affordable housing by creating incentives to legalize uncounted housing stock. The program is intended to: 1) ensure that existing residential second units are safe and habitable; 2) implement the goals and objectives of the General Plan Housing Element; 3) assist in meeting the City's housing needs (as determined by the Regional Housing Needs Assessment (RHNA)) by increasing the stock of legal and affordable housing; and 4) encourage the development and permitting of second residential units. The program, if adopted, would provide a limited time frame that would allow owners of unpermitted units to register and legalize their accessory dwellings and ensure that the units are in compliance with the required health and safety codes.

DISCUSSION: On March 27, 2012, the Subcommittee discussed a potential Second Unit Amnesty Program that could be incorporated as a program in the Draft Housing Element Update. At that meeting, the Subcommittee requested staff obtain additional information related to the success and implementation of these programs in other

municipalities. Staff has contacted various municipalities and found that five have implemented Second Unit Amnesty Programs. This agenda report discusses the success and requirements of their programs.

The following discussion focuses on Second Unit Amnesty Programs that have been implemented throughout California. Following the results of staff's survey of these programs, the report presents the final outstanding issues in order to obtain recommendations from the Subcommittee. Based on the outcome of this meeting, staff will draft a Second Unit Amnesty Program ordinance for review by the Planning Commission and subsequent approval by the City Council.

Survey Second Unity Amnesty Programs:

Staff contacted nine agencies that are either considering or have implemented amnesty programs. The following municipalities have incorporated Amnesty Programs to date:

- City of Fairfax
- Marin County
- City of San Carlos
- City of San Rafael
- City of Ventura

The following cities have not implemented an Amnesty Program to date:

- City of Martinez
  - No amnesty program has been adopted. Currently, the city encouraging owners to build second units to increase the supply of smaller and affordable housing while ensuring that they remain compatible with the existing neighborhood.
- City of Navato
  - The amnesty program is in the discussion and planning stages.
- City of Ojai
  - Many amnesty programs have been proposed, but none of them have been adopted.
- City of Sausalito
  - The draft amnesty program has been created and is awaiting adoption.

Attachment 1 includes the tabular results of staff's survey of the existing Amnesty Programs.

Eligibility Requirements for Second Units - As can be seen in the table, the majority of Amnesty Programs require that the unit be constructed prior to the adoption of the current Housing Element and the property owner must be the resident of either the primary or the secondary unit. In addition to obtaining a Second Unit Amnesty

Permit, the owner must demonstrate that unit provides a healthy environment for occupants (i.e., it meets building and safety standards).

Second Unit Size - Of the five cities surveyed, the sizes of second units range from 320 square feet to 1,000 square feet. Currently the City of Malibu Local Coastal Program (LCP) limits the maximum size of a second unit to 900 square feet of habitable area. Malibu could increase the allowable size of a second unit through an amendment to the LCP, if larger units are seen as desirable. In addition, the City could establish a minimum size of a second unit. Currently the minimum required size for an efficiency unit as defined in Section 17958.1 of the Health and Safety Code is 150 square feet.

Number of Second Units Allowed Per Property - Occasionally it has been observed that some properties within the City of Malibu contain more than one second unit. In order to facilitate the increase in the number of new units that can be applied towards the RHNA requirement, the City may consider allowing more than one second unit to be located on a property. This option would require amendments to both the LCP and Malibu Municipal Code (M.M.C.). The City could also limit multiple second units to lots greater than a certain size, for example two acres. However, none of the five cities surveyed allowed more than one second unit to be permitted per property.

Use of the Second Unit - All of the cities contacted required that the second unit created through the Second Unit Amnesty Program be designated for residential use. Second units created under the Amnesty Program were not allowed to be used for short stays, tourists, or bed and breakfast purposes.

At the March 27, 2012 ZORACES meeting, the concept of deed restricting these units to an only residential use or for rent only at affordable prices was discussed. Concerns related to the practicality of requiring a deed restriction was raised because of the potential that such a requirement would be viewed a detrimental to the property's value and a potential constraint on future financing. Staff contacted a mortgage banking firm and confirmed that a deed restriction could negatively affect a property's value. Staff sees such a requirement as having the potential to discourage participation in the program and recommends that it not be incorporated.

Non-Conforming Second Units - Much of the City's older development is in conformance with the previous Los Angeles County zoning ordinances; however, this development may not conform to current development standards set forth in the LCP and Malibu Municipal Code (M.M.C.). Therefore, many of the units that could come forward for permitting under a future Second Unit Amnesty Program would be considered non-conforming. Currently the M.M.C. allows for the repair and maintenance of non-conforming structures that were legally established prior to the incorporation of the City (M.M.C. Sections 17.60.020 (A) and (B)).

The City of Malibu could approach this issue two ways. One way would be to grandfather the non-conforming units that were constructed prior to the adoption of

the M.M.C. in 1993 or the second option would be to require the second units conform to the current standards set forth in the M.M.C. and LCP. Staff requests that ZORACES provide comments on how staff should proceed on reviewing non-conforming second units.

Two of the five cities surveyed confirmed that the second units approved under the Amnesty Program must conform to the current zoning ordinances. Ventura allows for zoning modifications to permit these units, with the provision of additional fees. Additionally, Fairfax defers permitting authority to the Planning Commission when the units do not comply with applicable requirements.

Parking - Currently, second units are required to provide one additional onsite parking space (measuring 18 feet long by 10 feet wide). On some lots, this provision is restrictive given that the primary residence must already accommodate four such parking spaces onsite. Options that could be included in the Second Unit Amnesty program include: 1) a provision that if the parcel is greater than a certain size, no additional parking is required; or 2) the size of three unenclosed spaces required to serve the primary and secondary residence may be compact in size, measuring 8 feet by 15.5 feet, in order to accommodate more spaces on a lot. Staff confirmed that a parking space for the second unit was required by all five cities under their Amnesty Programs.

Fees - None of the five jurisdictions waived the fees for the permitting of second units through the Amnesty Program. As an incentive to attract applicants, two of the cities reduced the permitting fees by 50%. A common incentive was to waive the code enforcement fees for the units if applications were filed during the time the amnesty program was active.

Staff requests that ZORACES offer input on the topic of fees and if the City should consider lowering permit fees and/or code enforcement fees as an incentive to attract applicants.

Success of Surveyed Programs - The City of Fairfax stated that the project was not successful due to parking and interior fire sprinkler requirements. According to the Director of Planning and Building Services, the City may consider relaxing these requirements as part of a future Amnesty Program.

Both the City of Ventura and County of Marin found the program to be successful. Marin County extended its program an additional year because of its success. The City of Ventura expects 10 to 20 additional applicants by the end of this year.

The City of San Carlos found success in an amnesty program for second units; however this program was not intended to increase affordable housing. The amnesty program in San Carlos was established to increase the safety of second units and the program is on-going. Finally, the City of San Rafael experienced modest program

success as additional second units were legalized between 2007 and 2008 under Marin County's program.

CONCLUSION: Staff will incorporate the Subcommittee's recommendations in language for a draft Second Unit Amnesty Program ordinance. The draft ordinance program will be forwarded to the Planning Commission for review and recommendation before going to the City Council for adoption.

ATTACHMENT:

1. Table of Second Unit Amnesty Program Survey Responses

	PROGRAM TERM & number of units legalized	PROGRAM SUCCESS	ELIGIBILITY REQUIREMENTS	SECOND UNIT SIZE	SECOND UTILITY METERS
FAIRFAX	2 years July 2007- August 2008, March 2009 - March 2010 **2 units were legalized during this period**	*According to Jim Moore, Director of Planning & Building Services:* The program was not very successful due to the sprinkler and parking requirements. Will re-draft the ordinance over the next year with relaxed requirements for parking and sprinklers in the downtown area.	• Second units must have been constructed prior to December 31, 2006 (adoption of the current Housing Element).	320 ft^2 - 700 ft^2	No separate metering requirements
MARIN COUNTY	2 years 2007-2008 (1 year + 1 year extension) **~50 units were legalized during this period**	Initial program extended for an additional year; success/high number of units legalized due to this being a county-wide program.	• Property owner must be a resident of the primary or secondary unit. • Second units must have been constructed prior to June 3, 2003 (adoption of the current Housing Element). • Units built after June 2003 receive the 50% fee reduction, but must comply with the County Code.	220 ft^2 - 750 ft^2 (units exceeding 750 ft^2 may be considered if established prior to 1987)	Recommended, but not required
SAN CARLOS	Ongoing (indefinite) program; *emphasis on safety*, not increasing number of affordable housing units **slow trickle of applicants** (in effect for 8-10 years, according to Chris Valley, Building Official)	This program is considered successful, but is markedly different from other programs as it: a) is ongoing; b) is concerned with safety (not affordable housing); and c) does not waive / reduce fees.	• Provide evidence that the second unit was construction prior to January 1, 2003 (adoption of the current Housing Element). • Property inspection. Correct health and safety defects. • Pay all required fees. • Demonstrate compliance with standards at the time of first use.	Not to exceed 640 ft^2	Optional
SAN RAFAEL	1 year (Sept. 2003-Sept. 2004) **4 units were legalized during this period**	Modest program success. Additional units were legalized as part of Marin County's 2007-2008 program.	• Property owner must be a resident of the primary or second unit. • Second units must have been established prior to June 3, 2003 (adoption of the current Housing Element). • Units built after June 2003 receive the 50% fee reduction, but must comply with the current code.	1,000 ft^2 maximum	No separate metering requirements
VENTURA	Ongoing ~1.5 years Summer 2011- December 2012 **21 applications filed as of June 15**	*According to Andrew Stuffler, Housing Authority of the City of San Buenaventura:* The city is already considering the program a success. They are anticipating 10-20 additional applicants by the end of the year.	• Units in use before 1978 are exempt from most fees--can be legalized for ~$600. • Units in use before 2004 are exempt from most other City regulations. • Units built after 2004 must meet current codes.	-	No separate metering requirements

# OF UNITS ALLOWED	USE OF SECOND UNIT	NON-CONFORMING SECOND UNITS	ONSITE WASTEWATER TREATMENT SYSTEMS	PARKING	PERMIT REVIEW AUTHORITY	FEES
1 residential second unit per lot	Residential	--	--	1 parking space required	▪ Residential Second Unit Amnesty Permits shall be approved ministerially by the Planning and Building Department Director. ▪ Permits that do not comply with applicable requirements to be reviewed by the Planning Commission.	▪ Fees reduced by 50% for Second Unit Amnesty Permits and for new applications. ▪ Fines for unpermitted second units are waived.
1 residential second unit per lot	Residential	--	▪ Septic systems required to pass performance tests. ▪ Redwood tanks require replacement. ▪ During amnesty period, may adhere to Class I, II, or III system. ▪ Must adhere to Remodel & Additions Policy (with 3 exceptions).	1 8.5' x 18' parking space required or 1 9' x 20' parking space for a constrained area (garage)	▪ Second Unit Amnesty Permits shall be reviewed ministerially by the Community Development Agency Directory without discretionary review or public hearing (except where such hearings are required).	▪ Fees reduced by 50% for Second Unit Permit applications and for new unit applications. ▪ Fines waived.
1 residential second unit per lot	Residential	Conformance required	--	1 parking space		▪ Permit fees not waived.
1 residential second unit per lot	Residential	Conformance required	--	1 parking space	▪ Varied review process, depending on the size and location of a second dwelling unit--the City's ministerial second dwelling review process (which requires the review of a proposed unit for compliance with the adopted development standards).	▪ Investigation fee waived during program's duration (fees were doubled following the project's end).
1 residential second unit per lot	Residential	Zoning modification may be sought for an additional fee	--	1 parking space	▪ The Chief Building Official is responsible for review an decision-making (appeals to the local appeals board). ▪ Second Dwelling Unit Zoning Modifications are decided by the Director of Community Development (appeals to the Planning Commission and City Council).	▪ $580 application fee plus development related fees.

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 09/11/12

Item 2

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: September 4, 2012 **Meeting date:** September 11, 2012

Subject: Revisions to Multi-Family Development Standards

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the revisions to existing multi-family development standards that may be included as amendments to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing the programs set forth in the General Plan Draft Housing Element Update.

BACKGROUND: On November 28, 2011, the City Council directed staff to forward a copy of the draft Housing Element Update to the California Department of Housing and Community Development to begin the certification process. As part of the draft Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA).

On July 27, 2012, the City of Malibu received approval (preliminary certification) of its Draft Housing Element Update from the California Department of Housing and Community Development (HCD). HCD found that the Draft Element will comply with housing element law (Article 10.6 of the Government Code) when adopted by the City Council (via approval of the amendment to the General Plan). If the Final Housing Element adopted by the City Council is consistent with the Draft Housing Element, the City will receive final certification.

DISCUSSION: Included in the Draft Housing Element Update is Program 2.2 which was developed to ensure adequate capacity to accommodate regional housing needs. Subsection B of that program includes a plan to facilitate new affordable housing development through consistent amendments of the M.M.C. and LCP with regard to multi-family development. The City Council directed staff to present the draft amendments to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting final amendment language for the Planning Commission and Council to review.

The residential development standards of the LCP and M.M.C. are written in a way that facilitates single-family residence development but do not really work for multi-family development. Maximum restrictions that have been established pertaining to allowable square footage per parcel, impermeable coverage, grading, and development area serve to create barriers to the development of multi-family housing in Malibu. As a result, the following discussion presents options for amendments to the LCP and M.M.C. which will help to remove these barriers in accordance with the Draft Housing Element Update.

Removing Barriers to Multi-Family Development

This report discusses potential amendments to LCP Local Implementation Plan (LIP) Chapters 3, 8 and Table B – Permitted Uses and M.M.C. Sections 17.12.040, 17.14.040 and 17.40.040. Draft amendment language is included in Attachment 1.

1. Revise the minimum permitted size for a multi-family unit.

Currently, the LCP and M.M.C. set a minimum size for multi-family residential units equal to 750 square feet. This minimum size precludes the development of certain types of affordable housing units, such as single room occupancies (SROs) and studio apartments. SROs and studios are a viable housing option for students, single tenants, seasonal or other traveling workers, empty nester widows/widowers, or others who do not desire or require large dwellings. They are smaller in size and have limited amenities. Often times, SROs and studios are generally a more affordable housing option.

California Health and Safety Code Section 17958.1 states that a city or county may, by ordinance, permit SRO units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance.

Studio apartments typically range in size from 300 to 600 square feet. To allow the construction of affordable multi-family units, staff recommends reducing the minimum permitted size for a multi-family unit to 300 square feet. Conversely, a larger minimum unit size could be proposed by the Subcommittee.

2. Revise maximum total development square footage (TDSF).

Current LCP and M.M.C. language regarding maximum structure size states that the TDSF associated with the construction of a single-family or multiple-family residence on a legal lot equal to or greater than 5 acres shall not exceed a total of 11,172 square feet.

While this method of calculation and resulting maximum square footage allowed makes sense when applied to single-family development, it does not calculate correctly from a multi-family standpoint.

For example a 6 acre property developed with 6 units per acre (the maximum currently allowed under the LCP and M.M.C.) would result in the following:

6 acres x 6 units per acre = 36 units
11,172 square feet / 36 units = 310 square feet per unit[1]

As currently exists, the LCP and M.M.C. set a minimum multi-family residential unit size as 750 square feet. Strict interpretation of existing code language results in units that would be sized below the minimum square footage required.

Staff went a step further and evaluated the TDSF maximum as it would apply to a 6 acre property developed with 20 units per acre (as proposed with an Affordable Housing Overlay District in the Draft Housing Element Update) and determined the following:

6 acres x 20 units per acre = 120 units
11,172 square feet / 120 units = 93.1 square feet per unit

Constructing a 93 square foot unit is not feasible as a habitable unit and would not meet the minimum size restriction discussed above. As such, the language limiting multi-family development to 11,172 square feet per legal lot needs to be amended.

There are several options which staff are considering and would like input from the Subcommittee on the following options:

A. Set no maximum on TDSF for multi-family development.

Setting no maximum on TDSF would allow other site constraints and development requirements dictate what could ultimately be constructed on a multi-family zoned parcel. Setback requirements, the maximum height of two stories, the maximum density permitted and the grading allowed would all serve to limit development onsite. In addition, setting no maximum on TDSF

[1] It is important to note that this square footage total would not include square footage dedicated to hallways, storage, recreation rooms or covered patios.

would allow the architect creativity to design a project consistent with the semi-rural character of Malibu, without rigid size restrictions. As the Affordable Housing Overlay District will require that all units constructed in excess of the base density allowed for the MF zone (6 dwelling units per acre) be affordable, it is not anticipated that these affordable units will be large in size.

B. Set a maximum of 11,172 square feet per building for multi-family development.

   This alternative would also set no maximum TDSF for a multi-family property, as is proposed in Alternative A, but it would limit each new building to not exceeding 11,172 square feet in size. Setback requirements, the maximum height of two stories, the maximum density permitted and the grading allowed would all serve to limit development onsite. This alternative would allow the development of multi-family residential buildings which would look similar to the largest allowable single-family residences which could be permitted under the LCP.

   However, as noted earlier, this option will mean that a limited number of units could be included in one building. This could result in numerous buildings on a parcel in order to accommodate the 6 to 20 dwelling units per acre.

C. Determine the maximum number of units that could be allowed on a multi-family zoned lot and create a formula based upon multiplying some predetermined average unit size by the total number of units.

   This alternative would require coming up with a formula to multiply the maximum number of multi-family units that could be constructed on a parcel by a determined "average unit size" allowed for multi-family construction. The resulting square footage would be the maximum allowed onsite. This alternative could be problematic as there is no industry recognized "average unit size" for a multi-family unit.

D. Apply a floor area ratio (F.A.R.) to limit the size of development, similar to commercial development standards.

   Rather than implementing a formula as is suggested in Alternative C, the F.A.R. method for determining maximum allowable TDSF onsite would allow a maximum percentage of development based on the size of the property. Implementing a F.A.R. between 30% and 50% of the lot size results in the following for a sample 5 acre (217,800 square foot) property:

   - 217,800 sqft x **30%** = 65,340 sqft — 30 units (6 du/ac) = 2,178 sqft / unit; 100 units (20 du/ac) = 653 sqft / unit
   - 217,800 sqft x **40%** = 87,120 sqft — 30 units (6 du/ac) = 2,904 sqft / unit

100 units (20 du/ac) = 871 sqft / unit

- 217,800 sqft x **50%** = 108,900 sqft 30 units (6 du/ac) = 3,630 sqft / unit
  100 units (20 du/ac) = 1,089 sqft / unit

These calculations show what the average size of a unit would be for both the existing density allowed (6 units per acre) and what could be constructed under the Affordable Housing Overlay District (20 units per acre) on a 5 acre lot. It is important to note that a range of affordable units, SROs, studios, one-bedroom, two-bedrooms and three-bedrooms, would need to be provided onsite. Under this option, development onsite would further be constrained by the need to allocate some square footage to providing parking areas as well as by the required setbacks from property lines.

Staff recommends, regardless of the decision on how maximum development will be determined, that the amendment language include a statement which exempts amenities that would serve the multi-family development, such as a gym, community room, storage areas, game room, etc., from the TDSF maximum allowed. The exemption would only apply to uses which specifically serve the multi-family development and those which are not commercial by nature. If recommended by the Subcommittee, an overall maximum of square footage that may be exempt could be included.

Staff also recommends that no maximum TDSF be established and instead, the focus should be on creating design guidelines for the construction of new multi-family development.

3. Exempt square footage of subterranean garages from TDSF total.

Current development standards allow up to 1,000 square feet of subterranean garage to be exempt from the TDSF for the project. Anything in excess of 1,000 square feet is added to TDSF at a rate of 1 to 2. In evaluating the amount of parking that would be required for a multi-family development, it appears that either there would be a large amount of area onsite dedicated strictly to parking spaces.

In order to encourage placing the required parking for the multi-family development underground, staff recommends allowing all square footage of a subterranean garage (which meets all requirements set forth in LIP Section 3.6(K) and M.M.C. Section 17.40.040(13)(d)) to be exempt from TDSF. Eliminating above ground parking area, either enclosed or unenclosed, frees up that space for the placement of units and landscaping and could serve to minimize the overall size of development. Visual impacts caused by large parking lots or carports would be eliminated by subterranean parking.

4. Revise the maximum impermeable coverage allowed per lot.

For all non-beachfront residential lots greater than ½ acre in size, the LCP and M.M.C. permit a maximum impermeable coverage square footage of 30% of the lot size, up to a maximum of 25,000 square feet. Beachfront lots are not subject to an impermeable coverage maximum.

Staff recommends revising this development standard for multi-family development to incorporate the same language which was recently approved for the LCP amendment to institutional development standards (LCPA No. 10-001). This language reads:

Landscaping and Site Permeability. 25% of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to landscaping. The required 5 foot landscape buffer around the perimeter of parking areas pursuant to Section 3.12.5(E)(1) of the Malibu LIP shall count toward the 25% requirement. An additional 5% of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to permeable surfaces.

Implementing this development standard will guarantee that 1) a minimum 30% of the lot will be permeable (via permeable surfaces and/or landscaping); 2) onsite drainage will be promoted; 3) low-impact development features will be promoted; and 4) the 30% permeability recommended by the City Public Works Department will be met onsite. In addition, this standard adds a new minimum site landscaping requirement which will help mitigate the visual impact of new multi-family development.

5. Remove the two-acre development convex requirement.

Currently the LCP and M.M.C. require that every residential development, regardless of parcel size, shall be contained within a convex-shaped enclosure that shall not exceed two acres.

As all but one of existing 28 undeveloped multi-family zoned properties, as identified on Table B-4 of the Draft Housing Element Update (Attachment 2), are less than two acres in size, it is not anticipated that this amendment will impact a large number of vacant MF or MFBF properties. However, the candidate parcels for inclusion in the Affordable Housing Overlay District, proposed as part of the Draft Housing Element Update and which are included as Attachment 3, do exceed two acres in size and therefore the development convex requirement would constrain their development. Staff recommends removing the two-acre development convex requirement from the multi-family development standards so that it may be feasible to construct 20 units per acre on the candidate sites.

6. Revise the requirements for private open space per multi-family unit.

M.M.C. Section 17.40.060 requires the provision of an appurtenant private patio, deck, balcony, atrium, or solarium for each multi-family unit. A minimum area of 150 square feet is required for each unit, except that one-bedroom units shall have a minimum of 130 square feet of private open space. The LCP does not include this requirement for multi-family development. As staff is proposing to reduce the minimum size allowed for a multi-family unit, it is also recommended that smaller sizes of open space be provided for smaller units. A potential scenario for this requirement is to create an additional standard for studios / efficiency units that sets the minimum open space area at 100 square feet or some similar number.

Furthermore, staff is undetermined regarding what would be a feasible requirement for a very small unit, like a 300 square foot studio. Should these types of units be exempt from the open space requirement? Should they provide a smaller open space area equal to 50 square feet (1/3 of the size required for a two bedroom unit)? Staff requests recommendations from the Subcommittee on this issue.

7. Revise the maximum grading total allowed for parcels zoned multi-family.

The LCP and M.M.C. limit grading for all residential properties to 1,000 cubic yards of non-exempt grading (cumulative of cut and fill) per lot. Limiting the total amount of grading that may be associated with a development project, regardless of the size of the property, creates a barrier to multi-family development. Typically, the construction of a single-family residence on a lot that is less than one acre in size can require just under 1,000 cubic yards of grading. It would then be infeasible to construct 6 units per acre (as currently permitted) or up to 20 units per acre (as proposed with the Affordable Housing Overlay District) and still meet this grading requirement.

Staff recommends revising this development standard for multi-family development to mimic the language which was recently approved for the LCP amendment to institutional development standards (LCPA No. 10-001). The amendment to the institutional development standards applies the commercial grading requirements, rather than residential grading requirements, to new multi-family development.

The LCP and M.M.C. allow for up to 1,000 cubic yards of non-exempt grading (cumulative of cut and fill) per acre as opposed to per lot. Allowing multi-family development to implement a grading maximum based on acreage will make development feasible.

8. Remove the CUP requirement for multi-family development.

M.M.C. Section 17.12.040 (Multiple Family (MF) Residential District) requires a CUP for "multiple-family residential uses, including duplexes, condominiums, stock cooperatives, apartments and other similar developments", while Section 17.14.040

(Multiple Family Beachfront (MFBF) Residential District) requires a CUP for "new, or the expansion over 500 square feet of, multiple-family residential uses, including duplexes, condominiums, stock cooperatives, apartments and other similar developments."

The requirement to obtain a CUP for multi-family development was created prior to the adoption of the LCP. The required findings in support of a coastal development permit, which would be required for new multi-family development, are stringent and provide an appropriate evaluation of the impacts that could occur as a result of the construction of new multi-family units. Furthermore, the findings which must be made do not offer an evaluation of the use which wasn't already made during the time when the land use and zoning maps were created for the Malibu General Plan. Refer to Attachment 4 for the list of required CUP findings.

It is redundant to process a CUP in addition to the CDP application that would already be required for multi-family development. Moreover, Housing law requires that development of multi-family units (20 units per acre) be permitted by-right in order to be considered affordable. The CUP process adds discretionary review when it is prohibited by Housing law. As such, staff is recommending amending Sections 17.12.040 and 17.14.040 to remove the requirement for multi-family development applications to be processed with a CUP in the MF and MFBF zones. To maintain consistency, Table B of the LIP will also be amended to reflect that a CUP would no longer be necessary for multi-family development in the MF and MFBF zones.

CONCLUSION: At the conclusion of the Subcommittee's review, staff will incorporate its recommendations in the draft amendment language. The amendments to the LCP and M.M.C. will be forwarded to the Planning Commission for review and recommendation before going to the City Council for approval. Upon approval by the City Council, the amendments to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENTS:

1. Draft Amendment Language
2. Table B-4: Vacant Multi-Family Sites Inventory
3. Table B-5: Candidate Affordable Housing Sites
4. M.M.C. Section 17.66.080 – CUP Findings

RESIDENTIAL DEVELOPMENT STANDARDS

**New / revised language is noted in underline and deleted text is indicated in ~~strikethrough~~. All other text in LIP Chapter 3.6 remains unchanged as part of the subject amendment.

In accordance with form and content of the Comprehensive Zoning Code Update, the specific residential development standards which pertain to all types of development (whether single- or multi-family) are grouped at the beginning of this chapter under Section 3.6.1. Section 3.6.2 includes single-family development standards and Section 3.6.3 includes multi-family development standards.

Both the Municipal Code and Local Coastal Program will mirror the form and content following:

3.6. RESIDENTIAL DEVELOPMENT

3.6.1. General to All.

A. All residences shall be subject to the following development standards:

1. Roof material.
2. Exterior siding.
3. Determination of lot width / depth.
4. Buildings within floodplains.
5. Height.
   a. Non-Beachfront Lots
   b. Beachfront Lots.
6. Setbacks.
   a. Non-Beachfront Yards / Setbacks.
      i. Front.
      ii. Side.
      iii. Rear.
   b. Beachfront Yards / Setbacks.

i. Front.

ii. Side.

iii. Rear.

A. Dwellings.

B. Decks and patios.

C. Infill development.

D. Accessory structures.

E. Swimming pools and spas.

F. Stairways.

G. Fences.

H. Shoreline protective devices.

c. Parkland Setbacks.

d. Bluff Setbacks.

7. Site of Construction.

8. Distance Between Buildings.

a. Minimum Distances.

i. Distance between main buildings.

ii. Distance between accessory and main buildings.

ii. Projections permitted between buildings on the same lot or parcel of land.

9. Accessory Structures.

10. Temporary Mobilehomes or Trailers.

B. Deviation from Development Standards.

1. Site Plan Review to allow heights up to 24 feet for flat roofs and 28 feet for pitched or sloped roofs.

2. Modifications to required yards/setbacks standards pursuant to a minor modification or variance.

3. Stringline modification via a minor modification pursuant to LIP Section 13.27.1(B)(3). Alternatively, the applicant may apply for a variance pursuant to LIP Section 13.26.

4. Variances or modifications to park buffer standards.

C. Housing Accessibility – Reasonable Accommodation for Disability.

D. Home Occupations.

3.6.2. Single-Family Development Standards.

Proposed single-family residential structures shall comply with the provisions of Section 3.6.1(A) of the Malibu LIP (General to All Residential Development Standards) except that minimum residence width, minimum floor area, structure size, development area, impermeable coverage, second residential units and neighborhood standards shall comply with the following requirements instead of those in Section 3.6.1(A) of the Malibu LIP.

A. Minimum Residence Width.

B. Minimum Floor Area.

C. Structure Size.

1. Single-Story Floor Area.

2. Multi-Story or Single Floor Area, Structures Greater Than 18 Feet In Height.

3. Basements.

4. Subterranean Garage.

5. Cellar.

6. Combinations of Basements, Cellars and/or Subterranean Garages.

D. Development Area.

E. Impermeable Coverage.

F. Second Residential Units.

1. Second residential unit includes a guest house or a second unit, as defined in Section 2.1 of the Malibu LIP.

2. Maximum of one second residential unit.

3. Siting.

4. Maximum Living Area.

5. Garage.

6. Parking.

G. Neighborhood Standards.

3.6.3. Multi-Family Development Standards.

Proposed multi-family residential structures shall comply with the provisions of Section 3.6.1(A) of the Malibu LIP (General to All Residential Development Standards) except that minimum floor area, structure size, development area and impermeable coverage shall comply with the following requirements instead of those in Section 3.6.1(A) of the Malibu LIP.

A. Minimum Floor Area. The minimum floor area of a multi-family residence shall be not less than 300 square feet, exclusive of any appurtenant structures.

B. Structure Size. Except as specifically provided herein and where otherwise restricted by provisions of the ESHA Overlay Ordinance (Chapter 4), of the Malibu LIP, the total development square footage (TDSF) associated with the construction of a multiple-family residence on a legal lot shall be: **TO BE DETERMINED**

i. Beachfront lots shall be exempt from the TDSF provisions of this paragraph.

ii. Common use areas such as gyms, storage rooms, game rooms, rental offices, etc. shall be exempt from the maximum structure size allowed.

1. Single-Story Floor Area. Notwithstanding any other provision of this Chapter, the total development square footage for single-story structures at or below 18 feet is determined according to the above formula.

2. Two-Thirds Rule. Applicable to multi-story or single floor area structures greater than 18 feet in height. Notwithstanding any other provision of this Chapter, the TDSF for a structure greater than 18 feet in height shall not be greater than

permitted for single-story construction. Any portion of the structure above 18 feet in height shall not exceed 2/3rds the first floor area, and shall be oriented so as to minimize view blockage from adjacent properties.

3. Basements. The square footage of a basement shall be included in the calculation of TDSF, consistent with the following formula: The initial 1,000 square feet of a basement shall not count toward TDSF; additional area in excess of 1,000 square feet shall be included in the calculation of TDSF at the rate of 1 square foot of TDSF for every 2 square feet of proposed basement square footage.

   a. A basement shall be located beneath or partially beneath the first floor footprint of the structure above.

   b. Any portion of a basement wall extending beyond the first floor footprint above shall be non-daylighting.

   c. All basements shall be limited to one floor level, not to exceed 12 feet in height.

   d. Any grading required for that portion of a basement not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP.

   e. Those areas of a basement that extend beyond the first floor footprint above shall be subject to the impermeable coverage development standards contained in Section 3.6.2(E) of the LIP.

   f. Basements shall not be constructed in beachfront parcels. However, subterranean equipment vaults not containing habitable space may occupy a landward area of a beachfront parcel that is not required for the construction of the onsite wastewater treatment system and as long as the vault does not require a shoreline protection structure.

4. Subterranean Garages. The square footage of a subterranean garage shall be exempt from the calculation of total development square footage (TDSF).

   a. All subterranean garages shall be limited to one floor level not to exceed 12 feet in height.

   b. A subterranean garage shall be located beneath or partially beneath the first floor footprint above.

   c. Any portion of a subterranean garage wall extending beyond the first floor footprint above shall be non-daylighting.

d. A subterranean garage shall be allowed only one opening for vehicular ingress and egress with a maximum continuous width of 36 feet, not including up to two support columns not exceeding 18 inches in width each.

e. Except for lots with a subterranean garage having an entry not facing and not visible from an abutting street frontage, only one story shall be located above the opening for vehicular ingress and egress for a width equal to the width of said opening.

f. Any grading required for that portion of a subterranean garage not under the first floor footprint above shall be subject to the provisions of Chapter 8 of the LIP.

g. Those areas of a subterranean garage that extend beyond the first floor footprint above shall be subject to the impermeable coverage development standards contained in Section 3.6.2(E) of the LIP.

h. Subterranean garages shall not be constructed on beachfront parcels.

5. Cellars. The square footage of a cellar shall be included in the calculation of total development square footage (TDSF), consistent with the following formula: the initial 1,000 square feet of the cellar area shall not count toward TDSF; additional area in excess of 1,000 square feet shall be included in the calculation of TDSF at ratio of 1 square foot for every 2 square feet proposed.

a. All cellars shall be subject to the impermeable coverage development standards contained in Section 3.6.2(E) of the LIP.

b. Any grading required for the development of a cellar shall be subject to the provisions of Chapter 8 of the LIP.

c. All cellars shall be limited to one floor level not to exceed 12 feet in height.

d. Cellars shall not be constructed on beachfront parcels.

6. Combinations of Basements and Cellars ~~and/or Subterranean Garages~~. If any combination of basements and cellars~~, and/or subterranean garages~~ is proposed, the initial 1,000 square feet of the combined area shall not count toward total development square footage (TDSF). Any additional area in excess of 1,000 square feet shall be included in the calculation of TDSF at ratio of 1 square foot for every 2 square feet proposed.

~~C. Development Area. Every residential development shall be contained within a convex-shaped enclosure that shall not exceed 2 acres, except where otherwise restricted by~~

~~provisions of the ESHA Overlay Chapter (Chapter 4), Scenic and Visual Resources Chapter (Chapter 6), or Grading Chapter (Chapter 8) of the Malibu LIP.~~

~~D. Impermeable Coverage. Use of permeable surfaces is encouraged, especially for driveways. However, including the primary structure, impermeable surfaces are permitted for residential lot areas (excluding slopes equal to or greater than 1:1), up to 1/4 acre at 45%; for lot areas greater than 1/4 acre but a 1/2 acre or less, at 35% and for lots greater than 1/2 acre at 30% up to a maximum of 25,000 square feet. Beachfront lots shall be exempt from the impermeable coverage provisions of this paragraph.~~

C. Landscaping and Site Permeability. 25% of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to landscaping. The required 5 foot landscape buffer around the perimeter of parking areas pursuant to Section 3.12.5(E)(1) of the Malibu LIP shall count toward the 25% requirement. An additional 5% of the lot area (excluding slopes equal to or greater than 1:1 and street easements) shall be devoted to permeable surfaces.

D. Private Open Space. All units shall have an appurtenant private patio, deck, balcony, atrium, or solarium with a minimum area of private open space for each of the following unit types:

1. Two or more bedrooms shall have a minimum of 150 square feet.

2. One-bedroom units shall have a minimum of 130 square feet.

3. Studios and efficiency units **TO BE DETERMINED.**

4. Single room occupancy units **TO BE DETERMINED.**

Such space shall have a configuration that would allow a horizontal rectangle of one hundred (100) square feet in area and no side shall be less than seven feet in length. Such space shall have at least one electrical outlet.

E. Private Storage Space. Each unit shall have at least 400 cubic feet of enclosed, weather-proofed, and lockable storage space for the sole use of the unit resident, in addition to customary storage space within the unit.

3.6.4. Mixed Use Development Standards.

PLACEHOLDER

Table B-4
Multi-Family Sites Inventory

APN	Address	Street	Parcel Size (acres)	Parcel Size (sq.ft.)	Zone	Realistic Density (units/acre)	Potential Units	
							Lower	Moderate
4450025041		LAS FLORES CANYON RD	0.1533	6,678	MF	6		1
4460019024	26544	LATIGO SHORE DR	0.8900	38,768	MF	6		5
4459016001	25222	MALIBU RD	0.1476	6,429	MFBF	23	3	
4459017005	25360	MALIBU RD	0.1810	7,884	MFBF	23	4	
4450005041		PACIFIC COAST HWY	0.1134	4,940	MFBF	23	2	
4451023022		PACIFIC COAST HWY	0.1724	7,510	MF	6		1
4451023023		PACIFIC COAST HWY	0.0872	3,798	MF	6		1
4467013022		PACIFIC COAST HWY	5.1196	223,008	MF	6		30
4450003012	20222	PACIFIC COAST HWY	0.0660	2,879	MFBF	23	1	
4450007033	20742	PACIFIC COAST HWY	0.1336	5,820	MFBF	23	3	
4450007030	20758	PACIFIC COAST HWY	0.1795	7,819	MFBF	23	4	
4450008041	20838	PACIFIC COAST HWY	0.0876	3,816	MFBF	23	2	
4451020002		RAMBLA PACIFICO	0.0325	1,416	MF	6		1
4451022002		RAMBLA PACIFICO	0.1859	8,098	MF	6		1
4451022021		RAMBLA PACIFICO	0.2369	10,319	MF	6		1
4451022022		RAMBLA PACIFICO	0.2011	8,760	MF	6		1
4451022024		RAMBLA PACIFICO	0.0812	3,537	MF	6		1
4451022028		RAMBLA PACIFICO	0.1005	4,378	MF	6		1
4451022063		RAMBLA PACIFICO	0.1157	5,040	MF	6		1
4451022023	3833	RAMBLA PACIFICO	0.1864	8,120	MF	6		1
4451022062	3859	RAMBLA PACIFICO	0.2313	10,075	MF	6		1
4451022061	3861	RAMBLA PACIFICO	0.4123	17,960	MF	6		2
4451022004	3863	RAMBLA PACIFICO	0.1574	6,856	MF	6		1
4451022003	3865	RAMBLA PACIFICO	0.1772	7,719	MF	6		1
4451021010		RAMBLA VISTA	1.0900	47,480	MF	6		6
4451022019		RAMBLA VISTA	0.2952	12,859	MF	6		1
4451022017	21331	RAMBLA VISTA	0.2685	11,696	MF	6		1
4460009001		SYCAMORE MEADOWS DR	0.0032	139	MF	6		1
		TOTALS	11.1065	483,801			19	60

Source: City of Malibu, 10/2011

Table B-5
Candidate Affordable Housing Sites

APN	Address	Site Size	General Plan Zoning	LCP Zoning	Existing Use	Owner Interest in Use for Housing	Potential Units (20 units/acre)
4467-013-022 & -023	28517 Pacific Coast Hwy / Not assigned	5.12 & 0.74 (5.86 total)	MF	MF	The larger of the two parcels is vacant and the smaller is developed with a 3,000 sq. ft. single-family residence which was constructed in 1958.	The property owner has indicated an interest in using this property for housing.	116
4467-012-005	28401 Pacific Coast Hwy	3.25	MF	MF	The parcel is developed with a 2,550 sq. ft. single-family residence which was constructed in 1957.		65
4458-021-003	3542 Coast View Dr / (Allied Nursery)	6.99	CC	CC	The parcel is developed with a 2,140 sq. ft. single-family residence which was constructed in 1960 and a commercial nursery.	The property owner has approached the City of Malibu to discuss the use of this parcel to construct workforce housing for Pepperdine University.	139
4458-021-005	23833 Stuart Ranch Rd / (Yamaguchi)	10.22	CC	CC	Vacant	The property owner has indicated an interest in using this property for housing and/or commercial development.	204
4458-022-012	23801 Stuart Ranch Rd	6.45	CC	CC	Vacant		129
4458-022-019	Not assigned (Wave property)	8.48	CC	CC	Vacant	The property owner has indicated an interest in housing development on this property.	169
4458-022-023/024	3700 La Paz Lane	2.3	CC	CC	Vacant	The property is being donated to the City of Malibu as a result of a development agreement. The City Council has expressed interest in using this site for affordable housing.	46

Malibu Municipal Code Section 17.66.080 – Conditional Use Permit Findings

The commission may approve and/or modify a conditional use permit application in whole or in part, with or without conditions, provided that all of the following findings of fact are made in a positive manner:

A. The proposed use is one conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of this title.

B. The proposed use would not impair the integrity and character of the zone in which it is to be located.

C. The subject site is physically suitable for the type of land use being proposed.

D. The proposed use is compatible with the land uses, if any, presently on the subject property and in the surrounding neighborhood.

E. The proposed use would be compatible with existing and future land uses within the zone and the general area in which the proposed use is to be located.

F. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

G. There would be adequate provisions for public access to serve the subject proposal.

H. The proposed use is consistent with the goals, objectives, policies, and general land uses of the Malibu general plan, or, if the general plan is not yet adopted, that: (1) the project will not adversely affect the city's ability to prepare a general plan; (2) the project is likely to be consistent with the general plan being prepared; (3) even if the project is ultimately inconsistent with the general plan, there is no probability of a substantial detriment to or interference with the future adopted general plan; and (4) the city is proceeding toward completion of a general plan in a timely manner.

I. The proposed project complies with all applicable requirements of state and local law.

J. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

K. If the project is located in an area determined by the city to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 09/11/12

Item 3

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: August 28, 2012 **Meeting date:** September 11, 2012

Subject: Reasonable Accommodation Ordinance

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the draft Reasonable Accommodation Ordinance which will be included as an amendment to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 3.2 – Remove Regulatory Barriers to Affordable Housing and Housing for Persons with Special Needs, set forth in the General Plan Draft Housing Element Update.

DISCUSSION: On November 28, 2011, the City Council directed staff to forward a copy of the draft Housing Element Update to the California Department of Housing and Community Development to begin the certification process. As part of the draft Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA).

The Council directed staff to present the draft amendments necessary to implement the programs of the draft Housing Element Update to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting final amendment language for the Council to review.

On July 27, 2012, the City of Malibu received approval (preliminary certification) of its Draft Housing Element Update from the California Department of Housing and Community Development (HCD). HCD found that the Draft Element will comply with

housing element law (Article 10.6 of the Government Code) when adopted by the City Council (via approval of the amendment to the General Plan). If the Final Housing Element adopted by the City Council is consistent with the Draft Housing Element, the City will receive final certification.

Program 3.2, included in the Draft Housing Element Update, complies with Housing Element law (Government Code Section 65583(c)(3)) which requires the adoption of programs that remove constraints or provide reasonable accommodations for housing designed for persons with disabilities, pursuant to Senate Bill (SB) 520. Refer to Attachment 1 for a memo on SB 520, prepared by HCD. To ensure compliance with SB 520, staff has drafted a reasonable accommodation ordinance which will apply to all residentially developed properties (Attachment 2).

The ordinance creates an administrative procedure for persons with disabilities to request reasonable accommodation from land use and zoning standards or procedures, when those standards or procedures are a barrier to equal housing access, pursuant to state and federal Fair Housing laws.

CONCLUSION: Staff will consider the Subcommittee's recommendations for incorporation into the draft amendment language. The amendments to the M.M.C. and LCP will be forwarded to the Planning Commission for review and recommendation before going to the City Council for approval. Upon approval by the City Council, the amendment to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENTS:

1. Senate Bill 520 Memo
2. Draft Reasonable Accommodation Ordinance

Chapter 671, Statutes of 2001
(Senate Bill 520)

Section 1 of Chapter 671 of 2001 statutes (SB 520) imparts the following:

> *It is the intent of the legislature in enacting this act only to clarify existing state requirements and not to establish any new reimbursable state mandate.*

In addition, Chapter 671 amends two areas of planning and land use law within the Government Code: Chapter 1 - General Provisions (Section 65008) and Chapter 3 – Local Planning (Article 10.6, starting with Section 65580), specifically, as follows, excluding minor clean-up amendments.

Government Code Section 65008 Excerpts (additions or changes in italics/underlined and deletions indicated by asterisks)

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the *individual* or group of individuals. *For purposes of this section, both of the following definitions apply:*
(A) "Familial status" as defined in Section 12955.2.
(B) "Disability" as defined in Section 12955.3.
(2) The method of financing of any residential development of the individual or group of individuals.
(3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability*, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) Omitted – Chapter 671 did not have major changes to this subsection

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

(2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, *familial status, disability,* or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(e-g) – Omitted - Chapter 671 did not have major changes to these subsections

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

Government Code Section 65583, Excerpts from Housing Element Law (additions or changes in italics/underlined and deletions indicated by asterisks)

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1 - 3) *Omitted – Chapter 671 did not have major changes to these subsections.*

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels *and for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a),* including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 *and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).*

(5) *Omitted – Chapter 671 did not have major changes to this subsection.*

(6) An analysis of any special housing needs, such as those of the *** "handicapped" omitted*** elderly, *persons with disabilities,* large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7 - 8) *Omitted – Chapter 671 did not have major changes to these subsections.*

(b) *Omitted – Chapter 671 did not have major changes to this subsection.*

(c) *Omitted – Chapter 671 did not have major changes to this subsection.*
(1-2) *Omitted – Chapter 671 did not have major changes to this subsection.*

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, *including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.*

(4) *Omitted – Chapter 671 did not have major changes to this subsection.*

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, *** "or" omitted*** color, *familial status, or disability.*

(6) *Omitted – Chapter 671 did not have major changes to this subsection.*

(d-e) *Omitted – Chapter 671 did not have major changes to these subsections.*

Chapter 671, Statutes of 2001
(Senate Bill 520)

IMPLEMENTATION ISSUES

The following is a list of potential issues in a question and answer format to assist localities in implementing the provisions of Chapter 671 (SB 520).

Question #1: What requirements does Chapter 671 add to the housing element process?

Answer: Prior to January 1, 2002 local governments were required to include an analysis of special housing needs in the housing element, including the needs of handicapped persons. SB 520 requires that in addition to the needs analysis for persons with disabilities, the housing element must analyze potential governmental constraints to the development, improvement and maintenance of housing for persons with disabilities and to include a program to remove constraints to, or provide reasonable accommodations for housing designed for occupancy by, or with supportive services for persons with disabilities.

Question #2: What does the law mean by "housing designed for occupancy by, or with supportive services for, persons with disabilities"?

Answer: The new law incorporates the definition of "disability" from the California Fair Employment and Housing Act, Government Code Section 12955.3. See the attached pertinent sections of the Government Code. Housing designed for occupancy by, or with supportive services for persons with disabilities includes a wide range of housing types. For example, housing that is physically accessible to people with mobility impairments, residential care facilities for individuals with disabilities or for the elderly, group homes, housing for individuals with Alzheimer's, housing for persons with AIDS/HIV, housing with support services and transitional housing that serve homeless with disabilities are within the meaning of "housing designed for occupancy by, or with supportive services for, persons with disabilities."

Question #3: Does Chapter 671 apply to jurisdictions that adopted elements prior to January 1, 2002?

Answer: No. The new law applies to any jurisdiction that adopts a housing element after January 1, 2002.

Question #4: What does the law require of a jurisdiction, as part of its governmental constraints program?

Answer: The law requires local governments to remove constraints to housing for persons with disabilities or provide reasonable accommodation to housing for persons with disabilities. Among other things, provisions in a local government's zoning and land use ordinances which restrict or limit housing for persons with disabilities should be identified in the jurisdiction's analysis of potential and actual governmental constraints to housing for persons with disabilities. The Department will be developing a list of examples to assist jurisdictions in the implementation of this requirement. In the meantime, the California Attorney General issued a letter on May 15, 2001 to all mayors and the County Supervisors Association of California that could be useful in understanding "reasonable accommodation" in the zoning and land use context. A copy of this has been attached for your reference.

Question #5: Are there examples of "reasonable accommodation" ordinances that local governments have adopted in California recently?

Answer: While adopting a reasonable accommodation ordinance is not the only means of complying with the provisions of Chapter 671, the Attorney General's Letter cites examples of local ordinances, Long Beach and San Jose, and includes a reference to an organization that can provide more examples.

Housing Accessibility – Reasonable Accommodation for Disability.

1. Purpose and Applicability.

   a. This section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Fair Housing Laws in the application of zoning laws, building codes and other land use regulations, policies or procedures. Fair Housing Laws means "Fair Housing Amendments Act of 1988" (42 USC Section 3601, et seq.), including reasonable accommodation required by 42 USC Section 3604(f)(3)(B) and the "California Fair Employment and Housing Act" (California Government Code Section 12900, et seq.), including reasonable accommodation required specifically by California Government Code Sections 12927(c)(1) and 12955(I), as any of these statutory provisions now exist or may be amended from time to time.

   b. A request for reasonable accommodation may be made by any person with a disability, his/her representative or any business or property owner when the application of a zoning law, building code provision or any other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment, as those terms are defined in the Fair Housing Laws.

   c. A request for reasonable accommodation may include a modification or exception to the rules, standards, practices for the siting, development and use of housing or housing related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by this section.

   d. It is the intent of this section that, notwithstanding time limits provided to perform specific functions, application review, decision making and appeals proceed expeditiously, especially where the request is time sensitive, and so as to reduce impediments to equal access to housing.

2. Application Submittal.

   a. Any person with a disability may request a reasonable accommodation on a form supplied by the Planning Department including the following information, accompanied by a fee established by resolution of the City Council:

      i. The applicant's and/or property owner's name, mailing address, daytime phone number and email address;

      ii. The address of the property for which the request is being made;

iii. The specific code section, regulation, procedure or policy of the City from which relief is sought;

iv. A site plan or illustrative drawing showing the proposed accommodation;

v. An explanation of why the specified code section, regulation, procedure or policy is preventing, or will prevent, the applicant's use and enjoyment of the subject property;

vi. The basis for the claim that Fair Housing Laws apply to the individual(s) and evidence satisfactory to the City supporting the claim, which may include a letter from a medical doctor or other licensed heath care professional, a handicapped license or any other appropriate evidence;

vii. A detailed explanation of why the accommodation is reasonable and necessary to afford the applicant an equal opportunity to use and enjoy a dwelling in the City;

viii. Verification by the applicant that the property is the primary residence of the person(s) for whom reasonable accommodation is requested; and

ix. Any other information required to make the findings required by subsection 4 of this Section consistent with the Fair Housing Laws.

b. A request for reasonable accommodation may be filed at any time that the accommodation may be necessary to ensure equal access to housing. If the project for which the request for reasonable accommodation is being made also requires a discretionary approval (including, but not limited to: conditional use permit, site plan review, etc.), then the applicant shall file the application submittal information together with the application for discretionary approval for concurrent review.

c. A reasonable accommodation does not affect or negate an individual's obligations to comply with other applicable regulations not at issue with the requested accommodation.

d. If an individual needs assistance in making the request for reasonable accommodation, the City shall provide assistance to ensure that the process is accessible.

3. Reviewing Authority.

a. Applications for reasonable accommodation shall be reviewed by the Planning Director (Director) or his/her designee, if no approval is sought other than the request for reasonable accommodation. The Director may, in his/her discretion, refer applications that may have had a material effect

on surrounding properties (e.g., location of improvements in the front yard, would violate a specific condition of approval, improvements are permanent) directly to the Planning Commission for a decision.

b. Applications for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

4. Findings.

The reviewing authority shall approve the request for a reasonable accommodation if, based upon all of the evidence presented, the following findings can be made:

a. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with disabilities protected under the Fair Housing Laws;

b. The requested accommodation is reasonable and necessary to make housing available to an individual with disabilities protected under the Fair Housing Laws;

c. The requested accommodation will not impose an undue financial or administrative burden on the City; and

d. The requested accommodation will not require a fundamental alteration in the nature of the City's zoning or building laws, policies and / or procedures.

5. Decision.

a. The Director shall consider an application, and issue a written determination within 30 calendar days of the date of receipt of a completed application. At least 10 calendar days before issuing a written determination on the application, the Director shall mail notice to the applicant and all adjacent property owners that the City will be considering the application and inviting written comments on the requested accommodation.

b. After referral from the Director, the Planning Commission shall consider an application at the next reasonably available public meeting after submission of an application for reasonable accommodation. The Commission shall issue a written determination within 40 calendar days after such public meeting.

c. Notice of Planning Commission meeting to review and act on the application shall be made in writing, 10 calendar days prior to the meeting and mailed to the applicant and the adjacent property owners.

d. If necessary to reach a determination on any request for reasonable accommodation, the review authority may request further information from the applicant consistent with this Section, specifying in detail what information is required. In the event a request for further information is made, the applicable time period to issue a written determination shall be stayed until the applicant reasonable responds to the request.

e. The review authority's written decision shall set forth the findings, any conditions or approval, notice of the right to appeal and the right to request reasonable accommodation on the appeals process, if necessary. The decision shall be mailed to the applicant, and when the approving authority is the Director, to any person having provided written or verbal comment on the application.

f. The reasonable accommodation shall be subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this Section. The reasonable accommodation may include conditions that the accommodation shall only be applicable to the particular individual(s) or property, or that any change in use or circumstances that negates the basis for the granting of the approval shall render the reasonable accommodation null and void and / or revocable by the City, and thereafter the reasonable accommodation may be required to be removed or substantially conformed to the code if reasonably feasible.

g. The written decision of the reviewing authority shall be final unless appealed in the manner set forth in subsection 6 of this Section.

h. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

i. Where the improvements or modification approved through reasonable accommodation would generally require a variance, a variance shall not be required.

6. Appeals.

a. The decision of the Director on a reasonable accommodation may be appealed to the Planning Commission within 10 calendar days of the Director's issuance of a written decision.

b. The decision of the Planning Commission on a reasonable accommodation may be appealed to the City Council within 10 calendar days of the Commission's issuance of a written decision.

c. The appeal shall be made in writing including a statement of the grounds for appeal, and accompanied by a fee established by resolution of the City Council.

d. The Planning Commission or the City Council, as applicable, shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than 90 calendar days after an appeal has been filed. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.

e. The City shall provide notice of an appeal hearing to the applicant, adjacent property owners and any other person requesting notification at least 10 calendar days prior to the hearing. The appeal authority shall announce its findings within 30 calendar days of the hearing, unless good cause is found for an extension, and the decision shall be mailed to the applicant. The Council's action shall be final.

f. If an individual needs assistance in filing an appeal on an adverse decision, the City shall provide assistance to ensure that the appeals process is accessible.

7. Waiver of Time Periods. Notwithstanding any provisions in this Section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this Section or may request a continuance regarding any decision or consideration by the City of a pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City, shall not constitute failure by the City to provide for prompt decisions on applications and shall not be a violation of any required time period set forth in this Section.

8. Discontinuance. Unless the review authority determines a reasonable accommodation runs with the land, a reasonable accommodation shall lapse if the rights granted by it are discontinued for 180 consecutive days. If the person initially occupying a residence or business vacate, the reasonable accommodation shall remain in effect only if the Director determines that:

a. The modification is physically integrated into a structure and cannot easily be removed or altered to comply with Title 17 of the Municipal Code;

b. Its removal would constitute an unreasonable financial burden; and

c. The accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling or business.

The Director may request the applicant or his or her successor-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within 10 days of the date of a request by the Director shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

Malibu City Council
Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES)
Special Meeting Agenda

Monday, October 1, 2012, 9:00 a.m.
Malibu City Hall – Zuma Room
23825 Stuart Ranch Road

Councilmember Skylar Peak
Councilmember John Sibert

Call to Order

Approval of Agenda

Public Comment

This is the time for members of the public to comment on any items not appearing on this agenda. Each public speaker shall be allowed up to 3 minutes each for comments. The Subcommittee may not discuss or act on any matter not specifically identified on this agenda, pursuant to the Ralph M. Brown Act.

Discussion Items

1. Multi-Family Use Parking Requirements

   Staff recommendation: Provide comments and recommendations to staff regarding proposed changes to Malibu's parking requirements for multi-family dwellings set forth in Malibu Municipal Code (M.M.C.) Section 17.48 and Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 3.12.

   Staff contact: Associate Planner Mollica, 310-456-2489, ext. 346

2. Affordable Housing Overlay District

   Staff recommendation: Provide comments and recommendations to staff regarding the draft Affordable Housing Overlay District which will be included as an amendment to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 2.2 – Ensure Adequate Capacity to Accommodate Regional Housing Needs by facilitating new affordable housing development, set forth in the General Plan Draft Housing Element Update.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

3. Density Bonus Ordinance and the Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance

   Staff recommendation: Provide comments and recommendations to staff regarding: 1) the draft Density Bonus Ordinance; and 2) the draft Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance which will be included as amendments to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 2.4 – Density Bonus Ordinance, and Program 1.5 – Conserve Affordable Housing in the Coastal Zone, set forth in the General Plan Draft Housing Element Update.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

4. Residential Care Facilities, Emergency Shelters, Transitional and Supportive Housing, and Single Room Occupancy Housing

   Staff recommendation: Provide comments and recommendations to staff regarding the draft language to add residential care facilities, emergency shelters, transitional and supportive housing, and single room occupancy (SRO) facilities as permitted uses in specified zoning districts to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 3.2 – Remove Regulatory Barriers to Affordable Housing and Housing for Persons with Special Needs, set forth in the General Plan Draft Housing Element Update.

   Staff contact: Senior Planner Danner, 310-456-2489, ext. 276

Adjournment

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 25th day of September 2012.

Mary Linden, Executive Assistant

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 10/01/12

Item 1

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Richard Mollica, AICP, Associate Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: September 20, 2012 **Meeting date:** October 1, 2012

Subject: Multi-Family Use Parking Requirements

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding proposed changes to Malibu's parking requirements for multi-family dwellings set forth in Malibu Municipal Code (M.M.C.) Section 17.48 and Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 3.12.

DISCUSSION: As part of the General Plan Housing Element Update goal to remove barriers to affordable multi-family development, staff has reviewed the current parking requirements for multi-family development to determine whether they pose a barrier. Staff found that the existing requirements present a barrier to new development because the number of parking spaces required for multi-family use is quite large and would monopolize a sizeable portion of the project site.

Malibu's current parking requirements for multi-family development are as follows:

- For each efficiency dwelling unit: 2 spaces which shall be either enclosed or covered;
- For each one-bedroom or two-bedroom unit: 3 spaces, 2 of which shall be enclosed;
- For each additional bedroom above two: 1 space which shall be enclosed or covered; and
- Guest parking for each four units or fraction thereof: 1 space.

Staff reviewed Malibu's current parking requirements for multi-family development and compared them to other cities which have similar demographics and constraints as the City of Malibu. In addition, City staff also reviewed neighboring cities as part of this analysis.

Below is a summary of parking requirements for multi-family development in other cities studied.

City of Calabasas:	Studio unit – 1 covered space per unit One bedroom unit – 1.5 spaces per unit, 1 of which shall be covered Two bedrooms or more – 2 spaces per unit, plus 0.5 addition spaces for each bedroom over two; 1 of every 2 required spaces shall be covered Guest parking – 1 space per three units
City of Dana Point:	One bedroom or less – 1 covered space, 0.5 uncovered spaces, and 0.2 visitor spaces Two bedrooms - 1 covered space, 1 uncovered space, and 0.2 visitor spaces Three bedrooms - 2 covered spaces, 0.5 uncovered spaces, and 0.2 visitor spaces More than three bedrooms - 2 covered spaces, 0.5, plus 0.5 uncovered spaces, and 0.2 visitor spaces
City of Laguna Beach:	Studio or one bedroom unit - 1.5 spaces Two or more bedroom unit - 2 spaces Guest parking - 1 space for 4 units and every 4 thereafter *At least 50 percent of the spaces must be covered. Of the covered and uncovered spaces, 50 percent of each may be compact-sized *Exceptions: 1) Artist's joint living and working quarters need not provide covered spaces; and 2) the city may reduce or waive parking requirements for housing projects with units committed to long-term, low-income or senior citizen's housing, as defined under the Federal Government Section 8 Housing or its equivalent
City of Santa Monica:	Studio, no bedrooms - 1 covered space One bedroom unit - 1.5 spaces Two or more bedroom unit - 2 spaces Guest parking - 1 space per five units, only applies to projects of five or more units
City of Simi Valley:	1.76 spaces per 1,000 square feet of gross residential floor area; plus 0.17 space per unit, one of which shall be

covered; plus guest parking at 1 space per five dwelling units or 2.5 spaces per dwelling unit, whichever requires more for the total project

The chart below compares Malibu's parking requirements to the other cities that were surveyed. In order to present a visual representation of how the parking for each city studied would work in a real world situation, staff created the following Sample Project.

10-unit building with a floor area equal to approximately 9,000 square feet.

- Five, 1 bedroom units
- Four, 2 bedroom units
- One, 3 bedroom unit

Table 1 – Parking Standards Comparison for the Sample Project

City	No. of Required Standard Parking Spaces	Required Guest Parking Spaces	Total Parking Spaces Required	Comments
City of Malibu	*31*	*3*	*34*	*21 parking spaces would have to be covered*
Calabasas	18	4	22	10 parking spaces would have to be covered
Dana Point	18	2	20	11 parking spaces would have to be covered
Laguna Beach	18	3	21	11 parking spaces would have to be covered
Santa Monica	17.5	2	19.5	5 parking spaces would have to be covered
Simi Valley	See Note 2	See Note 2	25	10 parking spaces would have to be covered

Note 1: All parking requirements are rounded to next whole number.
Note 2: The City of Simi Valley calculates the required parking two ways, one is on a per dwelling and building size basis. The other is a requirement of 2.5 spaces per dwelling unit. The applicant is required to comply with whichever results in more parking. In this example, 2.5 spaces per unit results in more parking.

As demonstrated by Table 1, Malibu would require the highest number of parking spaces, a total of 34 spaces for a 10 unit building, for the Sample Project. If placed side by side, the parking required for the 9,000 square foot building would be equivalent to 6,120 square feet (based upon 9 foot by 20 foot spaces), or 68 percent of the floor area (not including drive aisles or loading areas required by LIP Section 3.12.5 (Development Standards which apply to parking areas with six or more spaces). Conversely, Table 1 shows that the majority of the other cities studied have similar parking requirements, which are approximately 10 spaces lower than Malibu's.

Staff recommends that City consider adopting multi-family development parking requirements similar to the cities of Calabasas, Dana Point and Laguna Beach. At this time, staff requests input from the Subcommittee on the appropriateness of amending the City's parking standards for multi-family development.

Additionally, staff requests input regarding the potential to further reduce or waive parking requirements on a case-by-case basis for specific housing projects with units committed to long-term, low-income, senior citizens or special needs, e.g., as defined under the Federal Government Section 8 Housing, similar to what occurs in the City of Laguna Beach.

According to the Southern California Association of Non-Profit Housing, parking requirements can cause the following problems for affordable housing developers:

- Increases Development Costs – Parking requirements drive up the cost of development, resulting in less units of housing. Needing to spend more on parking means less funds are available to provide housing. Some developments end up having more space for cars than for people.
- Reduces the Potential for Other Amenities and Uses, Wastes Land – Parking requirements also mean that less money and land is available for other purposes. Childcare facilities, community rooms, and play areas may all be sacrificed in order to accommodate parking. The possibility for mixed-use, such as ground floor retail, are also reduced, leaving other community needs unmet in the name of parking.
- Less Attractive Designs – Meeting parking requirements becomes a focal point in the design process and eliminates opportunities to incorporate open space. With less parking to consider, a building can be designed that more reflects a neighborhood's context and needs.

The likely residents of affordable housing do not require a great deal of parking. Studies show that the correlation between income and vehicle ownership is strong, with the likelihood of owning more than one vehicle increasing with income. Low-income families, seniors, and special needs populations are less likely to require the use of more than one parking space, if that at all. The need for parking also decreases for residents in areas near transit.

CONCLUSION: Staff will consider the Subcommittee's recommendations for incorporation into the draft amendment language. The amendments to the M.M.C. and LCP will be forwarded to the Planning Commission for review and recommendation before going to the City Council for approval. Upon approval by the City Council, the amendment to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENTS: None.

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 10/01/12

Item 2

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: September 20, 2012 **Meeting date:** October 1, 2012

Subject: Affordable Housing Overlay District

RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the draft Affordable Housing Overlay District which will be included as an amendment to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 2.2 – Ensure Adequate Capacity to Accommodate Regional Housing Needs by facilitating new affordable housing development, set forth in the General Plan Draft Housing Element Update.

BACKGROUND: On November 28, 2011, the City Council directed staff to forward a copy of the draft Housing Element Update to the California Department of Housing and Community Development (HCD) to begin the certification process. As part of the draft Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA).

The Council directed staff to present the draft amendments necessary to implement the programs of the draft Housing Element Update to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting final amendment language for the Council to review (refer to Attachment 1 for a table listing all the implementation actions set forth in the Draft Update).

On July 27, 2012, the City of Malibu received approval (preliminary certification) of its Draft Housing Element Update from HCD. HCD found that the Draft Element will

comply with housing element law when adopted by the City Council (via approval of the amendment to the General Plan). If the Final Housing Element adopted by the Council is consistent with the Draft Housing Element, the City will receive final certification.

DISCUSSION:

What is an Affordable Housing Overlay Zoning District?

Based on carrots rather than sticks, Affordable Housing Overlay (AHO) zoning districts encourage the production of affordable homes rather than requiring it. They are called "overlay" zones because they layer on top of established base zoning regulations, leaving in place opportunities for property owners to develop within these existing rules. Rather than imposing restrictions, AHOs present developers with more choices by offering additional benefits to projects that increase the supply of affordable residential units.

Typically, AHO incentives include increased density, relaxed height limits, reduced parking requirements, fast-tracked permitting, and exemptions from mixed-use requirements. AHOs may also permit residential construction in zones otherwise restricted to commercial uses. In order to qualify for these incentives, developments must include a certain percentage of homes for lower income households, generally between 25 percent and 100 percent of the units.

What can a Housing Overlay Zone accomplish?

AHOs can benefit communities, local governments, land owners and developers. They can:

- Facilitate the development of affordable homes without added financial costs to governments or developers;
- Be tailored for individual jurisdictions, to meet their local needs;
- Provide entry into competitive real estate markets for non-profit developers;
- Ensure clarity and predictability of development standards and processes for both the community and developers;
- Encourage use of scarce land resources to better meet community needs; and
- Expand the amount of land available for homes people can afford.

Refer to Attachment 2 for Frequently Asked Questions and responses regarding AHOs.

Proposed AHO

Existing development standards in the multi-family (MF) zoning district limit density to six units per acre. In order to accommodate the City's lower-income housing need for

the 2008-2013 planning period[1], the Draft Housing Element Update proposes that the M.M.C. and LCP regulations be amended on parcels selected from the candidate sites listed in Table B-5 of the Housing Element (refer to Attachment 3) to allow multi-family or mixed-use development by-right at a minimum density of 20 units per acre for projects that include affordable housing.

The Draft Housing Element specifies that in order to qualify for the increased density incentive, all "bonus" units (i.e., additional units allowed above the base density of six units per acre) must be deed-restricted for low- and moderate-income households for a minimum of 30 years. The M.M.C. and LCP amendment should establish the required ratio of very-low-, low-, and moderate-income units in qualifying developments. In other jurisdictions where an AHO has been established, the required level of affordability ranges from 40 percent to 100 percent lower-income units (refer to Attachment 4 for a comparison chart).

Staff recommends a mix of low and moderate units to be allowed in the AHO. After researching the regulations of several cities, staff suggests implementing a 70 percent very-low and low to 30 percent moderate apportionment of the affordable units on parcels within the AHO.

In conformance with Government Code Section 65583.2(h-i), qualifying projects must accommodate at least 16 units per site, must be permitted by-right (i.e. without a discretionary permit), and at least 50 percent of the remaining lower-income need must be accommodated on sites where only residential development (i.e., not mixed use) is allowed. Development standards must be established to encourage and facilitate such development.

Any developer utilizing the increased density incentive shall be required to screen tenants or buyers for compliance with income limits and establish a monitoring system to ensure the unit's continued affordability. The City has the latitude to establish the minimum term of affordability, which typically ranges from 30 to 55 years.

Staff recommends implementing a 55 year term of affordability, which is the highest term of affordability found in the cities researched.

This program will create a strong incentive for affordable housing development because of the additional units allowed at 20 units per acre compared to what may be currently permitted at a base density of six units per acre. In addition to the allowable density of 20 units per acre, qualifying projects are eligible for a density bonus of up to 35 percent (i.e., 27 units per acre).

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[1] The total housing growth need for the City during the planning period is 441 units. This total is distributed by income category as follows: 115 very low, 73 low, 79 moderate, and 174 above moderate.

CONCLUSION: Staff will consider the Subcommittee's recommendations for incorporation into the draft AHO language. Key issues to be resolved are the required level and term of affordability for qualifying projects. Draft amendments to the M.M.C. and LCP will then be prepared for consideration by the Planning Commission and City Council. Upon approval by the City Council, the amendment to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENTS:

1. Housing Element Implementation Actions Table
2. Frequently Asked Questions about AHOs
3. Draft Housing Element Update Table B-5
4. Affordable Housing Overlay Comparison Table

Housing Element Implementation Actions
City of Malibu
September 2012

Action Item	Schedules	Status
Program 1.5 Conserve Affordable Housing in the Coastal Zone In accordance with *Government Code* Sec. 65590, amend the LCP and M.M.C. to require the replacement of low- or moderate-income units that have been removed from the coastal zone (either by demolition or conversion), whenever feasible.	General Plan, M.M.C. and LCP amendments by July 2013	
Program 2.2A Second Units 1. Develop a brochure to provide information on the City's second unit standards and incentives 2. Adopt a Second Unit Amnesty Program 3. Contact local service providers, including the Water District and School District, to pursue reduced development impact fees on second units dedicated for occupancy by lower-income households. Evaluate mechanisms to subsidize impact fees using local, state, and nonprofit sources, including the City's Affordable Housing Trust Fund. 4. Make available pre-approved second unit prototype plans	General Plan, M.M.C. and LCP amendments by July 2012	
Program 2.2B Affordable Housing Overlay Amend M.M.C. and LCP regulations on parcels selected from the candidate sites listed in Table B-5 to allow multi-family or mixed-use development by-right at a minimum density of 20 units/acre for projects that include affordable housing.	General Plan, M.M.C. and LCP amendments by July 2013	
Program 2.2C Reevaluate CUP Requirement on MF Developments The current requirement to obtain a Conditional Use Permit (CUP) for multi-family development in the Multi-Family (MF) and Multi-Family Beachfront (MFBF) zoning districts will be	General Plan, M.M.C. and LCP amendments by July 2013	

Action Item	Schedule	Status
reevaluated since the LCP requires more stringent findings for all coastal development permits for new residential development.		
Program 2.4 Density Bonus Ordinance In order to ensure consistency with state density bonus law, the LCP and M.M.C. will be amended in conformance with *Government Code* Section 65915.	General Plan, M.M.C. and LCP amendments within 1 year of Housing Element adoption	
Program 3.2A Residential Care Facilities Amend the LCP and M.M.C. to permit small licensed residential care facilities (maximum six residents) by-right in all residential zones, and larger care facilities (more than six residents) and similar innovative alternative living projects in the Civic Center area subject to a CUP where such projects would be compatible with the surrounding uses.	General Plan, M.M.C. and LCP amendments wthin one year of Housing Element adoption	
Program 3.2B Reasonable Accommodation Ordinance Amend the LCP and M.M.C. to establish administrative procedures for reviewing and approving requests for modifications to zoning and land use regulations that are necessary to accommodate the needs of persons with disabilities, such as universal design features and reasonable accommodation procedures.	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	
Program 3.2C Permanent Emergency Shelters Amend the LCP and M.M.C. to establish a definition and allow permanent emergency shelters as a permitted use by-right in the Commercial General (CG) and Institutional zoning districts subject to appropriate development standards consistent with Senate Bill (SB) 2.	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	
Program 3.2E. Transitional and Supportive Housing Amend the LCP and M.M.C. to clarify that transitional and supportive housing are residential uses that are subject only to the same regulations and procedures as other residential uses of the same type in the same zone.	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	

Action Item	Schedule	Status
Program 3.2F. Single Room Occupancy (SRO) Housing Amend the LCP and M.M.C. to identify appropriate locations and development standards to encourage and facilitate the production of SRO units, which can help to address the needs of seniors, college students, service workers and domestic employees with extremely-low incomes.	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	
Program 3.2G. Reduced Parking Requirements for Affordable Housing In order to enhance the feasibility of affordable housing development, amend the LCP and M.M.C. to allow reduced parking standards for qualifying affordable units pursuant to *Government Code* Sec. 65915 *et seq.*	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	
Program 3.2H. Farmworker Housing Amend the LCP and M.M.C. in conformance with the Employee Housing Act (*Health and Safety Code* Sec. 17021.5 and 17021.6).	General Plan, M.M.C. and LCP amendments by within one year of Housing Element adoption	

Affordable Housing Overlay Zoning District FAQs[1]

Have AHOs been implemented before or is this a new practice?

At least seven jurisdictions in California have implemented AHO policies. In Corte Madera, one of the earliest to adopt, the AHO policy has already led to a high-quality family apartment complex near jobs and transportation.

Have AHOs been successful in producing affordable housing?

While AHOs are still gaining in popularity, they have already produced homes that people can afford. In Corte Madera, for example, the developer, EAH Housing, relied on AHO incentives for a 79-unit family development that opened in 2007.

Won't land owners object if their property is rezoned for affordable housing?

AHOs do not involve re-zoning of land. Rather, they create an additional set of development options that land owners can choose to exercise at their discretion. Because existing zoning is left untouched, AHOs do not change existing development opportunities.

Doesn't California's Density Bonus Law already provide incentives for the construction of affordable homes?

California's Density Bonus Law provides for minimum incentives to encourage production of homes that people can afford, but AHOs can provide far greater incentives, as to the number, type and scope of incentives offered. They can offer density bonuses exceeding those provided through the Density Bonus Law, include other incentives such as parking reductions or fast track permitting, and set forth policies such as by-right development. They also create more certainty for developers by providing a full set of incentives at the same time and establishing local commitments to encourage specific types of housing.

Didn't the California courts limit the ability of local governments to require developers to build affordable homes? How is an AHO different from an Inclusionary Housing requirement?

Two 2009 Court of Appeal cases shed doubt on Inclusionary Housing and in-lieu fees related to rental housing. AHOs avoid the pitfalls of these cases because they do not require the production of affordable rental homes or payment of fees,

[1] Affordable Housing Overlay Zone Fact Sheet, www.publicadvocates.org, July 27, 2010.

as Inclusionary Housing policies do. Instead, AHOs offer incentives that developers can earn in exchange for producing this needed housing. Of course there is no need to choose one or another: AHO compliment Inclusionary Housing and other housing policies.

What does it take to make an AHO successful?

Organizing, technical assistance, and political will are all necessary to ensure that a local AHO becomes an effective tool for generating much needed homes that people from the local community can afford. Political buy-in and community support are also needed to make sure that the AHO policy has incentives strong enough to lead to real results.

Table B-5
Candidate Affordable Housing Sites

APN	Address	Site Size	General Plan Zoning	LCP Zoning	Existing Use	Owner Interest in Use for Housing	Potential Units (20 units/acre)
4467-013-022 & -023	28517 Pacific Coast Hwy / Not assigned	5.12 & 0.74 (5.86 total)	MF	MF	The larger of the two parcels is vacant and the smaller is developed with a 3,000 sq. ft. single-family residence which was constructed in 1958.	The property owner has indicated an interest in using this property for housing.	116
4467-012-005	28401 Pacific Coast Hwy	3.25	MF	MF	The parcel is developed with a 2,550 sq. ft. single-family residence which was constructed in 1957.		65
4458-021-003	3542 Coast View Dr / (Allied Nursery)	6.99	CC	CC	The parcel is developed with a 2,140 sq. ft. single-family residence which was constructed in 1960 and a commercial nursery.	The property owner has approached the City of Malibu to discuss the use of this parcel to construct workforce housing for Pepperdine University.	139
4458-021-005	23833 Stuart Ranch Rd / (Yamaguchi)	10.22	CC	CC	Vacant	The property owner has indicated an interest in using this property for housing and/or commercial development.	204
4458-022-012	23801 Stuart Ranch Rd	6.45	CC	CC	Vacant		129
4458-022-019	Not assigned (Wave property)	8.48	CC	CC	Vacant	The property owner has indicated an interest in housing development on this property.	169
4458-022-023/024	3700 La Paz Lane	2.3	CC	CC	Vacant	The property is being donated to the City of Malibu as a result of a development agreement. The City Council has expressed interest in using this site for affordable housing.	46

Affordable Housing Overlay Comparison Table

Jurisdiction	Applicable Zones	Required Affordability	Allowable Density*	Code Reference
Buellton (Santa Barbara County)	Specific parcels identified in ordinance	40% low / moderate (8% VL** min) 55 years (rental) 45 years (owner)	20 du*** / acre base 25 du / acre min.	Section 19.16.013
Capitola (Monterey County)	MFR	50% low / moderate (25% min. lower) 55 years	20 du / acre	Chapter 17.20
Corte Madera (Marin County)	Old Corte Madera Square	30% VL / 20% low / 50% moderate 55 years	25 du / acre	Section 18.18.600
Hermosa Beach	SP / Commercial	100% lower-income 40 years (rental) Permanent (owner)	33 du / acre	Section 17.42.130
Orange County	Commercial / Industrial Residential fronting on arterial highways	100% lower-income (70% low / 30% VL) 55 years	25 du / acre	Section 7-9-148 Housing Opportunities Overlay Zone
San Clemente	Commercial / Mixed-use	51% VL 30 years	24 du / acre	Section 17.28.035
Santa Paula	Commercial / Light industrial	20% VL / 40% low / 40% moderate 55 years	21 du / acre	Chapter 16.35

* Excluding density bonus
** VL = very low
*** du = dwelling unit
Note: This table does not represent an exhaustive list of California jurisdictions that have adopted affordable housing overlay districts, but is only intended to provide examples.

Source: J.H. Douglas & Associates

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 10/01/12

Item 3

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director

Date prepared: September 20, 2012 **Meeting date:** October 1, 2012

Subject: Density Bonus Ordinance and the Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance

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RECOMMENDED ACTION: Provide comments and recommendations to staff regarding: 1) the draft Density Bonus Ordinance; and 2) the draft Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance which will be included as amendments to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 2.4 – Density Bonus Ordinance and Program 1.5 – Conserve Affordable Housing in the Coastal Zone, set forth in the General Plan Draft Housing Element Update.

BACKGROUND: On November 28, 2011, the City Council directed staff to forward a copy of the draft Housing Element Update to the California Department of Housing and Community Development (HCD) to begin the certification process. As part of the draft Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA). The Council directed staff to present the draft amendments necessary to implement the programs of the draft Housing Element Update to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting final amendment language for the Council to review.

On July 27, 2012, the City of Malibu received approval (preliminary certification) of its Draft Housing Element Update from HCD. HCD found that the Draft Element will

comply with housing element law when adopted by the City Council (via approval of the amendment to the General Plan). If the Final Housing Element adopted by the City Council is consistent with the Draft Housing Element, the City will receive final certification.

DISCUSSION:

1. Density Bonus Ordinance

For many years, state law (Government Code Section 65915) has included a requirement for cities to allow increased density and other incentives for projects that include affordable housing. In 2004, this law was amended to increase the maximum density bonus to 35 percent when a project includes at least 20 percent low-income units or 11 percent very-low-income units, and also require incentives or concessions such as reductions in development standards for qualifying projects.

Density bonus law includes limited exceptions if a city finds that 1) a density bonus is not required to achieve affordability; 2) the density bonus would cause adverse impacts to public health or safety or to a historic resource; or 3) the density bonus would conflict with other state or federal law. In exchange for this density bonus, the developer must make the units affordable for at least 30 years. The law also includes incentives for other public benefits such as moderate-income for-sale units, senior housing, land donation, and provision of child care facilities.

The City's existing density bonus ordinance is located in LCP Local Implementation Plan (LIP) Section 3.7. The recommended amendment (Attachment 1) includes adding the text of LIP Section 3.7 to the M.M.C. for consistency purposes as well as updating outdated sections to conform to current state law.

2. Conversion or Demolition of Existing Affordable Units

In addition, a secondary item, the Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance, is proposed to be added to LIP Section 3.7. In accordance with Government Code Section 65590, the LCP and M.M.C. would be amended to require the replacement of low- or moderate-income units that have been removed (either by demolition or conversion), whenever feasible.

CONCLUSION: Staff will consider the Subcommittee's recommendations for incorporation into the draft amendment language. The amendments to the M.M.C. and LCP will be forwarded to the Planning Commission for review and recommendation before going to the City Council for approval. Upon approval by the City Council, the amendment to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENT: 1. Draft Density Bonus Ordinance and Conversion or Demolition of Existing Affordable Residential Dwelling Units Ordinance

3.7. AFFORDABLE HOUSING

3.7.1. RESIDENTIAL DENSITY BONUS ORDINANCE

A. Purpose and Intent.

The purpose of this section is to implement the incentive programs provided in the State density bonus regulations (Government Code Sections 65915 through 65918) in order to provide additional opportunities for the provision of affordable housing within the City of Malibu. The intent of the following regulations is to ensure that, to the maximum extent feasible, the provisions of Government Code Sections 65915 through 65918 are implemented 1) in a manner that is consistent with the policies of the City of Malibu General Plan, and 2) in a manner that is consistent with the certified Local Coastal Program land use policies and zoning ordinance provisions.

B. Applicability.

This section applies to any "housing development," as defined in Government Code Section 65915(i), when the development is for the type of housing specified in Government Code Section 65915(b)(1), (b)(2) or (b)(3). This section allows developers of certain types of residential projects that comply with all standards set forth in Government Code Section 65915, to build no more than 35 percent more units than a property's zoning would ordinarily allow when a project includes at least 20 percent low-income units or 11 percent very-low-income units. In exchange for this density bonus, the owners must make the units affordable for 30 years.

C. Protection of Coastal Resources.

Within the Coastal Zone, any housing development approved pursuant to Government Code Section 65915 (as modified to include a density bonus, incentives, or concessions) shall be consistent with all applicable Local Coastal Program policies and development standards. Further, the City shall grant the incentive or concession to accommodate the density increase in compliance with this section unless the requested incentive or concession will have an adverse effect on coastal resources. If, however, the City determines that the requested or concession will have an adverse effect on coastal resources, before approving a density increase, the City shall identify all feasible alternative incentives and concessions and their effects on coastal resources. The City shall grant one or more of those alternatives that avoids adverse impacts to coastal resources to the extent feasible.

For the purposes of this section, "coastal resources" means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code Section 30200 et seq., including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, and the visual quality of coastal areas.

D. Filing Requirements.

In addition to other filing requirements in the Local Coastal Program, an applicant who, pursuant to Government Code Section 65915, is seeking approval of a density bonus or both a density bonus and an incentive or concession identified in Government Code Section 65915(k), must provide:

1. The information required to demonstrate that the project meets all requirements of Government Code Section 65915;

2. Information demonstrating that any requested incentive or concession is necessary in order to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Government Code Section 65915(c);

3. A discussion of whether the method proposed by the applicant for accommodating the requested density bonus will have an adverse effect on coastal resources. If the applicant indicates, or if the City determines, that the method proposed for accommodating a requested density bonus will have an adverse effect on coastal resources, the applicant must submit an evaluation of: all feasible methods of accommodating the density increase, the effects of each method on coastal resources, and the method that is most protective of significant coastal resources; and

4. A discussion of whether any incentive or concession requested by the applicant will have an adverse effect on coastal resources. If the applicant indicates, or if the City determines, that an incentive or concession that is requested will have an adverse effect on coastal resources, the applicant must submit an evaluation of all feasible alternative incentives or concessions and their effects on coastal resources, and which of the feasible incentives or concessions is most protective of significant coastal resources.

E. Procedures for Approval.

1. When required by Government Code Section 65915, the City shall grant a density bonus that allows the applicant to build no more than 35 percent more units than a property's zoning would ordinarily allow, if the City finds:

a. The project is for any one of the types of residential projects described in Government Code Section 65915(b);

b. The project complies with all standards set forth in Government Code Section 65915; and

c. The project is a housing development consisting of five or more units.

2. In accordance with Government Code Section 65915(f), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. The "otherwise maximum allowable

residential density" shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the zoning ordinance and the Local Coastal Program.

3. In all density calculations, fractional units shall be rounded to the next whole number.

4. In addition to a density bonus, the City shall grant incentives or concessions pursuant to Government Code Section 65915(d) to a qualifying housing development.

5. For any housing development where the City approves a density bonus, prior to issuing the coastal development permit, the owners must record an affordable housing agreement, as described in Section 3.7.3 of the LIP, that provides that the affordable units in the development must remain affordable (as defined in Government Code Section 65915) for 30 years.

3.7.2. CONVERSION OR DEMOLITION OF AFFORDABLE RESIDENTIAL UNITS

A. Purpose.

1. Ensure, to the maximum extent feasible, that parcels currently providing affordable housing continue to provide affordable housing when feasible, and that replacement of affordable residential units be provided when conversions or demolitions of such structures take place. This section is in part designated to meet the requirements of the Mello Act (Government Code Section 65590).

2. Maintain the number of low- and moderate-income dwelling units within the coastal zone.

B. Definitions.

As used in this section:

1. "Affordable Residential Unit" means a unit that would be rented at a rate affordable to a lower or moderate income household.

2. "Conversion" means a change of a residential dwelling, including a mobile home, as defined in Section 18008 of the Health and Safety Code, or a mobile home lot in a mobile home park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership, or to a non-residential use.

3. "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income

households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually. Lower income households include very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106.

C. Applicability.

The provisions of this chapter shall apply to the conversion or demolition of existing residential dwelling units within the coastal zone occupied by persons or families of low or moderate income ("affordable residential units"), as defined in Health and Safety Code Section 50093, when the conversion or demolition of three or more dwelling units located in one structure.

D. Exemptions.

The provisions of this chapter shall not apply to the following:

1. Demolition of a Public Nuisance. The demolition of a residential structure that has been declared a public nuisance in compliance with the provisions of Health and Safety Code Division 13 (commencing with Section 17000) or any City ordinance enacted pursuant to those provisions shall be exempt from the provisions of this chapter. For purposes of this chapter, no structure, which conforms to the standards that were applicable at the time the structure was constructed and that does not constitute a substandard structure, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the structure does not conform to one or more of the current provisions of the Local Implementation Plan;

2. Replacement with a Coastal Dependent Use. The conversion or demolition of a residential structure for purposes of a nonresidential use that is either "coastal dependent," as defined in Public Resources Code Section 30101, or "coastal related," as defined in Public Resources Code Section 30101.3; or

3. Land Availability. The conversion or demolition of a residential structure when there are less than 50 acres, in aggregate, of privately-owned, vacant land available for residential use within the City.

E. Review Authority.

1. Director. The administration of this chapter shall be delegated to the Director and shall comply with the Mello Act, as it may be amended from time to time.

2. Determination. The Director shall make a determination as to the applicability of this chapter when a residential structure is to be converted or demolished. If applicable and based on the documentation provided in compliance with Section 3.7.2(G), the Director shall make determinations as to:

a. How many units were occupied by low- and moderate-income persons or families;

b. Whether the conversion or demolition proposes to go from residential to nonresidential and if so whether the proposed new use is coastal dependent;

c. Whether a feasibility analysis is required to be prepared;

d. The feasible number of affordable units required to be replaced, if any; and

e. Whether the required replacement affordable units are to be located on site or off site.

3. Referral to Planning Commission. The Director may defer action and refer a determination to the Planning Commission for a decision on any of the matters outlined in subsection (2) of this section.

4. Administrative Act. Determinations made by the Director under the provisions of this chapter are an administrative function. The determinations made by the Director for the purpose of complying with the purpose of this chapter shall not be construed as amendments to this Local Implementation Plan.

F. Replacement of Affordable Housing.

1. One for One Replacement. If the Director determines that the proposed conversion or demolition activities involve affordable dwelling units, replacement of the affordable dwelling units shall be provided on a one for one basis, unless the Director determines that replacement is not feasible.

2. Location of Replacement Units. Replacement dwelling units shall be located on the site of the converted or demolished structure(s) or elsewhere within the coastal zone if feasible.

3. Period of Affordability.

a. Restricted Units. Affordable dwelling units that were previously required to be restricted to low- or moderate-income persons or families because of an existing affordable housing agreement that are required to be replaced in compliance with the requirements of this chapter shall remain affordable for the duration of time remaining on the existing affordable housing agreement.

b. Non-Restricted Units. Affordable dwelling units that were not previously required to be restricted to low- or moderate-income persons or families through an existing affordable housing agreement, but are now required to be provided in compliance with this chapter, shall remain affordable for a minimum of 30 years.

G. Determining Requirements for Replacement Units.

1. Required Documentation. The property's affordability status shall be documented by the Planning Department. Affordability is measured by the income level of all current tenants. This information, along with information provided by the current tenants to the Planning Department,

will be used to determine if affordable dwelling units currently exist and the need to replace those units in compliance with the requirements of this chapter.

2. Information to Be Provided.

a. In order to make a determination of a property's affordability status, the applicant shall provide the following information regarding the subject property:

i. Address of the property;

ii. Total number of existing units;

iii. Income of the tenants;

iv. Square footage and number of bedrooms per unit;

v. Names and addresses of current tenants;

vi. Tenant family size in each unit;

vii. Information on any evictions within the last year; and

viii. Whether there are currently any vacant units and how long they have been vacant.

b. In addition to the information provided by the applicant, the Planning Department shall document information regarding the income status and household size of current tenants.

3. Eviction of Tenants.

a. For purposes of this chapter, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from the subject dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this chapter.

b. If a substantial number of persons or families of low or moderate income were evicted from the subject residential structure within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this chapter and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this chapter.

4. Residential Use Not Feasible. If the conversion or demolition of a residential structure is for the purpose of replacement by a nonresidential use that is not "coastal dependent," and the Director has determined that a residential use is no longer feasible in that location, the Director shall require replacement of any dwelling units occupied by persons and families of low or moderate income.

H. Feasibility Analysis.

1. Feasibility Analysis Required.

a. If the applicant claims that it is not feasible to provide affordable replacement dwelling units an independent feasibility analysis shall be prepared prior to any approvals being granted for the proposed project.

b. The test of feasibility shall be conducted using the income levels contained in the General Plan, Housing Element.

2. Feasibility of Replacing Affordable Units.

a. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

b. If the feasibility analysis determines that it is not feasible to replace the affordable units, the analysis shall provide an explanation of why it is not feasible, including the provision of the units both on site and off site.

3. Feasibility Analysis Preparation. The feasibility analysis shall be prepared by an independent firm under the direction of the Department. The selected firm shall have prior experience in the preparation of real estate feasibility analysis and shall provide an unbiased, neutral opinion as to the feasibility of complying with the requirements of this chapter.

I. Feasibility Analysis Fee.

If a feasibility analysis is required in compliance with Section 3.7.2(H) (Feasibility Analysis), the total cost of the analysis shall be paid in compliance with the City's master fee schedule.

J. Findings to Conclude that the Replacement of Units is Not Feasible.

In order to conclude that the replacement of affordable dwelling units is not feasible the review authority shall first find all of the following:

1. The feasibility analysis was prepared in a professional and appropriate manner, and the facts and information presented in the feasibility analysis are accurate to the best of the review authority's knowledge; and

2. The feasibility analysis concluded that the provision of affordable housing as required by this chapter and the Mello Act (Government Code Section 65590) is not feasible.

K. Affordable Housing Agreement.

An affordable housing agreement shall be executed pursuant to Section 3.7.3 of the LIP. The agreement shall provide that the replacement dwelling units be available for occupancy within three years from the date work commenced on the conversion or demolition of the existing dwelling units.

3.7.3. AFFORDABLE HOUSING AGREEMENT

An applicant that chooses any option for satisfying the affordability requirements of this chapter shall enter into an affordable housing agreement with the City. The affordable housing agreement shall be executed in a recordable form prior to the issuance of a building permit for any portion of a project including affordable units, subject to the requirements of this chapter.

1. Contents. Affordable housing agreements shall include the following where applicable:

a. A description of the project, how the affordable housing requirements will be met by the applicant, and whether the affordable units will be rented or owner-occupied;

b. The number, size and location of each affordable unit;

c. Incentive(s) and/or concession(s) provided by the City (if any) for density bonus;

d. Limits on income, rent, and sales price of affordable units;

e. Period of Affordability. The agreement shall provide that the required affordable dwelling units remain affordable for a minimum of 30 years.

f. Procedures for tenant selection and the process for qualifying prospective households for income eligibility;

g. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal for owner-occupied units, or restrictions for rental units;

h Performance guarantees (e.g., a cash deposit, bond, or letter of credit) as required by the review authority; and

i. Provisions for the enforcement and penalties for violation of the agreement.

2. Recording of Agreement. Affordable housing agreements in a form acceptable to the City Attorney and approved by the Director shall be recorded against the owner-occupied affordable units and the project containing rental affordable units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents shall also be recorded against owner-occupied affordable units.

3.7.4. AFFORDABLE HOUSING FUND [placeholder]

Zoning Ordinance Revisions & Code Enforcement Subcommittee Meeting 10/01/12

Item 4

Zoning Ordinance Revisions and Code Enforcement Subcommittee Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Sibert and Peak

Prepared by: Stephanie Danner, Senior Planner SD

Reviewed by: Stefanie Edmondson, AICP, Principal Planner

Approved by: Joyce Parker-Bozylinksi, AICP, Planning Director JPB

Date prepared: September 20, 2012 **Meeting date:** October 1, 2012

Subject: Residential Care Facilities, Emergency Shelters, Transitional and Supportive Housing, and Single Room Occupancy Housing

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RECOMMENDED ACTION: Provide comments and recommendations to staff regarding the draft language to add residential care facilities, emergency shelters, transitional and supportive housing, and single room occupancy (SRO) facilities as permitted uses in specified zoning districts to the Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP), with the intent of implementing Program 3.2 – Remove Regulatory Barriers to Affordable Housing and Housing for Persons with Special Needs, set forth in the General Plan Draft Housing Element Update.

BACKGROUND: On November 28, 2011, the City Council directed staff to forward a copy of the Draft Housing Element Update to the California Department of Housing and Community Development (HCD) to begin the certification process. As part of the Housing Element Update, a number of programs were incorporated to aid the City in achieving its required share of fair housing as set forth in the Regional Housing Needs Assessment (RHNA). The Council directed staff to present the draft amendments necessary to implement the programs of the draft Housing Element Update to the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) for review and comment prior to drafting final amendment language for the Council to review.

On July 27, 2012, the City of Malibu received approval (preliminary certification) of its Draft Housing Element Update from HCD. HCD found that the Draft Element will

comply with housing element law when adopted by the Council (via approval of the amendment to the General Plan). If the Final Housing Element adopted by the Council is consistent with the Draft Housing Element, the City will receive final certification.

DISCUSSION: Draft Housing Element Update Program 3.2 includes a plan to amend the M.M.C. and LCP, as required by state law, to allow residential care facilities, emergency shelters, transitional and supportive housing, and SRO facilities in specified zoning districts, in accordance with state law.

A. Residential Care Facilities

State law requires that licensed residential care facilities with six or fewer residents (excluding the operator and staff) be treated as a single-family residential use for zoning purposes. As such, these small care facilities must be permitted by-right in all residential zones. Larger care facilities (in excess of six residents) may be required to obtain a conditional use permit.

Staff recommends that the LCP and M.M.C. be amended to permit small licensed residential care facilities (maximum six residents) by-right in all residential zones, and large residential care facilities (seven or more residents) in the Commercial General (CG) zoning district subject to a conditional use permit, where such projects would be compatible with the surrounding uses.

There is already a definition for residential care facilities in the LCP and M.M.C. Staff recommends bifurcation of the existing definition to create separate definitions for small and large residential care facilities. Small residential care facilities are already permitted uses in the Rural Residential (RR), Single-Family (SF) and Multi-Family (MF) zoning districts. However, these facilities are required by state law to be permitted in all residential zones. As such, an amendment must be processed to allow them in the Multi-Family Beachfront (MFBF) zoning district. In addition, it is suggested that large residential care facilities be conditionally permitted in the CG zoning district.

Draft LCP and M.M.C. amendment text for residential care facilities is provided in Attachment 1.

B. Emergency Shelters

New state law (Senate Bill (SB) 2), adopted in 2007, requires every city to designate at least one zoning district where a permanent emergency shelter may be established "by-right" (i.e. without a conditional use permit or other discretionary approval) subject to objective development standards.

Staff recommends that the LCP and M.M.C. be amended to establish definitions for both permanent and temporary emergency shelters and allow permanent emergency shelters as a permitted use by-right in the CG and Institutional zoning districts subject to appropriate development standards consistent with SB 2.

Temporary shelters, to be established only during emergencies, will be added as a permitted use in all zoning districts. The City's emergency shelter program includes all four public schools (Juan Cabrillo Elementary, Point Dume Marine Science, Webster Elementary and Malibu High School) as potential shelters for use on a temporary basis. Additionally, the City has the possibility of using Bluffs Park as a temporary emergency shelter.

Additionally, language related to development standards for these permanent emergency shelters and the appropriate application process is proposed. Objective standards may be applied, including maximum number of beds, required parking, lighting and landscaping, provision of onsite management, length of stay and security.

Draft LCP and M.M.C. amendment text for emergency shelters is provided in Attachment 2.

C. Transitional and Supportive Housing

SB 2 also limits the extent to which cities can regulate transitional and supportive housing. Staff recommends that the LCP and M.M.C. be amended to establish definitions and clarify that transitional and supportive housing are residential uses that are subject only to the same regulations and procedures as other residential uses of the same type in the same zone consistent with the SB 2.

Draft LCP and M.M.C. amendment text for transitional and supportive housing is provided in Attachment 3.

D. Single Room Occupancy (SRO) Facilities

Pursuant to state law, staff recommends that the LCP and M.M.C. be amended to establish a definition, identify appropriate locations, and create development standards that will encourage and facilitate the production of SRO units. An SRO facility is a structure that provides living units that have separate sleeping areas, having some combination of shared bath or toilet facilities, and generally range in size from 150 square feet to 400 square feet per unit. State law mandates that at least one zone be identified to permit SRO units "by-right" (i.e. without a conditional use permit or other discretionary approval) subject to objective development standards.

The SROs can help address the needs of seniors, college students, service workers and domestic employees with extremely-low incomes. Staff recommends that SRO facilities be allowed in the CG zoning district, directing their development near employment, services and public transit. SROs are seen as a mixed use type of housing which is more appropriate for commercial areas than residential areas.

Draft LCP and M.M.C. amendment text for SRO facilities is provided in Attachment 4.

CONCLUSION: In addition to the proposed amendment language for the items discussed in this report, Table B of the LCP must also be amended to reflect these changes and is included as Attachment 5.

Staff will consider the Subcommittee's recommendations for incorporation into the draft amendment language. The amendments to the M.M.C. and LCP will be forwarded to the Planning Commission for review and recommendation before going to the City Council for approval. Upon approval by the City Council, the amendment to the LCP will then be forwarded to the California Coastal Commission for review.

ATTACHMENTS:

1. Draft Amendment Language - Residential Care Facilities
2. Draft Amendment Language – Emergency Shelters
3. Draft Amendment Language – Transitional and Supportive Housing
4. Draft Amendment Language – SRO Facilities
5. Draft Amendments to Table B of the LCP

Residential Care Facilities

Draft Amendment Language

1. **Residential Care Facility, Small**

   Definition: Any family home or group care facility serving six or fewer persons in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual, excluding jails and other detention facilities.

   Proposed Locations: Permitted use in the Rural Residential (RR), Single-Family (SF), Multi-Family (MF) and Multi-Family Beachfront (MFBF) zoning districts.

2. **Residential Care Facility, Large**

   Definition: Any family home or group care facility serving seven or more persons in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual, excluding jails and other detention facilities.

   Proposed Location: Conditionally permitted use in the Commercial General (CG) zoning district.

Emergency Shelters

Draft Amendment Language

1. **Emergency Shelter, Temporary**

   Definition: Any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for individuals and households made temporarily homeless due to a disaster (e.g. fires, earthquakes, etc.), the temporary use of which terminates at the conclusion of the event.

   Proposed Locations: Permitted use in all zoning districts.

2. **Emergency Shelter, Permanent**

   Definition: Housing with minimal supportive services for homeless persons, victims of domestic violence, persons requiring temporary housing, and other individuals and households made temporarily homeless due to disasters (e.g. fires, earthquakes, etc.), that is limited to occupancy of six months or less by a homeless person and operated by a government agency or private non-profit organization.

   Proposed Locations: Permitted use in the Commercial General and Institutional zoning districts.

   Development Standards: In addition to the development standards specific to the underlying zoning district, permanent emergency shelters shall be subject to the following standards:

   a. Each resident shall be provided a minimum of 50 square feet of personal living space per person, not including space for common areas. In no case shall occupancy exceed 20 residents at any one time. Bathing facilities shall be provided in quantity and location as required in the California Plumbing Code (Title 24 Part 5), and shall comply with the accessibility requirements of the California Building Code (Title 24 Part 2).

   b. The number of off-street parking spaces provided shall be one parking space per 10 adult beds, plus one parking space per employee on the largest shift.

c. Outdoor activities such as recreation, drop-off and pick-up of residents, or similar activities may be conducted at the facility. Staging for drop-off, intake, and pick-up should take place inside a building, at a rear or side entrance, or inner courtyard. Emergency shelter plans must show the size and location of any proposed waiting or resident intake areas, interior or exterior.

d. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be approved by the Planning Director. The management plan must include, but is not limited to, provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, temporary storage of residents' personal belongings, safety and security, loitering control, management of outdoor areas, screening of residents to ensure compatibility with services provided at the facility, and training, counseling and social service programs for residents, as applicable.

e. No more than one permanent emergency shelter is permitted within a radius of 300 feet from another emergency shelter.

f. Individual occupancy in a permanent emergency shelter is limited to six months in any 12 month period.

g. Exterior lighting shall be provided at all building entrances and outdoor activity areas. All exterior lighting shall comply with Section 6.5(G) of the Local Implementation Plan.

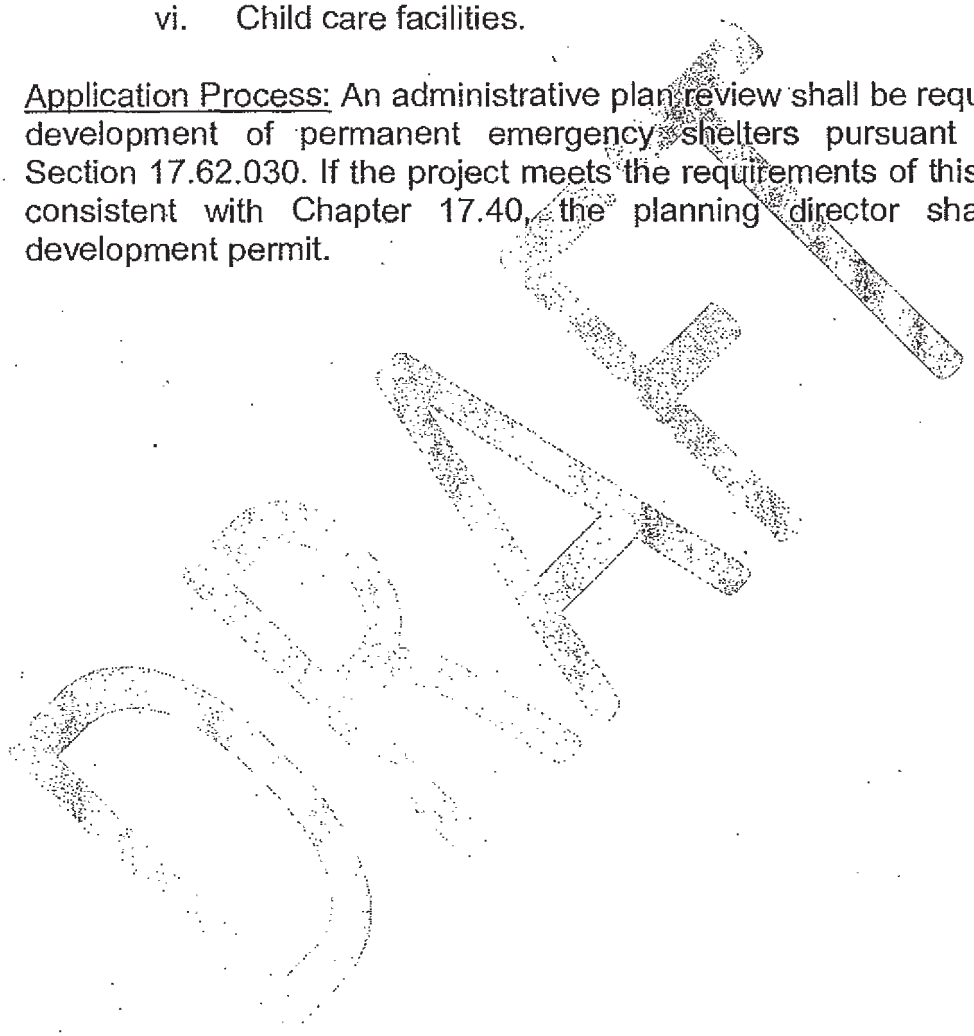
h. Each emergency shelter shall have an onsite management office, with at least one employee present at all times the emergency shelter is in operation or is occupied by at least one resident.

i. Each emergency shelter shall have onsite security employees, with at least one security employee present at all times the emergency shelter is in operation or is occupied by at least one resident.

j. Facilities must provide a storage area for refuse and recyclables that is enclosed by a six-foot high landscape screen, solid wall, or fence, which is accessible to collection vehicles on one side. The storage area must be large enough to accommodate the number of bins that are required to provide the facility with sufficient service so as to avoid the overflow of material outside of the bins provided.

k. The emergency shelter facility may provide one or more of the following specific facilities and services, including but not limited to:
    i. Commercial kitchen facilities designed and operated in compliance with the California Retail Food Code;
    ii. Dining area;
    iii. Laundry;
    iv. Recreation room;
    v. Support services (e.g. training, counseling, etc.); and
    vi. Child care facilities.

Application Process: An administrative plan review shall be required for the development of permanent emergency shelters pursuant to M.M.C. Section 17.62.030. If the project meets the requirements of this title and is consistent with Chapter 17.40, the planning director shall issue a development permit.



Transitional and Supportive Housing

Draft Amendment Language

Definitions:

Dwelling, Transitional Housing: A project that has as its purpose facilitating the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children. Transitional housing is a residential use that is subject only to the same regulations and procedures as other residential uses of the same type in the same zone consistent with the Fair Housing Act.

Dwelling, Supportive Housing: Long-term, community-based housing that has supportive services for homeless persons with disabilities. This type of supportive housing enables special needs populations to live as independently as possible in a permanent setting. The supportive services may be provided by the organization managing the housing or coordinated by the applicant and provided by other public or private service agencies. Permanent housing can be provided in one structure or several structures at one site or in multiple structures at scattered sites. There is no definite length of stay. Supportive housing is residential use that is subject only to the same regulations and procedures as other residential uses of the same type in the same zone consistent with the Fair Housing Act.

Single Room Occupancy (SRO) Facility

Draft Amendment Language

Definition: A structure that provides living units that have separate sleeping areas and may have private or some combination of shared bath or toilet facilities. The structure may or may not have separate or shared cooking facilities for the residents.

Proposed Location: Permitted use in the Commercial General zoning district.

Development Standards: In addition to the development standards specific to the underlying zoning district, SRO facilities shall be subject to the following standards:

a. SRO units shall be for the purposes of providing affordable housing and shall not serve the purpose of recreational or travel needs.

b. Size / Occupancy - Minimum size of 150 square feet, maximum of 400 square feet, and maximum of two persons.

c. Laundry facilities must be provided onsite.

d. Bathroom. An SRO unit is not required to but may contain partial or full bathroom facilities. If a full bathroom facility is not provided, common bathroom facilities shall be provided in accordance with the California Building Code for congregate residences with at least one full bathroom per floor.

e. Kitchen. An SRO unit is not required to but may contain partial or full kitchen facilities. If a kitchen is not provided, at least one common full kitchen must be provided per floor.

f. The SRO must provide 24 hour onsite management. The applicant shall provide a copy of the proposed rules and residency requirements governing the SRO. The management will be solely responsible for the enforcement of all rules that are reviewed and approved by the Planning Commission as part of a conditional use permit.

g. Off-street parking must be provided at a rate of one parking space per two units, inclusive of guest parking.

h. Facilities must provide a storage area for refuse and recyclables that is enclosed by a six-foot high landscape screen, solid wall, or fence, which is accessible to collection vehicles on one side. The storage area must be large enough to accommodate the number of bins that are required to provide the facility with sufficient service so as to avoid the overflow of material outside of the bins provided.

Application Process: A conditional use permit shall be required for the development of SRO facilities pursuant to M.M.C. Section 17.66. A conditional use permit for an SRO facility shall be decided upon by the Planning Commission.

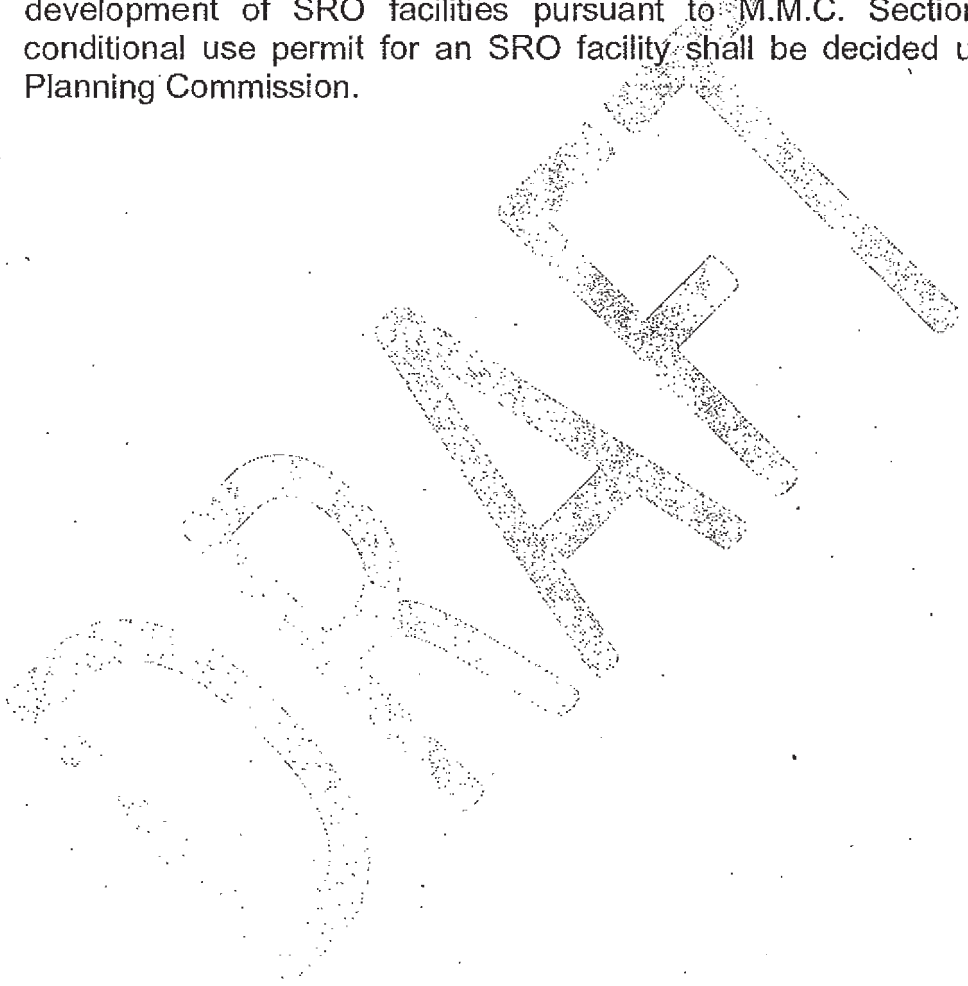


TABLE B PERMITTED USES – DRAFT AMENDMENT

KEY TO TABLE (In addition to a coastal development permit, the following permits are required.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
•	Not permitted (Prohibited)

USE	RR	SF	MF	MFBP	MHR	CR	BEO	CN	CC	CV-1	CV-2	CG	OS	IP	PRF	IVP
RESIDENTIAL																
Single-family residential	P	P	P	P	•	•	•	•	•	•	•	•	•	A	•	•
Manufactured homes	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•	•
Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments)	•	•	CUP	CUP	•	•	•	•	•	•	•	•	•	•	•	•
Second units	A[1]	A[1]	A[1]	A[1]	•	•	•	•	•	•	•	•	•	•	•	•
Mobile home parks	•	•	•	•	P	•	•	•	•	•	•	•	•	•	•	•
Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses)	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	•
Mobile home as residence during construction	P	P	P	MCUP	•	•	•	•	•	•	•	•	•	•	•	•
Accessory uses (guest units, garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses)	A[1]	A[1]	A[1]	A[1]	•	•	•	•	•	•	•	•	•	•	•	•
~~Residential~~ Small residential care facilities (serving 6 or fewer persons)	P	P	P	P•	•	•	•	•	•	•	•	•	•	•	•	•
Large residential care facilities (serving 7or more persons)	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•

Attachment 5

USE	RR	SL	ML	MLE	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	AL	HDR	RMP
RESIDENTIAL (continued)																
Supportive housing	P	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•
Transitional housing	P	P	P	P	P	•	•	•	•	•	•	•	•	•	•	•
Single-room occupancy facility	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Small family day care (serving 6 or fewer persons)	A	A	A	•	•	•	•	•	•	•	•	•	•	•	•	•
Large family day care (serving 7 to 12 persons)	LFDC	LFDC	LFDC	•	•	•	•	•	•	•	•	•	•	•	•	•
Home occupations	P/ MCUP[2]	P/ MCUP[2]	P/ MCUP[2]	P/ MCUP[2]	•	•	•	•	•	•	•	•	•	•	•	•
AGRICULTURAL/ANIMAL-RELATED																
Domestic animals kept as pets or for personal use	A	A	A	A	A	•	•	•	•	•	•	•	•	•	•	•
Equestrian and hiking trails (public and private)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Equestrian riding and training facilities and activities including boarding of horses and domestic animals, tournaments, shows and contests (including accessory uses such as club house with food and beverage service, pro shop, tack shop, riding rings, boarding/training/show facilities, barns, parking lots, sports courts, and living accommodations for members, their guests, participants, employees and persons required for the operation and maintenance of such facilities)	•	•	•	•	•	CUP	•	•	CUP	•	•	CUP	•	•	•	•
Grazing of cattle, horses, sheep or goats, including the supplemental feeding of such animals, provided that such grazing is not a part of nor conducted in conjunction with any dairy, livestock feed yard, livestock sales yard or commercial riding academy located on the same premises	P[1]	•	•	•	•	CUP[3]	•	•	•	•	•	•	•	•	•	•

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
AGRICULTURAL/ANIMAL-RELATED (continued)																
Raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals	P	A	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Boarding of horses as a commercial use	MCUP[3]	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Raising of hogs or pigs	P	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature	P	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Greenhouses	P	•	CUP	•	•	CUP	•	•	•	•	•	•	•	•	•	•
Raising of crops (field, tree, bush, berry row, nursery stock, etc.) provided no retail sale from the premises	A	A	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•
Wildlife preserves	•	•	•	•	•	P	•	•	•	•	•	•	P	•	•	•
RETAIL USES																
Book stores	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Convenience stores	•	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Food markets	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Hardware, garden supply stores	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Liquor stores	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Plant nurseries	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Prescription pharmacies	•	•	•	•	•	•	A	P	P	P	P	P	•	•	•	•
Stationary supplies	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Visitor-oriented goods such as recreational equipment and clothing, souvenirs, local arts/crafts, and similar uses	•	•	•	•	•	•	•	MCUP	•	P	P	•	•	•	•	•
GENERAL SERVICES																
Bakeries (no on-site seating)	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Barber shops, beauty salons	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Laundry, dry cleaners	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Miscellaneous services including travel agencies, photocopy services, photographic processing and supplies, mailing services, appliance repair, and similar uses	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•

USE	RR	SC	ME	MEBE	MHR	CR-2	RPO	CN	CC	CV-1	CV-2	CCF	OS	I-2	PRF	RVP
OFFICE/HEALTH USES																
Banks, financial institutions	•	•	•	•	•	•	•	P	P	P[4]	P[4]	P	•	•	•	•
Health care facilities	•	•	•	•	•	•	•	•	CUP	CUP[4]	CUP[4]	CUP	•	CUP	•	•
Medical, dental, physical therapy, and veterinary clinics and offices	•	•	•	•	•	•	P	P[5]	P[5]	P[4,5]	P[4,5]	P[5]	•	•	•	•
Professional offices	•	•	•	•	•	•	P	P	P	P	P	P	•	•	•	•
DINING, DRINKING, AND ENTERTAINMENT																
Amphitheatre	•	•	•	•	•	•	•	•	•	P	P	•	•	•	•	•
Bars	•	•	•	•	•	•	•	•	CUP[3]	CUP	CUP	CUP	•	•	•	•
Live entertainment	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Movie theaters	•	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Refreshment stands, ice cream stands, and other fixed location outdoor food vending stands	•	•	•	•	•	•	•	•	•	CUP	CUP	CUP	•	•	•	•
Restaurants	•	•	•	•	•	•	•	CUP[6]	CUP[7]	CUP[7]	CUP[7]	CUP[7]	•	•	•	•
AUTOMOTIVE RELATED USES																
Vehicle washing/detailing	•	•	•	•	•	•	•	CUP[8]	CUP[8]			CUP	•	•	•	•
Service stations (without convenience market)	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	•	•
Towing and automobile storage	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
RECREATION AND LEISURE																
Camping	•	•	•	•	•	P	•	•	•	•	•	•	P	•	•	•
Guest Cabins						P										
Community stage theaters	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Cultural and artistic uses (such as museums, galleries, performing arts venues)	•	•	•	•	•	CUP	•	CUP	CUP	CUP	CUP	CUP	•	•	•	•
Dance studios	•	•	•	•	•	•	•	P	P	P	P	P	•	•	•	•
Golf driving ranges	•	•	•	•	•	•	•	•	CUP	CUP	CUP	CUP	•	•	P	•
Health clubs	•	•	•	•	•	•	•	P	P	P	P	P	•	•	P	•
Hotels	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•	•
Motels, bed and breakfast inns	•	•	•	•	•	•	•	•	•	CUP	CUP	•	•	•	•	•
Parks, beaches, and playgrounds	CUP	CUP	CUP	CUP	•	P	•	CUP	CUP	CUP	CUP	CUP	P	•	P	•
Public Beach Accessway	P	P	P	P	P			P	P	P	P	P	P			
Recreation facilities (swimming pools, sandboxes, slides, swings, lawn bowling, volleyball courts, tennis courts and similar uses)	•	•	•	•	•	A	•	•	CUP	CUP[9]	CUP[9]	CUP	P	•	P	•

USE	RR	SF	MF	MHE	MHR	CR	BRO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RECREATION AND LEISURE (continued)																
Recreation facilities (neighborhood - for use by surrounding residents and operated by a non-profit corporation or neighborhood association for non-commercial purposes)	•	CUP	CUP	CUP	•	•	•	CUP	CUP	•	•	CUP	•	•	•	•
Recreational vehicle parks	•	•	•	•	CUP	•	•	•	•	•	•	•	•	•	•	P
Sports courts (lighted)	•	•	•	•	•	•	•	CUP	CUP	CUP[9]	CUP[9]	CUP	•	•	•	•
PUBLIC, QUASI-PUBLIC, OR NON-PROFIT USES																
Charitable, philanthropic activities	•	•	•	•	•	•	•	P[10]	P[10]	P[10]	P[10]	P[10]	•	CUP	•	•
Churches, temples, and other places of worship	•	•	CUP	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	CUP	•	•
Community centers	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Day care facilities, nursery schools	CUP	CUP	CUP	•	•	•	•	CUP	CUP	CUP	CUP	CUP	•	CUP	•	•
Educational (non-profit) activities	•	•	•	•	•	•	•	P	P	P	P	P	P	CUP	•	•
Educational institutions (public or private)	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Emergency communication and service facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP[4]	CUP[4]	CUP	CUP	CUP	CUP	CUP
Permanent emergency shelters	•	•	•	•	•	•	•	•	•	•	•	P	•	P	•	•
Temporary emergency shelters	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Helipad sites	CUP	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Government facilities	•	•	CUP	•	•	•	•	P	P	P[4]	P[4]	P	•	CUP	•	•
Libraries, museums	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Maintenance yards	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Public utility facilities	CUP	CUP	CUP	CUP	•	•	•	CUP	CUP	CUP[4]	CUP[4]	CUP	•	CUP	•	•
Research institutions	•	•	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•
Residential care facilities for the elderly	•	•	•	•	•	•	•	•	CUP	CUP	CUP[4]	CUP[4]	•	CUP	•	•
Wastewater storage and hauling	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Wireless telecommunications antennae and facilities	WTF	•	•	•	•	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF	WTF
CONSTRUCTION/LIGHT INDUSTRIAL USES																
Construction services (neighborhood-serving)	•	•	•	•	•	•	•	•	CUP	•	•	CUP	•	•	•	•
Manufacturing, processing, or treatment of products	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•

USE	RR	SF	MF	MFBE	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	IRP	IVP
CONSTRUCTION/LIGHT INDUSTRIAL USES (continued)																
Masonry and building supplies	•	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Metal welding	•	•	•	•	•	•	•	•	•	•	•	P	•	•	•	•
Research and development, testing facilities	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
Self-storage	•	•	•	•	•	•	•	CUP	CUP	•	•	CUP	•	•	•	•
Wholesale, storage, and distribution	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•
OTHER USES																
Uses permitted by right that operate between the hours of 11:00 p.m. to 7:00 a.m.	•	•	•	•	•	•	MCUP	MCUP	•	•	•	•	•	•	•	•
Mixed use (commercial and residential)	•	•	•	•	•	•	•	•	•	•	•	CUP	•	•	•	•

Notes:

1. Subject to Residential Development Standards (Section 3.6)
2. Subject to Home Occupations Standards [(Section 3.6(O)]
3. Use Prohibited in Environmentally Sensitive Habitat Areas
4. This commercial use may be permitted only if at least 50% of the total floor area of the project is devoted to visitor serving commercial use
5. CUP for veterinary hospitals
6. Maximum interior occupancy of 125 persons
7. If exceeding interior occupancy of 125 persons
8. By hand only
9. Use permitted only if available to general public
10. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.

Exhibit C

Forde

BIOLOGICAL CONSULTANTS

June 28, 2013

Todd Nelson
manatt | phelps | phillips
11355 West Olympic Boulevard, Los Angeles, California 90064

BACKGROUND

Todd Nelson of Manatt, Phelps, and Phillips requested that Forde Biological Consultants (FBC) peer review the Biological Resources section of the 2008 - 2014 Housing Element Update EIR prepared by Rincon Consultants Inc. on behalf of the City of Malibu. In addition to reviewing the Biological Resources section of the 2008 - 2014 Housing Element Update EIR, FBC also reviewed the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis included as Appendix C of the EIR and the Project Description section of the 2008 - 2014 Housing Element Update EIR. The proposed 2008 - 2014 Housing Element Update EIR will establish new housing goals, policies, and programs for the entire City of Malibu. Many of these goals, policies, and programs will apply citywide and include amending the zoning regulations for three properties commonly known as 28517 Pacific Coast Highway (APN 4467-013-022 and -023), 28401 Pacific Coast Highway (APN 4467-012-005), and 3700 La Paz Lane (APN 4458-022-023 and -024).

FBC is familiar with the biological resources located in the City of Malibu and has prepared more than 200 Biological Assessments for properties occurring in the Santa Monica Mountains. FBC holds U.S. Fish and Wildlife Service and California Department of Fish and Wildlife (CDFW) permits to conduct surveys for a number of special-status species including many that are endangered and threatened.

On June 24, 2013, Andrew McGinn Forde of FBC visited the three properties to conduct a biological assessment and determine if the report prepared by Rincon was complete and accurate. The City of Malibu General Plan (City of Malibu, 1995), Local Coastal Program Land Use Plan, (City of Malibu, 2002), and Local Coastal Program Local Implementation Plan (City of Malibu, 2002) were referenced as necessary. The latter two documents are referenced herein as the City of Malibu LCP.

CRITICAL HABITAT

FBC determined that critical habitat does not occur at any of the sites, which is consistent with the findings documented in the Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis.

STREAMS & WETLANDS

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR states, "Wetlands may be present along the southern portion of this ravine where it intersects PCH" (Site 1). The City of Malibu LCP defines wetlands as ESHA (Environmentally Sensitive Habitat Area). These documents also state that policies related to streams and wetlands that are designated as ESHA also apply to streams and wetlands that are not designated as ESHA. The City of Malibu LCP does not allow development within wetlands unless it is for incidental public services, aquaculture, wetlands-related research, or wetland restoration. The City of Malibu LCP does not allow development within streams unless it is for a necessary water supply, for flood protection, or for restoration benefitting flora and fauna. The area that is a potential wetland should be investigated further to determine if it meets the definition of a wetland.

PLANTS & PLANT COMMUNITIES

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis documents the dominant plants that were observed at each site. There is no mention of the non-dominant species that are present. The names of all plants observed should be included in the report.

FBC determined that the plant communities on each of the sites are accurately classified. The Habitat Map included in the EIR classifies what appears to be a single-family residence or guesthouse as "Ornamental." This area should be classified as "Disturbed/Developed.

Chapter 4.4.2 of the City of Malibu LCP states that a detailed biological study of the site should include photographs of the site. There are no photographs. Photographs depicting the plant communities and current condition of the sites should be included.

NATIVE TREE PROTECTION ORDINANCE

The City of Malibu LCP Native Tree Protection Ordinance protects native trees including alder (*Alnus rhombifolia*), California walnut (*Juglans californica*), oak (*Quercus* sp.), toyon (*Heteromeles arbutifolia*), and western sycamore (*Platanus racemosa*). The purpose of the ordinance is to create favorable conditions for the preservation and propagation of native trees for the benefit of current and future residents of the City of Malibu. Trees protected by the ordinance must have at least one trunk with a diameter measuring 6 inches or more or a combination of two trunks with diameters totaling 8 inches or more as measured 4½ feet above natural grade. FBC determined that protected trees occur at each site, which is consistent with the findings

documented in the EIR. The City of Malibu LCP requires a tree report be prepared and submitted for review as part of the planning process.

COMMON WILDLIFE

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis includes common wildlife observed or detected at the property but it does not include wildlife that would be expected to occur. The City of Malibu LCP requires a list of species expected to occur at each site.

Reptiles observed by FBC at the sites included side-blotched lizard (*Uta stansburiana hesperis*) and western fence lizard (*Sceloporus occidentalis longipes*). Reptiles with potential to occur include, but are not limited to, California kingsnake (*Lampropeltis getulus californiae*), chaparral whipsnake (*Masticophis lateralis lateralis*), gopher snake (*Pituophis catenifer catenifer*), red coachwip (*Masticophis flagellum piceus*), southern alligator lizard (*Elgaria multicarinata webbi*), western blind snake (*Leptotyphlops humilis humilis*), western skink (*Eumeces skiltonianus skiltonianus*), and western rattlesnake (*Crotalus viridis*). The only amphibian expected to occur at the sites is pacific treefrog (Pseudacris regilla). FBC detected Anna's hummingbird (*Calypte anna*), Bewick's wren (*Thryomanes bewickii*), black phoebe (*Sayornis nigricans*), bushtit (*Psaltriparus minimus*), California towhee (*Melozone crissalis*), common raven (*Corvus corax*), house finch (*Carpodacus mexicanus*), lesser goldfinch (*Carduelis psaltria*), mourning dove (*Zenaida macroura*), northern mockingbird (*Mimus polyglottos*), redwinged blackbird (*Agelaius phoeniceus*), spotted towhee (*Pipilo maculatus*), western scrub jay (*Aphelocoma californica*), and wrentit (*Chamaea fasciata*) at the sites. Species expected to occur at the sites at various times of the year include, but are not limited to, American crow (*Corvus brachyrhynchos*), American goldfinch (*Carduelis tristis*), American kestrel (*Falco sparverius*), ash-throated flycatcher (*Myiarchus cinerascens*), Allen's hummingbird (*Selasphorous sasin*), barn owl (*Tyto alba*), black-headed grosbeak (*Pheucticus melanocephalus*), Bullock's oriole (*Icterus bullockii*), California quail (*Callipepla californica*), California thrasher (*Toxostoma redivivum*), common yellowthroat (*Geothlypis trichas*), dark-eyed junco (*Junco hyemalis*), fox sparrow (*Passerella iliaca*), hermit thrush (*Catharus guttatus*), house wren (*Troglodytes aedon*), northern flicker (*Colaptes auratus*), phainopepla (*Phainopepla nitens*), red-breasted nuthatch (*Sitta Canadensis*), ruby-crowned kinglet (*Regulus calendula*), song sparrow (*Melospiza melodia*), western bluebird (*Sialia mexicana*), western kingbird (*Tyrannus verticalis*), winter wren (*Troglodytes troglodytes*), Wilson's warbler (*Wilsonia pusilla*), white-crowned sparrow (*Zonotrichia leucophrys*), and yellow-rumped warbler (*Dendroica coronata*). Other species are expected to occur, particularly during spring and fall migration. FBC observed California ground squirrel (*Otospermophilus beecheyi*) and evidence suggesting the presence of Audubon's cottontail (*Sylvilagus audubonii*) or brush rabbit (*Sylvilagus bachmani*), coyote (*Canis latrans*), valley pocket gopher (*Thomomys bottae*), and woodrat (*Neotoma* sp.). Mammals with potential to occur at the sites include, but are not limited to, California mouse (*Peromyscus californicus*), California pocket mouse (*Chaetodipus californicus*), deer mouse (*Peromyscus maniculatus*), long-tailed weasel (*Mustela frenata*), Pacific kangaroo rat (*Dipodomys agilis*), raccoon (*Procyon lotor*), and striped skunk (*Mephitis mephitis*). Big brown bat (*Eptesicus fuscus*), California myotis (*Myotis californicus*), free-tailed bat (*Tadarida brasiliensis*), long-legged myotis (*Myotis volans*), and canyon bat (*Parastrellus hesperus*) may forage over the sites. The mature trees and

structures located on the sites may provide suitable roost, maternal, and hibernation sites for some of these species. Other species of bat may occur, particularly during spring and fall migration.

WILDLIFE MOVEMENT CORRIDORS

FBC determined that the sites are not located within mapped wildlife habitat linkages as depicted in the Conservation Element of the Malibu General Plan (1995) and they are not located within any area indentified by the California Essential Habitat Connectivity Project. This finding is consistent with the findings documented in the Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis.

NESTING BIRDS

The Migratory Bird Treaty Act protects the majority of migratory birds breeding in the US regardless of their official status. The Act specifically states that it is illegal "… for anyone to take … any migratory bird … nests, or eggs."[1] "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.[2] The California Fish & Game Code protects the nest or eggs of all birds and specifically states, "that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird."[3] The Code defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."[4]

There is no discussion in the Biological Resources section of the 2008 - 2014 Housing Element Update EIR or the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis regarding the potential for birds to nest at the sites or what species may nest at the sites, only that nesting birds are protected and that potential impacts to them range from low to high. The vegetation on the sites provides potential nest sites for birds and cover for ground nesting birds. The structures also provide potential nest sites for black phoebe, house finch, and swallows. The CDFW recognizes the breeding season in southern California as occurring between March 1 and September 1; however, some species observed by FBC at the sites and some that would be expected to occur can nest outside this timeframe including Anna's hummingbird, barn owl, Bewick's wren, bushtit, California thrasher, mourning dove, and northern mockingbird. In general, Anna's hummingbird nests from mid-December to mid-August, barn owl nests from January through November, Bewick's wren nests mid-February through early August, bushtit nest from February to August, California thrasher nests November to July, mourning dove nests from February to September, but can nest year round, and northern mockingbird nests from mid-February until late September. Rincon Consultants observed red-tailed hawk (*Buteo jamaicensis*) during a site visit. Red-tailed hawks nest from February through July. Based on the above facts, the potential for birds to nest at the sites throughout most of the year is high.

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1 16 U.S.C. §§ 703-712, Migratory Bird Treaty Act of 1918 as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1989
2 50 C.F.R. § 10.12
3 CAL. Fish & Game Code § 3503
4 CAL. Fish & Game Code § 86

SPECIAL-STATUS SPECIES

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis includes species that are considered by the CDFW to be "Watch List" species and species that are classified by the CNPS as Rank 3 and 4 species. As defined by the City of Malibu LCP, special-status species include those that are protected by the State Endangered Species Act[5] and the Federal Endangered Species Act.[6] Special-status species also include California fully protected species,[7] species recognized by the CDFW as Species of Special Concern, and plant species on Rank 1A, 1B, and 2 of the CNPS Inventory of Rare and Endangered Plants. The City of Malibu LCP does not include "Watch List" species or CNPS Rank 3 and 4 species.

FBC relies on the "Fully Protected Animals" list, the "State and Federally Endangered and Threatened Animals of California" list, the "Special Animal's" list, the "Special Vascular Plants, Bryophytes, and Lichens" list, and the "State and Federally Listed Endangered, Threatened, and Rare Plants of California" list for special-status species determinations. These lists are produced and maintained by the CDFW. FBC also relies on the "Proposed and Candidate Species" system produced and maintained by the Sacramento Fish and Wildlife Office.[8] FBC reviewed the CDFW California Natural Diversity Database (CNDDB) and the CNPS Inventory of Rare and Endangered Plants by searching the U.S. Geological Service's 7.5-minute quadrangles of Beverly Hills, Calabasas, Camarillo, Canoga Park, Malibu Beach, Newbury Park, Point Dume, Point Mugu, Thousand Oaks, Topanga, Triunfo Pass, and Van Nuys to identify special-status species known to occur at or near the property and to identify those that may potentially occur.[9] These twelve quadrangles cover the entire Santa Monica Mountains and areas north of Highway 101 and east of the 405. The databases revealed that 40 special-status plant species and 26 special-status wildlife species have been recorded within the area covered by the twelve quadrangles. These species form FBC's target list. Target lists are typically prepared using the quadrangle(s) in which the sites are located and the quadrangles that surround them. FBC uses the 12 quadrangles because they cover the entire Santa Monica Mountains and studies tracking the movement of mountain lion (*Felis concolor*) have shown that despite the numerous roads and areas of dense development, the Santa Monica Mountains have no significant barriers to wildlife movement other than Highway 405. The special-status species target list that was prepared for the Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis is based on only two quadrangles, the Point Dume and Malibu Beach quadrangles.

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5 CAL. Fish & Game Code §§ 2050-2097
6 16 U.S.C. §§ 1531-1544
7 CAL. Fish & Game Code §§ 3511, 4700, 5050, & 5515
8 CAL. Fish & Wildlife, Fully Protected Animals, May 2003. CAL. Fish & Wildlife, Special Animals, January 2011. CAL. Fish & Wildlife, State & Federally Endangered & Threatened Species of California, January 2013. CAL. Fish & Wildlife, Special Vascular Plants, Bryophytes, & Lichens, April 2013. CAL. Fish & Wildlife, State & Federally Listed Endangered, Threatened, & Rare Plants of California, April 2013. Sacramento Fish & Wildlife Office, Proposed & Candidate Species, Threatened & Endangered Species System, Accessed June 1, 2013.
9 California Department of Fish & Wildlife, Wildlife & Habitat Data Analysis Branch, California Natural Diversity Database, 2013; California Native Plant Society, 2013, Inventory of Rare and Endangered Plants

California brown pelican (*Pelecanus occidentalis californicus*), California least tern (*Sterna antillarum browni*) and western snowy plover (*Charadrius alexandrinus nivosus*) are special-status wildlife species that are listed in the CNDDB as occurring within the area covered by the Malibu Beach quadrangle. They are frequently observed at Malibu Lagoon and foraging along the coastline. These species should be addressed in the EIR despite the fact that they are not expected to occur at any of the sites. Special-status wildlife species that occur in the region include silvery legless lizard (*Anniella pulchra pulchra*), coast patch-nosed snake (*Salvadora hexalepis virgultea*), white tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), peregrine falcon (*Falco peregrinus*), Swainson's hawk (*Buteo swainsoni*), light-footed clapper rail (*Rallus longirostris levipes*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), short-eared owl (*Asio flammeus*), long-eared owl (*Asio otis*), western burrowing owl (*Athene cunicularia hypugea*), southwestern willow flycatcher (*Empidonax traillii extimus*), loggerhead shrike (*Lanius ludovicianus*), least Bell's vireo (*Vireo bellii pusillus*), California gnatcatcher (*Polioptila californica*), which was recently discovered by Rincon Consultants at the western end of the Santa Monica Mountains, yellow warbler (*Setophaga petechia*), yellow-breasted chat (*Icteria virens*), grasshopper sparrow (*Ammodramus savannarum*), Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), tricolored blackbird (*Agelaius tricolor*), southern California saltmarsh shrew (*Sorex ornatus salicornicus*), California leaf-nosed bat (*Macrotus californicus*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), ringtail (*Bassariscus astutus*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), south coast marsh vole (*Microtus californicus stephensi*), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii*). The majority of these species are not expected to occur at the sites or only have a low potential to occur; however, silvery legless lizard and coast patch-nosed snake have moderate to high potential to occur. Regardless, all should be addressed in the EIR.

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis conclude that the project is located outside the known range of San Diego mountain kingsnake (*Lampropeltis zonata pulchra*) and that the sites lack suitable habitat. According to various range maps, this species range includes the Santa Monica Mountains and it is listed in the CNDDB as occurring within the area covered by the Malibu Beach quadrangle. San Diego Mountain kingsnake occurring within the Santa Monica Mountains are not recognized as special-status species, only individuals of the San Bernardino Mountain populations are considered special-status species. The documents also conclude that big-eared woodrat (*Neotoma macrotis*) nests (=house) were observed at one of the sites and that San Diego woodrat (*Neotoma lepida intermedia)* has a low to moderate potential for occurring. The reports do not include the methodology used to determine the species occupying the woodrat houses (or why it they not belong to San Diego woodrat). FBC recommends that a survey be conducted to determine which species is occupying the woodrat houses.

Decumbent goldenbush (*Isocoma menziesii* (H. & A.) G. Nesom var. *decumbens* (Greene) G. Nesom), a special-status plant species is listed as occurring within the area covered by the Malibu Beach quadrangle but it is not addressed in the Biological Resources section of the 2008 - 2014 Housing Element Update EIR or the City of

Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis. Plummer's mariposa lily (*Calochortus plummerae*) is no longer a CNPS Rank 1B.2 species; it is has been found to be more common than previously thought and is now a Rank 4 species. Estuary seablite (*Suaeda esteroa* Ferren & Whitmore), mesa horkelia (*Horkelia cuneata* Lindl. var. *puberula* (Rydb.) Ertter & Reveal), mud nama (*Nama stenocarpum* Gray), Parish's brittlescale (*Atriplex parishii* Wats), and salt spring checkerbloom (*Sidalcea neomexicana* Gray) are known to occur in the region. Although these species are not expected to occur at any of the sites they should be addressed in the EIR.

When evaluating potential for special-status plant species to occur, important factors to consider are geographic location, elevation, and vegetation types. Another important factor is soil type and soil chemistry. The City of Malibu LCP states that a detailed biological study of the site should include the physical characteristics of the site, including, but not limited to soil types. The Biological Resources section of the 2008 - 2014 Housing Element Update EIR and the City of Malibu 2008-2014 Housing Element Update Preliminary Biological Constraints Analysis do not include discussions regarding soil types at the sites. The U.S. Department of Agriculture Soil Conservation Service produces and publishes soil maps and reports for most areas within the U.S. including the Santa Monica Mountains National Recreation Area. The information contained in the soil maps and reports should be used to help determine the potential for special-status species to occur. For example, Coulter's saltbush (*Atriplex coulteri* (Moq.) D. Dietr) is found in coastal dune, coastal scrub, coastal bluff scrub, and valley and foothill grassland habitats with alkaline or clay soils. The reports state these facts and conclude that Coulter's saltbush has a low potential to occur. FBC would not expect this species to occur if the soils are acidic. The writer should also consider elevation of each site and the elevation range of each species addressed. For example, the elevation range of slender mariposa lily (*Calochortus clavatus* S. Watson var. *gracilis* Ownbey) is between 320 meters and 1000 meters. The sites are at much lower elevations.

ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Chapter 4.1 of the City of Malibu LCP, LIP and Chapter 3.1 of the City of Malibu LCP, LUP defines ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem." ESHA include native habitats, which contribute to the viability of species protected by the State Endangered Species Act, the Federal Endangered Species Act, fully protected species, CDFG species of special concern, and CNPS Rank 1 and Rank 2 species or are rare or valuable from a local, regional, or statewide basis and includes streams and wetlands.

According to the ESHA and Marine Resources Maps contained in the City of Malibu LCP, there are no Environmentally Sensitive Habitat Area's (ESHA) on the sites; however, a note on the maps states that they are "not intended to depict fixed boundaries of ESHA." The Biological Resources section of the 2008 - 2014 Housing Element Update EIR states, "Areas containing special-status plant species shall be considered ESHA per the LCP LUP." FBC determined that this is consistent with the City of Malibu LCP. The EIR also states, "Wetlands may be present along the southern portion of this ravine where it intersects PCH" (Site 1). The City

of Malibu LCP defines wetlands as ESHA. The EIR concludes that coastal whiptail (*Aspidoscelis tigris stejnegeri*), San Bernardino ringneck snake (*Diadophis punctatus modestus*), and coast horned lizard (*Phrynosoma blainvilli*) have potential to occur at one or more of the sites, and that bat roost and monarch butterfly (*Danaus plexippus*) roost sites may occur. It is the opinion of FBC that San Diego woodrat, silvery legless lizard, and coast patch-nosed snake may also occur. If special-status wildlife species, bat roosts, or monarch butterfly roosts occur at any of the sites, the habitat within which they occur meets the City of Malibu LCP's ESHA definition.

MITIGATION MEASURES

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR includes mitigation measures designed to reduce affects upon special-status resources including special-status wildlife species, nesting birds, bat roosts, and monarch butterfly roosts should they exist.

Mitigation Measure BIO-2 states, "Prior to any vegetation removal, grubbing, or other construction on-site, seasonally-timed special-status plant surveys shall be conducted by a City-approved biologist no more than two years before initial ground disturbance. If special-status plants are discovered during focused botanical surveys, the habitat within which said species are found shall be delineated as ESHA and all applicable LCP LUP and LCP LIP policies shall be adhered to." Although this strategy is included as a mitigation measure, no mitigation measures (or avoidance measures) are offered for special-status plants should they be discovered.

Mitigation Measure BIO-4 (a) states, "within 14 days prior too the start of construction activities at Candidate Sites #1 and #7, capture and relocation efforts shall be conducted where suitable habitat is present for the coastal whiptail, San Bernardino ringneck snake, and coast horned lizard." While capture and relocation of wildlife may reduce direct mortality, it is not true mitigation. Mitigation should include measures so that there is no net loss of habitat suitable for these species.

Mitigation Measure BIO-4 (c) states, "if a roost is determined by a qualified biologist to be used by a large number of bats (large hibernaculum), installation of bat boxes near the impacted roost would be necessary to reduce the impact to the bat species present." While this mitigation measure may work for some species, it will not mitigate the loss of roost sites for western red bat (*Lasiurus blossevilli*) or hoary bat (*Lasiurus cinereus*), which rely on foliage for roosting. Hoary bat will also roost on the trunks of trees.

Mitigation Measure BIO-4 (d) states, "to avoid the accidental take of any migratory bird species or raptors, the construction activities at each of the three candidate sites shall be conducted between September 1 and March 1, outside of the typical breeding season, as feasible. If avoidance of the nesting season is not feasible, a qualified biologist/ornithologist shall conduct focused nesting surveys weekly for 30 days, with the final survey occurring not more than three days prior to initiation of ground and vegetation disturbance activities." This is an avoidance strategy and not a mitigation measure. No mitigation is offered for the loss of nesting bird habitat. The avoidance strategy proposed does not protect birds that nest between September 1 and March 1.

Mitigation Measure BIO-4 (e) states, 'Prior to initiation of all construction activities, a County-approved biologist shall conduct a training session for all construction personnel" and also mentions County-required Conditions of Approval. This should be changed to a City-approved biologist and City-required Conditions of Approval.

Measures should include avoidance or relocation of the woodrat houses that were observed at the sites and should also include mitigation measures for other special-status species with potential to occur, for example silvery legless lizard and coast patch-nosed snake.

IMPACT ANALYSIS

The Biological Resources section of the 2008 - 2014 Housing Element Update EIR concludes that impacts to habitats on the site would not be significant. FBC disagrees with this conclusion. The EIR finds that special-status species may occur, bat and monarch butterfly roost sites may occur, and wetlands may occur on at least one site. It fails to address a number of special-status species that are known to occur in the region and the mitigation measures proposed do not mitigate the loss of habitat for certain species should they occur.

The EIR should address all special-status species known to occur in the region, the potential wetland should be investigated to determine if it meets wetland definitions, surveys for special-status species should be conducted, a tree report should be prepared, and appropriate mitigation, relocation, and avoidance strategies should be offered before the EIR is finalized.

Sincerely,

Andrew McGinn Forde
Principal Biologist
Forde Biological Consultants

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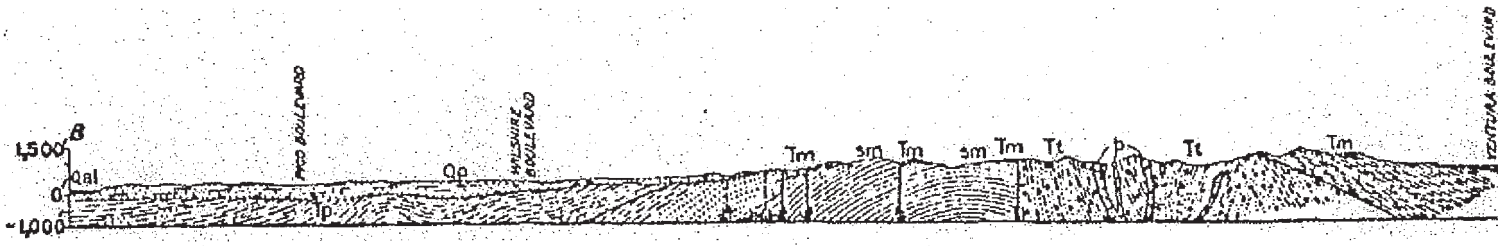
Exhibit D



Donald B. Kowalewsky
ENVIRONMENTAL &.
ENGINEERING GEOLOGY

June 26, 2013
Job # 13667G2.001

Manatt Phelps Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064

Engineering Geologic Comments on Draft EIR Housing Element

As requested several sections of the Draft EIR have been critically reviewed. The following comments are provided based on the page numbers in the Draft EIR.

P 4.5-1 Topographic description error: Candidate Site # 1"Topography sloping south-southwest" should read "south-southeast, southwest, and east"

The descriptions of the topography on page 4.5-1 refer to Figure 4.5-1. Figure 4.5-1 has fictitious contour elevations that do not relate to the elevations stated on Page 4.5-1 and are in fact not related to any actual contours nor to the published US Geological Survey topographic map for the Point Dume Quadrangle, even though the bottom of that figure refers to "Additional data provided by USGS, 2006"

P 4.5-9 This page discusses earth materials on the sites. It indicates the Geologic map of the Point Dume Quadrangle (1993) shows the earth materials to consist of "artificial cut and fill" and alluvial gravel, sand and clay of flood plains, and the Monterey Formation. This statement is misleading for two reasons:

1. Earth materials may be composed of artificial fill but not artificial cut. Apparently, the writer is not aware of how grading is performed. Grading typically includes cutting and filling. The cutting of natural earth materials from their original location and placing those materials as earth fill in other locations. The materials that are placed are not referred to as artificial cut and fill.

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2. The geologic map referred to indicates some of the earth materials consist of Older Alluvium. This material was called marine Terrace Deposits on another geologic map of the Point Dume Quadrangle published by the U S Geological Survey, 1996. Neither map suggests that these materials were "sands and clays of flood plains".

P 4.5-9 & 10. The discussion on these pages regarding "Liquefaction" fails to mention that any sites are, or are not within a mapped earthquake induced liquefaction hazard zone as shown on the Malibu Beach Quadrangle Seismic Hazard Zones map prepared by the State Geologist dated 2001 and Point Dume Quadrangle Seismic Hazard Zones map prepared by the State Geologist dated 2002. Significantly, it fails to state that sites 3, 4, 5, 6 & 7 are all within a mapped liquefaction hazard zone. That discussion is deferred to Page 4.5-16 where it is discussed as a potentially significant impact. In the discussion of mitigation on the same page, it discusses "appropriate techniques" and "Suitable measures" however, it fails to indicate that in areas such as this, the techniques and measures may be prohibitively expensive.

Failure to indicate in the section "Setting -- Secondary Seismic Hazards" the actual hazardous conditions that exist, appears to be misdirection. Why would someone look in the Mitigation section for a hazard that is not listed in the Hazards section?

P 4.5-10. The discussion of "Hydroconsolidation" states "No introduction of water is proposed as part of the project". In fact, that is strictly the case since re-zoning is the project, not the construction of housing that the re-zoning allows. However, this re-zoning is intended to allow multifamily development. Since no regional sewer system exists in Malibu, sites 1, 2 & 7 (as well as alternative sites 3,4,5 & 6) will need to be developed with onsite wastewater disposal. These construction projects will in fact result in the introduction of water. Therefore, hydroconsolidation is a potential concern.

In the Utilities and Services Section Page 4.14-12, Table 4.14-6, "Water Demand" (which actually refers to the quantity of wastewater that will be discharged for each project area) is given. For site #1, the volume is given as 14,196 gallons per day. For site #2, the volume is given as 9,984 gallons per day. For site #7, the volume is given as 8,892 gallons per day. Clearly the statement on Page 4.5-10 is very misleading since high quantities of water will

actually be introduced as part of the project. Consequently, the Hydroconsolidation potential needs to be properly addressed in the EIR

P 4.5-10. The discussion of "expansive and collapsible soils" is extremely generalized. It would have been prudent to have addressed the recent distress in the condominium development immediately to the east of Sites 1 and 2 where both expansive and collapsible soils have resulted in distress to buildings within that complex.

P 4.5-11. The discussion of "Landsliding and Slope Stability" is similarly very general and does not provide any site specific findings. It fails to mention that Sites 1 and 2 have small areas mapped as earthquake induced landslide hazard zones as shown on the Point Dume Quadrangle Seismic Hazard Zones map prepared by the State Geologist dated 2002. (Figure 1 of this document). This item was addressed in the mitigation section page 4.5-17.

P4.14-13. The impacts of onsite wastewater disposal is not properly addressed. This section clearly indicates that the onsite soils for Sites 1, 2, and 7 have the "greatest limitations for septic suitability" yet they suggest that the City and RWQCB policies will result in the construction of new wastewater treatment systems that have less than significant impacts. (It should be noted that the same general limiting soils exist at Sites 3, 4, 5 & 6). How does a policy make a soil with the greatest limitations suddenly become acceptable? There is the very real fact that every one of the proposed sites may not be able to discharge the very high anticipated quantity of effluent. Failure to be able to discharge all of the proposed effluent makes the sites' use less that what is proposed. In fact the EIR fails to properly evaluate the actual effect of the proposed land use with respect to wastewater disposal.

The final statement on this page basically indicates that proposed programs and policies regarding housing would have less than significant impacts on the environment. However, since a housing element assumes build out, the EIR should actually provide accurate data on the effect of that build out and not defer to less than significant impacts just because the City or RWQCB have rules.

P 4.13-18 As part of the discussion of Cumulative Impacts, wastewater was addressed. It is erroneous to assume that the only potential environmental effect of wastewater discharge would be related to the operation of a system (wastewater treatment). In fact, one very significant potential effect of onsite wastewater disposal systems is the quantity of wastewater that will

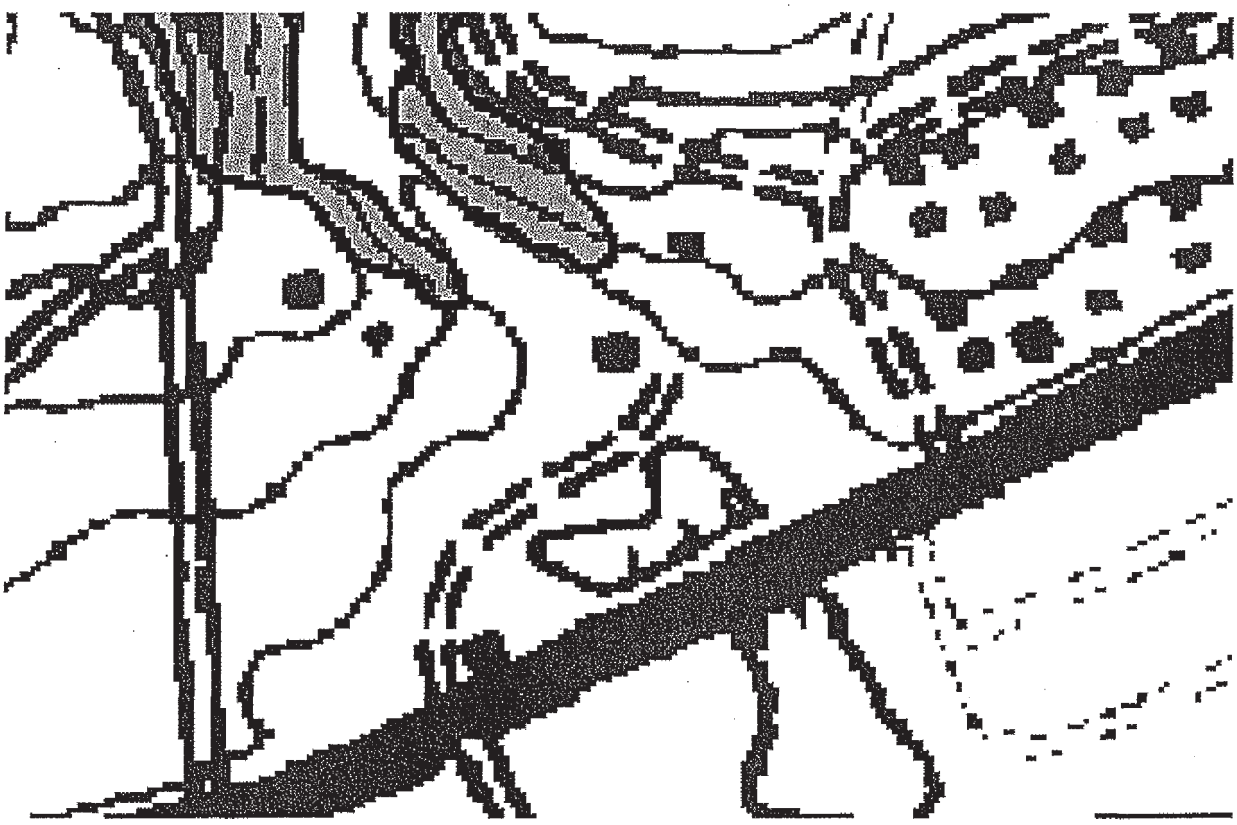

Figure 1. Earthquake induced landslide hazard zones shown in blue. (Compare this to site map in Draft EIR).

infiltrate into the underlying soils and bedrock. Large quantities of water introduced into the subsurface can affect the groundwater level (an item completely ignored in this Draft EIR), hydroconsolidation potential (addressed above in P 4.5-10), and regional slope stability. Sites 1 and 2 are both located upslope of the steep seacliffs located south of Pacific Coast Highway. The migration of groundwater can potentially affect non-adjacent properties. It is also a concern regarding the water table in the Civic Center area of Malibu Site 7 and Sites 3.4 5, & 6 where the existing groundwater level is already high. Increasing the groundwater level in that area may have several adverse affects (negative environmental impacts) none of which were addressed in the draft EIR.

P 6-9. The discussion of alternative Site 4 states "no surface faults were identified on Candidate Site # 4." Two published geologic maps (Yerkes & Campbell, 1980 and Dibblee, 1993) show the Malibu Coast fault through the southern portion of this site. Similarly, Figure 4.5-5 in the Draft EIR shows the fault through this site, although that map is subject to interpretation. This site actually has a greater risk than Site 7, because only the access flag of Site 7 is underlain by the fault.

Donald B. Kowalewsky
Certified Engineering Geologist 1025

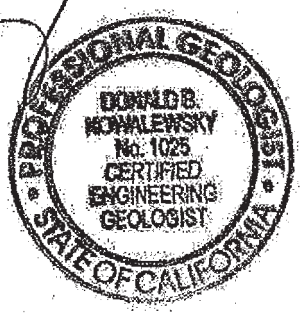

Exhibit E

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June 27, 2013

TRANCAS PCH, LLC
c/o Mr. Todd Nelson
MANATT PHELPS AND PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064

Subject: City of Malibu Housing Element Update DEIR Traffic Study Peer Review

Dear Mr. Nelson:

On behalf of TRANCAS PCH, LLC, Urban Crossroads, Inc. has reviewed the City of Malibu Housing Element Update DEIR Traffic Study. Fehr & Peers conducted the study to evaluate the potential traffic impacts of potential candidate sites which together would create 212 new units of multi-family affordable housing in the City. The study report includes analysis of existing (2012) conditions, opening year (2014) conditions, and general plan buildout (Year 2030) conditions.

The Housing Element Update DEIR Traffic Study focuses on weekday AM and PM and Saturday mid-day peak periods of traffic during the summer at the following intersections:

1. Decker Road (SR-23) & Pacific Coast Highway
2. Trancas Canyon Road & Pacific Coast Highway
3. Kanan Dume Road & Pacific Coast Highway
4. Zumirez Drive & Pacific Coast Highway
5. Malibu Canyon Road & Civic Center Way
6. Malibu Canyon Road & Pacific Coast Highway
7. Webb Way & Pacific Coast Highway
8. Cross Creek Road & Pacific Coast Highway
9. Las Flores Canyon Road & Pacific Coast Highway

Under existing conditions, seven of the nine study intersections were estimated to operate at an acceptable LOS C or better. The intersections of Malibu Canyon Road & Pacific Coast Highway and Las Flores Canyon Road & Pacific Coast Highway operate at LOS D or worse.

The project is expected to generate a total of approximately 1,410 daily weekday trips and 1,354 daily Saturday trips, including approximately 108 trips during the AM peak hour, 131 trips during the PM peak hour, and 110 trips during the Saturday mid-day peak hour. Using City of Malibu's significant impact criteria for traffic volumes, Fehr & Peers determined that the project would result in significant impacts at the intersections of Malibu Canyon Road & Pacific Coast Highway and Cross Creek Road & Pacific Coast Highway during one or more peak periods. They identified a mitigation measure at the intersection of Malibu Canyon Road & Pacific Coast Highway, which entails converting the southbound left-turn/through lane to accommodate all

turning movements. There is also a mitigation measure at the intersection of Cross Creek Road & Pacific Coast Highway, which entails adding a westbound right-turn lane.

Fehr & Peers concluded that the project would not result in significant impacts along the study roadway segments, would not result in transit, bicycle, or pedestrian impacts, and access points would not result in significant impacts. This letter discusses two areas of concern which are not adequately addressed: (1) potential impacts related to key safety issues along the PCH corridor through Malibu, and (2) quantitative analysis of local access to the candidate sites.

SAFETY ISSUES ALONG THE PCH CORRIDOR

Pacific Coast Highway (PCH or SR-1) is the sole east-west artery in the City of Malibu. As noted in the PACIFIC COAST HIGHWAY SAFETY STUDY (LSA Associates, Inc., 2013), PCH is a constrained mobility corridor that accommodates several modes serving a diverse array of adjoining land uses. Motorists use it for commuting and recreation, bicyclists for sport and entertainment, and pedestrians for exercise, coastal access, and connection to transit. Along this route, its four lanes are constrained by the Pacific Ocean and the Santa Monica Mountains into a tight cross-section. These constraints, as well as vertical and horizontal curves, leave little right-of-way for sidewalks or bicycle paths.

For the LSA study, traffic-turning movement data were collected for a.m. and p.m. peak periods at 28 intersections along PCH. Pedestrian and bicycle data were collected at 12 intersections. Daily traffic volumes were collected at six locations. Transit usage data was provided by the Los Angeles County Metropolitan Transportation Authority. Land use and land policy data was collated from the U.S. Census, the City Local Coastal Program (LCP), the City General Plan, and other policy documents. Collision statistics were gathered from previous reports prepared for the PCH corridor, the Statewide Integrated Traffic Records System (SWITRS), the Transportation Injury Mapping System (TIMS), and Los Angeles County Sheriff's Department Collision Summary Reports.

Several local, state and federal thresholds were used by LSA to assess the safety issues along the study corridor. For issues related to vehicle travel, technical reference materials such as the Manual on Uniform Traffic Control Devices (MUTCD), American Association of State Highway and Transportation Officials; A Policy on Geometric Design of Highways and Streets (AASHTO Design Manual), Caltrans Highway Design Manual (HDM), and the Transportation Research Board's (TRB) Access Management Manual were used. For bicycle-related issues, the National Association of City Transportation Officials (NACTO) Design Manual, AASHTO Design Manual, and California MUTCD were used. For pedestrian facilities, the California MUTCD, AASHTO Design Manual, and Caltrans HDM were referenced. The transit infrastructure was assessed based on the American with Disabilities Act (ADA) Standards for Accessible Design.

Based on the surveyed traffic volume, the intersection of Cross Creek Road/PCH would be expected to operate at Level of Service "D", but the LSA study observed that congested conditions at this intersection are worse as the result of other circumstances. Cross Creek Road provides access to one of the main shopping areas in Malibu. This results in high volumes for eastbound left turns and westbound right turns. The queue for the eastbound left turns has been observed to exceed the pocket provided. This potentially blocks one of the through lanes on PCH. The westbound right turn does not have a dedicated lane. High turn volume for this movement effectively cuts the through capacity on PCH in half. The condition is

exacerbated on weekends, when pedestrian use of the crosswalk along PCH is common. Pedestrians receive a walk signal at the same time PCH receives a green light. Pedestrians in the crosswalk prevent westbound right turns, which in turn completely blocks one of the through lanes on PCH. Congestion resulting from inefficient intersection operations builds back from Cross Creek Road and can reach Serra Road or farther on busy days. Sudden, unexpected slowing can contribute to rear-end collisions.

Malibu Road enters PCH at a shallow angle a short distance before the beginning of the eastbound left-turn pocket at Cross Creek Road. According to the Caltrans Highway Design Manual, an intersection angle should not be less than 75 degrees; however, this intersection angle is less than 75 degrees. The short distance remaining to Cross Creek Road also means that less acceleration length is provided than recommended by the California MUTCD. The shallow angle requires vehicles from Malibu Road to merge with PCH vehicles rather than waiting to turn at an intersection. The short distance provides little space for Malibu Road vehicles to accelerate to match the speed of PCH vehicles and increases the potential for conflict.

Congestion through the commercial area contributes to the potential for collisions. The intersections of Cross Creek Road/PCH, Webb Way/PCH, and Malibu Canyon Road/PCH are all calculated by LSA to exceed the LOS standard set by the City of Malibu. The result is poor progression due to overburdened intersections, which leads to closely spaced vehicles and the potential for collisions. Most of the collisions near Webb Way between 2010 and 2012 were rear-end collisions.

LOCAL ACCESS TO THE CANDIDATE SITES

The Housing Element Update DEIR Traffic Study indicates that the project driveways will be located on Ramirez Mesa Drive and La Paz Lane. Fehr & Peers concludes that these two roadways carry less vehicular traffic when compared to other roadways fronting the parcels (Pacific Coast Highway and Civic Center Way, respectively) and are expected to operate at an acceptable level with the addition of project traffic. However, there are no traffic forecasts provided to support this conclusion.

As noted in the PACIFIC COAST HIGHWAY SAFETY STUDY (LSA Associates, Inc., 2013), the intersection of Cross Creek Road/PCH is a busy location for pedestrian crossings. During the weekend midday peak hour, 236 pedestrians were counted crossing PCH in this crosswalk. In addition, 79 pedestrians were counted crossing Cross Creek Road. However, these pedestrian crossings conflict with the permitted left turn from the lagoon onto northbound PCH. During periods of high pedestrian volume, left-turning and through traffic will stack in the intersection and continue to block the intersection for the beginning of the green light for PCH. This creates a conflict between pedestrians and vehicles.

Although the Housing Element potential candidate site access locations are in the early phase of development, project access points should have been estimated, geometric issues reviewed and impacts quantified in the City of Malibu Housing Element Update DEIR Traffic Study. In addition to the ICU calculations presented in the DEIR Traffic Study, intersections along PCH should also be analyzed using updated HCM methodologies that can take into consideration the mix of peak season vehicle and pedestrian activities at key locations.

Urban Crossroads, Inc. is pleased to provide these comments related to our review of the City of Malibu Housing Element Update DEIR Traffic Study. If you have any questions or comments, please contact us at (949) 660-1994.

Respectfully submitted,

URBAN CROSSROADS, INC.

John Kain, AICP
Senior Principal

Carleton Waters, PE
Principal

JN: 08570

Exhibit F

City Council Meeting
05-23-11
Item
6.A.

Council Agenda Report

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

Prepared by: Craig George, Division Manager – Environmental and Building Safety

Reviewed by: Vic Peterson, Community Development Director

Approved by: Jim Thorsen, City Manager

Date prepared: May 5, 2011 Meeting date: May 23, 2011

Subject: Los Angeles County Waterworks District No. 29 and Los Angeles County Fire Department Development Policies

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RECOMMENDED ACTION: Receive and file.

FISCAL IMPACT: The immediate direct fiscal impact has been the inability to issue Building Permits for projects that have not received final Fire Department approval. There are currently 18 projects in this classification. It is estimated that these projects total approximately $300,000.00 in total fees when all permits and reviews are included. Additionally, there are numerous projects that have not initiated the entitlement process due to the understanding that they could not obtain Fire Department and/or Los Angeles County Department of Public Works, Waterworks District No. 29 (Water District 29) approval. There are financial impacts to the community due to the loss of construction jobs associated with the inability to issue construction permits on businesses and suppliers within the City. There will be long term financial impacts to the City due to the significant loss of property tax revenues these developments would provide. Additional financial impacts may be anticipated as property values will be impacted due to the inability to expand existing development when Fire Department or Water District 29 review is required.

DISCUSSION: Recent policy changes implemented by Water District 29 and the County of Los Angeles Fire Department Fire Prevention Division (Fire Department) have created considerable confusion and frustration in the development process for the City, development applicants, and the public. These policy changes were developed by the County without consultation or notice of either the City or the general public.

The implementation of these policy changes has had a significant impact on the development process for projects within the City. The public has expressed concerns regarding the ability of these public agencies to implement these policy changes without proper notification. The 18 identified projects within the City are eligible for permit issuance with the exception of the final Fire Department and Water District 29 approval. All 18 had been initially approved by both Water District 29 and the Fire Department in the beginning of the entitlement process, receiving initial "Will Serve" letters. All of these projects were issued initial Fire Department approval to proceed through the entitlement process in the City's Planning Division. Projects have obtained Fire Department approval of grading plans authorizing grading and the construction of Fire Department compliant access. When these projects submitted final building plans for approval by the Fire Department, they were denied. These denials were based on the new policy requirement to provide the required fire flow rate from the existing water supply infrastructure.

The policy changes implemented by the Fire Department requires all new project proposals meet Fire Code Chapter 5, Section 508.1. This code specifies that an approved water supply system capable of supplying the required fire flow for fire protection shall be provided to the premises upon which buildings are constructed. Fire Code Chapter 5, Section 508.3 states that the fire flow requirements for buildings shall be determined by the Fire Code Official, which is the County of Los Angeles Fire Department. In general, the Fire Department requires a fire flow between 1,000-2,000 gallons per minute for a two hour duration. The specific amount is dependent upon the size of the proposed development. This is in accordance with "Los Angeles County Fire Department Regulation #8" (Attachment 1). The specific policy change is that this water demand to meet the required fire flow MUST be provided by a municipal water supply, which in Malibu is Water District 29. Previously, the Fire Department allowed private water supply systems. These systems may include adequately sized water tanks, private sprinkler systems, and well water supply to supplement the domestic supply from Water District 29 when available.

The current policy from the Fire Department is to require a flow test on existing fire hydrants, or to require the installation of a compliant fire hydrant meeting the requirements of the County of Los Angeles Fire Code. When the fire flow from an existing fire hydrant cannot meet the required fire flow for the duration specified, the project is denied. Where the existing water supply infrastructure does not provide an existing fire hydrant in compliance with the Fire Code, and new compliant fire hydrant capable of meeting the fire flow demands will be required. When the fire flow requirement could not be met, or the water supply infrastructure was not present, the development applicant is then required to upgrade the existing Water District 29 infrastructure. This could include new water mains, pump systems, and water tanks.

Denial letters to applicants stated that they recognize the cost of upgrading the water supply infrastructure to comply with current code. The Fire Department has also stated that it did not find it prudent to allow the continuation of the past policy of allowing development of vacant parcels on a private water system utilizing private water tanks and fire sprinklers (alternative fire suppression mitigation). The Fire Department further stated that in order to reduce the cumulative impact of development in the wildland-urban interface zone in the Santa Monica Mountains, the water supply infrastructure must be improved to provide regional fire protection. This is the major policy shift instituted by the Fire Department. Since the City's incorporation, the Fire Department has allowed the use of private water tanks and private water systems for fire suppression requirements. In some denial letters it states, "Therefore, in accordance with County of Los Angeles Fire Department Regulation #8, you are required to install a fire hydrant, supplied by a public water main, in a location such that no portion of the proposed structure exceeds 750 lineal feet from the hydrant". Some projects have been required to install private onsite fire hydrants in approved locations supplied by a public water main. In one specific case to comply the applicant is required to install in a compliant manner 3,343 lineal feet of 12 inch water main at their own cost. The Fire Department has also stated that it does not have the discretion to grant alternative fire flow mitigation, though this was standard policy for the Fire Department in the recent past.

It is important to understand that the required fire flow is for water supply for the required interior fire sprinkler systems, which is for protection of occupants in a structure during a structure fire event, and for the protection of interior contents of the structure. These requirements are not directly intended to increase water supply for the use in wild fires. This would necessitate upgrading most, if not all, of the Water District 29 water storage and conveyance system in the City. The fire flow requirement of an average house in the City is 1250 gallons of water per minute for a two hour duration. That computes to 150,000 gallons of water supplied by a public municipal source. That requires a water tank of sufficient capacity, adequate piping, and proper location to provide that amount of water. Many tanks in the City cannot supply this amount of water. Additionally, this is for a single structure and not multiple structures such as a neighborhood or community. The fire flow demand on a single water tank may be depleted by a single structure fire if the entire water demand were to be utilized.

The Fire Department is no longer allowing alternative methods of water supply, including private water storage tanks. The Fire Department has stated that the Fire Code does not allow requirements to be waived and requires that any alternative method of protection comply with the intent of the Code and be at least equivalent to that prescribed in the Fire Code in quality, strength, effectiveness, fire resistance, durability, and safety. The Fire Department states that private water storage tanks do not provide an equivalent means of protection. The water supply must be a reliable source to allow the Fire Department the ability to fight fires.

It is of importance to understand the evolving changes that have occurred in Malibu with respect to the Fire Code and the Building Code. The required fire flows identified in the Fire Code have increased each code cycle. Past iterations of the Fire Code required 500 gallons per minute for a 20-minute duration. The current Code requires, dependent upon structure size, approximately 1500 gallons per minute for a 2-hour duration. Significant upgrades to the water supply infrastructure will be required to accommodate these changes for all structures.

Projects denied by the Fire Department for the inability to meet the fire flow requirements through the existing water supply infrastructure must engage Water District 29 to achieve a solution. Water District 29 is responsible for the issuance of "Will Serve" letters to applicants as the water purveyor. Currently, Water District 29 will issue a "Will Serve" letter to applicants stating "Water system improvements will be required to be installed by the developer subject to the requirements set by the Fire Department and the District" where it has determined the existing water infrastructure is insufficient to meet the fire flow requirements. Water District 29 has issued "Will Serve" letters stating "The District CANNOT serve water to this property at any time".

Water District 29 issued an informational notice of its new policies to Fire Chief P. Michael Freeman on November 10, 2010 (Attachment 2) titled "Los Angeles County Waterworks District No. 29, Malibu water service and fire protection to new single-family residences within the Santa Monica Mountains Area". The policy states that Water District 29 staff will determine if the water system zone has adequate storage and transmission capacities to meet the fire flow requirements. If it does, the applicant will be required to pay the District's applicable fees to obtain a "Will Serve" letter. If the water system is inadequate, the District Engineer will determine the needed new water infrastructure improvements. The applicant must agree in writing to construct and finance the needed water system improvements in order to obtain a "Will Serve" letter. The applicant must fully finance projects that benefit a single development. If improvements benefit a pressure zone the applicant must finance improvements and potentially be reimbursed if other developments rely on these improvements. The Fire Department requires all water supply infrastructures to be completed, operational, and capable of meeting the required fire flow prior to approval of new development.

Water District 29 also states in its informational notice that most of the pressure zones in the district do not have the capacity to meet the fire flow requirements. The notice also states that "Applicants have resisted the construction of needed improvements and instead resorted to pursuing alternative options" such as onsite water supply tanks. The notice also states that Water District 29 has the right to deny new water service to an applicant when the existing water system is inadequate to provide the fire protection needs or when no water system exists.

At this time, the primary flaw of the Water District 29 approach is that it relies on individual property owners to fund large infrastructure development. An example of this policy is the proposed "Civic Center Water Infrastructure Improvements". Water District 29 estimates the cost of these improvements at $5,000,000. Commencement of these improvements will not be initiated until such time as sufficient funds have been acquired from individual property owners to finance the project which may take a protracted amount of time.

The inadequacy of the water service has long been documented. In 2004, the Final Report Municipal Service Review – Water Service – Las Virgenes Region was prepared for the Local Agency Formation Commission. The report identified the system as an "aging system with water pressure and volume in some areas considered to be inadequate", and that "little progress has been made on capital improvements needed to ensure that adequate infrastructure is provided concurrent with need". The report also stated that "Waterworks District #29 has an aging system with diminishing reliability and limited capacity for delivery and storage. Capital projects have been limited, as funding is needed for immediate repairs rather than improvements. The Urban Water Management Plan noted a 6.3% unidentified water loss, which is likely due to system deficiencies".

The effect of the policies implemented by the County of Los Angeles Fire Department and the County of Los Angeles Department of Public Works Waterworks District No. 29 has significantly impacted current and future development within the City of Malibu. These policies have impacted current and future revenues for the City. These policies have also angered and frustrated those individuals seeking to develop their property or to expand development on existing developed properties and further exacerbating economic recovery.

ATTACHMENTS:

1. Los Angeles County Fire Department Regulation #8
2. Letter to Fire Chief P. Michael Freeman dated November 10, 2010 titled "Los Angeles County Waterworks District No. 29, Malibu water service and fire protection to new single-family residences within the Santa Monica Mountains Area"

I. INTRODUCTION

A. Purpose: To provide Department standards for fire flow, hydrant spacing and specifications.

B. Scope: Informational to the general public and instructional to all individuals, companies, or corporations involved in the subdivision of land, construction of buildings, or alterations and/or installation of fire protection water systems and hydrants.

C. Author: The Deputy Chief of the Prevention Services Bureau through the Assistant Fire Chief (Fire Marshal) of the Fire Prevention Division is responsible for the origin and maintenance of this regulation.

D. Definitions:

1. GPM – gallons per minute

2. psi – pounds per square inch

3. Detached condominiums – single detached dwelling units on land owned in common

4. Multiple family dwellings – three or more dwelling units attached

II. RESPONSIBILITY

A. Land Development Unit

1. The Department's Land Development Unit shall review all subdivisions of land and apply fire flow and hydrant spacing requirements in accordance with this regulation and the present zoning of the subdivision or allowed land use as approved by the County's Regional Planning Commission or city planning department.

B. Fire Prevention Engineering Section

1. The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow and hydrant spacing requirements in accordance with this regulation.

III. POLICY

A. The procedures, standards, and policies contained herein are provided to ensure the adequacy of, and access to, fire protection water and shall be enforced by all Department personnel.

IV. PROCEDURES

A. Land development: fire flow, duration of flow, and hydrant spacing

The following requirements apply to land development issues such as: tract and parcel maps, conditional use permits, zone changes, lot line adjustments, planned unit developments, etc.

		Fire Flow	Duration of Flow	Public Hydrant Spacing
1.	Residential Fire Zones 3 Very High Fire Hazard Severity Zone (VHFHSZ)			
a.	Single family dwelling and detached condominiums (1 – 4 Units) (Under 5,000 square feet)	1,250 GPM	2 hrs.	600 ft.
b.	Detached condominium (5 or more units) (Under 5,000 square feet)	1,500 GPM	2 hrs.	300 ft.
c.	Two family dwellings (Duplexes)	1,500 GPM	2 hrs.	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS OVER 5,000 SQUARE FEET. SEE, TABLE 1 FOR FIRE FLOW REQUIREMENTS PER BUILDING SIZE.

2. Multiple family dwellings, hotels, high rise, commercial, industrial, etc.

a. Due to the undetermined building designs for new land development projects ***(undeveloped land)***, the required fire flow shall be: 5,000 GPM 5 hrs. 300 ft.

NOTE: REDUCTION IN FIRE FLOW IN ACCORDANCE WITH TABLE 1.

b. Land development projects consisting of lots having existing structures shall be in compliance with Table 1 (fire flow per building size). This standard applies to multiple family dwellings, hotels, high rise, commercial, industrial, etc.

NOTE: FIRE FLOWS PRECEDING ARE MEASURED AT 20 POUNDS PER SQUARE INCH RESIDUAL PRESSURE.

B. Building plans

The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow requirements and hydrant spacing in accordance with the following:

1. Residential

Building Occupancy Classification	Fire Flow	Duration of Flow	Public Hydrant Spacing
a. Single family dwellings - Fire Zone 3 (Less than 5000 square feet)			
On a lot of one acre or more	750 GPM	2 hrs.	600 ft.
On a lot less than one acre	1,250 GPM	2 hrs	600 ft.
b. Single family dwellings - VHFHSZ (Less than 5,000 square feet)			
On a lot of one acre or more	1,000 GPM	2 hrs.	600 ft.
On lots less than one acre	1,250 GPM	2 hrs.	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS GREATER THAN 5,000 SQUARE FEET IN AREA SEE TABLE

c. Two-family dwelling units

Duplexes	1,500 GPM	2 hrs.	600 ft.

2. Mobile home park

a. Recreation bldg. — Refer to Table 1 for fire flow according to building size

b. Mobile home park — 1,250 GPM 2 hrs. 600 ft.

3. Multiple residential, apartments, single family residences (greater than 5,000 square feet), private schools, hotels, high rise, commercial, industrial, etc. (R-1, E, B, A, I, H, F, M, S) (see Table 1).

C. Public fire hydrant requirements

1. Fire hydrants shall be required at intersections and along access ways as spacing requirements dictate.

2. Spacing

a. Cul-de-sac

When cul-de-sac depth exceeds 450' (residential) or 200' (commercial), hydrants shall be required at mid-block. Additional hydrants will be required if hydrant spacing exceeds specified distances.

b. Single family dwellings

Fire hydrant spacing of 600 feet

NOTE: The following guidelines shall be used in meeting single family dwellings hydrant spacing requirements:

(1) Urban properties (more than one unit per acre): No portion of lot frontage should be more than 450' via vehicular access from a public hydrant.

(2) Non-Urban Properties (less than one unit per acre):
No portion of a structure should be placed on a lot where it exceeds 750' via vehicular access from a properly spaced public hydrant that meets the required fire flow.

c. All occupancies

Other than single family dwellings, such as commercial, industrial, multi-family dwellings, private schools, institutions, detached condominiums (five or more units), etc.

Fire hydrant spacing shall be 300 feet.

NOTE: The following guidelines shall be used in meeting the hydrant spacing requirements.

(1) No portion of lot frontage shall be more than 200 feet via vehicular access from a public hydrant.

(2) No portion of a building should exceed 400 feet via vehicular access from a properly spaced public hydrant.

d. Supplemental fire protection

When a structure cannot meet the required public hydrant spacing distances, supplemental fire protection shall be required.

NOTE: Supplemental fire protection is not limited to the installation of on-site fire hydrants; it may include automatic extinguishing systems.

3. Hydrant location requirements - both sides of a street

Hydrants shall be required on both sides of the street whenever:

a. Streets having raised median center dividers that make access to hydrants difficult, causes time delay, and/or creates undue hazard.

b. For situations other than those listed in "a" above, the Department's inspector's judgment shall be used. The following items shall be considered when determining hydrant locations:

(1) Excessive traffic loads, major arterial route, in which traffic would be difficult to detour.

(2) Lack of adjacent parallel public streets in which traffic could be redirected (e.g., Pacific Coast Highway).

(3) Past practices in the area.

(4) Possibility of future development in the area.

(5) Type of development (i.e., flag-lot units, large apartment or condo complex, etc.).

(6) Accessibility to existing hydrants

(7) Possibility of the existing street having a raised median center divider in the near future.

D. On-site hydrant requirements

1. When any portion of a proposed structure exceeds (via vehicular access) the allowable distances from a public hydrant and on-site hydrants are required, the following spacing requirements shall be met:

a. Spacing distance between on-site hydrants shall be 300 to 600 feet.

(1) Design features shall assist in allowing distance modifications.

b. Factors considered when allowing distance modifications.

(1) Only sprinklered buildings qualify for the maximum spacing of 600 feet.

(2) For non-sprinklered buildings, consideration should be given to fire protection, access doors, outside storage, etc. Distance between hydrants should not exceed 400 feet.

2. Fire flow

a. All on-site fire hydrants shall flow a minimum of 1,250 gallons per minute at 20 psi for a duration of two hours. If more than one on-site fire hydrant is required, the on-site fire flow shall be at least 2,500 gallons per minute at 20 psi, flowing from two hydrants simultaneously. On site flow may be greater depending upon the size of the structure and the distance from public hydrants.

NOTE: ONE OF THE TWO HYDRANTS TESTED SHALL BE THE FARTHEST FROM THE PUBLIC WATER SOURCE.

3. Distance from structures

All on-site hydrants shall be installed a minimum of 25 feet from a structure or protected by a two-hour firewall.

4. Shut-off valves

All on-site hydrants shall be equipped with a shut-off (gate) valve, which shall be located as follows:

a. Minimum distance to the hydrant 10 feet

b. Maximum distance from the hydrant 25 feet

5. Inspection of new installations

All new on-site hydrants and underground installations are subject to inspection of the following items by a representative of the Department:

a. Piping materials and the bracing and support thereof.

b. A hydrostatic test of 200 psi for two hours.

c. Adequate flushing of the installation.

d. Flow test to satisfy required fire flow.

(1) Hydrants shall be painted with two coats of red primer and one coat of red paint, with the exception of the stem and threads, prior to flow test and acceptance of the system.

6. Maintenance

It shall be the responsibility of the property management company, the homeowners association, or the property owner to maintain on-site hydrants.

a. Hydrants shall be painted with two coats of red primer and one coat of red, with the exception of the stem and threads, prior to flow test and acceptance of the system.

b. No barricades, walls, fences, landscaping, etc., shall be installed or planted within three feet of a fire hydrant.

E. Public hydrant flow procedure

The minimum acceptable flow from any existing public hydrant shall be 1,000 GPM unless the required fire flow is less. Hydrants used to satisfy fire flow requirements will be determined by the following items:

1. Only hydrants that meet spacing requirements are acceptable for meeting fire flow requirements.

2. In order to meet the required fire flow:

   a. Flow closest hydrant and calculate to determine flow at 20 pounds per square inch residual pressure. If the calculated flow does not meet the fire flow requirement, the next closest hydrant shall be flowed simultaneously with the first hydrant, providing it meets the spacing requirement, etc.

   b. If more than one hydrant is to be flowed in order to meet the required fire flow, the number of hydrants shall be flowed as follows:

One hydrant	1,250 GPM and below
Two hydrants	1,251– 3,500 GPM flowing simultaneously
Three hydrants	3,501– 5,000 GPM flowing simultaneously

F. Hydrant upgrade policy

1. Existing single outlet 2 1/2" inch hydrants shall be upgraded to a double outlet 6" x 4" x 2 1/2" hydrant when the required fire flow exceeds 1,250 GPM.

2. An upgrade of the fire hydrant will not be required if the required fire flow is between the minimum requirement of 750 gallons per minute, up to and including 1,250 gallons per minute, and the existing public water system will provide the required fire flow through an existing wharf fire hydrant.

3. All new required fire hydrant installations shall be approved 6" x 4" x 2 1/2" fire hydrants.

4. When water main improvements are required to meet GPM flow, and the existing water main has single outlet 2 1/2" fire hydrant(s), then a hydrant(s) upgrade will be required. This upgrade shall apply regardless of flow requirements.

G. Hydrant specifications

All required public and on-site fire hydrants shall be installed to the following specifications prior to flow test and acceptance of the system.

1. Hydrants shall be:

   a. Installed so that the center line of the lowest outlet is between 14 and 24 inches above finished grade

   b. Installed so that the front of the riser is between 12 and 24 inches behind the curb face

   c. Installed with outlets facing the curb at a 45-degree angle to the curb line if there are double outlet hydrants

   d. Similar to the type of construction which conforms to current A.W.W.A. Standards

   e. Provided with three-foot unobstructed clearance on all sides

   f. Provided with approved plastic caps

   g. Painted with two coats of red primer and one coat of traffic signal yellow for public hydrants and one coat of red for on-site hydrants, with the exception of the stems and threads

2. Underground shut-off valves are to be located:

   a. A minimum distance of 10 feet from the hydrant

   b. A maximum distance of 25 feet from the hydrant

      Exception: Location can be less than 10 feet when the water main is already installed and the 10-foot minimum distance cannot be satisfied.

3. All new water mains, laterals, gate valves, buries, and riser shall be a minimum of six inches inside diameter.

4. When sidewalks are contiguous with a curb and are five feet wide or less, fire hydrants shall be placed immediately behind the sidewalk. Under no circumstances shall hydrants be more than six feet from a curb line.

5. The owner-developer shall be responsible for making the necessary arrangements with the local water purveyor for the installation of all public facilities.

6. Approved fire hydrant barricades shall be installed if curbs are not provided (see Figures 1, 2, and 3 following on pages 11 and 12).

Barricade/Clearance Details

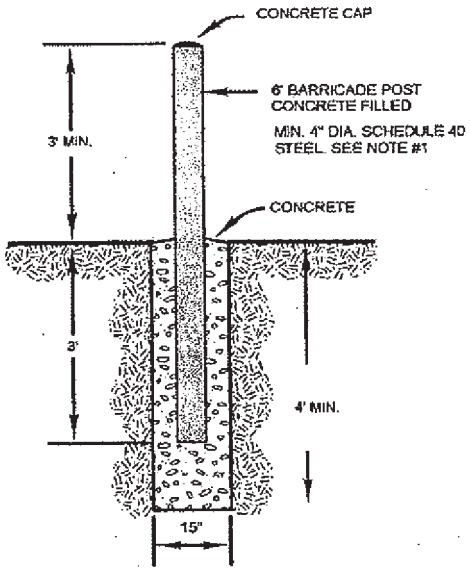
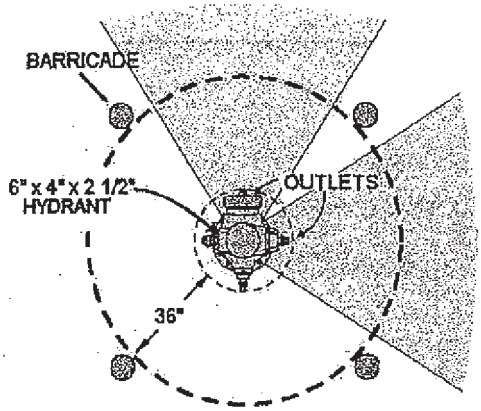


Figure 1



PLAN
FIRE HYDRANT BARRICADES
(TYPICAL)

Figure 2

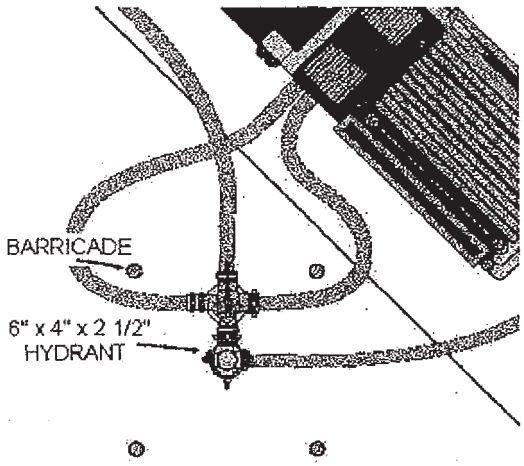


Figure 3

Notes:

1. Constructed of steel not less than four inches in diameter, six inches if heavy truck traffic is anticipated, schedule 40 steel and concrete filled.

2. Posts shall be set not less than three feet deep in a concrete footing of not less than 15 inches in diameter, with the top of the posts not less than three feet above ground and not less than three feet from the hydrant

3. Posts, fences, vehicles, growth, trash storage and other materials or things shall not be placed or kept near fire hydrants in a manner that would prevent fire hydrants from being immediately discernable.

4. If hydrant is to be barricaded, no barricade shall be constructed in front of the hydrant outlets (Figure 2, shaded area).

5. The exact location of barricades may be changed by the field inspector during a field inspection.

6. The steel pipe above ground shall be painted a minimum of two field coats of primer.

7. Two finish coats of "traffic signal yellow" shall be used for fire hydrant barricades.

8. Figure 3 shows hydrant hook up during fireground operations. Notice apparatus (hydra-assist-valve) connected to hydrant and the required area. Figure 3 shows the importance of not constructing barricades or other obstructions in front of hydrant outlets.

H. Private fire protection systems for rural commercial and industrial development

Where the standards of this regulation cannot be met for industrial and commercial developments in rural areas, alternate proposals which meet NFPA Standard 1142 may be submitted to the Fire Marshal for review. Such proposals shall also be subject to the following:

1. The structure is beyond 3,000 feet of any existing, adequately-sized water system.

    a. Structures within 3,000 feet of an existing, adequately-sized water system, but beyond a water purveyor service area, will be reviewed on an individual basis.

2. The structure is in an area designated by the County of Los Angeles' General Plan as rural non-urban.

I. Blue reflective hydrant markers replacement policy

1. Purpose: To provide information regarding the replacement of blue reflective hydrant markers, following street construction or repair work.

    a. Fire station personnel shall inform Department of Public Works Road Construction Inspectors of the importance of the blue reflective hydrant markers, and encourage them to enforce their Department permit requirement, that streets and roads be returned to their original condition, following construction or repair work.

    b. When street construction or repair work occurs within this Department's jurisdiction, the nearest Department of Public Works Permit Office shall be contacted. The location can be found by searching for the jurisdiction office in the "County of Los Angeles Telephone Directory" under "Department of Public Works Road Maintenance Division." The importance of the blue reflective hydrant markers should be explained, and the requirement encouraged that the street be returned to its original condition, by replacing the hydrant markers.

TABLE 1 *

BUILDING SIZE (First floor area)		Fire Flow *(1) (2)	Duration	Hydrant Spacing
Under 3,000	sq. ft.	1,000 GPM	2 hrs.	300 ft.
3,000 to 4,999	sq. ft.	1,250 GPM	2 hrs.	300 ft.
5,000 to 7,999	sq. ft.	1,500 GPM	2 hrs.	300 ft.
8,000 to 9,999	sq. ft.	2,000 GPM	2 hrs.	300 ft.
10,000 to 14,999	sq. ft.	2,500 GPM	2 hrs.	300 ft.
15,000 to 19,999	sq. ft.	3,000 GPM	3 hrs.	300 ft.
20,000 to 24,999	sq. ft.	3,500 GPM	3 hrs.	300 ft.
25,000 to 29,999	sq. ft.	4,000 GPM	4 hrs.	300 ft.
30,000 to 34,999	sq. ft.	4,500 GPM	4 hrs.	300 ft.
35,000 or more	sq. ft.	5,000 GPM	5 hrs.	300 ft.

* See applicable footnotes below:

(FIRE FLOWS MEASURED AT 20 POUNDS PER SQUARE INCH RESIDUAL PRESSURE)

(1) Conditions requiring additional fire flow.

a. Each story above ground level - add 500 GPM per story.

b. Any exposure within 50 feet - add a total of 500 GPM.

c. Any high-rise building (as determined by the jurisdictional building code) the fire flow shall be a minimum of 3,500 GPM for 3 hours at 20 psi.

d. Any flow may be increased up to 1,000 GPM for a hazardous occupancy.

(2) Reductions in fire flow shall be cumulative for type of construction and a fully sprinklered building. The following allowances and/or additions may be made to standard fire flow requirements:

a. A 25% reduction shall be granted for the following types of construction: Type I-F.R, Type II-F.R., Type II one-hour, Type II-N, Type III one-hour, Type III-N, Type IV, Type IV one hour, and Type V one-hour. This reduction shall be automatic and credited on all projects using these types of construction. Credit will not be given for Type V-N structures (to a minimum of 2,000 GPM available fire flow).

b. A 25% reduction shall be granted for fully sprinklered buildings (to a minimum of 2,000 GPM available fire flow).

c. When determining required fire flows for structures that total 70,000 square feet or greater, such flows shall not be reduced below 3,500 GPM at 20 psi for three hours.

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
http://dpw.lacounty.gov

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 10, 2010

IN REPLY PLEASE
REFER TO FILE: WW-3

TO: Fire Chief P. Michael Freeman

FROM: Gail Farber
Director of Public Works

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 29, MALIBU WATER SERVICE AND FIRE PROTECTION TO NEW SINGLE-FAMILY RESIDENCES WITHIN THE SANTA MONICA MOUNTAINS AREA

The following information is to clarify the processing of requests for water services for single-family developments by the Los Angeles County Waterworks District No. 29, Malibu District.

When an applicant requests water service for a proposed single-family development, we verify that the applicant's proposed development is within the District's service area and require that the applicant provide us with the Fire Department's requirements for the proposed development. Based on the flow rate and duration of the Fire Department's fire-flow requirement, District staff determines if the water system zone from which the proposed development will be served has adequate storage and transmission capacities to meet the fire domestic flow requirements. If it does, the applicants are required to pay the District's applicable fees to obtain a Will-Serve Letter for the proposed development. If the water system does not meet the fire and domestic flow requirement for the proposed development, the District Engineer determines the needed new water system improvements to serve the proposed development. A Will-Serve Letter will not be issued for the development until the applicant agrees in writing to construct the needed water system improvements.

The District may elect not to set conditions for water service for a project when the applicant's property is physically located at an elevation higher than the existing District tank elevation or at a distance of more than 2,000 feet from the District's existing distribution system. However, the applicant may propose a conceptual plan for constructing a new water system pressure zone for the proposed development and submit it to the District for review. The District may either reject and deny water service from the public water system or accept the proposed plans. If the District accepts the developer's plan, the applicant must agree in writing to finance the construction of a new water system pressure zone in order for the District to issue a Will-Serve Letter for the proposed development.

Attachment 2

It appears from the latest water service applications we received that most proposed single-family developments have fire-flow requirements of 1,250 gallons per minute for two hours. In most of the pressure zones within the District, we do not have enough storage and, in many cases, pipeline capacity to meet this fire-flow requirement. Applicants have resisted the construction of needed improvements and instead resorted to pursuing alternative options. Rule 1-C-1c of the Rules and Regulations of the Los Angeles County Waterworks Districts and the Marina del Rey Water System (copy attached), the District has the right to deny new water service to an applicant when the existing water system in the vicinity of the applicant's property is inadequate to provide the fire protection needs of the applicant or when no water system exists.

It is important to point out that when the needed improvements benefit other vacant properties, the applicant who finances the improvements may establish a right to future financial participation by other applicants by filing a "Letter of Participation" with the District. During the 10-year period commencing from the date of formal transfer of the water system improvements to the District, additional applicants must reimburse the original applicant their pro rata share of the cost of the improvements.

I hope that this letter clarifies the District's processing policy of new water service applications.

If you have any questions regarding this matter, please contact me or your staff may contact Greg Even of our Waterworks Division at (626) 300-3331 or geven@dpw.lacounty.gov.

GE:dvt
MEMO144

Attach.

Exhibit G

State of California
California Regional Water Quality Control Board, Los Angeles Region

Resolution No. R4-2009-007

Amendment to the
Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties
to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board), finds that:

1. In the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereafter *Basin Plan*), the Regional Board designated beneficial uses and established water quality objectives for the following water resources in the Civic Center area of the City of Malibu:

   Groundwater: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

   Malibu Lagoon: Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

   Malibu Creek: Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

   Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

2. In the 2006 Clean Water Act Section 303(d) list, approved by the United States Environmental Protection Agency (US EPA) on June 28, 2007, impairments to beneficial uses were formally identified for the following water resources:

   Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.
   Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).
   Malibu Beach: impaired by Indicator Bacteria.
   Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.
   Carbon Beach: impaired by Indicator Bacteria.

3. To restore water quality and impaired beneficial uses, the US EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs):

   i. **Malibu Creek Watershed Nutrient TMDL:** The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April 15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential land use activities. The TMDL specifies a load allocation for on-site wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.

   ii. **Malibu Creek and Lagoon Bacteria TMDL**: The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, on-site wastewater disposal systems, and animal wastes. The TMDL specifies load allocations for on-site wastewater disposal systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with >=0.1 and the three days following the rain event), there are 17 allowable exceedance days.

   iii. **Santa Monica Bay Beaches Wet and Dry Bacteria TMDL:** For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as a major source. The TMDLs did not provide load allocations for on-site wastewater disposal systems, meaning that no exceedances of the numeric targets are permissible as a result of discharges from non-point sources, including on-site wastewater disposal systems. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with >=0.1 and the three days following the rain event), there are 17 allowable exceedance days.

4. Pursuant to California Water Code section 13243, the Regional Board may, in its *Basin Plan*, specify certain conditions or areas where the discharge of waste, or certain types of

waste, will not be permitted. During a public meeting on December 14, 1998, the Regional Board directed the Executive Officer to prepare a prohibition of on-site wastewater disposal systems (OWDS) for consideration by the Regional Board. During a public meeting on November 13, 2008, the Regional Board discussed the need for a firm time schedule to address water quality problems in the Malibu Civic Center area and again directed staff to prepare a prohibition of on-site wastewater disposal systems for Board consideration.

5. For the purposes of this *Basin Plan* amendment, the "Malibu Civic Center area" is defined as the area within the lower Winter Canyon watershed, Malibu Valley watershed and adjacent coastal strips between and including Amarillo Beach and Surfrider Beach. A map depicting the boundaries of the Malibu Civic Center area is area is attached hereto as Exhibit 1.

6. In accordance with the California Water Code, sections 13280, 13281 and 13283, Regional Board staff presented technical evidence in a public hearing on November 5, 2009, demonstrating that discharges of wastewater from OWDSs in the Civic Center area fail to meet water quality objectives established in the *Basin Plan,* contribute to impairments of present or future beneficial uses of water resources, and cause pollution, nuisance or contamination. Section 13280 states that a determination that discharges from OWDSs should not be permitted shall be supported by substantial evidence. The evidence, as summarized in the Technical Staff Report, leads to the following conclusions:

   i. Dischargers in the Civic Center area subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance.

   ii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water.

   iii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater that are in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation.

   iv. Discharges of wastewaters released from OWDSs in the Civic Center Area to groundwater that are in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the nutrient TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication.

   v. Wastewater flows from OWDSs in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and

many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities.

7. Peer reviews of the scientific portions of the technical staff report were conducted pursuant to California Health and Safety Code section 57004. The peer reviewers confirmed that the technical staff report was based upon sound scientific knowledge, methods and practices.

8. No authorized public agency has offered satisfactory assurance that discharge systems are appropriately designed, located, sized, spaced, constructed, and maintained, such that they are adequate to protect the quality of water for beneficial uses in the Malibu Civic Center area, pursuant to the California Water Code section 13282.

9. Pursuant to the California Water Code section 13283, the State Water Resources Control Board (State Board) is required to include a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and convention treatment systems. The Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report.

10. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act (CEQA), including preparation of an initial study, negative declaration, and environmental impact report (California Code of Regulations, title 14, section 15251(g)). As this amendment is part of the basin planning process, staff has prepared an Environmental Staff Report, which is considered a substitute to an initial study, negative declaration, and/or environmental impact report. This Environmental Staff Report satisfies the substantive requirements of the California Code of Regulations, title 23, section 3777(a), and includes a project description, environmental checklist, reasonable alternatives, alternative methods of compliance with the Basin Plan amendment, and mitigation measures. The Environmental Staff Report, together with this resolution and the responses to comments constitute the Substitute Environmental Documents, as specified in California Code of Regulations, title 23, section 15252. The Regional Board hereby determines that depending upon the compliance project selected, there could be significant adverse impacts, as specified in the Substitute Environmental Documents. However, there are also impacts that can be mitigated and be less than significant. The potential mitigation measures are set forth in the Environmental Staff Report and checklist incorporated therein.

THEREFORE, be it resolved that:

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record including oral testimony at the hearing, finds the evidentiary requirements specified in section 13280 et seq. have been satisfied and that discharges from septic systems in the Malibu Civic Center area fail to meet water quality objectives and impair both existing and potential beneficial uses of water, as documented in the Final Technical Staff Report, dated November 5, 2009. Pursuant to section 13240 of the California Water Code, the Regional Board hereby adopts and amends the *Basin Plan* to include a prohibition on discharges from on-site wastewater disposal systems in the Civic Center area. This amendment, as set forth in Exhibit 2, will:

   - Prohibit all new discharges, except certain specific projects which have already progressed through the entitlement process, and are identified on table 4-yy of the Basin Plan Amendment.

   - Prohibit discharges from existing systems within six years in commercial areas and within ten years in residential areas from the date of adoption by the Regional Board of this *Basin Plan* amendment as specified in figure 4-yy of the Basin Plan Amendment.

   This prohibition does not preclude a publicly owned, community-based, solution that includes specific wastewater disposal sites subject to waste discharge requirements to be prescribed by the Regional Board.

2. The Regional Board has reviewed and considered the information contained in the Substitute Environmental Documents, as described in Finding 10, above, and hereby adopts and certifies them.

3. Pursuant to California Code of Regulations, tit.14 section 15091(a)(2), the Regional Board hereby finds, as more fully set forth in the Substitute Environmental Documents, that there are potentially significant impacts from implementation projects to comply with the proposed prohibition on OWDSs, but notes that there are mitigation measures available (as more fully described in the Substitute Environmental Documents specified in paragraph 10 below) to reduce potentially significant environmental impacts to less than significant levels. However, implementation of these mitigation measures are not under the control or discretion of the Regional Board, but are within the responsibility and jurisdiction of other (responsible) agencies, which will be required to comply with or assist affected citizens in complying with the provisions of this prohibition (e.g., the City of Malibu). These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the prohibition. (See Pub. Res. C. § 21159.2.) This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2).

4. Pursuant to California Code of Regulations, tit.14, section 15093, the Regional Board hereby finds that the project's benefits override and outweigh its potential unavoidable significant adverse impacts, for the reasons more fully set forth in the Substitute Environmental Documents. Specific economic, social, and environmental benefits justify the adoption of this project despite the project's potential significant adverse environmental impacts. These benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every unavoidable impact. Upon review of the environmental information generated for this prohibition and in view of the entire record supporting the need for a prohibition, staff has determined that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances. This determination is based upon the fact that most of the identified significant adverse impacts from the reasonably foreseeable means of compliance are temporary nuisance impacts associated with abatement of the use of OWDSs, and/or the construction of compliance projects. The foreseeable means of compliance are generally accepted beneficial infrastructure amenities in most municipal jurisdictions, and typically installed for the benefit of the community irrespective of their potential growth inducing and other impacts associated with their construction and operation. Furthermore, the reasonably foreseeable means of compliance with the prohibition are expected to result, over the long term, in positive environmental improvements to the environment, including water quality and restoration of beneficial uses of water resources (including decreased instances of associated illness), and economic benefits associated with increased use from their restoration. This is particularly important at the Malibu beaches which are generally considered to be some of best beach environments in the State of California. Enhancement of recreational uses of beaches, aquatic habitat in Malibu Lagoon, and drinking water potential in groundwater will have positive social and economic effects.

5. In making the determination in paragraph 1 above, the Regional Board has considered all of the factors set forth in California Water Code section 13281, including but not limited to, the factors set forth in section 13241.

6. The Executive Officer is directed to forward this *Basin Plan* amendment to the State Board in accordance with the requirements of sections 13245 of the California Water Code.

7. If, during the approval process, the State Board or Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

8. The Regional Board requests that the State Board approve the *Basin Plan* amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law.

9. This prohibition is not intended to prevent repairs and maintenance to existing septic/disposal systems, provided that repairs and maintenance do not expand the capacity of the systems and increase flows of wastewaters.

10. Pursuant to Water Code section 13225 (or such other authority as may be appropriate), the Executive Officer is directed to require the City to submit quarterly written reports to the Executive Officer, summarizing the strategy and progress toward meeting the 2015 prohibition deadline. In the quarterly progress reports, the City shall document progress, to the satisfaction of the Executive Officer, toward the following interim and final deadlines:

May 1, 2010:	Completion of 25% of a master facilities plan for possible projects to comply with the prohibition, including initiation of a strong public participation program.
November 1, 2010:	Completion of 50% of a master facilities plan and initiation of environmental review, with strong, on-going public participation. Concurrently, initiation of preliminary engineering and a feasibility study for possible projects to comply with the prohibition.
May 1, 2011:	Substantial completion of a master facilities plan, preliminary engineering and a feasibility study, and engagement of the public in selection of a project to comply with the prohibition.
November 1, 2011:	Completion of a master facilities plan, preliminary engineering and a feasibility study, and selection of a project to comply with the prohibition.
November 1, 2012:	Completion of final design for selected project.
November 1, 2014:	Completion of 50% of construction of selected project.
November 5, 2015:	Completion of project to comply with prohibition, including successful startup of facilities, and commercial connections to the project facilities, and cease discharge from OWDSs.
November 5, 2019:	Completion of project to include residential connections to the project facilities, and cease discharge from OWDSs.

The first progress report is due March 31, 2010, and subsequent quarterly progress reports are due on March 31st, June 30th, September 30th, and December 31st until such time that the Regional Board determines that compliance with the prohibition has been achieved.

The City may, upon approval from the Executive Officer, transfer this responsibility to another public agency.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 5, 2009.

Tracy J. Egoscue
Executive Officer

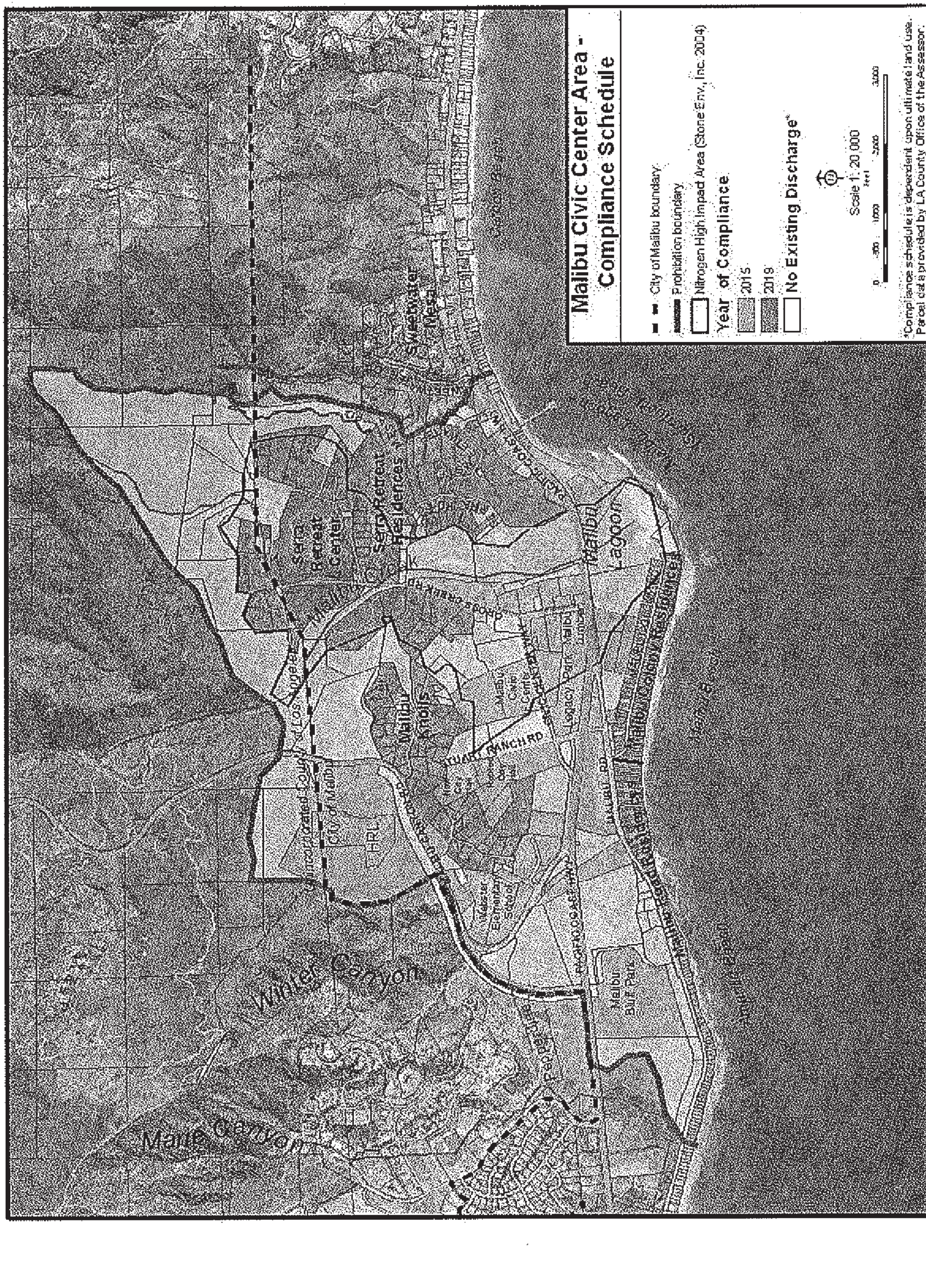


Exhibit 1

November 5, 2009

Malibu Civic Center Prohibition, Table 4-zz

Address	APN
24001 Malibu Road	4458018005
3469 Cross Creek Road	4458023003
3504 Coast View Drive	4458026014
23038 Pacific Coast Highway	4452005001
23060.5 Pacific Coast Highway	4452006902
3516 Sweetwater Mesa Road	4452017006
2930 Sweetwater Mesa Road	4452025021
2860 Sweetwater Mesa Road	4452025023
23460 Malibu Colony Drive	4458004031
23872 Malibu Road	4458007019
23812 Malibu Road	4458007028
24024 Malibu Road	4458009007
24380 Malibu Road	4458011021
22959 Pacific Coast Highway	4452019005
22941 Pacific Coast Highway	4452019009
24132 Malibu Road	4458010009
24266 Malibu Road	4458011010
23618 Malibu Colony Drive	4458005040
23401 Civic Center Way	4458022001
23800 Malibu Crest Drive	4458024038
3700 La Paz Lane	4458022025
23915 Malibu Road	4458018004
23410 Civic Center Way	4458020010
23816 Malibu Crest Drive	4458024023
3556 Sweetwater Mesa Road	4452017008
3314 Serra Road	4452026012
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068
23921 Malibu Road	0000000069
23923 Malibu Road	0000000070
23652 Malibu Colony Drive	4458005030
23664 Malibu Road	4458001003
23720 Malibu Road	4458002900
3535 Coast View Drive	4458027030
23316 Malibu Colony Drive	4452008016
23684 Malibu Colony Drive	4458005022
23872 Malibu Road	4458007019
24052 Malibu Road	4458009002
23405 Malibu Colony Drive	4452010010
23681 Malibu Colony Drive	4458002008
23917 Malibu Road	4458018004
23919 Malibu Road	4458018004
23921 Malibu Road	4458018004
23923 Malibu Road	4458018004
(The Vesting Tract Map has not been recorded therefore APNs have not yet been assigned to the individual lots below.)	
24108 Pacific Coast Highway	4458018002
24120 Pacific Coast Highway	4458018018
24134 Pacific Coast Highway	4458018019
24150 Pacific Coast Highway	
24174 Pacific Coast Highway	
3215 Serra Road	4457003023
3217 Serra Road	4457003021, 4457003022
3219 Serra Road	4457003019
3221 Serra Road	4457003020
3240 Cross Creek Road	4457002038

Resolution No. R4-2009-007

Amendment to the
Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties
to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area

Exhibit 2: Language to be revised in the *Basin Plan*

The *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties* (*Basin Plan*) contains a section entitled "Septic Systems" in Chapter 4.[1] This amendment to the *Basin Plan* revises that section, as indicated by italicized, underlined text for additions, and text strikeouts for deletions.

Regulating Septic Systems

The California Water Code, Chapter 4, Article 5, sets forth criteria for prohibiting individual disposal systems (i.e., residential septic tanks). Alternatively, the Regional Board has authority to regulate discharges, including discharges from residential units, multiple-dwelling units, non-domestic septic tank systems, and large developments.

Oxnard Forebay Septic Prohibition

On August 12, 1999, the Regional Board amended the Basin Plan to include a prohibition on septic systems in the Oxnard Forebay (figure 4-xx), pursuant to Section 13280 of the California Water Code. The prohibition applies to both future and existing septic systems in the Oxnard Forebay. As of August 12, 1999, new septic systems in the Oxnard Forebay were prohibited. By January 1, 2008, discharges from existing septic systems must cease. This action was taken in view of:

- The conclusion that discharges of wastewaters from residential and commercial facilities to groundwater underlying the Oxnard Forebay do not meet water quality objectives specified in the Basin Plan, and are impairing the present and future beneficial uses of underlying resources of ground water.

- The need to ensure long-term protection of ground water underlying both the Oxnard Forebay and the Oxnard Plain. Alternatives to replace these supplies of local water, or to treat the water before beneficial use, would be costly and would violate the requirement to protect the water for beneficial uses.

[1] Language to be revised will go into the *Basin Plan*, starting on page 4-17 (in the 1994 version) with the section currently entitled 'Septic Systems.'

The prohibition is not intended to prevent repairs to existing septic systems in the Oxnard Forebay prior to January 1, 2008, provided that the purpose of such repairs is not to increase capacity.

An exemption to this prohibition or a time extension of the effective date of the prohibition may be granted in the event the Regional Board determines that such an exemption or extension is in the best interest of water quality, in accordance with Water Code Section 13241 and the correction of water quality problems associated with the wastewater discharges from septic systems in the Oxnard Forebay.

Individual disposal systems that dispose of domestic wastewater that are located on lot sizes equal to or greater than five acres are not subject to this prohibition.

Malibu Civic Center Area Prohibition

On November 5, 2009, the Regional Board amended this* Basin Plan *to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center area (figure 4-yy), pursuant to section 13280 of the California Water Code. Effective [insert effective date of Basin Plan amendment]:

- ***All new on-site wastewater disposal system discharges are prohibited with the exception of the projects identified in table 4-yy, which shall be deemed existing OWDSs.***
- ***All wastewater discharges in commercial areas from existing on-site wastewater disposal systems are prohibited on November 5, 2015, as specified in figure 4-yy.***
- ***All wastewater discharges in residential areas from existing on-site wastewater disposal systems are prohibited on November 5, 2019, as specified in figure 4-yy.***

This prohibition does not preclude a publicly owned, community-based, solution that includes specific waste water disposal sites subject to waste discharge requirements to be prescribed by the Regional Board.

The prohibition is not intended to prevent repairs, maintenance, and upgrades to existing on-site wastewater disposal systems prior to November 5, 2019, provided that repairs, maintenance, and upgrades do not expand the capacity of the systems or increase flows of wastewaters.

Other Areas

In other areas, where ground water constitutes an important source of drinking water, the Regional Board has adopted general WDRs (Order 91-94) for certain private residential subsurface sewage disposal systems. A lot with size less then 1 acre is not eligible for these general WDRs; for those lots between one and less than five acres in size, the General WDRs require either a hydrogeologic study or mitigation measures. WDRs are not required for lot sizes greater than five acres.

Exhibit H

PL

ORDINANCE NO. 330

AN ORDINANCE OF THE CITY OF MALIBU APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MALIBU AND MALIBU LA PAZ RANCH, LLC

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. The City of Malibu and Malibu La Paz Ranch, LLC ("La Paz") desire to enter into a development agreement pursuant to Government Code Sections 65864 through 65869.5 and Chapter 17.64 of the Malibu Municipal Code with respect to a parcel of real property located in the City of Malibu and more particularly described in the Development Agreement attached hereto as Exhibit A and incorporated herein by reference ("Development Agreement").

Section 2. La Paz applied for approval of a development agreement and associated entitlements on February 17, 2000 and amended the application on June 21, 2005. The history of the project applications is set forth in City Council Resolution No. 08-51, certifying the Environmental Impact Report (EIR) for this project.

Section 3. At the November 10, 2008, public hearing, the Council heard and considered all testimony and arguments of all persons desiring to be heard and the Council considered all factors relating to the development agreement and associated entitlements, including, but not limited to, the recommendation from the Planning Commission.

Section 4. In accordance with the California Environmental Quality Act, an EIR was prepared by the City and circulated for public comment. The EIR provided information regarding potential adverse environmental impacts of the project, mitigation measures, and alternatives. The City Council has certified the EIR and adopted the Statements of Findings and Facts in support of findings and Statement of Overriding Considerations, and approved the Mitigation Monitoring and Reporting Program. The Final EIR for La Paz development and associated entitlements is complete and adequate for the consideration of the Development Agreement.

Section 5. Based upon substantial evidence in the record of the proceedings, including, without limitation, the written and oral staff reports, the Final EIR, the General Plan, the Local Coastal Program, and the documentary record and testimony before the Planning Commission and the City Council, the City Council finds that the proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan and Local Coastal Program (LCP), the proposed Development Agreement complies with the City's zoning, subdivision, and other applicable ordinances and regulations, and the proposed Development Agreement is in conformity with the public necessity, public convenience, general welfare, and good land use practices.

Section 6. The proposed Development Agreement is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the Development Agreement with the applicant. The Development Agreement provides for the orderly development of two parcels of property within the City's Civic Center, in a comprehensive planned development. The Development Agreement ensures that the project can be developed over time in its approved form, and in exchange for the rights conferred in the Development Agreement, that the applicant will provide substantial public benefits to the City as a part of the development.

Section 7. Taking into account all of the conditions of approval that have been applied to the project, the City Council further finds that the Development Agreement:

A. will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding areas, since the various elements of the projects are in keeping with the character and general development patterns of the surrounding areas;

B. will not be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, since the proposed improvements are consistent with and will enhance their surroundings with high quality development, and will provide additional public infrastructure and public benefits; and

C. will not jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare, as the projects are adequately conditioned to mitigate impacts, will comply with all applicable codes and will provide public safety and health improvements.

Section 8. The proposed Development Agreement complies with and contains the elements prescribed in the terms, conditions, restrictions, and requirements of Section 17.64.050 of the Malibu Municipal Code. Pursuant to Section 17.64.050, the Development Agreement and the project entitlements provide for a duration of the Agreement, uses permitted on the affected parcels of property, permitted density, maximum height, size and location of buildings, reservation of land for public purposes and special benefits that would not otherwise be provided by the applicant in the absence of an agreement.

Section 9. Based upon the foregoing, the City Council hereby approves the Development Agreement attached hereto as Exhibit A and authorizes the Mayor to execute said Development Agreement on behalf of the City.

Section 10. EFFECTIVE DATE. This Ordinance shall take effect 30 days after its adoption and upon certification by the Coastal Commission of an LCP amendment consistent with the requirements of the LCP.

PASSED AND ADOPTED this 24th day of November, 2008.

PAMELA CONLEY ULICH, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 330 was passed and adopted at the regular City Council meeting of November 24, 2008, by the following vote:

AYES:	4	Councilmembers:	Sibert, Barovsky, Stern, Conley Ulich
NOES:	1	Councilmember:	Wagner
ABSTAIN:	0		
ABSENT:	0		

Lisa Pope
LISA POPE, City Clerk
(seal)

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF MALIBU
23815 Stuart Ranch Road
Malibu, CA 90265

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY OF MALIBU

and

MALIBU LA PAZ RANCH, LLC

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO GOVERNMENT CODE § 65868.5

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into on this __ day of _____, 2008, by and between the CITY OF MALIBU ("CITY"), a general law city duly organized and existing under the laws of the State of California, and MALIBU LA PAZ RANCH, LLC ("LA PAZ"), a limited liability company authorized to do business in the State of California. CITY and LA PAZ may be referred to individually as "Party" and collectively as "Parties."

1. RECITALS

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

1.1 LA PAZ has submitted two applications to CITY for the development of LA PAZ's 15.29 acre property (the "Property"). The applications are for two projects defined hereafter as the Preferred and Alternative Projects (collectively "the Projects"). The Property is described more specifically in the legal description attached as Exhibit 1. A map depicting the Property and its location is attached as Exhibit 2;

1.2 The CITY has asked that LA PAZ include in the Preferred Project a parcel of land for a proposed 20,000 square foot City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.3 LA PAZ has agreed to convey 2.3 acres of the Property to the CITY for a new City Hall, or certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement, and undertake the other obligations set forth herein, if it receives all of the assurances set forth in this Agreement;

1.4 Government Code § 65864, *et seq.* authorizes CITY to enter into binding development agreements such as this Agreement with persons having legal or equitable interests in real property in order to, among other things, provide certainty in the approval of development projects so as to strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, make maximum efficient utilization of resources at the least economic cost to the public and avoid waste of resources escalating the cost of development to the consumer. This Agreement provides assurances to LA PAZ that, if the Preferred Project is approved, during the term of this Agreement it may be implemented in accordance with the CITY's official policies, ordinances, rules and regulations in force as of the date the ordinance approving this Agreement was approved by the City Council;

1.5 Pursuant to Government Code § 65865, CITY has adopted rules and regulations for consideration of development agreements, and proceedings have been taken in accordance with CITY's rules and regulations;

1.6 By entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement and permitted by law;

1.7 The terms and conditions of this Agreement have undergone extensive review by the CITY and City Council. CITY and LA PAZ acknowledge and agree that the consideration to be exchanged pursuant to this Agreement is fair, just and reasonable;

1.8 This Agreement and the Project which is the subject of this Agreement are consistent with the CITY's General Plan, and its Local Coastal Program (LCP);

1.9 CITY has certified a Final Environmental Impact Report, SCH No. 2003011131 for the Project ("the EIR");

1.10 All actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, including hearings by the planning commission and legislative body, findings, votes, and other procedural matters;

1.11 Development of the Preferred Project will further the comprehensive planning objectives contained within the General Plan, and will result in public benefits, including, among others, the following:

1.11.1 Dedication of 2.3 acres of land for a new City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.2 Provision of $500,000 for a new City Hall, or for development of certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.3 Contributing via planned Project improvements to the creation of a linear wetland park;

1.11.4 Providing landscaped and irrigated open space areas, as well as subterranean parking structures, which, under appropriate conditions, may be used as emergency evacuation zones.

1.11.5 Dedication of an internal segment of the Malibu-Pacific trail connecting Serra Retreat to Legacy Park;

1.11.6 Creating significant offsite public improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

2. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1 "Agreement" means this Development Agreement.

2.2 "Vesting Date" means the date on which the ordinance enacting this Agreement was approved by the CITY's City Council.

2.3 "CITY" means the City of Malibu, a general law city, duly organized and existing under the laws of the State of California.

2.4 "LA PAZ" means Malibu La Paz Ranch, LLC.

2.5 The "Preferred Project" means the project described in Sections 2.14.3 and 5.1.

2.6 "Development" means the entitlement, and improvement of the Property for the purposes of completing the structures, improvements and facilities described herein including, but not limited to: grading; the construction of infrastructure and public facilities related to the Preferred Project (as such Project may be approved), whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping, septic system, retaining walls, drainage devices, retention ponds, drive aisles with at grade parking, subterranean parking structures, fire department turn arounds, water features, public congregation and recreation areas, and hardscaping.

2.7 "Development Agreement Statute" means Government Code § 65864 *et seq.* as it exists on the Effective Date.

2.8 "Project Approvals" means all plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial, necessary in connection with development of the Preferred Project in accordance with this Agreement, which may include but are not limited to:

2.8.1 Compliance with the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* ("CEQA");

2.8.2 Plot Plans;

2.8.3 Site Plan Review;

2.8.4 Coastal Development Permits ;

2.8.5 General Plan Amendments;

2.8.6 Local Coastal Program amendments;

2.8.7 Zone text amendments;

2.8.8 Conditional Use Permits;

2.8.9 Minor modifications;

2.8.10 Lot line adjustments;

2.8.11 Grading and building permits;

2.9 The "Applicable Rules" shall consist of the following:

2.9.1 The CITY's General Plan and Local Coastal Program (LCP) as they exist on the Vesting Date;

2.9.2 The CITY's Municipal Code, including those sections of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date;

2.9.3 Such other laws, ordinances, rules, regulations, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date.

2.10 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Applicable Rule or project approval, for the dedication of land, the construction of improvements or public infrastructure and facilities, or the payment of any type of fees, taxes, and assessments in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

2.11 "Subsequent Rules" means any change in the Applicable Rules, except as provided in Section 2.13, including, without limitation, any change in any applicable general plan or specific plan, local coastal program, zoning, or subdivision regulation, adopted or becoming effective after the Vesting Date, excluding any such change processed concurrently with this Agreement, but including, without limitation, any change effected by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, agency, commission or department of the CITY, or any officer or employee thereof, or by the electorate, as the case may be (collectively the "Subsequent Rules"), which would, absent this Agreement, otherwise be applicable to the Property, shall not be applied by the CITY to any part of the Project, except as LA PAZ may consent to the application thereof pursuant to Section 3.1 of this Agreement.

2.12 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to LA PAZ and reserved to CITY under this Agreement. Notwithstanding any other provision of this Agreement, the following Subsequent Rules shall apply to the development of the Property.

2.12.1 Processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for development approvals and permits or for monitoring compliance with any development approvals or permits granted or issued. Provided, however, that LA PAZ shall have no obligation for payment of permit or plan check fees with respect to the CITY's development of Parcel C.

2.12.2 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

2.12.3 Regulations governing construction standards and specifications including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

2.12.4 Regulations that otherwise would not apply to the development of the Property or Project for which LA PAZ has given its written consent to the application of such regulations pursuant to Section 3.1 of this Agreement.

2.13 "Projects" shall mean the Preferred Project and the Alternative Project, collectively.

2.13.1 "Preferred Project," or singular "Project," means the Project more particularly described in Section 5.1.

2.13.2 Preferred Project Parcel Descriptions

2.13.2.1 "Parcel A", identified as Assessor's Parcel Number 4458-022-023, and legally described in Exhibit 3, represents Parcel A as it exists prior to development.

2.13.2.2 "Parcel A, post-lot line adjustment" means the parcel legally described in Exhibit 4.

2.13.2.3 "Parcel B", identified as Assessor's Parcel Number 4458-022-024 and legally described in Exhibit 5, represents Parcel B as it exists prior to development.

2.13.2.4 "Parcel B, post-lot line adjustment" means the parcel legally described in Exhibit 6.

2.13.2.5 "Parcel C" means the real property legally described in Exhibit 7. Parcel C consists of the 2.3 acres to be conveyed by LA PAZ to the CITY for a new City Hall, or for certain municipal uses that may in the future be considered by the City, as set forth in this Agreement;

2.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property.

3. VESTED DEVELOPMENT RIGHTS

3.1 LA PAZ is hereby granted the vested right to develop the Preferred Project on the Property, subject to the Applicable Rules, the Project Approvals, and any future approvals applied for by LA PAZ, or its successors, and granted by the CITY for the Preferred Project (the "Future Approvals").

3.1.1 Vested Development Rights. Notwithstanding any future action of the CITY, whether by ordinance, resolution, initiative, or otherwise, the Applicable Rules shall govern the development of the Preferred Project during the term of this Agreement, except and subject to the Reservations of Authority and the terms of this Agreement. In developing the Property, LA PAZ is provided, and assured, the vested right to require that the rules governing the development of the Preferred Project during the term of this Agreement shall be as provided in this Agreement. LA PAZ in its sole discretion may elect to be subject to any Subsequent Rules that may be enacted. Any such election by LA PAZ shall be made in its sole discretion and shall be in writing.

3.1.2 This Agreement does not (1) grant density or intensity in excess of that otherwise established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, or (4) prohibit or, if legally required, indicate Owner's consent to, the Property's inclusion in any public financing district or assessment district, except as specified herein, or (5) confer any vested rights with respect to the Alternative Project.

3.1.3 The Project conditions are attached hereto as Exhibit 8 and constitute the entirety of the conditions imposed upon the Project.

3.2 Purposes of Agreement. This Agreement is entered into in order to provide a mechanism for planning and carrying out the Preferred Project in a manner that will ensure certain anticipated benefits to both CITY, including without limitation the existing and future residents of CITY, and LA PAZ, and to provide to LA PAZ assurances regarding the land use regulations that will be applicable to the development of the Property, including but not limited to, those land use regulations relating to timing, density and intensity of development, that will justify the undertakings and commitments of LA PAZ described in this Agreement and the investment in planning and development of the major on-site and off-site infrastructure and improvements needed for the Projects, and each of them.

3.3 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may reasonably be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations unless compliance with such state or federal laws or regulations causes a material breach or failure of consideration. Upon repeal of any such law or regulation, or the occurrence of any other event removing the effect thereof, the provisions of this Agreement shall be restored to their original effect.

3.4 Ownership of Property. LA PAZ represents and covenants that it is the owner of the fee simple title to the Property.

3.5 Binding Effect of Agreement. All of the Property shall be subject to this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, the CITY and LA PAZ. Any and all rights and obligations that are attributed to

LA PAZ under this Agreement shall run with the land, subject to the assignment provisions of Section 4 of this Agreement.

3.6 Term. The term of this Agreement shall commence on the Vesting Date and shall continue for a period of ten years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

3.6.1 Term of Map(s) and Other Project Approvals. Pursuant to Government Code §§ 66452.6(a) and 65863.9, the term of any subdivision or parcel map that has been, or in the future may be, processed on all or any portion of the Property, and the term of each of the Project Approvals, shall be extended through the termination date of this Agreement.

3.6.2 Tolling of Term of Agreement. The term of this Agreement shall be tolled during the time the Project is pending before the California Coastal Commission. The term of this Agreement shall be tolled during any period of time during which a development moratorium is in effect. For purposes of this Agreement a development moratorium shall be deemed to exist (i) during the period that any action or inaction by CITY or other public agency that regulates land use, development or the provision of services to the land prevents, prohibits or delays the use of the approval or the construction of the Project or (ii) during the period any lawsuit is pending brought by any third party concerning this Agreement, any of the Project Approvals, including pursuant to CEQA, or any Subsequent Approval. Any tolling pursuant to this Agreement of the commencement, or running, of LA PAZ's ten year vesting period will likewise, for an equal period of time, toll the performance of CITY's obligations pursuant to Section 6.4 of this Agreement.

3.7 Bargained For Reliance by Parties. The assurances of the CITY to LA PAZ, and of LA PAZ to the CITY, in this Agreement are provided pursuant to, and as contemplated by, the Development Agreement Statute, and are bargained for, and in consideration of, the undertakings of LA PAZ and the CITY set forth in this Agreement.

4. ASSIGNMENT

4.1 LA PAZ may assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, pursuant to the following provisions.

4.2 Right to Assign. Subject to Section 4.4, LA PAZ shall have the right to sell, transfer or assign the Property, in whole or in part (provided that no such partial transfer shall be made in violation of the Subdivision Map Act, Government Code §66410 *et seq.*), to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred.

4.3 Partial Transfers. Subject to Section 4.4, the Property currently consists of two parcels, and it may be further subdivided. Pursuant to Section 4.2, LA PAZ's right to sell, transfer or assign the Property includes the right to sell, transfer or assign any portion of the Property and, in such event, the assumption of the obligations of this Agreement shall apply only to the portion or portions of the Property sold, transferred, or assigned. Upon such a partial

transfer, the rights and responsibilities of LA PAZ under this Agreement, and those of its successors and assigns, shall be severable, and a default by the owner of one portion shall not affect the owner, transferee or assignee of the other portion(s).

4.4 Approval By CITY. If LA PAZ transfers its right title or interest in the Property, as defined and limited in Section 4.8 of this Agreement, prior to the completion of construction of the Project, and issuance by CITY of certificates of occupancy for all structures, such transfer shall be made only in accordance with Sections 4.4, 4.5, 4.6 and 4.7 of this Agreement.

4.4.1 At least forty-five days prior to any proposed sale, transfer or assignment of LA PAZ's right, title or interest in the Property, as defined and limited in Section 4.8 hereof, LA PAZ shall submit to the CITY a request for approval of such proposed sale, transfer or assignment, which approval shall not unreasonably be withheld by the CITY. The CITY may not withhold its approval if a reasonable person would find that:

4.4.1.1 The proposed purchaser, transferee or assignee demonstrates the financial ability to perform the obligations of this Agreement; and

4.4.1.2 The proposed purchaser, transferee or assignee has the necessary qualifications, competence, experience or capability to implement the development plan contemplated by the Project Approvals with the skill, expertise and quality equivalent to that of LA PAZ.

4.5 Provision of Information. LA PAZ shall provide promptly to the CITY such information that the CITY reasonably requests so that CITY can make the determinations called for in Sec. 4.4, hereinabove.

4.6 Provision of Security. The proposed purchaser, transferee or assignee shall provide the CITY with security equivalent to any security previously provided by LA PAZ to secure performance of its obligations under this Agreement. Upon provision of such security the CITY shall promptly release any security previously provided by LA PAZ.

4.7 Provision of Executed Agreement. Concurrently with the closing of any approved sale, transfer or assignment, LA PAZ shall provide the CITY with an agreement executed by the purchaser, transferee or assignee, demonstrating compliance with the applicable provisions of this Section 4.

4.8 Applicability. The provisions of Sections 4.4, 4.5, 4.6, 4.7 shall not be applicable to (i) a transfer or assignment of a mortgage or deed of trust, or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof, or (iii) a transfer as a result of which LA PAZ remains the Managing Member with respect to the Project.

4.9 Termination of CITY's Right of Approval. The provisions of Sections 4.4, 4.5, 4.6, 4.7, and 4.8, hereinabove, shall terminate and be of no further force or effect when LA PAZ has completed construction of the Project and CITY has issued certificates of occupancy for all structures located on Parcel A post-lot line adjustment and Parcel B post-lot line adjustment.

4.10 Release of Transferring Owner. A transferring owner shall be released from all obligations under this Agreement with respect to the portions of the Property transferred, provided the transferor has complied with all of the applicable provisions of Section 4 of this Agreement. Upon transfer of any portion of the Property and the express assumption of LA PAZ's obligations under this Agreement by the transferee, the CITY agrees to look solely to the transferee for compliance with the provisions of this Agreement that relate to the portion of the Property acquired by such transferee. Any such transferee shall be entitled to the benefits of this Agreement and shall be subject to the obligations of this Agreement applicable to the parcel(s) transferred. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way LA PAZ's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for satisfying the good faith compliance requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between the CITY and a transferee shall affect only the portion of the Property owned by such transferee.

4.11 Subsequent Assignment. Any subsequent sale, transfer or assignment of the Property, or a portion thereof, after an initial sale, transfer or assignment must be made in accordance with, and subject to, the terms and conditions of this Section 4.

5. DESCRIPTION AND PROCESSING OF THE PROJECTS

5.1 Preferred Project.

5.1.1 General Project Description. The Preferred Project consists of the development of 15.29 acres into a commercial, retail, restaurant and business park center adjacent to the CITY's development on Parcel C. The Preferred Project includes over eight acres of landscaped and open space area, as well as 112,058 square feet of commercial office, restaurants, including two restaurants of up to 10,000 square feet, in Buildings 4, 5 and 6, and retail uses.

5.1.2 General Parcel By Parcel Breakdown of Preferred Project. The following generally summarizes the Preferred Project.

5.1.2.1 Parcel A, post-lot line adjustment, consists of approximately 312,195 square feet of land area (7.16 acres) and will be developed with commercial office, restaurant and retail uses. The development includes five single-story and two two-story buildings with a total developed floor area of 68,997 square feet. The remaining areas include 118,867 square feet of landscaping and 41,923 square feet of open space, with 346 parking spaces, including surface and below grade parking.

5.1.2.2 Parcel B, post-lot line adjustment, includes approximately 248,610 square feet of land area (5.7 acres) and will be developed with commercial office and retail uses. The development includes four buildings with a total floor area of 43,061 square feet. The development includes approximately 99,444 square feet of landscaping and approximately 56,358 square feet of open space, as well as a total of 197 parking spaces, including a below grade parking structure.

5.1.2.3 Parcel C includes approximately 100,000 square feet of land area (2.3 acres) and is contemplated to house the CITY's new City Hall, which will include a maximum of 20,000 square feet of office uses and, in addition thereto, parking as required by CITY's Municipal Code. If CITY in the future determines not to construct the new City Hall it must do so in accordance with the terms and conditions of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement .

5.1.2.4 The Preferred Project is Summarized as Follows:

Building No.	Occupancy	Floor Area (Gross Square Feet)
PARCEL A		
1	Retail	6,200
2	Retail	6,200
3	Retail	10,248
4	Retail	10,240
5	Retail / Office / Restaurant	17,879
6	Retail / Office / Restaurant	17,830
7	Retail	400
	Subtotal Parcel A	**68,997**
PARCEL B		
8	Office / Retail	15,300
9	Office / Retail	15,640
10	Office	7,258
11	Office	4,863
	Subtotal Parcel B	**43,061**
PARCEL C		
	CITY Office Uses/Council Room	20,000
	Subtotal Parcel C	**20,000**
	TOTAL OVERALL FLOOR AREA	**132,058 (FAR = 0.20)**

5.1.3 Subject to the requirements of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4, the CITY may in the future determine Parcel C should be used for another municipal purpose not to exceed the maximum development allowed pursuant to Sec. 5.1.2.3 of this Agreement.

5.1.4 Summary of Entitlements for the Preferred Project (.20 FAR):

5.1.4.1 Coastal Development Permit. In accordance with § 13.3 of the LCP, the Preferred Project will require a Coastal Development Permit. In addition to the development of buildings, landscaping, drainage devices, septic system, roadways, etc., a Coastal Development Permit shall be required for the subdivision/lot line adjustment between Parcel A and Parcel B in order to modify the existing parcel boundaries as depicted on the project survey to those boundaries depicted on the project plans. Additionally, LA PAZ will dedicate in fee as part of the consideration for this Agreement the remaining 2.3 acres to the CITY for the purposes of constructing a new City Hall thereon, or such other development as may in the future be

approved in accordance with Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement, and furthering the public benefits required under section 3.8(5)(f) of the LCP.

5.1.4.2 Local Coastal Program Amendment. Pursuant to Sections 3.8(5) and 13.28.1 of the LCP, an LCP Amendment is required for the Preferred Project.

5.1.4.3 Development Agreement. This Agreement between the CITY and LA PAZ is entered into pursuant to Section 5.18 of the LUP and Sections 3.8(5)(e) and 13.28 of the LIP, which require that projects proposing FAR of greater than .15 are processed in accordance with either a development agreement (DA) or as a planned development (PD). In either case, the DA or the PD must also be subsequently certified by the California Coastal Commission as an LCP Amendment. LA PAZ has elected to utilize this Development Agreement.

5.1.4.4 Subdivision Map Act. The dedication of Parcel C to the CITY constitutes a subdivision of land for purposes of the Subdivision Map Act because a third parcel is being created where only two existed previously; however, the subdivision is exempt from parcel map requirements pursuant to Govt. Code § 66428(a)(2) as a conveyance of land to a public agency. A conveyance will still be required; however, a parcel map will not. The California Coastal Act, however, is an independent substantive state law and the subdivision is a "development" in accordance with § 30106 of the Public Resources Code. Therefore, the Coastal Development Permit for the Project shall include the processing of a subdivision of land in its description of approved development.

5.1.4.5 Zone Text Amendment. A Zone Text Amendment shall be required to establish new development standards for the Project in accordance with section 3.8(A)(5)(e) of the CITY's LCP.

5.1.4.6 Lot Line Adjustment/Parcel Configuration. The 15.29 acre property is currently composed of two lots, zoned Community Commercial. Parcel A (4458-022-023) is 6.22 acres and is to be increased in size (via LLA) to 7.16 acres. Parcel B (4458-022-024) is 9.07 acres and is to be decreased in size (via LLA) to 5.7 acres. The remaining 2.3 acres will be conveyed to the CITY in accordance with Sec. 6.1.1, thus creating Parcel C.

5.1.4.7 Conditional Use Permit. A Conditional Use Permit is required for restaurants, in accordance with Section 3.3(I) of the LIP, Table B of the LIP and Sections 17.24 and 17.66 of the CITY's Municipal Code.

5.2 LA PAZ May Construct Alternative Project. Nothing in this Agreement shall preclude LA PAZ from proceeding independently with the Alternative Project.

5.3 Fees, Exactions, Mitigation Measures, Conditions, Reservations and Dedications. All development Exactions that are applicable to the Preferred Project or the Property are established by the Applicable Rules, the Project Approvals and this Agreement. Other than as set forth herein, this section shall not be construed to limit the authority of CITY to charge LA PAZ the then current normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse

CITY's actual expenses attributable to such application, processing and permitting and are in force and effect on a CITY-wide basis at the time approvals and permits are granted by CITY. LA PAZ waives any and all rights it may have to challenge development fees that are in force as of the Vesting Date. LA PAZ retains the right to challenge amended or increased development fees enacted after the Vesting Date that do not comply with Government Code § 66000 *et seq.*, or any other applicable statute or rule of law, including its right to receive credits against any amended or increased fees.

5.3.1 LA PAZ shall not be responsible for development fees, permit fees, plan check fees, school fees, mitigation fees, or any other fees or exactions related to the development of Parcel C.

5.4 Plan Review. Plans for each building of the Preferred Project, including plans for signage, trash enclosures and screening and landscaping, shall be reviewed and approved by the CITY's Planning and Building Safety Director prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with the Development Standards, the Applicable Rules and Project Approvals.

5.5 CITY Processing of Permit Applications On An Expedited Basis. The CITY shall expedite the processing of all permits needed for the Preferred Project at LA PAZ's expense, including, but not limited to, all plan checking, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, and other permits or approvals necessary, convenient or appropriate for the grading, excavation, construction, development, improvement, use and occupancy of the Projects in accordance with the CITY's accelerated plan check process under the Applicable Rules. Without limiting the foregoing, if requested by LA PAZ, the CITY agrees to utilize contract planners and plan checkers (at LA PAZ's sole cost), and any other reasonably available means, to expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments.

5.6 Issuance of Building Permits. The CITY shall not unreasonably withhold or condition any ministerial permit provided LA PAZ has satisfied all requirements for such permits.

5.7 Satisfaction of Mitigation Measures and Conditions. In the event that any of the mitigation measures or conditions required of LA PAZ hereunder have been implemented by others to the satisfaction of the CITY, LA PAZ shall be conclusively deemed to have satisfied such mitigation measures or conditions, consistent with CEQA and the LCP, or other applicable state of local statute or ordinance. If any such mitigation measures or conditions are rejected by a governmental agency with jurisdiction, LA PAZ may implement reasonably equivalent substitute mitigation measures or conditions, consistent with CEQA, to the CITY's satisfaction, in lieu of the rejected mitigation measures or conditions. Such substitution shall be deemed a clarification pursuant to Section 11.3 of this Agreement.

5.8 Timing of Development. The Parties acknowledge that LA PAZ cannot at this time predict when or the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of LA PAZ, such as market orientation

and demand, interest rates, absorption, completion and other similar factors. In *Pardee Construction Co. v. City of Camarillo (Pardee)*, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development prevailing as against the parties' agreement. CITY and LA PAZ intend to avoid the result in *Pardee* by acknowledging and providing that LA PAZ shall have the right to develop the Property in such order and at such rate and times as LA PAZ deems appropriate solely within the exercise of its subjective business judgment, but LA PAZ shall have no obligation to develop the Project or the Property.

5.8.1 In furtherance of the Parties' intent, as set forth in this Section 5.8, no future amendment of any existing CITY ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or the Project.

5.8.2 Moratorium. The CITY shall not impose a moratorium on the Property or Project unless the CITY has made legislative findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of the entitlement sought by LA PAZ would result in that threat to public health, safety or welfare, and provided that the CITY has otherwise complied with all applicable law.

5.9 Pedestrian and Bike Path Plan. LA PAZ will coordinate and cooperate with the CITY in the development of a pedestrian and bike path plan that will serve the Preferred Project. LA PAZ agrees that these paths may be utilized by golf carts, as well as pedestrians and cyclists.

5.10 Wastewater System. At the City's request, LA PAZ shall grant to the CITY an easement to build, maintain and dispose on LA PAZ's property unless the CITY finds an alternative means of disposing without the LA PAZ property.

The CITY may in the future approve and implement a municipal centralized wastewater treatment facility for the Civic Center area. If the CITY builds such a centralized wastewater treatment facility and it is fully permitted and operational before LA PAZ receives its final grading permit for construction of its wastewater treatment facility for either the Alternative or Preferred Project, whichever occurs first, LA PAZ will hook up to the CITY's centralized municipal facility and pay an amount equivalent to that paid by other property owners that have hooked up to the system. If the CITY's centralized wastewater treatment facility is not fully permitted and operational when LA PAZ receives its grading permit, LA PAZ shall have the right to go forward with its wastewater treatment facility and shall not be required to hook up to the CITY's facility nor to contribute thereto, unless LA PAZ elects to hook-up to the CITY's facility, in which case LA PAZ may be required to pay an amount equivalent to that paid by other property owners that have hooked up to the system.

5.10.1. Separate City Wastewater Treatment Plant & Corresponding Easement: CITY wishes to reserve its right to construct and maintain its own centralized or on-site wastewater treatment facility on Parcel C. In the event CITY opts to construct such a

separate wastewater plant on Parcel C, LA PAZ agrees to grant CITY an easement for the dispersal of effluent only, onto LA PAZ's property not to exceed 600 gallons per day. How and where the effluent is dispersed onto LA PAZ's property shall remain within the exclusive control and discretion of LA PAZ in accordance with and subject to all applicable laws. The Easement shall only permit the dispersal of excess municipal wastewater treated in compliance with Division 4 of TITLE 22 of the California Code of Regulations. All excess municipal wastewater to be disposed of on the La Paz property shall have been processed in a Title 22 wastewater treatment plant approved by, if such approval is otherwise required by law, the City of Malibu, the California Department of Public Health, the Los Angeles County Regional Water Quality Control Board and any other responsible public agency, as well as performing the required daily monitoring of effluent quality. Only Title 22 compliant waters shall be delivered to La Paz.

5.10.2. Overburdening: The easement is intended to permit excess wastewater disposal onto the La Paz property only in amounts commensurate with that generated by the development of a 20,000 sq. ft. City Hall Office Building housing a maximum of 200 employees (approximately 4000 Gallons per day gross code flow wastewater generation prior to reduction from reuse); any development that exceeds these flow parameters will be deemed to be an overburdening of the easement unless CITY and LA PAZ agree in writing and amend this Agreement to so provide. The City, prior to utilizing its easement for disposal on La Paz's property, shall make all reasonable efforts to recycle and reuse its wastewater for in-building toilet reuse and landscaping on its property (85% anticipated reuse potential from in-building toilet reuse alone). CITY shall install dual plumbing (Purple pipe) in whatever municipal structure(s) that may be constructed in order to provide for the intended recycling and reuse potential in compliance with TITLE 22 and applicable law.

6. DEVELOPMENT OF PARCEL C

6.1 LA PAZ's obligations with respect to Parcel C are limited to the following:

6.1.1 Land Conveyance. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum, and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have terminated in final judgment favorable to LA PAZ and the CITY, including all appeals, or litigation has ended in a settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall convey Parcel C to the CITY. Such conveyance is exempt from the Subdivision Map Act, Government Code § 66410 *et seq.*, pursuant to § 66428(a)(2), as a conveyance to a public agency.

6.1.2 Cash Contribution. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have proceeded to final judgment favorable to LA PAZ and the

CITY, including all appeals, or settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall, within 30 days of such date, contribute $500,000 to the CITY to be used for the development of Parcel C. This contribution is LA PAZ's sole monetary obligation with respect to Parcel C.

6.1.3 Reimbursement of CITY's Fees and Costs. Within 10 working days after the Vesting Date, LA PAZ shall pay $25,000 to the CITY to reimburse CITY for a portion of its attorneys fees and other costs in negotiating this Agreement.

6.2 LA PAZ May Proceed With Preferred Project. When LA PAZ has satisfied its obligations set forth in Sections 6.1.1 and 6.1.2, it may proceed immediately with construction of its Preferred Project, without regard for the status of the CITY's development of Parcel C.

6.3 CITY's Obligations With Respect to Parcel C.

6.3.1 Cost of Construction. Other than the contribution set forth in Section 6.1.2, all costs associated with development of Parcel C shall be borne solely by the CITY. The CITY acknowledges that changes in the economy and construction trades over the anticipated permitting and construction timeline for new City Hall render it impossible to firmly estimate or to judge actual construction costs of a new City Hall as of the Vesting Date of this Agreement. There are no plans for any other potential use of Parcel C that have been prepared; and the nature of any use which may potentially be approved pursuant to Secs. 6.3.2, 6.3.3 and 6.3.4 is unspecified and uncertain, so any analysis or estimation of permitting and construction costs would be wholly speculative. The CITY has not committed any resources which would foreclose meaningful options for any potential future project, mitigation measure or alternative on Parcel C.

6.3.2 Limitations on Use of Parcel C. This Agreement allows the CITY to use Parcel C for its new City Hall, which must be constructed in substantial conformance with Sections 5.1.2.3 and 5.1.2.4 of this Agreement. The CITY, however, wishes to retain flexibility with respect to its future needs and the use of Parcel C. The Parties therefore agree that the CITY may use Parcel C for a new City Hall, or for a library, community center, senior center, centralized wastewater treatment facility, improved park or for similar uses, with structures, of like kind and nature to those structures and uses heretofore listed in this Sec. 6.3.2. The CITY shall not use Parcel C, or cause Parcel C to be used, primarily for any commercial or retail purpose, although may sell city related merchandise or hold special events which have a commercial component.

6.3.2.1 The CITY agrees that any development of, and construction on, Parcel C shall be consistent with that of LA PAZ's Project.

6.3.2.2 The CITY acknowledges its agreement to use Parcel C as provided herein is a material consideration without which LA PAZ would not have entered into this Agreement because, among other things, the City Hall or the other potential uses would provide a substantial public benefit to the CITY and its residents but would not compete with LA PAZ's Project.

6.3.3 Required CEQA and Public Hearing Process. Before implementing any use of Parcel C other than a new City Hall, the CITY, at its sole cost and expense, must conduct adequate review of its proposed project under CEQA, and at a duly noticed public hearing, the City Council must find that the proposed use is consistent with adjacent uses, the General Plan and the LCP, and any other applicable law, policy, rule, regulation or ordinance.

6.3.4 LA PAZ Reservation of Rights. LA PAZ retains all of its rights to oppose, or seek modification of, any project proposed pursuant to sec. 6.3.3 on any ground whatsoever, including without limitation if the project is not consistent with adjacent uses, the General Plan and/or LCP, has not received adequate review under CEQA or other applicable statute or rule of law requiring environmental review, or does not comply with any other applicable standard, policy, law, rule or regulation.

6.4 Reconveyance of Parcel C to LA PAZ.

6.4.1 If CITY does not build either City Hall or another use approved pursuant to the provisions of this Agreement within ten years of the date of conveyance by LA PAZ, CITY shall reconvey Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Sections 6.4.2 through and including 6.4.4. Provided, however, that if CITY has determined to use Parcel C for a park but has not installed any park improvements, the provisions of this Section shall apply. If CITY determines to sell Parcel C within ten years of the Vesting Date, CITY shall first offer to sell Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Section 6.4.11 through and including 6.4.4. The word "sell" shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of Parcel C, except for an easement for utility purposes. The purchase price for Parcel C to be paid by LA PAZ ("Purchase Price") shall be determined pursuant to Section 6.5.2 hereof.

6.4.1.1 CITY shall deliver notice of any sale of Parcel C it proposes to make prior to the expiration of the ten year period to LA PAZ by registered mail. LA PAZ shall have ten business days from the receipt of such notice to accept or reject purchase of Parcel C ("Acceptance Period") by delivering its written notice of its intent to purchase Parcel C ("Notice of Intent") to CITY on or before 5:00 p.m. on the last day of the Acceptance Period. If LA PAZ fails to notify the CITY of its intent to purchase Parcel C on or before the last day of the Acceptance Period, the CITY may proceed with its proposed sale.

6.4.2 The Purchase Price shall be determined based upon the value of Parcel C as entitled for 20,000 square feet of office use, regardless of which use the CITY may have intended for Parcel C. The CITY and LA PAZ shall each select an appraiser holding an MAI certification, who shall each appraise Parcel C. If the two appraisers reach values that are not within 5% of each other, the two appraisers shall select a third appraiser who will appraise Parcel C. The third appraiser shall be limited in his or her appraisal to a valuation no lower nor higher than the values arrived at by the first two appraisers. The third appraiser's valuation will establish the Purchase Price. If the two appraisers reach values within 5% of each other, the Purchase Price will be determined by splitting the difference.

6.4.2.1 The Purchase Price shall be reduced by a sum equal to $500,000, less reasonable costs incurred by the CITY for the design, engineering and other costs

reasonably related to the development by CITY of a new City Hall or other use approved pursuant to Sections 6.3.2, 6.3.3 and 6.3.4 of this Agreement.

6.4.2.1.1 LA PAZ may demand in writing substantiation of the costs claimed by CITY to have been incurred toward the development of Parcel C and CITY shall provide such written substantiation within five business days of LA PAZ's demand.

6.4.2.1.2 The costs and fees charged by a third appraiser shall be split evenly between the CITY and LA PAZ.

6.4.3 If the CITY is required to reconvey Parcel C, an escrow shall immediately be opened by LA PAZ at an escrow company of LA PAZ's choosing, reasonably acceptable to CITY. The escrow instructions shall provide for a closing date 90 days following the end of the ten year vesting period or the delivery of LA PAZ's Notice of Intent to Purchase Parcel C ("Closing Period"), as appropriate pursuant to Section 6.4.1. The escrow instructions shall reflect the terms and conditions set forth in this Section 6.4, including, but not limited to, the deposit by LA PAZ of the Purchase Price and the deposit by CITY of a warranty grant deed reconveying Parcel C to LA PAZ.

6.4.4 Upon reconveyance to it of Parcel C, to the extent allowed by law, LA PAZ shall be entitled to develop Parcel C with 20,000 square feet of commercial office development within a footprint of development generally consistent with that set forth in Section 5.1.2.3 of this Agreement, regardless of which use the CITY may have intended for Parcel C. The EIR shall be relied upon for CEQA compliance for such development, to the maximum extent allowed by the law. In reviewing LA PAZ's commercial development, the CITY may conduct a site plan review pursuant to Malibu Municipal Code Section 17.62.070, as it exists on the Vesting Date. Any such site plan review shall be limited to review of any substantial changes in the footprint and configuration of development on Parcel C as the CITY, in approving the Preferred Project, has already found that the location and configuration of the proposed City Hall building are consistent with the CITY's General Plan and LCP, does not impact any views and thus comports with Section 17.62.060 of the CITY's Municipal Code, and any other rules or regulations that are or may be applicable. No other or further discretionary review shall be required, except as may be required by the Applicable Rules.

7. PROJECT HEARINGS

7.1 Hearing Schedule. The requirements for notice and hearing are governed by the applicable sections of the CITY's LCP and Municipal Code.

7.2 Separate Approvals. The actions of the CITY on each Project shall be separate. Nothing in this Agreement precludes LA PAZ in its sole discretion from proceeding with the Alternative Project.

7.3 Coastal Commission. If the Preferred Project is considered by the California Coastal Commission, and during that consideration modified, then the matter shall be placed on the Planning Commission agenda and, if required, on the City Council agenda, consistent with legal noticing requirements, at the earliest reasonable opportunity, subject to Section 7.3.1.

7.3.1 If the Preferred Project is modified by the California Coastal Commission, LA PAZ in its sole discretion may elect not to proceed with the hearing process. The CITY retains its legal discretion to disapprove a modified project after it conducts the required public hearing process.

8. DEMONSTRATION OF GOOD FAITH COMPLIANCE

8.1 Review of Compliance. In accordance with Government Code § 65865.1, and Malibu Municipal Code § 17.64.130 *et seq.*, this Section 8 and the Applicable Rules, once every 12 months, on or shortly before each anniversary of the Effective Date, the CITY's Manager or his/her designee shall review LA PAZ's compliance with the terms of this Agreement, and shall prepare a report setting forth his or her determination, which must be based on substantial evidence, in accordance with Government Code § 65865.1 and Malibu Municipal Code § 17.64.130 B ("Periodic Review").

8.2 Information to be Provided to LA PAZ. Not later than five business days prior to the Periodic Review, the CITY shall make available to LA PAZ copies of all staff reports which have been prepared in connection with the Periodic Review, written comments from the public and all related exhibits concerning the Periodic Review. If any staff reports, written comments from the public, and related exhibits are completed or received at a later date, they shall be provided to LA PAZ upon completion or receipt.

8.3 Scope of Review. As part of the Periodic Review, LA PAZ shall be given a full and adequate opportunity to be heard, orally and in writing, regarding its performance. It is the duty of LA PAZ to provide evidence of good faith compliance with this Agreement to the City Manager's satisfaction at the time of the review.

8.4 Good Faith Compliance. For purposes of this Agreement, the phrase "good faith compliance" shall mean that LA PAZ has demonstrated that it has acted in a commercially reasonable manner (taking into account the circumstances which then exist) and has substantially complied with LA PAZ's material obligations under this Agreement.

8.5 Notice Of Non-Compliance; Cure Rights. The City Manager or his/her delegee shall determine on the basis of substantial evidence that has or has not complied with this Agreement. If, as a result of this review the City Manager determines that the Agreement is not being fulfilled, he or she shall notify LA PAZ of his or her findings as required by law for the service of summons or by registered or certified mail, postage prepaid, return receipt requested, also indicating that failure to comply within a period specified, but in no event less than thirty calendar days, may result in legal action to enforce compliance, termination or modification of this Agreement ("Notice of Violation").

8.5.1 Contents of Notice of Violation. Every Notice of Violation shall state with specificity that it is given pursuant to Section 8.5 of this Agreement, the nature of the alleged breach, including references to the pertinent provisions of this Agreement, the portion of the Property and/or Project involved, and the manner in which the breach may satisfactorily be cured.

8.6 Failure of Periodic Review. The CITY's failure to conduct any Periodic Review shall not constitute a breach, nor be asserted by any Party to be, a breach of this Agreement nor does it constitute a waiver of any Party's obligations hereunder.

8.7 Proceedings Upon Modification or Termination. If, at the end of the time period established by the City Manager, LA PAZ has failed to comply with the terms of this Agreement or, alternatively, submitted additional evidence satisfactorily substantiating such compliance, the Director shall notify the Planning Commission of his or her findings recommending such action as he or she deems appropriate, including legal action to enforce compliance or terminate or modify this Agreement.

8.8 Hearing on Modification or Termination. Where the Director notifies the commission that his or her findings indicate that this Agreement is being violated, a public hearing shall be scheduled before the Planning Commission to consider LA PAZ's reported failure to comply and the action recommended by the Director. Procedures for conduct of such hearing shall be the same as provided in the Municipal Code for initiation and consideration of a development agreement.

8.8.1 If as a result of such hearing, the Planning Commission finds that LA PAZ is in violation of this Agreement, it shall notify the City Council of its findings, recommending such action as it deems appropriate.

8.8.2 If the Planning Commission reports a violation of this Agreement, the City Council may take one of the following actions:

8.8.2.1 Approve the recommendation of the Planning Commission instructing that action be taken as indicated therein, in cases other than a recommendation to terminate or modify this Agreement; or

8.8.2.2 Refer the matter back to the Planning Commission for further proceedings with or without instructions; or

8.8.2.3 Schedule the matter for a public hearing before itself where termination or modification of this Agreement is recommended. Procedures for such hearing shall be as provided in Municipal Code Sections 17.04.160 through 17.04.230.

8.9 This Section 8 is subject to the cure provisions of Section 9.1.

8.10 Certificate of Agreement Compliance. If at the conclusion of a Periodic Review LA PAZ is found to be in good faith compliance with this Agreement, CITY shall, upon request of LA PAZ, issue a Certificate of Compliance with Development Agreement ("Certificate") to LA PAZ stating that after the most recent Periodic Review, and based upon the information known or made known to the CITY, that (1) this Agreement remains in effect, and (2) LA PAZ is not in default. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of the next Periodic Review. LA PAZ may at its sole option record the Certificate with the County Recorder.

9. DEFAULT AND REMEDIES

9.1 Default. Either Party to this Agreement shall be deemed to have breached this Agreement if it materially breaches any of the provisions of this Agreement and the same is not cured within the time set forth in a written Notice of Violation from the non-breaching Party to the breaching Party. The contents of the Notice of Violation shall be as set forth in Section 8.5.1. The period of time to cure shall be not less than thirty days from the date that the Notice of Violation is deemed received; provided, however, that if the breaching Party cannot reasonably cure a default within the time set forth in the Notice of Violation, then the breaching Party shall not be in default if it commences to cure the default within the time limit and diligently effects the cure thereafter.

9.2 Specific Performance. The Parties acknowledge that money damages are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement, and are available to the Parties for the following reasons:

9.2.1 This Agreement involves the planning and development of real property;

9.2.2 Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of the Project has begun. After such implementation has begun, LA PAZ may be foreclosed from other choices it may have had to utilize the Property or portions thereof. LA PAZ has invested significant time and resources and performed extensive planning and processing of the Project, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate LA PAZ for such efforts.

9.3 Remedies in General. LA PAZ's sole remedy against the CITY shall be specific performance. The CITY shall not be liable to LA PAZ in damages for any breach of this Agreement.

10. MORTGAGEE PROTECTION

10.1 Mortgagee Protection. This Agreement shall not prevent or limit LA PAZ, in any manner, in LA PAZ's sole discretion, from encumbering the Property or any portion thereof, or any improvements thereon, by any mortgage, deed of trust or other security device. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property, shall be entitled to the following rights and privileges:

10.1.1 Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform

LA PAZ's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

10.1.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Violation delivered to LA PAZ.

10.1.3 Mortgagee's Time to Cure. The CITY shall provide a copy of any Notice of Violation to the Mortgagee within ten days of delivery of the Notice of Violation to LA PAZ. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty days after receipt of such Notice of Violation. Notwithstanding the foregoing, if the default is a default which can only be remedied by the Mortgagee obtaining possession of the Property, or any portion thereof, and the Mortgagee seeks to obtain possession, the Mortgagee shall have until thirty days after the date of possession to cure or, if such default cannot reasonably be cured within that period, to commence to cure the default, provided that the default is cured no later than one year after Mortgagee obtains possession.

10.1.4 Cure Rights. Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of LA PAZ under this Agreement as to the Property or portion thereof so acquired; provided, however, that in no event shall the Mortgagee be liable for any defaults or monetary obligations of LA PAZ arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees, and other monetary or non-monetary obligations, due under this Agreement for the Property, or portion thereof acquired by the Mortgagee, have been satisfied.

10.1.5 Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure, or other appropriate proceedings in the nature of foreclosure, by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving LA PAZ, the time periods specified in Section 10.1.3 above shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

10.2 Estoppel Certificate. At any time and from time to time, LA PAZ may deliver written notice to CITY and CITY may deliver written notice to LA PAZ, requesting that such Party certify in writing that, to the knowledge of the certifying Party (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended, or if amended, the identity of each amendment, and (c) the requesting Party is not in breach of this Agreement, or if in breach, a description of each breach. The Party receiving such a notice shall execute and return the certificate within thirty days following receipt of the notice. The CITY's Director shall be authorized to execute, on behalf of the CITY, any Estoppel Certificate requested by LA PAZ. CITY acknowledges that an estoppel certificate may be relied upon by successors in interest to LA PAZ and by holders of record of deeds of trust on the portion of the Property in which LA PAZ has a legal interest. The City Council may designate other persons who shall be authorized to execute any Estoppel Certificate requested by LA PAZ.

11. ADMINISTRATION OF AGREEMENT

11.1 Appeal. Any decision by CITY staff concerning the interpretation or administration of this Agreement or development of the Project or Property in accordance herewith, may be appealed by LA PAZ to the Planning Commission, and thereafter, if necessary, to the City Council, following the procedures set forth in the CITY's Municipal Code. All determinations of the CITY's Planning Commission with respect to the Property or Project may be appealed to the City Council pursuant to such Municipal Code procedures. Final determinations by the City Council are subject to judicial review in accordance with California law.

11.2 Certificate of Performance. Upon the completion of the Preferred Project, or the completion of development of any parcel within the Project, or upon completion of performance of this Agreement, or its earlier revocation and termination, the CITY shall provide LA PAZ, upon LA PAZ's request, with a statement ("Certificate of Performance") evidencing the completion or revocation and the release of LA PAZ from further obligations hereunder, excepting any ongoing obligations. The Certificate of Performance shall be signed by the appropriate agents of LA PAZ and the CITY and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a Notice of Completion as referred to in California Civil Code § 3093.

11.3 Clarifications Through Operating Memoranda. During the term of this Agreement, clarifications to this Agreement, and the Applicable Rules may be appropriate with respect to the details of the performances of CITY and LA PAZ. If and when, from time to time, during the term of this Agreement, CITY and LA PAZ agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by CITY and LA PAZ which, after execution, shall be attached hereto and become part of this Agreement, and the same may be further clarified from time to time, as necessary, with future written approval by CITY and LA PAZ. Operating memoranda are not intended to, and shall not, constitute modifications or amendments to this Agreement but are mere ministerial clarifications. Therefore, public notices and hearings shall not be required. The City Attorney shall be authorized to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification constitutes an amendment which requires compliance with the provisions of Section 11.5. The authority to enter into operating memoranda is delegated to the CITY's Manager, and the CITY's Manager is hereby authorized to execute any operating memoranda hereunder without further City Council action.

11.4 Modifications Requiring Amendment of this Agreement. Any proposed modification of the performances of CITY or LA PAZ which results in any of the following shall not constitute a clarification but rather shall require an amendment to this Agreement:

11.4.1 Any decrease in the required building setbacks;

11.4.2 Any increase in the total developable square footage of the entire Property in excess of the maximum FAR allowed under this Agreement;

11.4.3 Any increase in the maximum allowable height of buildings or structures on the Property, as set forth in this Agreement;

11.4.4 Any decrease in the minimum required lot area, as set forth in this Agreement;

11.4.5 Any implementation of a use which is not permitted under this Agreement;

11.4.6 Any material modification to LA PAZ's obligation to convey Parcel C to the CITY and pay the $500,000 to the CITY, as provided in Section 6.1.1 of this Agreement.

11.4.7 When the City Attorney determines pursuant to Section 11.3 that an amendment is required.

11.5 Amendment or Cancellation of Agreement. Except as otherwise set forth herein, this Agreement may only be amended or cancelled, in whole or in part, by mutual consent of CITY and LA PAZ, and upon compliance with the provisions of Government Code § 65868. This provision shall not limit any remedy of CITY or LA PAZ as provided by this Agreement.

12. TERMINATION

12.1 This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

12.1.1 Expiration of the stated term of this Agreement except for its provisions that are stated to survive its termination.

12.1.2 Entry of a final judgment after all appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

12.1.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.

13. INDEMNIFICATION/DEFENSE

13.1 LA PAZ's Indemnification. LA PAZ shall indemnify, defend, and hold harmless the CITY and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, LA PAZ's performance pursuant to this Agreement, except to the extent such is a result of the CITY'S sole negligence, gross negligence or intentional misconduct. LA PAZ shall indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or the Project Approvals, including without limitation, the CEQA determination. LA PAZ is in no event required to indemnify, defend or hold harmless the CITY with respect to any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or

judgments arising out of, or resulting in any way, from CITY's planning or development of Parcel C, including, without limitation, against any action or proceeding to attack, review, set aside, void or annul CITY's approval of any use on Parcel C.

13.2 Defense of Agreement. The CITY agrees at LA PAZ's expense to, and shall timely take, all actions which are necessary or required to uphold the validity and enforceability of this Agreement and the Applicable Rules. The CITY may choose its own counsel or, at its sole discretion, demand that LA PAZ provide counsel to provide such defense in which event the CITY shall co-operate with such counsel.

13.2.1 The rate per hour billed to LA PAZ for the services of the City Attorney shall be capped at the City Attorney's regular hourly rate billed to the CITY at the time the lawsuit is filed, with persons billing at a lesser rate billed to LA PAZ at their actual rate billed to the CITY at the time the lawsuit is filed.

13.2.2 In defending such joint litigation, the CITY agrees that LA PAZ's counsel may take the laboring oar to avoid duplicative work.

13.2.3 The CITY shall not settle any lawsuit attacking the Project Approvals, or other litigation implicating LA PAZ, without LA PAZ's written consent, obtained in advance.

13.3 This Section 13 shall survive the termination of this Agreement.

14. **TIME OF ESSENCE.** Time is of the essence for each provision of this Agreement of which time is an element.

15. **NOTICES.** As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

15.1 All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage and postal charges prepaid, or by facsimile, as follows:

If to CITY:

City Clerk
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265
Fax: (310) 456-3356

with copies to:

The City Attorney:
Christi Hogin, Esq.

Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266
Fax: (310) 643-8841

If to LA PAZ:

Malibu La Paz Ranch, LLC
c/o Sterling Partners
1033 Skokie Blvd., Suite 600
Northbrook, Illinois 60062
Attn: Jeff Perelman
Fax: (847) 480-0199

and

Donald W. Schmitz, II
Christopher Deleau, Esq.
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, California 90265
Fax: (310) 589-0353

with copies to:

Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067
Fax: (310) 277-7889

15.2 Either Party may change its designated recipient, mailing address and/or facsimile number, by giving written notice of such change in the manner provided herein. All notices under this Agreement shall be deemed received on the earlier of the date personal delivery is effected or on the date deposited in the mail or the delivery date shown on the return receipt, air bill or facsimile confirmation sheet.

16. MISCELLANEOUS PROVISIONS

16.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City Council within ten days of execution, as required by Government Code § 65868.5.

16.2 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are merged herein. This Agreement shall not be amended, except as expressly provided herein.

16.3 Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

16.4 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, each Party, in its sole discretion, shall have 60 days to determine whether to elect to terminate this Agreement or to deem that the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

16.5 Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint venturers or any other association of any kind or nature between CITY and LA PAZ, jointly or severally.

16.6 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person or party shall have any right of action based upon any provision of this Agreement.

16.7 Cooperation Between CITY and LA PAZ. CITY and LA PAZ shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement.

16.8 Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to conflict with any provision of the Applicable Rules or the Project Approvals or the Future Approvals, the provisions of this Agreement shall control.

16.9 Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.

16.10 Governing Law and Venue. This Agreement is made and entered into in the County of Los Angeles, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the County of Los Angeles.

16.11 Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the

judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

16.13 Weekend/Holiday Dates. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or federal or state holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.

16.14 Not a Public Dedication. Except as otherwise expressly provided herein, nothing herein contained, or shown or graphically depicted on the approved plans for the Project, including without limitation all site plans and surveys, shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to the development of the Project for the purposes herein expressed. LA PAZ shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose which is not consistent with the development of the Project. Any portion of the Property conveyed to the CITY by LA PAZ as provided herein shall be held and used by the CITY only for the purposes contemplated herein or otherwise provided in such conveyance, and the CITY shall not take or permit to be taken (if within the power or authority of the CITY) any action or activity with respect to such portion of the Property that would deprive LA PAZ of the material benefits of this Agreement, or would in any manner interfere with the development of the Project as contemplated by this Agreement.

16.15 Singular and Plural. As used herein, the singular of any word includes the plural.

16.16 Excusable Delays. Performance by any Party of its obligations hereunder shall be excused during any period of "Excusable Delay," as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Party as soon as reasonably possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (f) damage to work in progress by reason of fire, flood, earthquake or other casualty; (g) reasonably unforeseeable delay caused by a reasonably unforeseeable restriction imposed or mandated by a governmental entity other than CITY; (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Future Approval or any other action necessary for development of the Property, (a) delays caused by any default by CITY or LA PAZ hereunder, or (b) delays due to presence or remediation of hazardous materials. The term of this Agreement shall be extended by any period of Excusable Delay.

16.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

16.18 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devises, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its Property hereunder, and each other person succeeding to an interest in such properties.

16.19 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record any reasonably required instruments and writings, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement and to evidence or consummate the transactions contemplated by this Agreement.

16.20 Authority to Execute.

16.20.1 The persons signing below on behalf of LA PAZ warrant and represent that they have the authority to bind LA PAZ and that all necessary partners, managing members, board of directors, shareholders, or other approvals have been obtained.

16.20.2 The persons signing below on behalf of the CITY warrant and represent that they have the authority to bind the CITY and that all necessary approvals from the City Council have been obtained.

16.21 Exhibits. All Exhibits attached to this Agreement are hereby incorporated by reference as if set forth in full.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

CITY OF MALIBU

Dated: _____ By: _____
Mayor of Malibu

ATTEST:

By: _____

(SEAL)

APPROVED AS TO FORM:

By: _____
Counsel for the CITY

Dated: _____

MALIBU LA PAZ RANCH, LLC

By: _____
Title: _____

Dated: _____

By: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Counsel for LA PAZ

TABLE OF CONTENTS

Exhibit I

State of California
California Regional Water Quality Control Board, Los Angeles Region

Final Environmental Staff Report

Containing substitute environmental documentation in accordance with the California Environmental Quality Act in support of an Amendment to the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*

to Prohibit Onsite Wastewater Disposal Systems in the Malibu Civic Center Area

November 5, 2009

Table of Contents

Environmental Staff Report

in support of an Amendment to the
Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties

to Prohibit Onsite Wastewater Disposal Systems in the Malibu Civic Center Area

Introduction

Proposed Action

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) proposes to amend the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan)* to prohibit discharges from on-site wastewater disposal systems (OWDSs) in the Civic Center area of the City of Malibu. This proposed regulatory action is referred to as the prohibition, or project, throughout this report.

Prohibition Boundary

The area that would be affected by the proposed prohibition is referred to as the Malibu Civic Center area, and is delineated by the red line shown in Figure 1[1]. The area is not defined according to municipal borders or parcel lines. Rather, the area subject to the prohibition is delineated according to hydrogeologic parameters and drainage patterns; as groundwater flow roughly mimics surface drainage, the prohibition boundary follows a topographic high surrounding both the Winter Canyon and lower Malibu Creek (also known as Malibu Valley) watersheds. All property extending seaward of this boundary to the ocean is subject to the prohibition, including the coastal strips along the Pacific Coast Highway stretching from Amarillo Beach to First Point at Surfrider Beach. This entire area, which is referred to as the "Malibu Civic Center area,"[2] totals 2.2 square miles of which 1.5 square miles and 0.7 square miles are within the City of Malibu and the unincorporated area of County of Los Angeles, respectively. Figure 2[1] shows the civil boundaries and parcels.

To the west, the prohibition boundary encompasses Winter Canyon not only because this watershed is heavily developed and discharges almost 50,000 gallons per day of wastewater (about 20% of the wastewater in the prohibition area), but also because wastewater management strategies for many commercial activities in the coastal strip adjacent to the Colony – as well as

[1] Figure 1 and Figure 2 refer to the prohibition area as recommended by staff prior to a public meeting of the Board on November 5, 2009. During the public meeting, the Board directed staff to modify the western boundary so that upper Winter Canyon is not subject to the prohibition. Figure 1A and Figure 1B refer to the official prohibition boundary, as modified by the Board on November 5, 2009 in Resolution R4-2009-007.

[2] As the prohibition area covers a small portion of the City of Malibu and an even smaller portion of unincorporated County of Los Angeles, staff avoided designating this as a 'Malibu' prohibition. Nor did staff select hydrologic terms to designate the prohibition area, out of concern that such terminology may not be readily recognized by the affected community. Rather, the designation of 'Malibu Civic Center area' was selected for broad name recognition.

proposed strategies for managing future wastewaters from Malibu Valley – rely on disposal capacity in Winter Canyon, which is severely strained. Note that the prohibition area includes only a small sliver of the Pepperdine University campus, as this sliver is the only portion of Pepperdine that falls within the topographically-defined Winter Canyon watershed.

Figure 1

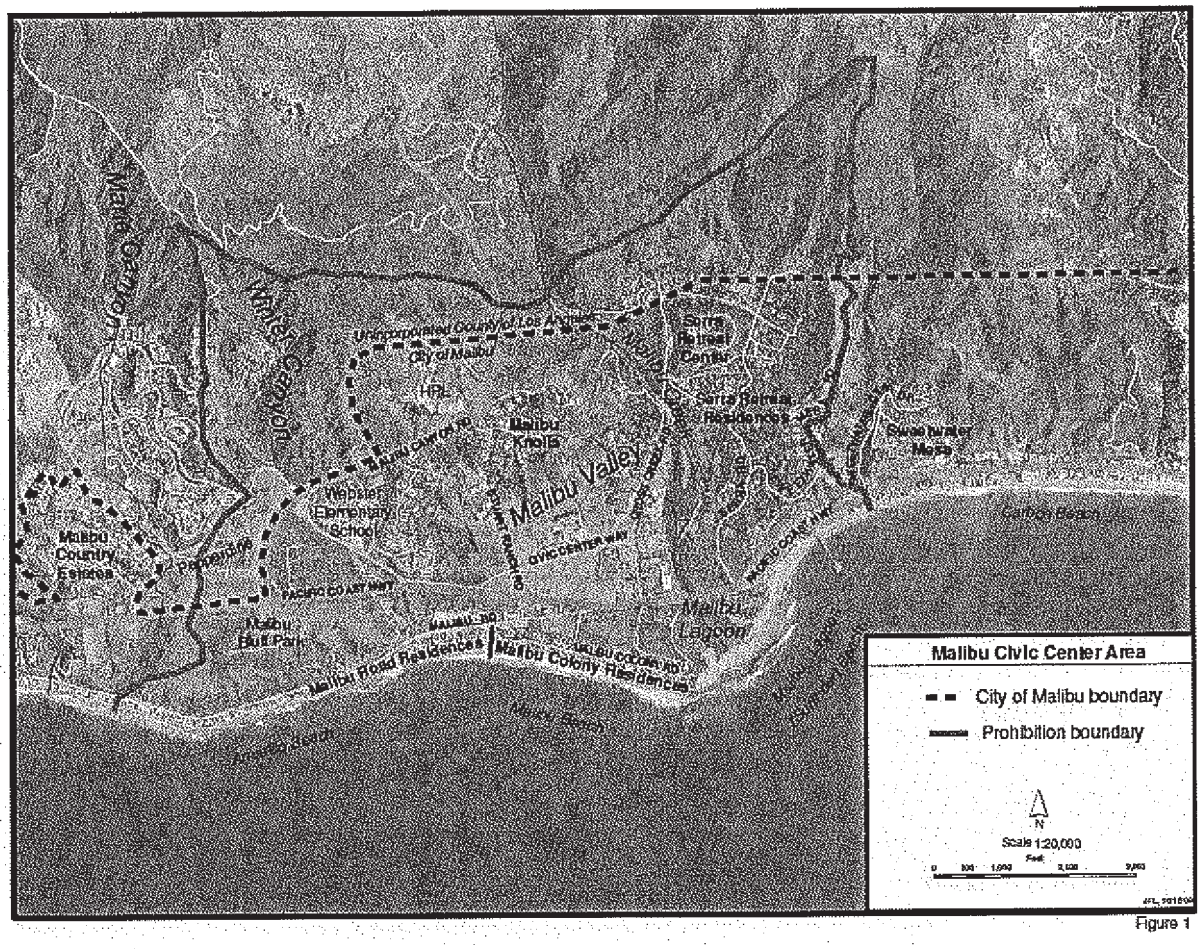


Figure 1

To the east, the prohibition boundary encompasses the Serra Retreat neighborhood, and follows Sweetwater Mesa Road along the eastern topographic high. The boundary was not extended eastward, as the Sweetwater Mesa neighborhood is a lower density residential development. Nor was the boundary extended eastward along the Pacific Coast Highway to capture a stretch of significant commercial development, as the intent of this proposed regulatory action is to encompass priority areas that affect groundwater and are hydraulically connected to impaired surface water resources, including Surfrider, Malibu, and Amarillo Beaches and Malibu Lagoon. Additional areas, such as the stretch of the Pacific Coast Highway eastward of the boundary, may be subject to future regulatory actions.


Malibu Civic Center Area
City of Malibu boundary
Prohibition boundary
Scale 1:20,000
Winter Canyon
Marie Canyon
Malibu Valley
Malibu Creek
Malibu Lagoon
Malibu Knolls
Malibu Colony Residences
Malibu Road Residences
Malibu Country Estates
Sweetwater Mesa
Carbon Beach
Unincorporated County of Los Angeles
City of Malibu
STUART RANCH RD
PACIFIC COAST HWY

Figure 1A

Figure 2

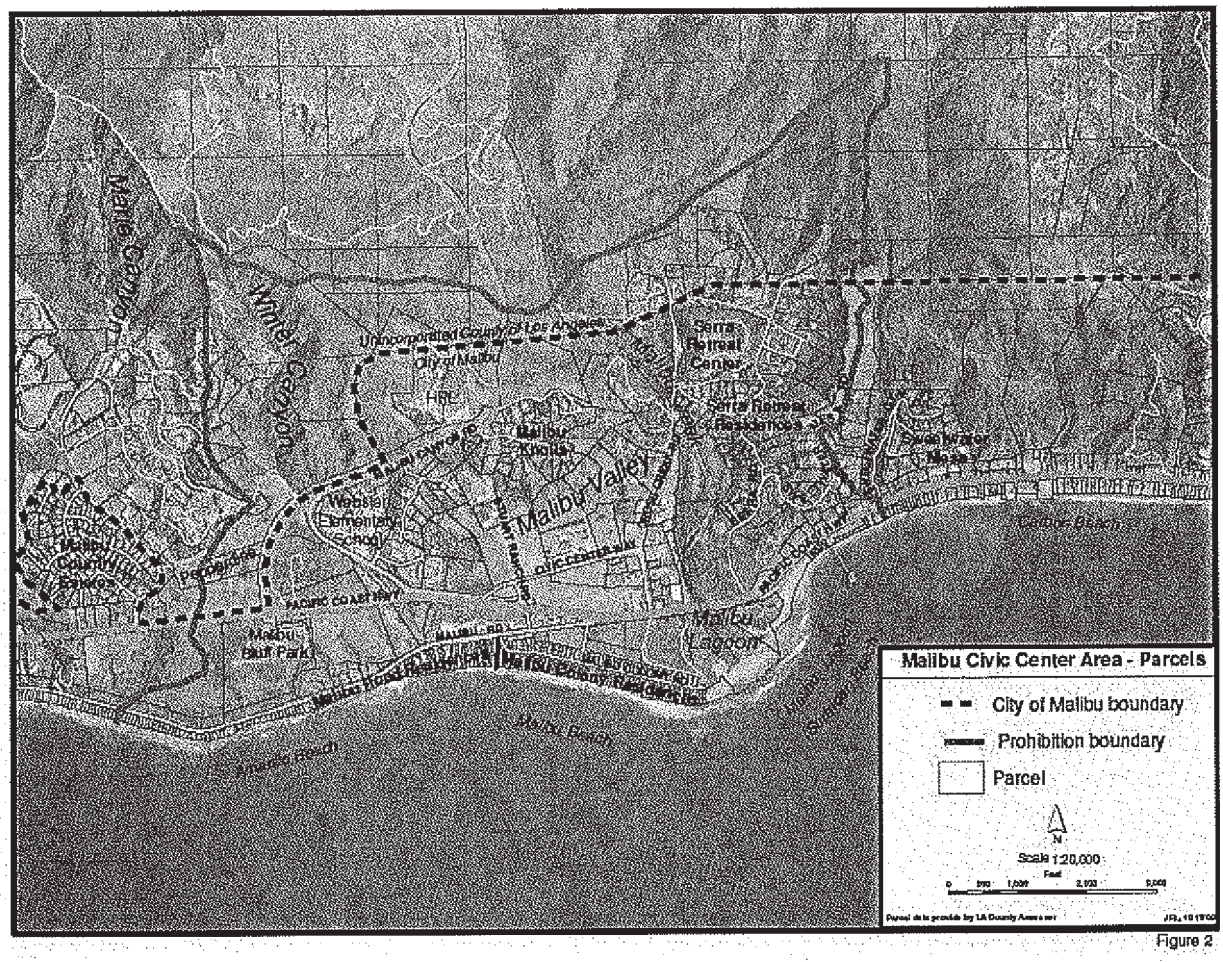


Figure 2

Types of Dischargers Subject to Prohibition

All property owners, including existing residences, businesses, and public facilities that discharge wastes through an OWDS in the Malibu Civic Center area, would be affected by theproposed prohibition as well as future dischargers who may plan to discharge in this area. The regulatory action would immediately prohibit all new discharges from OWDS in the Malibu Civic Center area, and establish a schedule to cease discharges from existing systems by 2014.

Types of Discharges Subject to Prohibition

Collectively, the systems from which wastewaters discharge are referred to as OWDSs. Types of subsurface disposal systems, or OWDSs, that would be prohibited range from passive systems with conventional septic tanks to active systems with equipment that more aggressively remove pollutant loads from sewage before subsurface disposal. The prohibition would cover an OWDS that serves an individual property (residential, commercial, industrial, and public properties) as well as a group of properties. The prohibition would apply to all OWDSs and regulated

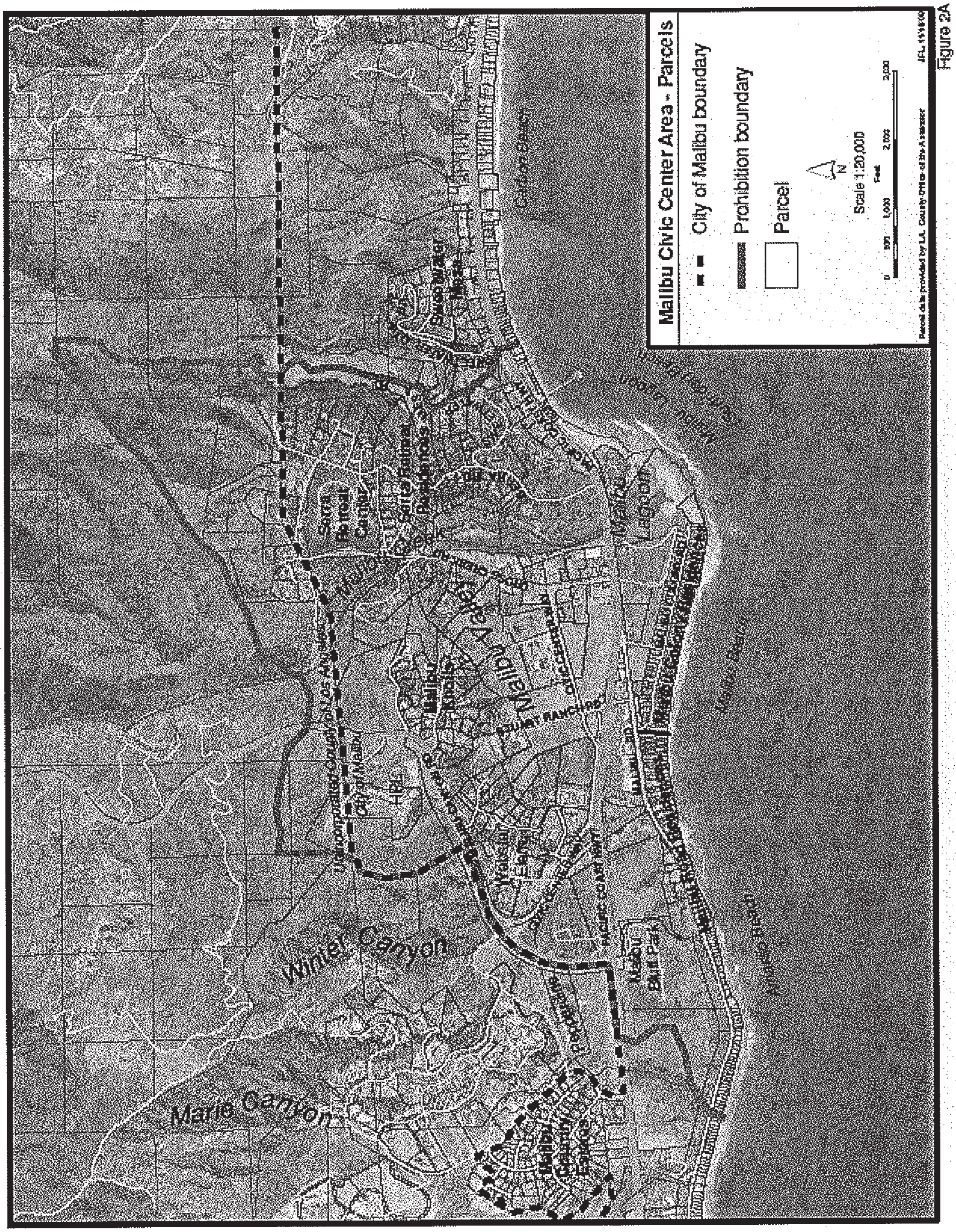

Malibu Civic Center Area - Parcels
City of Malibu boundary
Prohibition boundary
Parcel
Scale 1:20,000
Winter Canyon
Marie Canyon
Malibu Valley
Malibu Lagoon
Carbon Beach

Figure 2A

discharges (whether they are regulated by the City of Malibu, County of Los Angeles, or State) as well as any unregulated discharges that may exist.

Lead Agency

The Regional Board is the lead agency for evaluating environmental impacts from the proposed prohibition on OWDSs in the Malibu Civic Center area.

Scope of Environmental Staff Report

The Regional Board's basin planning process is exempt from certain requirements of CEQA, including preparation of an initial study, negative declaration, and environmental impact report (California Code of Regulations, title 14, section 15251(g)). As the proposed amendment to the *Basin Plan* is part of the basin planning process, the Regional Board prepares environmental information and analyses that are the functional equivalent of an environmental impact report. The Regional Board describes it as "substitute environmental documentation," which complies with Public Resources Code section 21080.5. In this substitute environmental documentation, alternatives to the proposed project, reasonably foreseeable environmental impacts arising from those alternatives and from methods of complying with the proposed prohibition are disclosed in accordance with the California Environmental Quality Act (CEQA) and CEQA regulations.

This information is also presented to meet a requirement of section 13283 of the California Water Code (CWC), which requires a preliminary review of possible alternatives to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination.

Consideration of the factors in section 13241 of the CWC is required by section 13281. Staff has presented preliminary cost information for conceptual options, or projects, that the community and stakeholders could select and implement to comply with the prohibition. These projects are analyzed on a conceptual basis only, as a local government body will need to select and implement a specific wastewater management strategy and project. As this occurs, it will be the responsibility of a local government body to perform a specific project-level analysis and disclose environmental impacts.

The Regional Board has analyzed environmental impacts. This substitute environmental documentation is based on the proposed prohibition that will be considered by the Regional Board and, if adopted, implemented through an amendment to the *Basin Plan*. Evidence in support of the proposed prohibition is presented in a technical staff report that, together with this environmental staff report and a tentative resolution, are part of the substitute environmental documentation which will be considered on November 5, 2009. Approval of the substitute environmental documentation is separate from approval of a specific project alternative or a component of an alternative. Approval of the substitute environmental documentation refers to the process of: (1) addressing comments, (2) confirming that the Regional Board considered the information in the substitute environmental documentation, and (3) affirming that the documentation reflects independent judgment and analysis by the Regional Board (Cal. Code Regs., tit. 14, section 15090).

California Environmental Quality Act

This prohibition is evaluated at a program level of detail under a Certified Regulatory Program and the information and analyses are presented in this substitute environmental documentation as discussed in this section.

CEQA's basic purposes are to: 1) inform the decision makers and public about the potential significant environmental effects of a proposed project, 2) identify ways that environmental damage may be mitigated, 3) prevent significant, avoidable damage to the environment by requiring changes in projects, through the use of alternative or mitigation measures when feasible, and 4) disclose to the public why an agency approved a project if significant effects are involved. (Cal. Code Regs., tit. 14, section 15002(a).)

To fulfill these functions, a CEQA review need not be exhaustive, and CEQA documents need not be perfect. They need only be adequate, complete, and good faith efforts at full disclosure. (Cal. Code Regs., tit.14, section 15151.) The Court stated in *River Valley Preservation Project v. Metropolitan Transit Development Board* (1995) 37 Cal.App.4th 154, 178:

> As we have stated previously, "[o]ur limited function is consistent with the principle that ""[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. . . ."" (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1448 [263 Cal.Rptr. 340]; quoting *Laurel Heights I*, supra, 47 Cal.3d at p. 393.) "We look 'not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.' (Guidelines, section 15151.)" (*City of Fremont v. San Francisco Bay Area Rapid Transit Dist.*, supra, 34 Cal.App.4th at p. 1786.)

Nor does CEQA require unanimity of opinion among experts. The analysis is satisfactory as long as those opinions are considered. (Cal.Code Regs.,tit. 14, section 15151.)

In this document, the Regional Board staff has strived to perform a good faith effort at full disclosure of the reasonably foreseeable environmental impacts that could be attendant with the prohibition. Our analysis and conclusions follow.

Public Resources and Water Code Requirements

While the "certified regulatory program" of the Regional Board is exempt from certain CEQA requirements, it is subject to the substantive requirements of California Code of Regulations, title 23, section 3777(a), which requires a written report that includes a description of the proposed activity, an analysis of reasonable alternatives, and an identification of mitigation measures to minimize any significant adverse environmental impacts. Section 3777(a) also requires the Regional Board to complete an environmental checklist as part of its substitute environmental documents. This checklist is provided within this document.

In addition, pursuant to the California Water Code, section 13281(a), the Regional Board must consider all relevant evidence related to the discharge, including, but not limited to, those factors

set forth in section 13241 information provided pursuant to section 117435 of the Health and Safety Code, possible adverse impacts if the discharge is permitted, failure rates of any existing individual disposal systems, whether due to inadequate design, construction, maintenance, or unsuitable hydrogeologic conditions, evidence of any existing, prior or potential contamination, existing and planned land use, dwelling density, historical population growth, and any other criteria as may be established pursuant to guidelines, regulations, or policies adopted by the state board. This evidence is presented in the technical and environmental staff reports.

Pursuant to the California Water Code, section 13241, the Regional Board may establish water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. In so doing, the Regional Board is to consider factors, including but not necessarily limited to, all of the following:

(a) Past, present, and probable future beneficial uses of water.
(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
(d) Economic considerations.
(e) The need for developing housing within the region.
(f) The need to develop and use recycled water.

Although the proposed regulatory action does not establish a new water quality objective, staff has nonetheless presented such information in the technical and environmental staff reports.

Public Resources Code section 21159(d) specifically states that the public agency is not required to conduct a "project level analysis." Rather, a project level analysis must be performed by the local agencies that are required to implement the requirements of the prohibition. Notably, ***the Regional Board is prohibited from specifying the manner of compliance with its regulations*** (Water Code § 13360), and accordingly, the ***actual*** environmental impacts will necessarily depend upon the compliance strategy selected by the local agencies.

This substitute environmental documentation identifies the reasonably foreseeable environmental impacts of the ***reasonably foreseeable*** methods of compliance (Pub. Res. Code, section 21159(a)(1)), based on information developed before, during, and after the CEQA scoping process that is specified in California Public Resources Code section 21083.9. This analysis is a program-level (i.e., macroscopic) analysis. CEQA requires the Regional Board to conduct a program-level analysis of environmental impacts. (Pub. Res. Code, section 21159(d).) Similarly, the CEQA substitute documents do not engage in speculation or conjecture (Pub. Res. Code, section 21159(a).) When the CEQA analysis identifies a potentially significant environmental impact, the accompanying analysis identifies reasonably foreseeable feasible mitigation measures. (Pub. Res. Code, section 21159(a)(2).) The substitute environmental documentation has identified the reasonably foreseeable alternative means of compliance. (Pub. Res. Code, section 21159(a)(3).)

documentation has identified the reasonably foreseeable alternative means of compliance. (Pub. Res. Code, section 21159(a)(3).)

Proposed Action

Description of Proposed Action

The proposed regulatory action by the Regional Board would prohibit discharge of wastewater through an OWDS in the Civic Center area of the City of Malibu. The prohibition would be effected through an amendment, set forth in the tentative resolution, to the *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan).*

The area that would be affected by the proposed prohibition is referred to as the Malibu Civic Center area (Figure 1[1]), which includes Malibu Valley, Winter Canyon, and the adjacent coastal strips of land and beaches. Existing residents, businesses, and public facilities that discharge wastes through an OWDS in the Malibu Civic Center area, would be affected by the proposed prohibition as well as future dischargers who may plan to discharge in this area. The regulatory action would immediately prohibit all new discharges from OWDS in the Malibu Civic Center area, and establish a schedule to cease discharges from existing systems by 2014.

Types of subsurface disposal systems, or OWDSs, that would be prohibited range from passive systems with conventional septic tanks to active systems with equipment that more aggressively removes pollutant loads from sewage before subsurface disposal. The prohibition would cover an OWDSs that serves an individual property (residential, commercial, industrial, and public properties) as well as a group of properties.

Goal of the Proposed Action

The goal of the proposed prohibition on OWDSs is to remedy pollution of water resources, including beaches, Malibu Lagoon and Creek, and groundwater, that are affected by discharges from OWDSs. The prohibition, together with other efforts, is expected to restore beneficial uses of these water resources.

Environmental Setting

Background

The Malibu Civic Center area supports a population of approximately 2,000 residents and is the core of the City's business, cultural, and commercial activities. The area, which includes the renowned Surfrider Beach, attracts a high volume of visitors.

Residents, businesses, and public facilities in the area discharge wastewaters totaling about 270,000 gallons per day (gpd) through OWDSs to the subsurface and underlying groundwater. These high flows of wastewater, coupled with unfavorable hydrogeologic conditions, have raised concerns about reliance on this wastewater disposal strategy.

Water Resources

Surface waters in the Malibu Civic Center area include Malibu Creek, Malibu Lagoon, a critical fresh/saltwater habitat for rare, threatened, and endangered species, and the ocean beaches that are heavily used by the resident population as well as visitors. Also, groundwater in the area is a historic and potential source of drinking water. In the *Basin Plan*, the Regional Board has formally designated these plus other beneficial uses for water resources as follows:

> **Malibu Lagoon:** Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.
>
> **Malibu Creek:** Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.
>
> **Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach:** Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.
>
> **Groundwater:** Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

Also in the *Basin Plan*, the Regional Board has established water quality objectives to protect the beneficial uses identified above.

Impairments to Beneficial Uses of Water Resources

In a 2006 Clean Water Act Section 303(d) list, approved by the United States Environmental Protection Agency (US EPA) on June 28, 2007, impairments to beneficial uses are formally identified for the following water resources:

> Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.
> Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).
> Malibu Beach: impaired by Indicator Bacteria.
> Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.
> Carbon Beach: impaired by Indicator Bacteria.

To restore water quality and impaired beneficial uses, the US EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs):

a. **Malibu Creek Watershed Nutrient TMDL:** The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April

15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential land use activities. The TMDL specifies a load allocation for onsite wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.

b. **Malibu Creek and Lagoon Bacteria TMDL:** The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, onsite wastewater disposal systems, and animal wastes. The TMDL specifies load allocations for onsite wastewater disposal systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with >=0.1 and the three days following the rain event), there are 17 allowable exceedance days.

c. **Santa Monica Bay Beaches Wet and Dry Bacteria TMDL:** For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as a major source. The TMDLs did not provide load allocations for onsite wastewater disposal systems, meaning that no exceedances of the numeric targets are permissible as a result of discharges from non-point sources, including onsite wastewater disposal systems. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with >=0.1 and the three days following the rain event), there are 17 allowable exceedance days.

Technical Evidence in Support of the Proposed Prohibition

In the technical staff report, staff presents evidence in support of the proposed prohibition, in accordance with the requirements of the California Water Code, sections 13280 and 13281, for a determination that discharges of OWDSs in the Malibu Civic Center area result in violation of water quality objectives, impairment of present or future beneficial uses of water, pollution, nuisance, or contamination, or unreasonable degradation of the quality of waters of the State. The conclusions, based on the evidence in the technical staff report, are as follows:

i. Dischargers subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance. (See Technical Memorandum #1 appended to the technical staff report.)

ii. Discharges of wastewaters released from OWDSs to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water. (See Technical Memorandum #2 appended to the technical staff report.)

iii. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with beaches represent a source of impairment for water contact recreation. (See Technical Memorandum #3 appended to the technical staff report.)

iv. Discharges of wastewaters released from OWDSs to groundwater that is in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication. (See Technical Memorandum #4 appended to the technical staff report.)

v. Wastewater flows in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities. (See Technical Memorandum #5 appended to the technical staff report.)

Based on these conclusions, the technical staff report presents a recommendation for Regional Board action to prohibit discharges from OWDSs in order to protect the quality of water resources and to restore beneficial uses of water resources in the Malibu Civic Center area. This recommendation is set forth in a tentative resolution for the proposed amendment to the *Basin Plan*, which the Regional Board will consider for adoption on November 5, 2009.

Schedule for Compliance with the Proposed Prohibition

Although the Regional Board is not specifying the *manner* of compliance with the prohibition, staff has reviewed options for conceptual projects that could provide the community with wastewater services in compliance with federal and state regulations, water quality objectives, and the proposed prohibition. These compliance projects include construction, operation, and maintenance of:

A. Integrated water resources management facilities that would collect and treat wastewaters in, and distribute recycled water from, a centralized plant within the community.

B. A community sewer collection system and interceptor sewer to export sewage for treatment at a facility in another community.

C. Decentralized wastewater management facilities that would collect and treat and wastewaters in, and distribute recycled water from, small plants within the community.

The proposed prohibition anticipates that the community would select, design, and construct one of the above projects, or a similar project, and cease discharges from OWDSs by 2014, in accordance with the following schedule:

May 1, 2010:	Completion of 25% of a master facilities plan for possible projects to comply with the prohibition, including initiation of a strong public participation program.
November 1, 2010:	Completion of 50% of a master facilities plan and initiation of environmental review, with strong, on-going public participation. Concurrently, initiation of preliminary engineering and a feasibility study for possible projects to comply with the prohibition.
May 1, 2011:	Substantial completion of a master facilities plan, preliminary engineering and a feasibility study, and engagement of the public in selection of a project to comply with the prohibition.
November 1, 2011:	Completion of a master facilities plan, preliminary engineering and a feasibility study, and selection of a project to comply with the prohibition.
November 1, 2012:	Completion of a final design for selected project.
November 1, 2013:	Completion of 50% of construction of selected project.
November 1, 2014:	Completion of project selected to comply with prohibition, including successful startup of the project and termination of discharge from all OWDSs.

Program Alternatives

In this section, staff analyzed two alternatives, or actions, to the proposed project within the jurisdiction of the Regional Board, municipalities, and other local agencies. These alternatives include:

1. An initiative by a municipality, utility, or other local authority (local government) to cease discharge through OWDSs by providing community services to collect and dispose/reuse wastewater in a manner that will restore water quality and beneficial uses of impaired waters.

2. A 'no action' alternative, in which dischargers continue to rely on existing OWDSs.

Staff did not analyze an alternative that assumes that dischargers would elect to haul large quantities of sewage off-site, by tanker truck, to other communities with wastewater disposal facilities and capacity to accept liquid wastes from dischargers in the Malibu Civic Center area. As discussed in the technical staff report (Technical Memorandum #5), a subset of ten commercial dischargers haul about 7% of their sewage (almost 2 million gallons) from the Malibu Civic Center area to communities that have wastewater treatment facilities. This need results from on-site hydrogeologic limitations and/or facility limitations. The hauling practice already has impacts to traffic, odor, and aesthetics, and staff did not deem this to be a practical alternative on a larger scale (capable of handling flows of about 250,000 gpd to 300,000 gpd) and on a long-term basis, for reasons among which include:

- Tanker truck capacities are small, ranging from 2,500 gallons to 7,000 gallons.
- Public nuisances, including noise and odor, have been observed during the pumping of raw sewage at various commercial facilities for transfer into the tanker trucks.
- Round trips for the tanker trucks are between 60 miles and 180 miles (including routes through other communities), and are expected to have adverse impacts on roads and transportation flows.
- Air quality impacts from diesel emissions would be significant.
- Staff estimates that this practice of managing raw sewage contributes to climate change, at a rate of 250 tons of carbon dioxide per year.

Program Alternative 1– Local Government Initiative

Under program alternative 1, a municipality, utility or other local authority would provide community services to collect and dispose/reuse wastewater in the Malibu Civic Center area in a manner that will restore water quality and beneficial uses of impaired waters.

While a local government may be an existing entity, such as the City of Malibu or and existing utility or other government authority, it also may be a newly formed utility or government authority. California law provides for a number of institutional options for providing community services. For example, the City can contract for services from a nearby government entity that already has wastewater management capabilities and capacity. Alternatively, an existing utility,

such as the Los Angeles County Waterworks District No. 29, Malibu, or a regional water authority, such as the West Basin Municipal Water District, could expand their scope of services and provide wastewater management services, integrated with potable water services already offered to the Malibu Civic Center area. Such an option also offers the potential to manage wastewater as a resource for recycling. Finally, a private organization – while not a government entity – could nevertheless be formed by community members and stakeholders to provide wastewater management services.

Program alternative 1 – for a local government initiative – anticipates achieving water quality objectives and TMDL targets through compliance projects that would provide the community with wastewater services in compliance with federal and state regulations, water quality objectives, and the proposed prohibition. These compliance projects could include construction, operation, and maintenance of:

A. Integrated water resources management facilities that would collect and treat wastewaters in, and distribute recycled water from, a centralized plant within the community.

B. A community sewer collection system and interceptor sewer line to export sewage for treatment at a facility in another community.

C. Decentralized wastewater management facilities that would collect and treat and wastewaters in, and distribute recycled water from, small plants within the community.

An overview and analysis of conceptual projects, or options, that the community and stakeholders could implement to comply with these program alternatives is provided in the next section (Options for Compliance Projects). These compliance projects are expected to have positive environmental impacts, in that they are expected to reduce water quality impairments and help restore beneficial uses. However, these projects also have potential significant adverse impacts to the environment that would occur from the construction, operation, and maintenance these community facilities. These impacts, which are of relatively short duration, can either be mitigated or alternative projects to achieve water quality objectives may be available.

Program Alternative 2 – No Action

This "no action" program alternative assumes that neither the Regional Board nor a local government takes action to prohibit discharges from OWDSs. Although dischargers could voluntarily implement projects to achieve water quality objectives and TMDL targets, staff believes that this is unlikely. Staff's technical memos provide evidence that water quality objectives are not being met and there is no evidence that those objectives will be met in the future absent any additional action. Accordingly, under this program alternative, it is assumed that the cumulative rate of pollutant loading does not decline. As a result, this program alternative would result in continuing or worsening impairments to beneficial uses of the water resources in and around the Malibu Civic Center area, including:

- Malibu Valley groundwater, as a potential source of drinking water.
- beaches, for body contact recreation, and
- Malibu Creek and Lagoon, as support for aquatic and wildlife habitat, including rare, threatened, and endangered species.

Recommendation

Staff concludes that the proposed project (Regional Board prohibition) is the most environmentally advantageous program. Program alternative 2 (no action) is not a preferred alternative because, while it avoids impacts due to construction and operation of wastewater management projects, it allows continued impairment of beaches, Malibu Lagoon and Creek, and underlying groundwater.

Both the proposed project (Regional Board prohibition) and program alternative 1 (local government initiative) have potential to achieve water quality objectives and to restore beneficial uses. However, program alternative 1 relies on an existing or newly formed government entity to voluntarily plan, design, construct, and operate a project that would provide dischargers in the Malibu Civic Center area with community wastewater collection, treatment, and disposal services. Such a voluntary, or discretionary, effort is not currently available. Or, if such an initiative does form, it may not be able to act in a timely manner to complete projects to achieve water quality goals and restore beneficial uses. Therefore, program alternative 1 is not a preferred alternative.

Options for Compliance Projects

Introduction

The program alternatives in the previous section do not specify a particular project to achieve compliance,[4] and it will be the responsibility of the community and stakeholders to select a strategy for compliance. Project-level impacts to the environment will depend on the selected strategy and it will be the responsibility of a local government (local agency) to perform a specific project-level analysis and disclose those environmental impacts.

Nevertheless, the Regional Board can analyze and disclose, on a conceptual basis, foreseeable environmental impacts from possible projects that may be selected for compliance. Accordingly, in this section, staff provides an overview and analysis of three conceptual options, or projects, that the community and stakeholders could implement to comply with the proposed prohibition and program alternative 1 – the local government initiative. These possible compliance projects include:

A. "Integrated Facilities," including the construction and operation of a central wastewater treatment plant in the community, a local sewer collection system, and recycled water distribution system. The community may also elect to broaden the scope of such a project, in order to integrate these services with delivery of potable water supplies; however, for purposes of this analysis, a more limited scope was assumed.

B. "Interceptor Sewer," including construction and operation of a local sewer collection system and an interceptor sewer to export sewage for treatment at a facility in another community.

C. "Decentralized Facilities," including the construction and operation of small plants in the community, small sewer collection systems, and limited recycled water distribution systems.

These projects are expected to have positive environmental impacts, in that they are expected to reduce water quality impairments to:

- Groundwater – which has pollutants from OWDSs at levels that would impact human health should the community need groundwater as part of its potable water supply in the future.

- Malibu Lagoon – which has a nitrogen load from OWDSs at levels that contribute to eutrophication and impair habitat for aquatic life and wildlife.

- Nearby beaches – which consistently fail to meet standards set to protect swimmers and surfers from infectious disease resulting from incidental ingestion of or direct exposure to polluted water.

[4] The Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code § 13360).

However, these projects also have potential significant adverse impacts to the environment, which would occur from the construction, operation, and maintenance these facilities. These impacts, which are generally of relatively short duration, can either be mitigated or alternative means of compliance with the Regional Board prohibition may be available.

Summary of Economics

Wastewater costs for systems currently operating in the Malibu Civic Center area vary widely. Many residents had passive septic systems installed decades ago which, if replaced today, would roughly cost between $8,000 to $21,000. Maintenance costs for such systems are not significant; assuming a homeowner pumped sludge on a three-year schedule, operating and maintenance costs would be $600 (or $200 annually spread over three years). At the other extreme are capital costs for the wastewater management systems for larger commercial properties that generate high flows of wastewater relative to land available for plant and equipment and for subsurface disposal. For example, capital costs for the treatment system at Malibu Lumber – the most recent system to come on-line (in April 2009) – totaled millions of dollars.

To estimate costs for the three compliance projects considered in this analysis, staff assumed that the projects would be sized to replace the total existing OWDS capacity in the community, and that the projects would not be designed to accommodate increases in wastewater flows. Accordingly, all three compliance projects were sized to handle a flow of approximately 300,000 gpd.

Based on preliminary estimates for the three compliance projects considered in this analysis, capital costs, in today's dollars, would range from $17 million to $80 million, as follows:

Summary of Capital Costs for Compliance Projects

Components	Integrated Facilities	Interceptor Sewer to a:		Decentralized Facilities
		Hyperion Connection	Tapia Connection	
Local Sewer System	$7,800,000	$7,800,000	$7,800,000	$7,800,000
Interceptor Sewer	--	$49,000,000	$72,500,000	--
Treatment Plant(s)	$5,900,000	--	--	$5,800,000
Recycled Distribution System	$3,000,000	0	0	$3,000,000
Total	***$16,700,000***	***$56,800,000***	***$80,300,000***	***$16,600,000***

Also, in switching from OWDSs to one of the above projects, all dischargers would incur costs for abandonment of their systems. For a residential property, these costs are estimated to range from $1,700 to $2,700.

Compliance Project A – Integrated Water Resources Management Facilities

Under the "Integrated Facilities" method of compliance, the City of Malibu, an existing utility or local authority, or a newly formed utility or local authority would construct and operate a centrally located wastewater treatment plant, with a local sewer collection system and a local recycled water distribution system. Capital cost estimates for this compliance project total $16,700,000 and include the following major components and key assumptions:

Integrated Water Resources Management Facilities

Component	Capital Cost	Key Assumptions
Local Sewer System	$7,800,000	22,000 ft of 8-inch diameter pipe, to collect 300,000 gpd by gravity flow to 3 wet wells.
		Construction Technique: Open Cut Trenching
Treatment Plant	$5,900,000	300,000 gpd capacity using activated sludge, filtration, and disinfection to produce a Title 22 recycled water for direct reuse.
		Cost of land not included.
Recycled Water Distribution System	$3,000,000	15,000 ft of 8-inch diameter pipe, to distribute 150,000 gallons of recycled water
		Construction Technique: Open Cut Trenching
		50% of flow recycled; 50% disposed to subsurface.
Total	***$16,700,000***	

For purposes of this preliminary analysis, staff assumed that there would be demand to directly reuse only half of the treated effluent (and a market analysis would need to be conducted to determine the community's capacity for recycling). Community planners may consider the promotion of additional uses for recycled water by requiring dual plumbing for any new development or retrofits.

Staff also assumed that the portion of treated effluent not recycled is discharged through subsurface methods, which will require a larger project footprint, unless the discharge can be integrated into management with other water projects such as stormwater treatment. As an alternative to subsurface disposal, the community may elect to consider an ocean outfall. Costs for construction of this outfall, additional treatment capabilities such as temperature controls for the treated effluent, and diffusers at the outfall, have not been included in this analysis.

Compliance Project B – Interceptor Sewer

Under the "Interceptor Sewer" method of compliance with the proposed prohibition, the community would design and construct a wastewater collection system in the Malibu Civic Center area that would feed into an interceptor sewer that exports the sewage out of the area to another community with wastewater treatment facilities. The nearest connections are sewers that are part of the Hyperion Wastewater Treatment Plant in El Segundo and the Tapia Water Reclamation Facility in Calabasas.

Hyperion Interceptor Sewer: An interceptor sewer designed to export sewage to the Hyperion system is expected to require tunneling under the Pacific Coast Highway to the nearest connection point in Castellammare, which is 7-1/2 miles from the Civic Center area. Cost estimates for this compliance project total $56,800,000 and include the following major components and key assumptions:

Hyperion Interceptor Sewer

Component	Capital Cost	Key Assumptions
Local Sewer System	$7,800,000	22,000 ft of 8-inch diameter pipe, to collect 300,000 gpd by gravity flow to 3 wet wells.
		Construction Technique: Open Cut Trenching
Interceptor Sewer Line	$49,000,000	40,000 ft of 24-inch diameter pipe, to export 300,000 gpd by gravity flow to a connection point in Castellammare.
		Connection fee of $1,700,000 included
		Construction Technique: Trenchless Tunneling
		California Department of Transportation permitting fees not included.
total	***$56,800,000***	

The interceptor sewer line costs include the capital costs of a local collection system, the interceptor line, and four wet well lift stations that would be needed for gravity flow transport of sewage with a vertical lift of 300 feet over 7-1/2 miles to a connection in Castellamarre.

Tapia Interceptor Sewer: An interceptor sewer designed to export sewage to the Tapia Water Reclamation Facility is expected to require tunneling under Las Virgenes Road and installation of pumps to lift the sewage to a connection point with the Tapia plant in Calabasas. Cost estimates for this compliance project total $80,300,000 and include the following major components and key assumptions:

Tapia Interceptor Sewer

Component	Capital Cost	Key Assumptions
Local Sewer System	$7,800,000	22,000 ft of 8-inch diameter pipe, to collect 300,000 gpd by gravity flow to 3 wet wells.
		Construction Technique: Open Cut Trenching
Interceptor Sewer Line	$72,500,000	58,000 ft of 24-inch diameter pipe, to export and lift 300,000 gpd by pressurized flow Tapia.
		Connection fee of $1,700,000 included
		Construction Technique: Trenchless Tunneling
		Permitting fees not included.
total	*$80,300,000*	

The interceptor sewer scenario includes capital costs for the local collection system, the interceptor line, and ten wet well lift stations needed to lift and transport the sewage 800 vertical feet over a distance of 11 miles to the Tapia connection.

Compliance Project C – Decentralized Wastewater Management Facilities

Under the "Decentralized Facilities" method of compliance, the City of Malibu, an existing utility or local authority, or a newly formed utility or local authority would construct and operate small plants in the community, small sewer collection systems, and limited recycled water distribution systems. Or, alternatively, such projects could be led by private sector developers. Cost estimates for this compliance project total $16,600,000 and include the following major components and key assumptions:

Decentralized Wastewater Management Facilities

Component	Cost	Key Assumptions
Local Sewer System	$7,800,000	22,000 ft of 8-inch diameter pipe, to collect 300,000 gpd by gravity flow to 3 wet wells.
		Construction Technique: Open Cut Trenching
Treatment Plant 1	$1,200,000	67,000 gpd capacity using activated sludge, filtration, and disinfection to produce a Title 22 recycled water for direct reuse.
		Cost of land not included.
Recycled Water Distribution System Treatment Plant 1	$600,000	3,000 ft of 8-inch diameter pipe, to distribute Construction Technique: Open Cut Trenching
		50% of flow recycled; 50% disposed to subsurface.
Treatment Plant 2	$4,600,000	233,000 gpd capacity using activated sludge, filtration, and disinfection to produce a Title 22 recycled water for direct reuse.
		Cost of land not included.
Recycled Water Distribution System Treatment Plant 2	$2,400,000	12,000 ft of 8-inch diameter pipe, to distribute Construction Technique: Open Cut Trenching
		50% of flow recycled; 50% disposed to subsurface.
Total	***$16,600,000***	

For purposes of this preliminary analysis, staff assumed that there would be demand to directly reuse only half of the treated effluent, and a market analysis would need to be conducted to determine the capacity for recycling within each sector served by the treatment plants. Community planners may consider the promotion of additional uses for recycled water by requiring dual plumbing for any new development or retrofits. Staff assumed that effluent that could not be recycled is discharged via subsurface mechanisms, which would require more land. Staff did not expect that an ocean outfall for the non-recycled portion of the treated effluent would be practical for these smaller scale plants.

CEQA Analysis

Environmental Checklist and Discussion

The Regional Board has endeavored to analyze and disclose impacts to the environment that are expected to result from possible projects that would achieve compliance with the proposed Regional Board prohibition. These compliance projects, described in the previous section, include construction, operation, and maintenance of:

A. "Integrated Facilities," including the construction and operation of a central wastewater treatment plant in the community, a local sewer collection system, and recycled water distribution system. The community may also elect to broaden the scope of such a project, in order to integrate these services with delivery of potable water supplies; however, for purposes of this analysis, a more limited scope was assumed.

B. "Interceptor Sewer," including construction and operation of a local sewer collection system and an interceptor sewer to export sewage for treatment at a facility in another community.

C. "Decentralized Facilities," including the construction and operation of small plants in the community, small sewer collection systems, and limited recycled water distribution systems.

These compliance projects are expected to have positive environmental impacts, in that discharges through OWDSs should cease, resulting in improvement to water quality and restoration of beneficial uses. However, these projects also have some potential significant adverse impacts to the environment that would occur from the construction, operation, and maintenance of these community facilities, and from abandonment of OWDSs currently in use. These impacts, which are generally of relatively short duration, can either be mitigated or alternative means of compliance with the Regional Board prohibition may be available.

The impacts from the possible compliance projects are analyzed below on a conceptual basis. A review of possible projects[1] and a more detailed, project specific analysis should be led by community leaders with robust participation among stakeholders. It will be the responsibility of the community and stakeholders to select a strategy for compliance. And as a strategy and compliance project are selected, it will be the responsibility of a local government (local agency) to perform a specific project-level analysis and disclose environmental impacts in accordance with CEQA.

[1] The Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code § 13360).

ENVIRONMENTAL CHECKLIST		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
1.	**Earth. Will the proposal result in:**				
	a. Unstable earth conditions or in changes in geologic substructures?		X		
	b. Disruptions, displacements, compaction or overcoming of the soil?		X		
	c. Change in topography or ground surface relief features?				X
	d. The destruction, covering or modification of any unique geologic or physical features?				X
	e. Any increase in wind or water erosion of soils, either on or off the site?		X		
	f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?			X	
	g. Exposure of people or property to geologic hazards, such as earthquakes, landslides, mudslides, ground failure, or similar hazards?		X		

Discussion:

a. Many of the areas where the compliance projects would be located are already developed and significantly altered, and the projects would not subject people or structures to seismic risk or unstable soils identified on seismic/soil hazard maps. However, portions of the Interceptor Sewer and portions of the collection system for all compliance projects might be constructed through zones of slope instability. During this construction period, compliance with standard design and construction specifications and implementation of recommendations to mitigate geologic hazards, prepared at a project level, would reduce the risk of geologic hazards Such mitigation measures could include among others: shoring sufficient for each excavation, proper location of excavated stockpiled soils, adequate setback from slopes and structures, appropriate compaction of backfilled soils, dewatering excavations as necessary of ground water, and controlling surface run on from stormwater or irrigation.

b. Implementation of any of the compliance projects would disturb soils during excavations and trenching for sewers, pump stations, and/or recycled water distribution lines, and also during foundation work for treatment plant facilities for the Integrated Facilities and Decentralized Facilities. To the extent that any soil is disturbed during construction, standard construction techniques, including but not limited to, shoring, piling and soil stabilization would mitigate any potential impacts. Prior to earthwork, geotechnical studies would be conducted to evaluate geology and soil conditions.

Upon completion of any of the compliance projects, trenching for lateral sewer lines and proper abandonment of existing OWDSs may disturb soils. Standard and accepted engineering practices and techniques for stabilizing soils and minimizing erosion and sedimentation during trenching and installation activities should mitigate these impacts, and would be further evaluated on a project basis.

c. No impact, as infrastructure for the compliance projects could be of a size or scale that minimizes impact to topography and relief.

d. No impact as pre-construction studies and mapping should identify any unique structures or features and geologic mapping during excavations would identify potential problems missed during earlier investigations.

e. For all compliance projects, construction activities would require soil displacement and could result in the loss of topsoil. Trenching equipment would be required to install sewer lines, interceptor line, and recycled water delivery lines. Construction activities would include the use of machinery for rough and final grading. To mitigate these impacts, topsoil could be stockpiled and standard best management practices (BMPs), such as minimizing the size and duration of exposed stockpiles, managing stormwater, and revegetating replaced soils as soon as practicable, could be identified and implemented to prevent/control erosion from water and wind.

f. Portions of all compliance projects would occur in loosely consolidated beach sands due to the location near former shorelines. As documented in 1(e) above, construction activities would require soil displacement. Trenching equipment would be required to install sewer lines, an interceptor line, and recycled water delivery lines. Construction activities would include the use of machinery for rough and final grading. To mitigate these impacts, standard BMPs, such as covering and minimizing the amount of disturbed/stockpiled soil and controlling runon/runoff, would be identified and implemented to prevent/control erosion from water and wind.

g. Portions of the Interceptor Sewer and portions of the the collection system for all compliance projects might be sited and constructed in zones of slope instability identified in published seismic/soil hazard maps. As documented in 1(a) above, compliance with accepted standard engineering design and construction specifications and implementation of measures (such as sufficient shoring for each excavation, proper location of excavated stockpiled soils, adequate setback from slopes and structures, appropriate compaction of backfilled soils, dewatering excavations as necessary of ground water, and controlling surface run on from stormwater or irrigation) to mitigate geologic hazards, prepared at a project level, would reduce the risk of geologic hazards.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
2.	**Air. Will the proposal result in:**				
	a. Substantial air emissions or deterioration of ambient air quality?		X		
	b. The creation of objectionable odors?		X		
	c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?			X	

Discussion:

a. All compliance projects would be located in the South Coast Air Basin, which is classified as an extreme non-attainment area for ozone and serious non-attainment area for PM_{10} and CO. Due to a coastal influence in the area, air quality is generally considered better than much of the South Coast Air Basin.

During construction of all compliance projects, short-term increases in traffic (from construction equipment as well as idling cars) and short-term use of construction equipment would increase air emissions and generate minor amounts of NOx, CO, SO_2, ROG, and PM_{10}; these emissions would be quantified during planning and design at the project level. With mitigation measures, these emissions should be within the South Coast Air Quality Management District's construction significance thresholds. Measures to mitigate these impacts might include use of construction and maintenance vehicles with lower-emission engines, use of soot reduction traps or diesel particulate filters, and use of emulsified diesel fuel.

During operation of treatment facilities associated with the Integrated Facilities, Decentralized Facilities, and pump stations for local sewers associated with all compliance projects, maintenance activities and solid waste removal are not expected to significantly increase air emissions. Furthermore, solid waste removal schedules could be synchronized with general trash removal schedules.

b. All compliance projects have the potential to eliminate existing odors from problematic OWDSs and from pumping excess sewage into tanker trucks for off-site hauling. However, the projects may also create odors during construction (which would be of a short-term nature) and during operation of facilities such as the Integrated Facilities and Decentralized Facilities. The potential for such odors would be evaluated during planning and design at the project level. Mitigation measures, such as siting, design, and buffer zones, would be identified and considered at a project level.

c. No significant impact as construction activities would not increase air emissions to an extent that affects air movement, moisture or temperature, or change in climate.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
3.	**Water. Will the proposal result in:**				
	a. Changes in currents, or the course of direction or water movements, in either marine or fresh waters?				X
	b. Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff?			X	
	c. Alterations to the course of flow of flood waters?		X		
	d. Change in the amount of surface water in any water body?			X	
	e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen, or turbidity?		X		
	f. Alteration of the direction or rate of flow of ground waters?	X			
	g. Change in the quantity or quality of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	X			
	h. Substantial reduction in the amount of water otherwise available for public water supplies?				X
	i. Exposure of people or property to water related hazards such as flooding or tidal waves?			X	

Discussion:

a. No changes in currents or surface water flow are expected because the proposed project and the potential compliance projects are not expected to discharge to any surface waters and create this impact.

b. Decreases in absorption rates, drainage patterns, or the rate and amount of surface water runoff from hardscape at the plant(s) for the Integrated Facilities and Decentralized Facilities are expected to be minimal because the design and construction of these facilities would have to consider and address these factors. These impacts would be evaluated at the project level, and minimized through siting and design of the facilities during the planning stages.

c. Alterations to the course of flow of flood waters may be expected but the compliance projects will have be designed, constructed and operated to take into account the flow of flood waters when the site of the facilities are determined. The City is aware of the flood hazards, as described in the Malibu General Plan, section 7.3.3.1, and will be expected to ensure through its oversight

of the design and construction of compliance projects that the sites will account for such hazards. The City will determine the appropriate mitigation measures.

d. No change in the amount of flow of surface water is expected because neither the proposed project nor the compliance projects are expected to discharge flows into surface waters. To the extent that groundwater is dewatering during construction and discharged into surface waters, it is not expected that such discharges will change the amount of flow of surface waters significantly.

e. Water quality problems, including eutrophication in Malibu Lagoon and pathogen levels at beaches that necessitate beach advisories, are well known in the area. Implementation of compliance projects is expected to improve, over the long-term, the quality of surface waters in the area and to restore beneficial uses.

   However, during construction of all of the compliance projects, possible short-term impacts may result. The potential for such impacts, such as increased turbidity and sediment in runoff from construction sites and groundwater dewatering, would be evaluated during planning and design at the project level. Mitigation measures, such as treatment of dewatered groundwater prior to discharge during construction and construction BMPs (such as berms, fiber blankets, soil cover, temporary vegetation) to control pollution in stormwater, would be identified and considered at a project level.

   Furthermore, for compliance projects such as the Integrated Facilities, there may not be sufficient demand for recycling of all of the wastewaters, and a portion of the 300,000 gpd flow may need to be discharged. Should areas with favorable hydrogeologic conditions for subsurface disposal not be identified, such projects may require export of the treated wastewater through an outfall. With proper design and operation of treatment facilities and outfall equipment such as diffusers and temperature controls, an outfall discharge should meet water quality objectives, including temperature and turbidity. These impacts, together with mitigation measures, would be considered at a project level.

f. Upon operation of all compliance projects, termination of discharges from OWDSs would alter, on a local scale, groundwater flow patterns because the discharges from the OWDSs will cease. Should subsurface disposal mechanisms be used for all or a portion of the discharge from the Integrated Facilities and Decentralized Facilities, groundwater flow patterns could be altered on a larger scale. Proper design and siting of the subsurface disposal mechanisms will be necessary to mitigate this impact to the extent possible.

   In anticipation of restoration of groundwater quality, integrated planning and design for disposal field sites should consider potential sites for future production wells to meet a portion of the community's potable water needs or as a short-term water supply in the event of disrupted delivery from the Los Angeles County Waterworks District No. 29 – Malibu. Future groundwater production would significantly alter the direction and rate of flow of groundwater. These and other impacts would be evaluated during planning and design at the project level, and monitored during operation of disposal mechanisms. Possible mitigation measures could include planning efforts to determine the safe yield of the basin and the minimum discharge required for Malibu Creek and Lagoon for aquatic life protection.

g. One of the goals of the Regional Board's proposed prohibition is to improve the quality of groundwater and restore this resource as a potential source of drinking water. This would be a potentially significant beneficial impact. See also 3(f) above.

h. No reduction to public water supplies is expected. One of the goals of the Regional Board's proposed prohibition is to improve the quality of groundwater and restore this resource as a potential source of drinking water. See also 3(f) above.

i. The Malibu General Plan, section 7.3.3.1 states that tsunamis can be expected rarely from distant sources but may be generated offshore by surface ground rupture or submarine landslides. Damage to the Malibu Civic Center area due to flooding from such events can be expected. The Malibu Building Code, specifically Chapter 15.20, contains mitigation measures for flood impacts. Such mitigation includes: requiring bulkheads or other protective barriers be installed at time of construction, control the creation of hazards that contribute to flood, control the location of facilities, and prevent the construction of flood barriers that may increase flood hazards in other areas.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
4.	**Plant Life. Will the proposal result in:**				
	a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, microflora and aquatic plants)?		X		
	b. Reduction of the numbers of any unique, rare or endangered species of plants?		X		
	c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?				X
	d. Reduction in acreage of any agricultural crop?				X

Discussion:

a. As much of the Malibu Civic Center area is urbanized, construction and operation of facilities associated with all compliance projects would not disturb or change plant diversity or change or reduce the number of unique, rare, or endangered species of plants. However, portions of the area are environmentally sensitive and, depending on the location selected for the facilities, impacts could potentially occur to biological resources including special-status species and habitats, wetlands, and trees protected under local ordinances or policies. Important plant communities include the coastal salt marsh and coastal stand. The diversity of species, or number of any species of plants, could be maintained by siting and/or by preserving plants prior, during, and after the construction of facilities by re-establishing and maintaining the plant communities after construction. The City of Malibu's Technical Advisory Committee has completed studies on the ecosystem of Malibu Valley and generated documents recommending the enhancement of the plant and animal life to replicate historic conditions. These plans can provide specific options for the mitigation of removal of plant and animal life through project construction and result in an enhanced ecosystem upon completion.

b. As documented in 4(a) above, portions of the area are environmentally sensitive and, depending on the location selected for the facilities, impacts could potentially occur to biological resources including unique, rare or endangered species of plants. When the specific projects are developed and sites identified, a search of the California Natural Diversity Database could be employed to confirm that any potentially sensitive plant species or biological habitats in the site area are

properly identified and protected as necessary. Focused protocol plant surveys for special-status-plant species could be conducted. Responsible agencies should endeavor to avoid compliance measures that could result in reduction of the numbers of any unique, rare or endangered species of plants. If sensitive plant species occur on a project site, a local agency should require mitigation in accordance with the Endangered Species Act. These mitigation measures would be developed in consultation with the California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS). Also, see 4(a) above.

c. No impact because the use of an existing ecosystem study to choose landscaping, as described in 4(a), should minimize the invasion of foreign species.

d. No impact because, according to the Malibu General Plan, page 1-13, traditional ranching and farming is only practiced in a minute fraction of land within the City. Horticulture and horse ranches are more prevalent, usually as a transitional use or adjunct to residential use.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
5.	**Animal Life. Will the proposal result in:**				
	a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects or microfauna)?		X		
	b. Reduction of the numbers of any unique, rare or endangered species of animals?		X		
	c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?				X
	d. Deterioration to existing fish or wildlife habitat?		X		

Discussion:

a. As much of the Malibu Civic Center area is urbanized, construction and operation of facilities associated with all compliance projects would not disturb or change the diversity of animal species or change or reduce the numbers of any of species. However, portions of the area are environmentally sensitive and, depending on the location selected for the facilities, impacts could potentially occur to biological resources including the wetlands and riparian habitat. Malibu Lagoon is a refuge for migrating birds. When specific projects are developed and sites identified, measures should also be identified to avoid and mitigate impacts to habitat and direct impacts to animals and wildlife during construction and operation. The City of Malibu's Technical Advisory Committee has completed studies on the ecosystem of Malibu Valley and generated documents recommending the enhancement of the plant and animal life to replicate historic conditions. These plans can provide specific options for the mitigation of removal of plant and animal life through project construction and result in an enhanced ecosystem upon completion.

b. As documented in 5(a) above, portions of the area are environmentally sensitive and, depending on the location selected for the facilities, impacts could potentially occur to biological resources including unique, rare or endangered species of animals. Construction activities may be proposed within and/or adjacent to areas potentially supporting these species and may result in the temporary and/or permanent modification of their habitat. When the specific projects are developed and sites identified, a search of the California Natural Diversity Database could be employed to confirm that any potentially special-status animal species in the site area be properly identified and protected as necessary. When specific projects are developed and sites identified, measures should be identified that will avoid or mitigate impacts to the habitats and also direct impacts to animals during construction and operation. If a project site is located in a habitat for a sensitive animal species, a local agency should require mitigation in accordance with the Endangered Species Act. These mitigation measures would be developed in consultation with the California Department of Fish and Game (CDFG) and the United States Fish and Wildlife Service (USFWS). See 5(a) above.

c. No impact because the projects will not introduce new species nor will the compliance projects be sited to be barriers to the movement of animals. Proper design and siting analysis will prevent this factor from being a concern .

d. As documented in 5(a) above, portions of the area are environmentally sensitive and, should facilities be located in a habitat supporting fish or wildlife habitat, some short-term deterioration to this habitat might occur during construction. When specific projects are developed and sites identified, standard BMP measures such as soil coverings, fiberglass barriers, and fencing, should be identified that will avoid or mitigate impacts to habitat and to animals during construction and operation.

However, it is expected that all the compliance projects will, over the long-term, considerably improve habitat for aquatic life and wildlife.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
6.	**Noise. Will the proposal result in:**				
	a. Increases in existing noise levels?		X		
	b. Exposure of people to severe noise levels?		X		

Discussion:

a. During construction, all compliance projects would be expected to result in noise and/or vibration. When specific projects are developed, measures should be identified to ensure that noise is kept to levels that comply with any noise standard or ordinance. Mitigation could include requirements for mufflers on noise emitting equipment, or construction during certain times of the day.

During operation, no significant increase in noise is anticipated from any of the possible compliance projects. Design of buildings to capture and muffle noise could be required. There

may be a reduction in noise on commercial sites that on tanker trucks to regularly pump raw sewage for off-site hauling once these sites are connected to one of the compliance projects.

b. As noted in 6(a) above, all compliance projects would be expected to result in noise and/or vibration during construction. Machinery used for construction would likely include standard equipment such as graders, dozers, backhoes, and other similar equipment. It is unknown at this time if pile driving equipment would be required to construct any facilities. Noise impacts from vehicles, machines, and equipment, would be short-term and of a temporary duration. When specific projects are developed, measures, such as requiring mufflers on equipment or construction during certain times of the day, should be identified to ensure that noise is kept to levels that comply with any noise standard or ordinance.

   During operation, no significant increase in noise is anticipated from any of the possible compliance projects.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
7.	**Light and Glare. Will the proposal:**				
	a. Produce new light or glare?		X		

Discussion:

a. Construction of the compliance projects is not likely to produce new light or glare, unless construction is done at night. For the Interceptor Sewer, however, should construction night-time schedules be used to mitigate traffic impacts during construction, additional lighting will be needed. Such impacts, which would be short-term, should be evaluated at the project level. Mitigation measures could include hoods or shields to direct lighting down onto the work areas.

   During operation of all compliance projects, no need for significant lighting is expected. For lighting that may needed, light and glare to passing vehicles, neighborhood homes, and businesses during operation, can be minimized by a lighting plan specifying hoods or shields on all light fixtures and limiting light trespass and glare through the use of shielding and directional lighting methods.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
8.	**Land Use. Will the proposal result in:**				
	a. Substantial alteration of the present or planned land use of an area?	X			

Discussion:

a. The proposed prohibition is intended to be growth neutral, and not have a direct impact on population and housing. Under California law, each county and city must prepare a comprehensive, long term general plan to guide its future. In general plans, counties and cities must address a minimum of seven elements, including housing. The City of Malibu and County of Los Angeles have adopted general plans and amended these plans. Through the general planning process as well as zoning and other land use authorities, the City and the County have authority to meet community goals, including land use goals.

Sewer lines for all three compliance projects should not have impacts on land use, zoning, or the physical arrangement of the community. After installation of the sewer lines, pre-project conditions would be restored.

Land for treatment plant facilities for the Integrated Facilities and Decentralized Facilities might require changes in land use. The Integrated Facilities' wastewater/recycled water plant would require land for construction and operation of this facility. Should disposal of treated wastewater that cannot be recycled be discharged to the subsurface, additional land for infiltration would be required. The Decentralized Facilities also would require land for plant(s) and subsurface disposal, although such land requirements may be on a smaller scale and require a smaller footprint. Impacts would be considered at a project level since the location selected will likely determine if there is a "substantial alteration of the land use of the area. Possible mitigation would involve careful consideration of the siting of the facilities to meet community goals, in accordance with local plans and zoning codes.

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	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
9.	**Natural Resources. Will the proposal result in:**				
	a. Increase in the rate of use of any natural resources?				X
	b. Substantial depletion of any nonrenewable natural resource?				X

Discussion:

a. No impact. The compliance projects would not use or deplete any mineral resources in the area. The use of electrical power and fuel is discussed in the Energy portion of the checklist.

During operations, no impact to natural resources is anticipated, other than land. See the discussion under Land – 8(a).

b. No Impact. See Natural Resources – 9(a) above.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
10.	**Risk of Upset. Will the proposal involve:**				
	a. A risk of an explosion or the release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?		X		

Discussion:

a. For all compliance projects, it is reasonably foreseeable that hazards or hazardous materials would be used during construction, operation, and maintenance of the facilities. However, the use of these materials is not expected to create a significant hazard to the public or environment through the routine transport, use, or disposal of hazardous materials. The hazardous materials that might be used are controlled substances regulated at the state and local levels. Materials would be delivered by contractors licensed to handle and transport these materials in accordance with applicable laws and regulations. The storage and use of materials would be strictly regulated and a hazardous materials management program would be developed for use by construction contractors and plant operators. This information would also be filed with the fire department. See also the discussion under 14(a). Mitigation could be a requirement that all handlers/transporters receive education about the federal, state and local laws, ordinances, regulations and statutes that govern safe handling/transport of hazardous materials.

Proper design of sewer and plant facilities for all compliance projects, with appropriate redundancy, backup systems, and alarms would lower risk of upset during operation of the plant and sewer facilities for all compliance projects. Backup electrical generators to ensure uninterrupted power supply (redundancy requirement) could be installed to monitor release of hazardous substances in the event of an accident, upset condition, or natural disaster. A warning system could be designed and operated to ensure that responsible personnel provide quick and effective response. During operation, early detection of potential failures can be improved through frequent inspections and wastewater testing. Operators should be trained and certified, and have a safety plan in place for upset conditions. Periodic video surveys of sewer lines could detect rooting or corrosion, allowing for appropriate maintenance and repair to prevent sewer line rupture.

Due to the nature (wastewater management) of all compliance projects, the risk of exposure to raw sewage and partially treated wastewater should be lowered, as the projects are intended to better control and manage wastewaters generated within the community. During abandonment of existing OWDSs, the risk of accidental release of hazardous material can be lowered by complying with local codes for proper decommissioning such systems. See section 16(d).

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
11.	**Population. Will the proposal:**				
	a. Alter the location, distribution, density, or growth rate of the human population of an area?			X	

Discussion:

a. All compliance projects would replace existing on-site wastewater disposal systems, and should not affect population and growth. However, during construction of all compliance projects, there may be brief, temporary periods during which construction workers are employed in the area. These workers are not expected to substantially add to new employment and population density.

The compliance projects are expected to be sized to replace existing OWDS flows only, and no population increases are expected. However, depending upon the location of the compliance projects, some of these factors may be impacted. Without a specific compliance project to analyze, any discussion would be speculative. See the discussion under Housing – 12(a).

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
12.	**Housing. Will the proposal:**				
	a. Affect existing housing, or create a demand for additional housing?		X		

Discussion:

a. The proposed prohibition is intended to be growth neutral, and should not have a direct impact on population and housing. However, the project could have an effect on existing housing. The City of Malibu, in its General Plan section 3.3.3, has a strategy of using individual septic systems as a means of reducing the rate and intensity of growth. The building of any of the compliance projects could undermine that strategy. As mitigation, the City of Malibu could update its General Plan to develop a new strategy for reducing the rate and intensity of growth. If none of the compliance projects are developed, the impact could be that all housing is affected adversely. However, that is not a reasonably foreseeable outcome.

The proposed prohibition will not create a demand for additional housing, nor will the development of any compliance project. By itself, the building of some type of community treatment system should not create a demand for additional housing. Further, the Malibu General Plan section 7.3.3.1 states that the opportunity for development of housing is constrained by geologic hazards, flood hazards, and wildland and urban fire hazards. Also, slope instability,

expansive soils, and high groundwater are additional constraints on development. Therefore, it seems unlikely that this project will create a demand for additional housing.

Through the general planning process as well as zoning and other land use authorities, the City and the County have the tools to meet community goals, including housing goals.

During construction of all compliance projects, there may be brief, temporary periods during which construction workers are employed in the area. These temporary workers are expected to be present for one shift per work day, and should not add to housing demands.

The compliance projects will presumably be sized to provide capacity for existing wastewater flow rates or for whatever level of growth that the City decides. During operation of all compliance projects, no increased demand for housing stemming from job creation at the compliance projects is anticipated.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
13.	**Transportation/Circulation. Will the proposal result in:**				
	a. Generation of substantial additional vehicular movement?	X			
	b. Effects on existing parking facilities, or demand for new parking?		X		
	c. Substantial impact upon existing transportation systems?	X			
	d. Alterations to present patterns of circulation or movement of people and/or goods?			X	
	e. Alterations to waterborne, rail or air traffic?				X
	f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?	X			

Discussion:

a. Construction of all three compliance projects would require construction crews and earthmoving equipment, and may require soil transport, resulting in some traffic congestion of a short-term, temporary duration. Measures to mitigate these impacts, which would be examined more closely on a project level, could include development of a traffic mitigation plan. For the Interceptor Sewer, a project level analysis should consider night-time schedules for construction along the Pacific Coast Highway, which is the most heavily traveled highway in the area and which is an important regional link. This may be a significant adverse impact for a short duration.

During operation of the compliance projects, no impacts are expected to traffic. Traffic conditions may improve upon completion of the compliance projects, as the need for frequent pumping from many commercial facilities will be eliminated.

b. During construction, all compliance projects may cause some loss of parking capacity. However, this impact is temporary. Measures to mitigate such impacts would be examined more closely on a project level, and could include development of a traffic mitigation plan which addresses parking issues, such as park-and-ride lots or temporary increased public transportation.

   During operation, no significant impacts are expected.

c. During construction, all compliance projects may impact existing roadways and parking capacity. The Treatment Plants and Interceptor Sewer project would have significant impacts on vehicle traffic on the Pacific Coast Highway; however, this impact will be temporary and limited to the construction phase and for intermittent maintenance activity. Impacts would be examined more closely on a project level, and measures to facilitate traffic movement, such as minimizing construction traffic in peak traffic times and providing temporary traffic signals/flagging could be developed in a traffic mitigation plan.

   During operation, no significant impacts are expected

d. During construction of the compliance projects, there may be temporary less than significant impacts to present patterns of circulation due to temporary road closures or detours. No impacts from operation of the compliance projects is expected.

e. No impact. No waterborne, air, or rail traffic is expected to be generated from any of the compliance projects during construction or operation.

f. No permanent road or design hazards are associated with operation of any of the possible compliance projects. However, during construction, all three compliance projects would require construction crews, earthmoving equipment, and – for Interceptor Sewer – possible night-time construction activity. These activities would result in some traffic congestion of a short-term, temporary duration. Hazards arising from such conditions would be considered at a project level, and measures to lower risk to vehicles, bicyclists, and pedestrians might include signage and markings, barricades, and traffic flow controls (signals or traffic control personnel), and coordination with local police and the California Highway Patrol. These methods would be selected and implemented by responsible local agencies considering project level concerns.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
14.	**Public Service. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:**				
	a. Fire protection?		X		
	b. Police protection?			X	
	c. Schools?				X
	d. Parks or other recreational facilities?	X			
	e. Maintenance of public facilities, including roads?				X
	f. Other governmental services?				X

Discussion:

a. Construction of all three compliance projects, and operation of the treatment facilities for the Integrated Facilities and Decentralized Facilities would use hazardous materials, and incidents of upset, such as spills, could result in the need for emergency and/or fire suppression response. Traffic impacts during construction of all compliance projects could result in delays in emergency responses; however, most jurisdictions have in place established procedures to ensure safe passage of emergency vehicles during periods of road maintenance, construction, or other attention to physical infrastructure. Impacts to fire protection and response capabilities, and measures to mitigate these impacts, would be considered at a project level.

b. Mitigation of traffic impacts during construction of all compliance projects would require coordination with local police and the California Highway Patrol. See the discussion under 13(f). These impacts could result in delays in police emergency responses; however, most jurisdictions have in place established procedures to ensure safe passage of emergency vehicles during periods of road maintenance, construction, or other attention to physical infrastructure. Impacts to police protection and response capabilities, and measures to mitigate these impacts, would be considered at a project level.

No impact during operation of any of the compliance projects.

c. No impact is expected to schools, as none of the compliance projects is expected to add new students to elementary, middle, or high schools or to Pepperdine University.

d. See the discussion of land use impacts under 8(a) above and recreational impacts under 14(a) below. The Integrated Facilities – a centralized integrated wastewater/recycled water plant – would require land for construction and operation of this facility. Impacts to parks and measures to mitigate these impacts would be considered at a project level.

Compliance with the proposed prohibition is a remedy to restore beneficial uses, including avoiding beach closures that currently impair swimming along beaches in the Malibu Civic Center area.

e. No impact to maintenance of public roads is expected. During sewer installation of all three compliance projects, the City of Malibu and other entities with utilities along the public roads will coordinate maintenance and repair activities.

   Positive impacts (lower road maintenance) might result from a reduction in tanker truck traffic that will no longer be needed to haul a portion of the community's sewage to facilities in other areas (e.g. Carson).

f. No impact, because it is likely that the City would re-direct its efforts to oversee its existing strategy of OWDS management in the Malibu Civic Center area to an area-wide wastewater collection and treatment strategy, to achieve compliance with the proposed prohibition. Should the City decide to pursue an integrated strategy of managing stormwater, wastewater, and recycled water, it may be better positioned to accomplish conservation and environmental goals.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
15.	**Energy. Will the proposal result in:**				
	a. Use of substantial amounts of fuel or energy?			X	
	b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?			X	

Discussion:

a. During the construction phase of all compliance projects, construction vehicles, equipment, and machinery would require fossil fuel and/or power. These energy demands are not expected to significantly affect the power grid or deplete resources of fossil fuels; nor are the energy demands expected to conflict with energy conservation plans or use non-renewable resources in a wasteful manner. Such impacts, and measures to promote energy efficiency, would be evaluated on a project basis.

   As design of treatment plant facilities for Integrated Facilities, Decentralized Facilities and pumping stations to lift wastewater in sewers for all compliance projects is expected to be subject to building codes with energy conservation requirements, operation is expected to result in an incremental amounts of energy, and demand on the power grid is expected to be minimal. Such impacts, and measures to promote energy efficiency, would be evaluated on a project basis.

b. Energy needed for existing OWDSs ranges from zero (for passive septic systems) to low power consumption (for advanced OWDSs). During operation of a compliance project, the demand for energy will increase, as energy would be needed to power lift pumps for the collection system and interceptor sewer, and/or treatment plant. This increase is

estimated to range from 300 kilo-watt hours per day to 1,500 kilo-watt hours per day, and is not expected to be a significant impact. Nor are any of the compliance projects expected to result in the need for a new source of energy. Impacts would be evaluated on a project basis.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
16.	**Utilities and Service Systems. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:**				
	a. Power or natural gas?			X	
	b. Communications systems?				X
	c. Water?			X	
	d. Sewer or septic tanks?	X			
	e. Storm water drainage?		X		
	f. Solid waste and disposal?			X	

Discussion:

a. Refer to discussion under Energy, 15(a) and 15(b) above.

b. No impact as none of the compliance projects will place significant demands on existing communication systems.

c. Operation of the Integrated Facilities, if undertaken in conjunction with capital improvements to the community's water supply system, could improve the reliability of water service.

Furthermore, and by their nature, operation of all the possible projects to comply with the prohibition is expected to result in substantial improvements to water quality, including the quality of groundwater (which is a potential source of drinking water for the community, especially in the event of a disruption to deliveries of imported water supplies).

See also the discussion under Water, 3(g) above.

d. The purpose of the prohibition and possible compliance projects is to eliminate reliance on OWDSs, which have severe constraints, including hydrogeological, siting, capacity, and operational constraints. By the nature of the prohibition, elimination of the on-site systems will result in a need for sewers and treatment facilities. The elimination of these on-site systems will require septic tanks, leach fields or seepage pits to be properly abandoned or decommissioned in compliance with the Malibu Plumbing Code (which is Title 28, Plumbing Code, of the Los Angeles County Code, as amended and in effect on January 1, 2008, adopting the California

Plumbing Code, 2007 Edition (Part 5 of Title 24 of the California Code of Regulations)) and/or any other appropriate ordinance, regulations or statutes.

e Refer to discussion under Water, 3(b), 3(c), 3(d), 3(e) above. All three proposed compliance projects would result in earth disturbances during construction activities which may impact storm water drainage. The disturbances would result from site grading and trenching for the construction of the wastewater treatment plant and lift stations, sewer collection systems, and pumped sewer lines. The impacts produced by the storm water run-on and run-off at construction sites could be mitigated by applying good engineering and management practices. Good practices could include construction during the dry season, appropriate soil compaction, slope stabilization, soil stock pile minimization, rapid re-vegetation of affected areas before the rainy season, reduced exposure time of disturbed areas, and appropriate management of storm water to avoid contact with unstable areas

f. During construction of all compliance projects, excavated soils should be re-used as fill material to the extent feasible. However, a minimal amount of soils and other construction materials may be wasted. For example, soils and aggregate wastes could be transported to aggregate recycling centers and prepared for reuse, and/or applied as daily cover at landfills. Wastes generated from the abandonment of existing OWDSs would be handled in compliance with Los Angeles County or City Plumbing Codes and Chapter 7 of the California Plumbing Code. These impacts, which are expected to be less than significant, would be evaluated on a project level.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
17.	**Human Health. Will the proposal result in:**				
	a. Creation of any health hazard or potential health hazard (excluding mental health)?		X		
	b. Exposure of people to potential health hazards?		X		

Discussion:

a. During construction of all three possible compliance projects, there may be an increased risk to the health of construction workers who may be handling hazardous materials. This would be evaluated on a project basis, and appropriate measures – such as Health and Safety Plans and compliance with Cal OSHA regulations – to mitigate these risks should be identified. For a discussion on the risk of Upset, refer to discussion under 10(a).

During operation of the wastewater treatment plants for the Integrated Facilities and Decentralized Facilities and during maintenance of sewers and pump stations for all compliance projects, operating personnel may be exposed to raw sewage and partially treated wastewaters. These possible impacts would be evaluated on a project basis and appropriate measures – such as Health and Safety Plans and compliance with Cal OSHA regulations to provide safety equipment and training – to mitigate these risks should be identified.

Due to the nature of the proposed prohibition and possible projects to comply with the prohibition, wastewaters from domestic, commercial, and industrial activities will be better controlled, treated, and discharged (or recycled).

b. See discussion under 17(a) above.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
18.	**Aesthetics. Will the proposal result in:**				
	a. The obstruction of any scenic vista or view open to the public?		X		
	b. The creation of an aesthetically offensive site open to public view?		X		

Discussion:

a. During construction of all three possible compliance projects, the aesthetics of residents and visitors may be offended by construction equipment and activities. These impacts, which would be temporary, together with appropriate mitigation measures such as temporary screens or landscaping, would be considered at a project level.

After installation of sewers for all three compliance projects, pre-project conditions would be restored, and the sewers would not permanently impact aesthetics.

After construction, facilities such as a treatment plant and reservoir for storing recycled water could impact scenic vistas or views open to the public. These impacts would be evaluated on a project level, and designs could be required in locations that are acceptable to the community. Mitigation could include ensuring that the design of the facilities considers appropriate and acceptable shapes, sizes, and colors of the facilities, re-establishment of vegetative cover in disturbed areas, landscaping of graded slopes, and installation of screens or fences. Irrigation with recycled water could result in more rapid growth of the new landscaping.

b. See discussion under 18(a) above.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
19.	**Recreation. Will the proposal result in:**				
	a. Impact upon the quality or quantity of existing recreational opportunities?	X			

Discussion:

a. The Integrated Facilities -- a centralized integrated wastewater/recycled water plant – would require land for construction and operation of this facility. During construction of the Integrated Facilities, the park may be temporarily unavailable for recreation. Such impacts, together with mitigation measures, would be considered at a project level. If the facilities are built on lands used for recreational activities, there could be significant impacts. Appropriate mitigation could include improving other recreational sites or creating other locations for recreational use.

Implementation of one of the possible projects to comply with the proposed prohibition is a remedy to restore beneficial uses, including avoiding beach closures that currently impair swimming along beaches in the Malibu Civic Center area. This long-term impact and restoration of water quality in Malibu Lagoon and along beaches will enhance recreational opportunities.

See also the discussions for Land use under 8(a) above and for Public Services—Parks under 14(d) above.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
20.	**Archeological/Historical. Will the proposal:**				
	a. Result in the alteration of a significant archeological or historical site structure, object or building?		X		

Discussion:

a. It is not expected that any of the compliance projects would affect historic structures. Also, it is expected that the compliance projects would not affect archeological resources, as sewers for all the possible compliance projects would generally be located in public streets and on public property that has already undergone significant disturbance.

Should a relatively undisturbed site be selected for a treatment plant for the Integrated Facilities or Decentralized Facilities, impacts and mitigation measures recommended by appropriate agencies and organizations for possible archeological resources would be evaluated on a project level. These measures could include a records search, using resources such as the South Central Coastal Archaeological Information Center at the University of California, Los Angeles. Other

measures could include a field survey, to examine the surface of the areas proposed for grading or disturbance and a requirement that an archaeologist be on site during grading, trenching, and excavations.

	ENVIRONMENTAL CHECKLIST	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant	No Impact
21.	**Mandatory Findings of Significance**				
	Potential to degrade: Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?		X		
	Short-term: Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time, while long-term impacts will endure well into the future.)			X	
	Cumulative: Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)			X	
	Substantial adverse: Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X	

Discussion:

The prohibition does not have the potential to degrade the quality of the environment in the long-term. The possible compliance projects also do not have reasonably foreseeable long-term impacts that will degrade the quality of the environment with significant adverse impacts. As discussed in the checklist herein, there are many standard mitigation measures well known to responsible local agencies that will have jurisdiction over the compliance projects. The short-term construction impacts, however, may be significant in some ways. Those impacts are also described in the checklist and discussion herein.

The prohibition probably will not have the potential to achieve short-term benefits. The prohibition, in conjunction with the TMDLs and other regulatory actions, will provide long-term beneficial impacts to water resources.

As discussed below, the cumulative beneficial impacts are considerable, while the cumulative adverse impacts are not. The cumulative impacts from implementation of the TMDLs, this prohibition, and the City's efforts will have an immense benefit to the water resources, resulting in more environmental and economic benefits to the City of Malibu.

The project and potential compliance projects do not have the potential to create substantial adverse effects to human beings, directly or indirectly. Assuming the compliance projects are appropriately designed, constructed and operated in conformance with all laws, ordinances, regulations and statutes, it is not foreseeable that there will be substantial effects to human beings. In fact, there should be substantial beneficial effects on human beings as the water resources of the Civic Center area will no longer be impaired.

Other Environmental Considerations

Analyses of other environmental impacts resulting from reasonably foreseeable options of complying with the proposed prohibition include:

- Cumulative Impacts of the Program Alternatives (as required by CEQA Guidelines Section 15130): Cumulative impacts, defined in Section 15355 of the CEQA Guidelines, refer to two or more individual effects, that when considered together, are considerable or that increase other environmental impacts. A cumulative impact assessment must consider not only impacts of the proposed prohibition, but also impacts from other municipal and private projects that would occur in the area during the period of implementation.
- Potential Growth-Inducing Effects of the Program Alternatives (as required by CEQA Guidelines Section 15126).
- Unavoidable Significant Impacts (as required by CEQA Guidelines Section 15126.2).

Cumulative Impacts

On a programmatic level, the Regional Board expects a net environmental benefit to water quality and beneficial uses from the proposed prohibition, TMDLs, and other future regulatory actions. The Regional Board's proposed prohibition is a regulatory action that is related to TMDLs that have been developed by the Regional Board and US Environmental Protection Agency, including:

a. The Malibu Creek Watershed Nutrient TMDL: The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April 15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential land use activities. The TMDL specifies a load allocation for onsite wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.
b. The Malibu Creek and Lagoon Bacteria TMDL: The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan,* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, onsite

wastewater treatment systems, and animal wastes. The TMDL specifies load allocations for onsite wastewater treatment systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 – October 31), there are no allowable exceedance days, in winter dry weather (November 1 - March 31), there are three allowable exceedances days, and in wet weather (November 1 - October 31), there are 17 allowable exceedance days.

c. The Santa Monica Bay Beaches Wet and Dry Bacteria TMDL: For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as the major source. The TMDLs did not specify load allocations for onsite wastewater treatment systems. This effectively means that no loading is permissible from discharges from on-site wastewater disposal systems.

The proposed prohibition, in that it is a remedy to water quality impairments, is closely related to the Malibu Creek Watershed Nutrient TMDL, Malibu Creek and Lagoon Bacteria TMDL, and Santa Monica Bay Beaches Wet and Dry Bacteria TMDL. Additionally, the Regional Board has issued other TMDLs that affect the area, such as a trash TMDL in the Malibu Creek watershed. The Regional Board and other agencies may issue future regulations that affect the area.

The cumulative impacts of the proposed project and the TMDLs identified above should not be significant since the implementation time frames for each of the Regional Board actions are staggered and lengthy, allowing the City and other parties to undertake a iterative implementation process towards achieving the ultimate requirements. The Santa Monica Bay Beaches TMDL allows implementation over three phases, with deadlines in 2006, 2009 and then as late as 2021. The Nutrient TMDL, because it was developed by US EPA, does not have set deadlines for implementation. The proposed project sets a feasible and reasonable deadline, of 2014, for compliance.

On a project level, the Regional Board expects a net environmental benefit over the long term from projects undertaken to comply with the prohibition, TMDLs, and other regulatory actions, in that water quality will be improved and beneficial uses will be restored. Specific projects proposed to comply with the prohibition must be environmentally evaluated and cumulative impacts considered as the implementing municipality or agency considers such projects.

Growth-Inducing Impacts

Staff's analyses of other environmental impacts resulting from reasonably foreseeable options of complying with the proposed prohibition also includes growth-inducing impacts, including:

- an overview of the CEQA Guidelines relevant to evaluating growth inducement,
- a discussion of the types of growth that can occur in the Malibu Civic Center area,
- a discussion of obstacles to growth in the area, and

- an evaluation of the potential for the Program Alternatives to induce growth.

Growth-inducing impacts are defined by the State CEQA Guidelines as:

> The ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are impacts which would remove obstacles to population growth. Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects... [In addition,] the characteristics of some projects.. .may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It is not assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.
>
> (CEQA Guidelines, Section 15126.2(d)).

Growth inducement indirectly could result in adverse environmental effects if the induced growth is not consistent with or accommodated by the land use plans and growth management plans and policies. Local land use plans provide for land use development patterns and growth policies that encourage orderly urban development supported by adequate public services, such as water supply, roadway infrastructure, sewer services, and solid waste disposal services.

Public works projects that are developed to address future unplanned needs (i.e., that would not accommodate planned growth) could result in removing obstacles to population growth. Direct growth inducement would result if, for example, a project involved the construction of new wastewater treatment facilities to accommodate populations in excess of those projected by local or regional planning agencies. Indirect growth inducement would result if a project accommodated unplanned growth and indirectly established substantial new permanent employment opportunities (for example, new commercial, industrial, or governmental enterprises) or if a project involved a construction effort with substantial short-term employment opportunities that indirectly would stimulate the need for additional housing and services. Growth inducement also could occur if the project would affect the timing or location of either population or land use growth, or create a surplus in infrastructure capacity.

Types of Growth: The primary types of growth that occur within the area affected by the proposed prohibition are:

- development of land, and
- population growth. (Economic growth, such as the creation of additional job opportunities, also could occur; however, such growth generally would lead to population growth and, therefore, is included indirectly in population growth.)

Growth in land development is the physical development of residential, commercial, and industrial structures in the Malibu Civic Center area. The Malibu General Plan, section 7.3.3.1, describes several constraints on development. The Plan states that hillsides and steep slopes make housing construction expensive or impossible. More than eighty-three percent of Malibu is hillside area; the remaining relatively flat land is either subject to ocean and/or canyon (creek) flooding, or other significant environmental constraints. Other constraints mentioned in the

General Plan include seismic characteristics (citing numerous faults in the area), flood plains, land slides, soil erosion, fire hazards and liquefaction potential. Land use growth is subject to general plans, community plans, parcel zoning, and applicable entitlements and is dependent on adequate infrastructure to support development. The portion of the prohibition area in unincorporated Los Angeles County would be subject to similar plans promulgated by the County.

Population growth is growth in the number of persons that live and work in the Malibu Civic Center area and other jurisdictions within the boundaries of the area. Population growth occurs from natural causes (births minus deaths) and net emigration to or immigration from other geographical areas. Emigration or immigration can occur in response to economic opportunities, life style choices, or for personal reasons.

Although land use growth and population growth are interrelated, land use and population growth could occur independently from each other. This has occurred in the past where the housing growth is minimal, but population within the area continues to increase. Such a situation results in increasing population densities with a corresponding demand for services, despite minimal land use growth. The Malibu Civic Center area that would be affected by the proposed prohibition is within the City of Malibu, which has plans that guide land use development The portion of the prohibition area in unincorporated Los Angeles County would be subject to similar plans promulgated by the County.

Existing Obstacles to Growth: Obstacles to growth could include inadequate infrastructure (e.g. an inadequate water supply that results in rationing or inadequate wastewater treatment capacity that results in restrictions in land use development). Policies that discourage either natural population growth or immigration also are considered to be obstacles to growth. In Malibu, there are several environmental constraints that constitute obstacles to growth, as described above.

Potential for Compliance with the Proposed Prohibition to Induce Growth

The prohibition on OWDSs in the Malibu Civic Center area is not expected to directly induce growth, in that it would not result in the construction of new housing.

Furthermore, the prohibition on OWDSs in the Malibu Civic Center area is not expected to indirectly induce growth, in that it would not generate long-term economic opportunities that could lead to additional immigration, and would not remove an obstacle to land use or population growth. Although the City has cited the use of septic systems as a strategy for reducing the rate and intensity of growth, there are other strategies that the City could employ to maintain that goal. Although construction activities associated with compliance projects for the prohibition would increase the economic opportunities in the area and region, this construction activity is not expected to result in or induce substantial or significant population or land use development growth because the majority of the new jobs that would be created by this construction are expected to be filled by persons already residing in the area or region, based on the existing surplus of unemployed persons in the area and region.

Unavoidable Significant Adverse Impacts

Section 15126.2(c) of the CEQA Guidelines requires a discussion of potential significant, irreversible environmental changes that could result from a proposed project. Examples of such changes include commitment of future generations to similar uses, irreversible damage that may result from accidents associated with a project, or irretrievable commitments of resources. Although the proposed prohibition in conjunction with theTMDLs would require resources (materials, labor, and energy), the proposed project does not represent a substantial irreversible commitment of resources.

In addition, compliance with the prohibition and TMDLs will have substantial benefits to water quality and will enhance beneficial uses. Enhancement of the recreational beneficial uses (both water contact recreation and non-contact water recreation) will have positive social and economic effects by decreasing potential trash hazards, reducing bacteria and nutrient loading in the water, and increasing the aesthetic experience at beaches, parks around the lake, and other recreation areas. In addition, pristine habitat carries a significant non-market economic value. Enhancement of the beneficial uses will also have positive indirect economic and social benefits. The environmental checklist identifies the anticipated environmental effects from possible compliance projects, identifies mitigation measures for potentially significant impacts, and determines that most of the impacts after implementation of mitigation are insignificant.

To the extent that there are unavoidable significant adverse impacts, those impacts are temporary in nature, predominantly arising from construction of possible compliance projects, and temporary nuisance impacts associated with abatement of the use of OWDSs.

DISCUSSION OF ENVIRONMENTAL EVALUATION (Based on information in the technical staff report and environmental staff report for the proposed prohibition on OWDSs in the Malibu Civic Center area)

Findings Related to Mitigation for Significant Adverse Impacts (Title 14, California Code of Regulations, section 15091(a)(2).)

This environmental analysis concludes that there are some potentially significant impacts from implementation projects to comply with the proposed prohibition on OWDSs, but notes that there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels. However, implementation of these mitigation measures is not under the control or discretion of the Regional Board, but is within the responsibility and jurisdiction of other (responsible) agencies, which will be required to comply with or assist affected citizens in complying with the provisions of this prohibition (e.g., the City of Malibu). These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the prohibition. This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2).

Statement of Overriding Considerations and Determination (Title 14, California Code of Regulations, section 15093.)

The Regional Board staff has balanced the economic, legal, social, technological, and other benefits of this proposed prohibition on OWDSs against the unavoidable environmental risks in determining whether to recommend that the Regional Board approve the prohibition. Upon review of the environmental information generated for this prohibition and in view of the entire record supporting the need for a prohibition, staff has determined that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances. This determination is based upon the fact that most of the identified significant adverse impacts from the reasonably foreseeable means of compliance are temporary nuisance impacts associated with abatement of the use of OWDSs, and/or the construction of compliance projects. The foreseeable means of compliance are generally accepted beneficial infrastructure amenities in most municipal jurisdictions, and typically installed for the benefit of the community irrespective of their potential growth inducing and other impacts associated with their construction and operation. Furthermore, the reasonably foreseeable means of compliance with the prohibition are expected to result, over the long term, in positive environmental improvements to the environment, including water quality and restoration of beneficial uses of water resources (including decreased instances of associated illness), and economic benefits associated with increased use from their restoration. This is particularly important at the Malibu beaches which are generally considered to be some of best beach environments in the State of California. Enhancement of recreational uses of beaches, aquatic habitat in Malibu Lagoon, and drinking water potential in groundwater will have positive social and economic effects.

This environmental staff report, together with the technical staff report and tentative resolution provide the necessary information pursuant to Public Resources Code section 21159 to conclude that properly designed and implemented compliance projects generally should not foreseeably have significant permanent adverse effects on the environment. Any potential impacts can be mitigated at the subsequent project level when specific sites and methods have been identified, and responsible local governments can and should implement the recommended mitigation measures.

Specific projects to comply with this prohibition that may have a significant impact will be implemented by local agencies and jurisdictions and would therefore be subject to a separate environmental review. A lead agency for the compliance projects would have the ability to mitigate project impacts, can and should mitigate project impacts, and are required under CEQA to mitigate any environmental impacts it identifies, unless it has reason not to do so. Notably, in almost all circumstances, where unavoidable or unmitigable impacts would present unacceptable hardship upon nearby receptors or venues, a local agency has a variety of alternative implementation measures available instead.

All of the potential impacts must be mitigated at the subsequent project level because they involve specific sites and designs not specified or specifically required by the *Basin Plan* amendment to implement the prohibition. At this stage, any more particularized conclusions

would be speculative. The Regional Board does not have legal authority to specify the manner of compliance with its orders or regulations (CWC, section 13360), and thus cannot dictate that an appropriate location be selected for any particular project, that it be designed consistent with standard industry practices, or that routine and ordinary mitigation measures be employed. These measures are all within the jurisdiction and authority of an agency, or local government, that would be responsible for implementing this prohibition, and that agency can and should employ those alternatives and mitigation measures to reduce any impacts as much as feasible. (14 Cal. Code Regs., section 15091(a)(2).)

Implementation of the proposed prohibition is both necessary and beneficial. To the extent that the alternatives, mitigation measures, or both, that are examined in this analysis are not deemed feasible by those local agencies, the necessity of implementing the prohibition and restoring beneficial uses (an action required to achieve the express, national policy of the Clean Water Act) remains.

PRELIMINARY STAFF DETERMINATION

☐ The proposed project COULD NOT have a significant effect on the environment, and, therefore, no alternatives or mitigation measures are proposed.

☑ The proposed project MAY have a significant or potentially significant effect on the environment, and therefore alternatives and mitigation measures have been evaluated.

Chief Deputy E.O. for — 11-5-09

signature — date

Tracy J. Egoscue — November 5, 2009

printed name — Date

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 21094, 21151, Public Resources Code; Sundstrom v. County of Mendocino, 202 Cal.App.3d 296 (1988); Leonoff v. Monterey Board of Supervisors, 222 Cal.App.3d 1337 (1990).

Exhibit J

CITY OF MALIBU
NOTICE OF PREPARATION AND SCOPING MEETING

FOR AN ENVIRONMENTAL IMPACT REPORT

Pursuant to the California Environmental Quality Act (CEQA), the City of Malibu ("City") will be the Lead Agency and will prepare an environmental impact report (EIR) for the project identified below. The City has determined in its initial review that an EIR is required for the project.

Date of Meeting: **May 25, 2011**

Location and Time of Meeting: **New City Hall – Zuma Room**
23825 Stuart Ranch Rd. Malibu, CA 90265
7:00 p.m.

Project Title: **General Plan Housing Element Update Environmental Impact Report (EIR)**
Environmental Impact Report No. 11-002
General Plan Amendment No. 10-002

Applicant/Lead Agency: City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone: (310) 456-2489

Contact Person: Richard Mollica, AICP, Associate Planner
(310) 456-2489, extension 346
rmollica@malibucity.org

Address Where Documents Are Available for Review: City of Malibu City Hall
Planning Division
23825 Stuart Ranch Road
Malibu, CA 90265

Parcels Being Considered (APN):
4470-012-045 (6155 Trancas Canyon Road)
4470-012-064 (No address assigned)
4470-012-002 (No address assigned)
4467-013-022 (No address assigned)
4467-012-005 (28401 Pacific Coast Highway)
4458-021-003 (3542 Coast View Drive)
4458-021-005 (23833 Stuart Ranch Road)
4458-022-012 (23801 Stuart Ranch Road)
4458-022-019 (No address assigned)

Project Description: The State of California Housing Element law, enacted in 1969, mandates that local governments adequately plan to meet the existing and projected housing needs of the community in all economic levels. Included in this State law is the requirement that local governments adopt land use plans and regulatory systems which provide opportunities for, and do not unduly constrain, housing development. The State also requires that Housing Elements be updated and certified every five years to reflect the most recent trends in demographics and employment that may affect existing and future housing demand and supply.

The General Plan Housing Element Update will establish new policies, goals and programs for the entire city. A preliminary Draft Housing Element is available for review at the following website address: http://www.malibucity.org/download/index.cfm/fuseaction/download/cid/16685/

In addition, the City plans to develop a program to upzone a limited number of parcels to accommodate the City's required housing needs as determined by Southern California Association of Governments (SCAG). The City's assigned Regional Housing Needs Assessment (RHNA) number is 441 units. Based on RHNA, the City must accommodate 115 very low, 73 low, 79 moderate and 174 above moderate income households in addition to its current housing stock for the period from 2006 through 2014.

The City has identified nine candidate sites which could be upzoned to provide the additional units to meet the RHNA needs assessment.

The potential new densities for the candidate parcels under consideration are as follows:

List of Potential Parcels to be Considered for Upzoing

APN	Current Zoning	Potential Zoning	Gross Lot Size (Ac.)	Current Development Potential	Potential Number of Units
4470-012-045	RR-5	MF (6 du per acre)	30	6 SFR and 2nd Residential Units	48 units (only 8 acres is usable)
4470-012-046	RR-5	MF (6 du per acre)	10	2 SFR and 2nd Residential Units	60 units
4470-012-002	RR-5	MF (6 du per acre)	18	3 SFR and 2nd Residential Units	108 units
4467-013-022	MF	MF-High (20 du per acre)	5	30 Units	100 units
4467-012-005	MF	MF-High (20 du per acre)	5	18 Units	66 units
4458-021-003	CC	MF-High (20 du per acre)	7	45,672 sq. ft. Commercial	140 units
4458-021-005	CC	PD Mixed Use	10	66,777 sq. ft. Commercial	200 units + an undetermined F.A.R. for commercial
4458-022-012	CC	PD Mixed Use	6	42,144 sq. ft. Commercial	120 units + an undetermined F.A.R. for commercial
4458-022-019	CC	PD Mixed Use	8	55,408 sq. ft. Commercial	160 units + an undetermined F.A.R. for commercial

List of abbreviations: RR-5 = Rural Residential - Five Acre; MF = Multi-Family; CC = Community Commercial; du = Dwelling Units; PD = Planned Development; SFR = Single-Family Residence; and F.A.R. = Floor Area Ratio

Of the nine candidate parcels, only a subset will be selected to be studied in depth as a "project" pursuant to CEQA guidelines. A "project" is defined as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. A second subset of parcels will be included as alternative sites in the event that project alternatives are required.

Purpose of Meeting: The City intends to prepare an EIR for the General Plan Housing Element Update. In accordance with Section 15082 of the CEQA Guidelines, the City has prepared this Notice of Preparation (NOP) to provide Responsible Agencies and other interested parties with information describing the proposal and its potential environmental effects. Environmental factors that would be potentially affected by the project include:

a. **Aesthetics:** Potential visual impacts of increased densities and residential buildout, including possible modifications of development standards such as reduced common open space, reduced setbacks and parking.

b. **Air Quality:** Potential impacts of increased residential buildout on the rezone sites related to vehicular traffic and construction dust emissions.

c. **Biological Resources:** Potential impacts that development or subdivisions may have on Environmental Sensitive Habitat Areas (ESHA). Not all potential sites contain ESHA.

d. **Cultural Resources:** Potential impacts that residential development may have on archeological resources.

e. **Geology, Soils, and Seismicity:** Identify any impacts that site-based geological conditions may have on the future development of the sites listed.

f. **Greenhouse Gas Emissions:** Potential impacts of increased residential buildout on the rezone sites related to temporary construction emissions and permanent residential operations and vehicular traffic emissions.

g. **Hydrology & Water Quality:** Potential impacts of increased residential densities on onsite hydrology and water quality resources.

h. **Land Use / Planning:** Review for consistency with Housing Element goals and polices as well as with SCAG requirements and compatibility of potential development with surrounding uses.

i. **Noise:** Potential increase in ambient noise levels due to increased densities and from buildout and associated traffic.

j. **Population / Housing:** Evaluate the changes resulting from rezoning and potential impacts on the City's population and housing stock.

k. **Public Services:** Adequacy of public facilities and services for increased residential buildout.

l. **Transportation & Traffic:** Potential impact of residential buildout on roadway and intersection facilities, levels of service, and traffic safety concerns that are related to the increased densities on the proposed rezone sites.

m. **Utilities / Service Systems:** Adequacy of public services and utility systems for increased residential buildout.

Purpose of Review: The purpose of this NOP is to solicit input from those public agencies and interested members of the public as to the scope and content of the environmental information to be included in the EIR (Ref: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375). As specified by the CEQA Guidelines, the NOP

will be circulated for a 30-day public review period. The City welcomes Responsible Agency and public input during this period regarding the scope and content of environmental information included and analyzed in the EIR Agencies should comment on the elements of the environmental information that are relevant to their statutory responsibility in connection with the project.

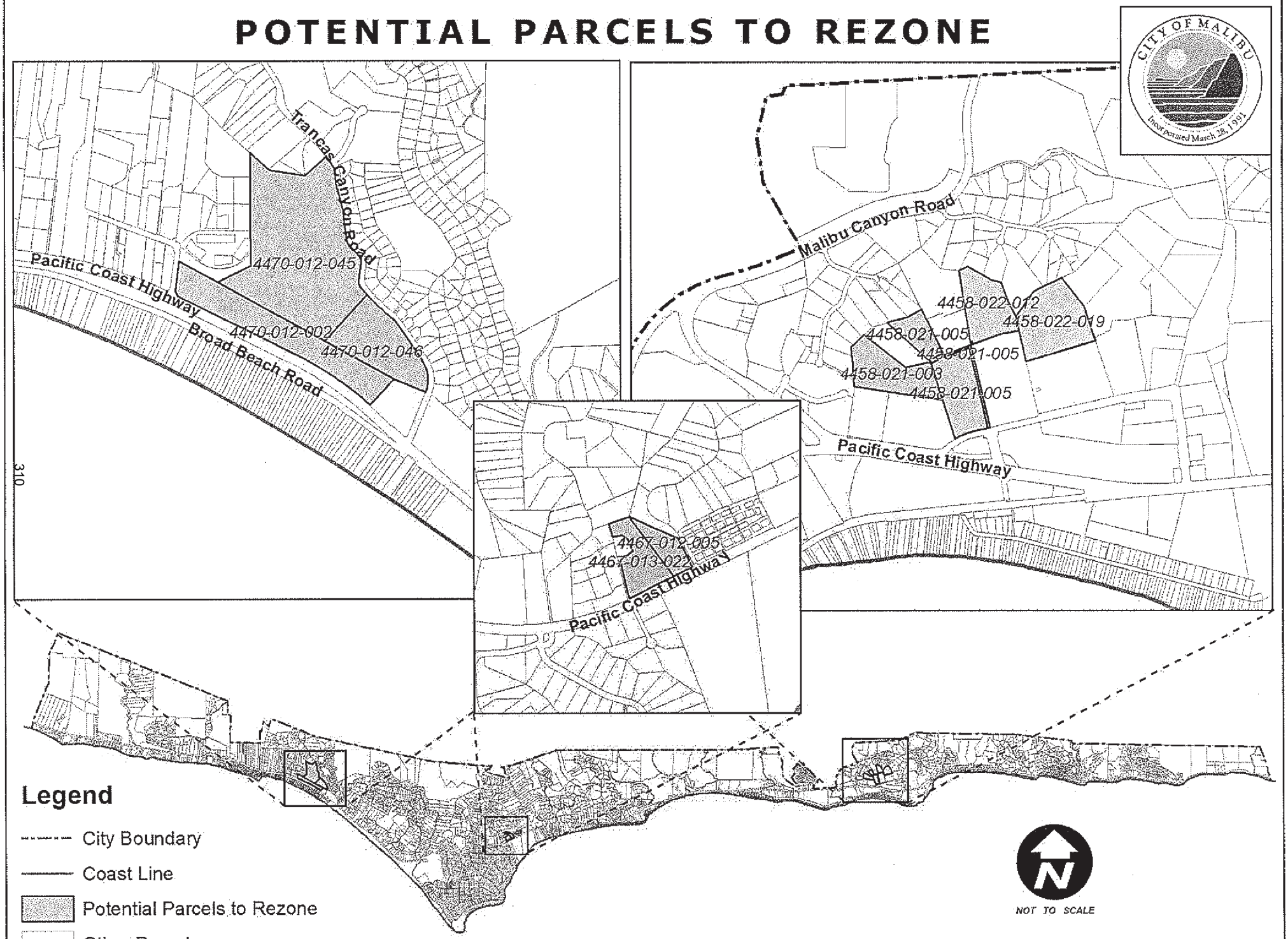
Where to Send Comments: Responses to the NOP must be submitted, in writing, no later than **June 2, 2011 at 4:30 p.m.** Comments should reference EIR No. 11-002 and should be addressed to Richard Mollica, AICP, Associate Planner at the address below. Agency responses to this NOP should include the name, address, and telephone number of the person serving as the primary point of contact for this project within the commenting agency.

Public Scoping Meeting: The City is scheduled to hold a Public Scoping Meeting for the EIR to describe the proposed project, the environmental process, and to receive input on the scope and content of the EIR in conformance with Section 21083.9 of the Public Resources Code.. The Public Scoping Meeting is scheduled on Wednesday, May 25, 2011, at 7:00 p.m. in the Zuma Room, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA. The City encourages all interested individuals, organizations, and agencies to attend the meeting.

If there are any questions regarding this notice, please contact Richard Mollica, Associate Planner, at (310) 456-2489, extension 346.

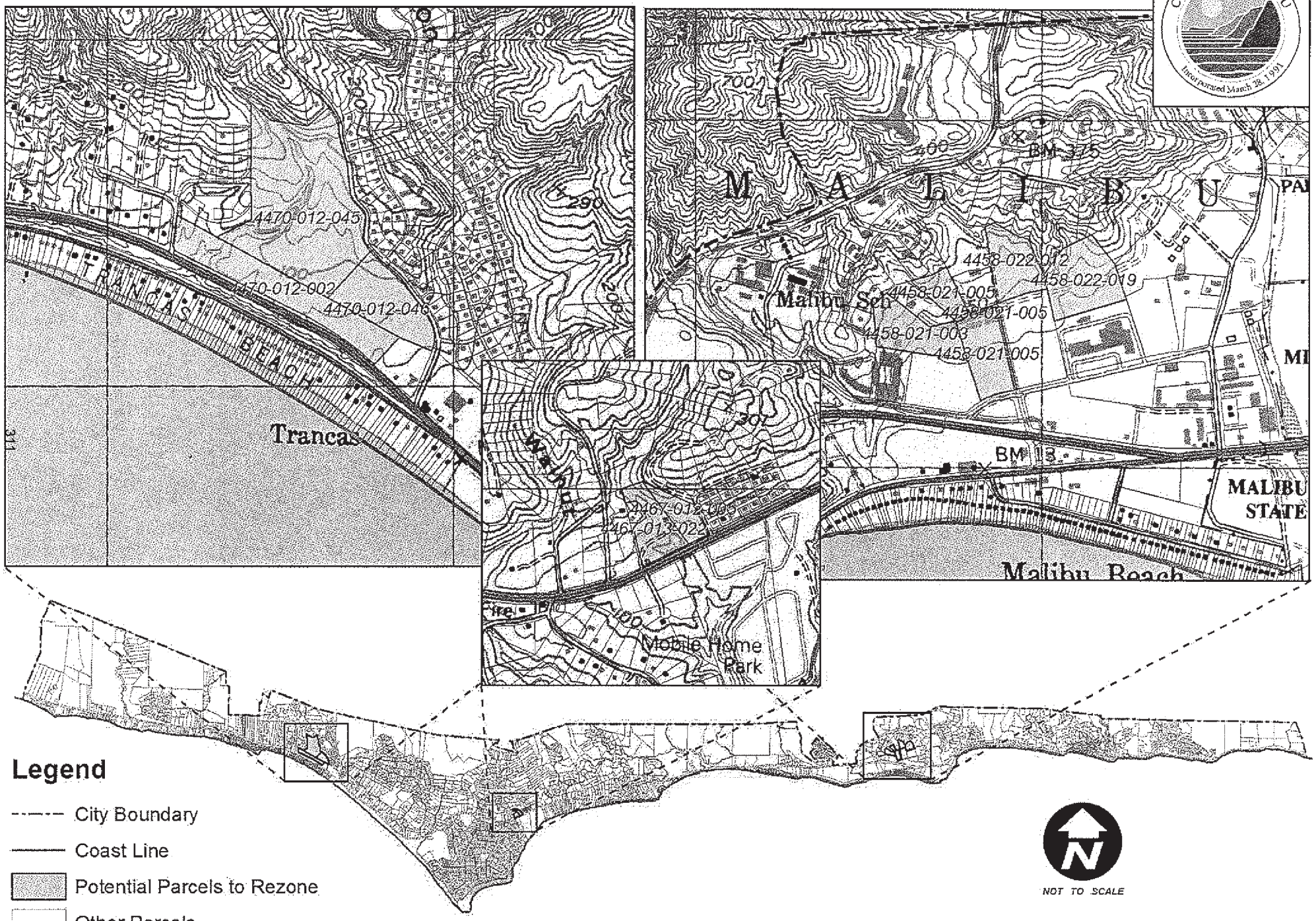
Joyce Parker-Bozylinski, AICP, Planning Manger

POTENTIAL PARCELS TO REZONE



Note: This map was prepared by the City of Malibu Planning Division on April 21, 2011.

POTENTIAL PARCELS TO REZONE



Note: This map was prepared by the City of Malibu Planning Division on April 21, 2011.

Letter 3

COMMENTER: Victor De la Cruz, Manatt, Phelps & Phillips, LLP on behalf of Trancas PCH, LLC.

DATE: June 21, 2013

Response 3.1

The commenter speculates that the City will need to amend many of its existing development standards in order to develop the Candidate Sites with multi-family housing. The commenter states the DEIR fails to acknowledge and analyze these changes and states that there are alternative sites (including a property owned by the individual represented by the commenter) that could accommodate multifamily development with fewer environmental impacts and in compliance with all City development policies.

The Candidate Sites have been analyzed in the EIR for development restrictions such as wetlands and steep slopes. The developable area of the Candidate Sites is shown in Table 2-2 of Section 2.0, *Project Description*. Based on the analysis in the EIR, the Candidate Sites have adequate capacity to provide the number of units specified in Table 2-2 and development would be able to adhere to City standards. The commenter does not specify which development standards would need to be changed in order to accommodate multi-family housing or give any evidence as to why or how development of the Candidate Sites would not be able to adhere to City standards. Therefore, this comment is speculative.

The City has gone through an extensive site selection process that identified the sites considered in DEIR and Section 6.0 of the EIR considers a range of alternative sites that were among those considered as part of this process. As the commenter notes, there may be other sites in the City that could meet the City's housing needs. However, CEQA does not require a lead agency to consider "every conceivable alternative" (CEQA Guidelines Section 15126.6(a)). Rather, the requirement is to consider a reasonable range of alternatives. (Id.)

In addition, the degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR (CEQA Guidelines Section 15146). The analysis is programmatic in nature since the nature, location, and timing of development that may be affected by proposed City-wide programs is not known. According to the Guidelines, an EIR that is programmatic in nature "should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow."

Response 3.2

The commenter again states that the DEIR's Project Description fails to mention the variety of development regulations that must be modified to allow development on the Candidate Sites and that the EIR should recognize both rezoning and amendments to the City's development standards that will be required. The EIR recognizes in Section 2.0, *Project* Description, that under the Housing Element Program 2.2(B) "amendments to the M.M.C. and LCP Local

Implementation Plan (LIP) development standards will be processed as necessary to facilitate affordable multi-family development. These amendments could include revisions to current standards for total development square footage, grading quantities, impermeable coverage, building envelope, minimum unit size, or subterranean parking." Please also see Response 3.1.

Response 3.3

The commenter states that potential environmental impacts in the DEIR are dismissed by stating that proposed development would be required to comply with applicable LCP policies; however, the commenter states LCP policies would likely restrict development so that multi-family development could not occur. Again, the commenter speculates that the proposed multi-family development on the Candidate Sites would not adhere to City development standards and LCP standards but does not give evidence to support the conclusion that future development would violate standards. This comment is speculative. Please see Response 3.1.

Response 3.4

The commenter states that the DEIR does not adequately analyze the City-wide policies and programs that would increase the development potential of multi-family sites across the City. Contrary to what the commenter suggests, the impacts to proposed policies and programs are discussed in each of the Environmental Impact Analysis Sections (Sections 4.1 through 4.15). Out of necessity, the discussions are programmatic in nature given that no specific development is proposed at this time and it is unknown which sites, if any, may actually be developed in the future. As appropriate, future development projects in the City will undergo additional environmental review in accordance with CEQA to address any site-specific issues that cannot be addressed at this stage of planning.

Response 3.5

The commenter states that the DEIR does not adequately describe proposed City-wide programs listed in Program 2.2 of the Housing Element Update. Section 2.4.2 of the *Project Description* describes the proposed City-wide programs as they are described in the Housing Element Update. The environmental impacts associated with these programs are analyzed throughout Section 4.0 of the EIR. Out of necessity, the analysis is programmatic in nature since the nature, location, and timing of development that may be affected by proposed City-wide programs is not known. As appropriate, future development projects in the City will undergo additional environmental review in accordance with CEQA to address any site-specific issues that cannot be addressed at this stage of planning.

Response 3.6

The commenter states that the DEIR fails to summarize the programs proposed by the Housing Element and does not include the full text of the proposed Housing Element Update. Policies and programs included in the Housing Element Update are included in Section 2.0, *Project Description*. The DEIR includes a link to the Housing Element Update text. The full text can be viewed on the City of Malibu Website. The following text on page 2-1 of the FEIR has been revised to address this comment and include the updated link:

The Housing Element Update can be accessed in its entirety at: http://malibucity.org/index.aspx?NID=370.

Response 3.7

The commenter again states that the DEIR fails to summarize the programs proposed by the Housing Element Update and fails to describe that modified development regulations would be necessary to develop the Candidate Sites. Please see Responses 3.1 through 3.6.

Response 3.8

The commenter states that the DEIR fails to analyze conflicts between the LCP's Visual and Scenic Resources Policies and the proposed development of the Candidate Sites. The commenter also states that the DEIR does not adequately show compliance with LCP policies. The aesthetic analysis considers the range of aesthetic concerns (view alteration, visual character, light and glare) in light of what can reasonably be predicted about future development on the Candidate Sites and other sites affected the proposed programs and policies. Because no specific development is proposed at this time, the analysis correctly assumes that applicable development standards contained in the City's LIP would apply to future development and considers the effects of development that complies with such standards. The commenter has provided no evidence that compliance with applicable LIP standards is infeasible.

Response 3.9

The commenter states that the DEIR fails to analyze the aesthetic impacts of City-wide programs and policies proposed in the Housing Element Update. Potential aesthetic impacts related to the City-wide programs and policies are discussed in each impact statement in Section 4.1, *Aesthetics*. As discussed in Response 3.5, out of necessity the EIR examines City-wide programs and policies at a programmatic level. More detailed analysis of aesthetic impacts of development projects associated with City-wide policies and programs of the Housing Element Update would be speculative at this time.

Response 3.10

The commenter reiterates an opinion that the DEIR does not adequately analyze aesthetic impacts of anticipated future development of multifamily zoned sites in the City. See Responses 3.8 and 3.9.

Response 3.11

The commenter requests that Mitigation Measure AQ-1(b) provide more detail and asks who will be responsible for enforcement. The calculation of emissions following implementation of mitigation measures contained in Section 4.2, *Air Quality,* only accounts for those measures for which implementation can be assured and quantified. Consequently, no "credit" has been given for requirements such as those to which the commenter refers that cannot be reasonably quantified. Thus, as demonstrated in Section 4.2, emissions can be reduced to below a level of

significance even without these non-quantifiable requirements, implementation of which would further reduce emissions. In addition, the FEIR includes a Mitigation Monitoring and Reporting Program that describes implementation actions required for all mitigation measures, a timeline for implementation, and entities responsible for enforcement. The City will be responsible for enforcing all mitigation measures.

Response 3.12

The commenter states that the EIR should analyze the air quality impacts associated with implementation of the proposed City-wide policies and programs. The EIR contains an analysis of the proposed policies and programs (*see* Section 2.4.2, describing the proposed City-wide programs as they are described in the proposed Housing Element Update). As stated in Response 3.5, given the programmatic nature of this EIR, quantification of air pollutant emissions associated with individual development projects that may be affected by proposed policies and programs would be speculative at this time. Also, please see Response 3.1 regarding the degree of specificity contained in the EIR and Response 3.5 regarding the programmatic nature of the EIR.

Response 3.13

The commenter states that the DEIR fails to include an analysis of SCAQMD's Localized Significance Thresholds (LSTs). Tables 4.2-7 and 4.2-8 in Section 4.2, *Air Quality*, compare construction emissions associated with development of the Candidate Sites to LSTs. LSTs only apply to onsite development; therefore they are not applicable to mobile sources such as cars on a roadway. Table 1 below shows the onsite operational emissions compared to operational LSTs.

Table 1
Operational Emissions Associated with Candidate Sites #1, #2, and #7 (lbs/day)

Emission Source	ROG	NO_x	CO	PM_{10}	$PM_{2.5}$
Area	5.23	0.21	18.03	0.10	0.10
Energy	0.12	1.01	0.43	0.08	0.08
Total Emissions	**5.35**	**1.22**	**18.46**	**0.18**	**0.18**
*LST Thresholds**	*N/A*	*147*	*827*	*2*	*1*
Exceeds LST?	***N/A***	***No***	***No***	***No***	***No***

** Allowable emissions for sensitive receptors within 25 meters from a two-acre site in SRA-2 (lbs/day)*
See Appendix B for CalEEMod emissions calculations.

As shown in Table 1, operational emissions would be well below operational LSTs. Therefore, operational emissions would not exceed SCAQMD significance thresholds.

Response 3.14

The commenter states that the EIR should analyze toxic air contaminants. The proposed Housing Element Update facilitates the development of housing, which typically does not involve emissions of toxic air contaminants. Moreover, none of the Candidate Sites are within areas subject to emissions of large quantities of toxic air contaminants given the lack of generators of such emissions in Malibu. The ARB Land Use Handbook (April 2005) recommends the avoidance of new sensitive land uses within 500 feet of a freeway or urban road with 100,000 vehicles per day. Candidate Sites #1 and #2 are within 500 feet of the Pacific Coast Highway (PCH). However, the PCH is not a freeway and does not have over 100,000 vehicles per day (see the traffic study in the appendix for traffic counts). No evidence has been provided suggesting that implementation of the Housing Element Update would result in exposure to toxic air contaminants.

Response 3.15

The commenter states that the DEIR fails to describe the air quality baseline and does not describe the construction dates or operational dates associated with "opening plus project" conditions and "cumulative plus project" conditions. Baseline ambient air quality information is provided in Table 4.2-2 and Table 4.2-3 in Section 4.2, *Air Quality*. The existing, opening and cumulative years described under Impact AQ-5 correspond to the existing, opening, and cumulative year scenarios described in the project traffic study (Appendix E). The following text was added to Page 4.2-16 of the FEIR in order to clarify the dates associated with existing year, opening year, and cumulative year conditions:

> Development on Candidate Sites #1, #2, and #7 under existing (year 2012) plus project conditions would cause the intersection of Kanan Dume Road and Pacific Coast Highway (PCH) to degrade from LOS C to LOS D during Saturday peak hour. In addition, development on Candidate Sites #1, #2, and #7 under opening year (2014) plus project conditions would cause the intersection at Webb Way and PCH to degrade from a LOS C to a LOS D during the Saturday peak hour and would increase the volume to capacity ratio at PCH and Cross Creek Road by 2.2% in the PM peak hour. Under cumulative (year 2030) conditions, development of the candidate sites would cause the intersection of PCH and Malibu Canyon Road to degrade from LOS C to LOS D during the PM peak hour and would increase the volume to capacity ratio at PCH & Cross Creek Road by 2.2% during the PM peak hour.

Response 3.16

The commenter states that the DEIR's analysis and mitigation of impacts to native tree species associated with development of the Candidate Sites is inadequate because there is no proof that a tree replacement at a ratio of 10:1 would be accommodated on the project site. The EIR notes that if trees on the Candidate Sites would be removed as part of site development, trees would be required to be replaced at a ratio of 10:1 according to the Local Implementation Plan (LIP). The LIP states that tree replacement shall include the planting of replacement trees on-site only if suitable area exists (LIP, § 5.5.1) and in some cases off-site mitigation is acceptable. The commenter has provided no evidence suggesting that planting of trees in accordance with LIP requirements is infeasible.

Response 3.17

The commenter states that the DEIR does not contain adequate analysis of the type and extent OF potential impacts to sensitive biological resources. As part of the DEIR preparation, biological field surveys were conducted to document the existence of sensitive habitat and sensitive species located on the Candidate Sites. The impact analysis assumes a "worst case" scenario of complete loss of all habitat acreages. No ESHA or other sensitive habitats or sensitive species were found on Candidate Sites #2 and #7. Potential impacts to ESHA and wetlands on Candidate Site #1 would be mitigated by existing requirements of the LIP and Malibu Municipal Code (M.M.C.). Also, please see Response 3.1 regarding the degree of specificity contained in the EIR and Response 3.5 regarding the programmatic nature of the EIR.

Response 3.18

The commenter states that the area of the field surveys for Candidate Sites #1 and #2 in Section 4.3, *Cultural Resources*, needs to be clarified and the location of field surveys for Candidate Site #7 should be shown. Figures 4.4-1 and 4.4-2 show the survey area for the field surveys. The red line shows the area surveyed and, as shown, this area includes all of Candidate Sites #1 and #2. The arrows show the locations of the photos displayed. Candidate Site #7 was surveyed for cultural resources by Chester King of Topanga Anthropological Consultants on June 7, 1994 and by E. Gary Stickel of Environmental Research Archaeologists (ERA) on February 4, 1999. These surveys also included the entirety of Candidate Site #7.

Response 3.19

The commenter states that the existing single-family homes on Candidate Sites #1 and #2 should be surveyed for the historic worth. The single-family residence on Candidate Site #1 was constructed in 1958 and the single-family residence on Candidate Site #2 was constructed in 1957. Neither residence has been identified by the City as having historic value as neither is known to have been associated with any historic person, event, or pattern. Both buildings are typical examples of residences built during the time period in which they were constructed.

Response 3.20

The commenter notes that there is a discrepancy between the topography described for the Candidate Sites in Section 4.5, *Geology and Soils* and what is shown in Figures 4.5-1 and 4.5-3. The contour maps on Figures 4.5-1 and 4.5-3 have been corrected in the FEIR. This correction does not affect the DEIR findings or conclusions.

Response 3.21

The commenter states that the DEIR does not adequately account for onsite wastewater disposal and the potential for hydroconsolidation of soil. The type of onsite wastewater treatment systems (OWTS) used by development of the Candidate Sites is not known at this time; therefore, the potential for hydroconsolidation is unknown. However, OWTS would be required to comply with LIP Chapter 18 and applicable RWQCB requirements which would

address soil stability concerns. The following text has been added to page 4.5-11 of the FEIR to address this comment:

> Hydroconsolidation is the gradual reduction in soil mass resulting from an increase in compressive stress caused by high groundwater or the introduction of water. No introduction of water is proposed as part of the project, though water treatment systems (OWTS) may be used on the project site and depending on the type of treatment system used, could introduce water. Requirements for OWTS are discussed further in Section 4.14, *Utilities and Service Systems*.

Response 3.22

The commenter states that the DEIR must include a fault study for Candidate Site #7. As stated in Section 4.5, *Geology and Soils*, a fault survey for Candiate Site #7 conducted in 1999 found no evidence to indicate the location of the Malibu Coast Fault through the project site. Therefore, because Candidate Site #7 is not within an Alquist-Priolo Earthquake Fault Zone, and there is no evidence that the Malibu Coast Fault traverses the project site, impacts would be less than significant. However, development associated with the City-wide programs and policies may facilitate development near the Malibu Coast Fault. Therefore, Mitigation Measure GEO-1 is required for any subsequent development associated with Housing Element Update programs and policies within 500 feet of the Malibu Coast Fault.

Response 3.23

The commenter states an opinion that mitigation measures GEO-3 and GEO-4 are not adequate to reduce impacts to a less than significant level. As the commenter acknowledges, the measures are programmatic in nature since no specific development is proposed at this time (see CEQA Guidelines §§ 15146; 15168(b)(4), (d)(2) (stating that Program EIRs allow lead agencies to consider "broad policy alternatives" and "programwide mitigation measures")). Both measures provide standards to be met and potential methods by which standards can be achieved. Nevertheless, the measures have been modified to provide greater clarity with respect to the standards that are to be achieved.

Measure GEO-3 has been modified as follows to address this comment:

> **GEO-3** **Geotechnical Study and Mitigation.** Prior to Planning Department approval, a geotechnical study shall be prepared by a registered civil or geotechnical engineer and certified engineering geologist for any future project developed pursuant to the Housing Element Update. This study shall include an analysis of the settlement, expansion, and liquefaction potential of the underlying materials. If a particular development site is confirmed to be in an area prone to seismic settlement or expansion, appropriate techniques to ~~minimize potential impacts~~ comply with the requirements of the California Building Code shall be prescribed and implemented.

Measure GEO-4 has been modified as follows to address this comment:

GEO-4 **Landslide Study and Mitigation.** The future applicant for development of residential structures pursuant to the Housing Element Update on sites with slopes above 30% shall have a geotechnical study prepared by a certified engineering geologist and geotechnical engineer for the project site prior to Planning Department approval. This study shall include an analysis of the erosion and landslide potential of portions of the sites with steep slopes. If a particular development site is confirmed to be in an area prone to erosion or landsliding, appropriate techniques to ~~minimize potential impacts~~ comply with the requirements of the California Building Code shall be prescribed and implemented.

Response 3.24

The commenter states that the DEIR fails to describe the existing GHG baseline. The *Setting* section of Section 4.6, *Greenhouse Gas Emissions,* describes the existing worldwide, U.S., and California GHG inventory.

The following text has been added to page 4.6-11 to address this comment:

> Existing GHG emissions from the Candidate Sites are minimal. Candidate Site #7 is currently undeveloped and therefore there are no existing GHG emissions. Candidate Sites #1 and #2 each have one existing single-family residences which emits some GHG emissions associated with energy and vehicle usage.

Response 3.25

The commenter states that there is not enough evidence to support using SCAQMD's draft significance threshold of 3,500 MT CO2e per year. As is stated in the EIR, this threshold is used because the SCAQMD has not yet adopted GHG emissions thresholds that apply to land use projects where the SCAQMD is not the lead agency and the City of Malibu has not adopted a GHG emissions reduction plan or GHG emissions thresholds. SCAQMD recommends several thresholds; among them are a 3,000 MT CO2e per year threshold for all land uses and a 3,500 MT CO2e per year threshold for residential land uses, if such threshold is used consistently. The 3,500 per year threshold was determined to be the most appropriate as the Housing Element Update involves only residential land uses. The City of Malibu has not recommended this threshold for any other purpose at this time, but that numeric threshold is recommended for this analysis and may be used for subsequent analyses.

Response 3.26

The commenter states that the DEIR does not adequately analyze GHG impacts associated with City-wide programs and policies in the proposed Housing Element Update. As discussed in Response 3.5, this EIR is a Program EIR. More detailed analysis of greenhouse gas impacts of programs and projects associated with the Housing Element Update would be speculative at this time, as no specific project plans have been proposed (In re *Bay-Delta Programmatic Envtl. Impact Report Coordinated Proceedings* (2008) 43 Cal. 4th 1143, 1172, citing *Rio Vista Farm Bureau*

Center v. County of Solano (1992) 5 Cal.App.4th 351, 373 ("Where, as here, a [Program] EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA."). As required by CEQA, individual development projects that could be facilitated by the proposed Housing Element would undergo further environmental review to address issues that cannot be feasibly considered at this stage of planning.

Response 3.27

The commenter explains that the DEIR relies on setback requirements to ensure reduction of impacts related to hazardous materials, but the setback requirements may need to be amended to allow multi-family housing on the Candidate Sites. The commenter does not explain why this setback requirement would need to be amended; therefore, this comment is speculative.

Response 3.28

The commenter states an opinion that the DEIR does not adequately explain whether there would be adequate ingress/egress in case of a wildland fire and speculates that the proposed multi-family development may not have to adhere to applicable codes. The commenter does not provide evidence to support the assertion that the proposed development would not have be subject to existing codes and ordinances. As is stated in Section 4.7, *Hazards*, any project within the City is required to comply with the California Fire Code and Los Angeles Fire Code. Development would be required to prepare a Fuel Modification Plan and submit plans to review by the Los Angeles County Fire Department. Compliance with existing codes and ordinances would ensure proper site design and adequate site ingress/egress.

Response 3.29

The commenter states that the DEIR does not adequately explain stormwater impacts and does not agree with the assumption of 74 percent impervious coverage based on data from LA County data for multi-family housing. The commenter does not provide alternate assumptions or evidence to suggest why this assumption is unreasonable. Therefore, this comment is speculative.

Response 3.30

The commenter states that the DEIR should demonstrate that there would be sufficient room on the Candidate Sites to accommodate development and the stormwater detention facilities that would be required under the M.M.C. As is stated in Section 4.8, *Hydrology and Water Quality,* applicants would be required to submit a storm water management plan and include detention such that peak runoff after development does not exceed peak runoff of the site before development for the one hundred (100) year clear flow storm event. As is stated in Response 3.1, the Candidate Sites have been analyzed in the EIR for development restrictions such as wetlands and steep slopes. The developable area of the Candidate Sites is shown in Table 2-2 of Section 2.0, *Project Description*. Based on the analysis in the EIR, it appears the Candidate Sites have adequate capacity to provide the number of units specified in Table 2-2 and development would be able to adhere to City standards.

Response 3.31

The commenter speculates that the development on the Candidate Sites may not be able to meet Standard Urban Stormwater Mitigation Plan (SUSMP) requirements for conserving natural areas and protecting slopes and channels. The commenter does not provide any evidence to support this claim. Therefore, this comment is speculative.

Response 3.32

The commenter states that the DEIR analysis does not adequately analyze potential constraints for the installation of an OWTS. Potential soil limitations can be overcome or minimized by special planning, design, or installation and as stated in Sections 4.8, *Hydrology and Water Quality,* and 4.14, *Utilities and Service Systems,* of the DEIR. New OWTS systems would be subject to RWCQB requirements and would require operation permits from the City. Existing regulations would reduce potential water quality impacts related to OWTS.

Response 3.33

The commenter states that the DEIR cannot assume compliance with existing regulations to reduce impacts to a less than significant level because the City must do away with requirements in order to develop the Candidate Sites. The commenter does not provide any evidence to support the claim that the City would exempt development on the Candidate Sites from existing regulations. Therefore, this comment is speculative.

Response 3.34

The commenter states that the DEIR does not adequately analyze tsunami and seiche impacts for development associated with City-wide programs and policies contained in the proposed Housing Element Update. Please see Response 3.5.

Response 3.35

The commenter reiterates previous comments that the DEIR does not describe the amendments to the City's development regulations that would be required to develop the Candidate Sites. The commenter speculates that the City's development regulations are so restrictive that multi-family development on the Candidate Sites would be impossible. Please see Responses 3.1 and 3.5.

Response 3.36

The commenter states that the DEIR fails to analyze the land use impacts of the City-wide programs and policies contained in the proposed Housing Element Update. Please see Response 3.5.

Response 3.37

The commenter suggests that the construction noise mitigation measures are inadequate, noting that the construction timing restrictions do not meaningfully reduce noise exposure. In response to this comment, Mitigation Measure N-1(a), which restricts construction hours, has been eliminated and the two remaining measures have been revised to clarify their applicability. The two remaining measures in the FEIR read as follows:

N-1(a) **Diesel Equipment Mufflers.** All future project sponsors on Candidate Sites #1, #2, and #7 and all other MF sites to which the AHO is applied shall ensure that all diesel equipment shall be operated with closed engine doors and shall be equipped with factory recommended mufflers during construction.

N-1(b) **Electrically-Powered Tools.** All future project sponsors on Candidate Sites #1, #2, and #7 and all other MF sites to which the AHO is applied shall ensure that electrical power is used to run air compressors and similar power tools during construction.

As noted in the text of FEIR Section 4.10, *Noise,* the City has not adopted specific thresholds for construction noise. However, these measures, in combination with standard City requirements limiting the hours allowed for construction, would reduce construction noise to the degree feasible.

Response 3.38

The commenter states that the DEIR does not properly analyze site access issues. The transportation analysis made reasonable assumptions about where access points for the various sites and analyzed the traffic impacts based on these assumptions. Given that no specific project is currently proposed at any site, this is the only approach available. Regardless, the traffic analysis would not be sensitive to minor shifts in the location of site access points along a particular roadway and it is highly unlikely that access to any of the sites would be from a different roadway than was assumed in the DEIR analysis. Also, as further discussed in Response 3.43, additional traffic analysis included in the FEIR concludes that all of the project's significant traffic impacts can be mitigated to below a level of significance.

Response 3.39

The commenter states that the DEIR ignores pedestrian and traffic safety issues. According to the Appendix G of the CEQA Guidelines, the EIR must analyze conflicts with existing policies, plans, or programs related to pedestrian facilities. Per City Traffic Impact Analysis Guidelines, a significant impact would occur if a project disrupts existing or planned pedestrian facilities. As discussed in Impact T-7, development of the Candidate Sites would not conflict with adopted plans, policies, or programs related to pedestrian facilities. The City does not have any adopted standards related to pedestrian safety.

Response 3.40

The commenter states that the analysis of impacts to water infrastructure is inadequate because it does not address whether or not there is adequate capacity to meet fire flow requirements. As stated in Section 4.14, *Utilities and Service Systems,* the proposed Candidate Sites are located in developed areas, with Candidate Sites #1 and #2 located between existing multi-family residences and Candidate Site #7 located near commercial uses, such as the Los Angeles County Courthouse, Malibu Library and a shopping center. The existing multi-family residences and commercial properties would require similar fire flows as the proposed multi-family residences. Therefore, it is anticipated that existing water mains would have sufficient capacity to provide adequate fire flows for the proposed Candidate Sites. Should any new connections or upgrades be required, such upgrades would likely occur within existing utility easements along PCH and Civic Center Way, and would not result in new areas of disturbance. Consequently, adequate water supply and water conveyance infrastructure would be available to serve the Candidate Sites.

Response 3.41

The commenter states that the DEIR does not adequately analyze septic-related issues on Candidate Site #7. Please see Response 3.32.

Response 3.42

The commenter states that the EIR fails to analyze the environmental impacts of the OWTS. Please see Response 3.32.

Response 3.43

The commenter states that the DEIR fails to provide alternatives that would reduce the significant and unavoidable impacts found in the EIR. It is true that none of the studied alternatives would completely eliminate all of the significant impacts identified for the proposed project. However, per Section 15126.6, subdivision (a) of the CEQA Guidelines, alternatives merely need to "avoid or substantially lessen" one or more of the project's significant effects while feasibly accomplishing most project objectives. Because meeting RHNA is a basic project objective, all feasible alternatives must provide for adequate housing to meet the City's RHNA. Because the only way to completely eliminate the potential for significant traffic impacts is to substantially reduce the overall number of housing units to well below the RHNA, any alternative that would completely eliminate the project's significant effects would not be feasible.

It should be noted that additional analysis of project impacts, including transportation/traffic impacts, has been conducted and certain conclusions contained in the DEIR have been reconsidered. Notably, it has been determined that, based on the City's adopted traffic analysis methodology, the unavoidably significant impacts related to traffic and General Plan policies can be mitigated to below a level of significance. The FEIR has been revised to reflect these altered conclusions, which effectively eliminate the only unavoidably significant environmental impacts identified for the proposed Housing Element Update. These altered conclusions do

involve any new significant environmental impacts or increases in the severity of an impact compared to what was identified in the DEIR.

Response 3.44

The commenter states that the alternatives analysis is too simplistic. This opinion is noted. For the FEIR, certain analyses have been revised slightly to more accurately reflect site conditions. However, the revised analyses generally do not alter the findings or conclusions in the DEIR. Out of necessity, the alternatives analysis is generalized in nature since there is no specific development that can be analyzed at any of the Candidate Sites. The following is provided regarding the commenter's specific examples of what he believes are erroneous conclusions:

- The aesthetic analysis for Alternative 2 concludes that impacts associated with that alternative would be slightly lower than, but generally similar to those of the propose project. As the commenter suggests, the analysis focuses on the area of potential disturbance. Overall, the magnitude of aesthetic impacts was determined to be about the same as that of the proposed project.
- With respect to air quality, it is generally true that a smaller grading footprint results in fewer air pollutant emissions. Nevertheless, as noted in DEIR Section 6.0, *Alternatives,* though there may be minor variations in overall construction-related emissions, the overall magnitude of construction impacts would be similar among the alternatives.
- For the Alternative 3 hydrology analysis, the presence of a potential "farmed wetland" on the alternative site does not change the fact that reducing the overall development footprint would incrementally reduce overall ground disturbance and runoff. In any event, the overall magnitude of hydrological impacts associated with that alternative would be similar to that of the proposed project.

Response 3.45

The commenter asserts that the explanation for alternatives considered, but rejected is false. In response to this comment, the second paragraph under DEIR Section 6.5 has been revised to read as follows:

> Additional alternatives were considered for inclusion in the EIR. These alternatives were other combinations of all seven Candidate Sites and other sites contemplated during the City's site selection process. Alternative combinations of Candidate Sites (e.g., the combination of Candidate Site #6 and #7) were eliminated because several of the sites selected had already been evaluated in the EIR, or would be insufficient to meet the City's RHNA requirements and thus fail to meet project objectives, or would result in overall increased environmental impacts. Other sites were eliminated from further consideration based upon a variety of physical feasibility issues and, in some cases, public controversy.

Letter 4

COUNTY OF LOS ANGELES

FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294

RECEIVED
JUN 26 2013
PLANNING DEPT.

DARYL L. OSBY
FIRE CHIEF
FORESTER & FIRE WARDEN

June 12, 2013

Richard Mollica, Associate Planner
Planning Department
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

Dear Mr. Mollica:

NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT, NOTICE OF PLANNING COMMISSION PUBLIC HEARING, EIR NO. 11-002, STATE CLEARINGHOUSE NO 2011051027, FOR THE 2008-2014 UPDATE OF THE GENERAL PLAN HOUSING ELEMENT WHICH ESTABLISHES SPECIFIC GOALS, POLICIES AND OBJECTIVES RELATIVE TO THE PROVISION OF HOUSING, AND THE CONSTRUCTION OF MULTI-FAMILY RESIDENTIAL DEVELOPMENT, MALIBU (FFER #201300075)

The Notice of Availability of a Draft Environmental Impact Report has been reviewed by the Planning Division, Land Development Unit, Forestry Division, and Health Hazardous Materials Division of the County of Los Angeles Fire Department. The following are their comments:

PLANNING DIVISION:

4.12 PUBLIC SERVICES

4.12.1 Setting

Paragraph 1, should be corrected as follows:

a. Fire Protection. The Los Angeles County Fire Department (LACFD) provides fire protection service in Malibu. Currently, four stations (Nos. 70, 71, 88 and 99) directly serve the City; however, all LACFD resources are available to serve the City. LAFCD operations are divided into nine operational Divisions, which are composed of 22 Battalions serving unincorporated area of Los Angeles County and ~~57~~ *58* cities, including the City of Malibu. Candidate sites #1, #2, and #7 are all

4.1

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS	CALABASAS	DIAMOND BAR	HIDDEN HILLS	LA MIRADA	MALIBU	POMONA	SIGNAL HILL
ARTESIA	CARSON	DUARTE	HUNTINGTON PARK	LA PUENTE	MAYWOOD	RANCHO PALOS VERDES	SOUTH EL MONTE
AZUSA	CERRITOS	EL MONTE	INDUSTRY	LAKEWOOD	NORWALK	ROLLING HILLS	SOUTH GATE
BALDWIN PARK	CLAREMONT	GARDENA	INGLEWOOD	LANCASTER	PALMDALE	ROLLING HILLS ESTATES	TEMPLE CITY
BELL	COMMERCE	GLENDORA	IRWINDALE	LAWNDALE	PALOS VERDES ESTATES	ROSEMEAD	WALNUT
BELL GARDENS	COVINA	HAWAIIAN GARDENS	LA CANADA FLINTRIDGE	LOMITA	PARAMOUNT	SAN DIMAS	WEST HOLLYWOOD
BELLFLOWER	CUDAHY	HAWTHORNE	LA HABRA	LYNWOOD	PICO RIVERA	SANTA CLARITA	WESTLAKE VILLAGE
BRADBURY							WHITTIER

located within Battalion #5 (LACFD, 2012). In the event of a major fire, additional equipment is kept in reserve at most of the stations to be used by off-duty fire fighters (LACFD, 2012). 4.1

Paragraph 3, should be corrected as follows:

Candidate Sites #1 and #2. Candidate sites #1 and #2 would be served by LACFD Fire Station 71. Fire Station 71 is located at 28722 West Pacific Coast Highway, in the City of Malibu, and is approximately 0.30 miles southwest of Candidate Site #1 and 0.35 miles southwest of Candidate Site #2. Fire Station 71 ~~has three firefighters on duty at all times, and equipment includes one Fire Engine and one Paramedic Ambulance (City of Malibu General Plan, Chapter 4, Section 4.3 Public Services, 1991).~~ *is staffed with a 3-person engine company (consisting of 1-Fire Captain, 1-Fire Fighter Specialist and 1-Fire Fighter Paramedic) and a 2-person paramedic squad (consisting of 2-Fire Fighter Paramedics).* According to the LACFD, the average response time to candidate sites #1 and #2 would be approximately one minute (Buck, Lorraine, Personal Communication April 17, 2012). 4.2

Paragraph 4, should be corrected as follows:

Candidate Site #7. According to the LACFD, Fire Station 88 would be the primary station serving Candidate Site #7 (Bloom, David, Personal Communication April 2012). Fire Station 88 is located at 23720 West Malibu Road, in Malibu, and is approximately 0.5 miles southwest of Candidate Site #7. Fire Station 88 ~~has three firefighters on duty at all times, and equipment includes one Telesquirt1 and one Paramedic Ambulance (City of Malibu General Plan, Section 4.3 - Public Services, 1991).~~ *is staffed with a 3-person engine company (consisting of 1-Fire Captain, 1-Fire Fighter Specialist and 1-Fire Fighter Paramedic) and a 2-person paramedic squad (consisting of 2-Fire Fighter Paramedics).* According to LACFD, the response time to Candidate Site #7 would be approximately 1.7 minutes (Buck, Lorraine, Personal Communication April 17, 2012). 4.3

LAND DEVELOPMENT UNIT:

1. The statutory responsibilities of the County of Los Angeles Fire Department, Land Development Unit, are the review of and comment on, all projects within the unincorporated areas of the County of Los Angeles. Our emphasis is on the availability of sufficient water supplies for firefighting operations and local/regional access issues. However, we review all projects for issues that may have a significant impact on the County of Los Angeles Fire Department. We are responsible for the review of all projects within Contract Cities (cities that contract with the County of Los Angeles Fire Department for fire protection services). We are responsible for all County facilities, located within non-contract cities. The County of Los Angeles Fire Department, Land Development Unit may also comment on conditions that may be imposed on a project by the Fire Prevention Division, which may create a potentially significant impact to the environment. 4.4

2. The development of this project must comply with all applicable code and ordinance requirements for construction, access, water mains, fire flows and fire hydrants.

3. This property is located within the area described by the Forester and Fire Warden as a Fire Zone 4, Very High Fire Hazard Severity Zone (VHFHSZ). All applicable fire code and ordinance requirements for construction, access, water mains, fire hydrants, fire flows, brush clearance and fuel modification plans, must be met.

4. The proposed development may necessitate multiple ingress/egress access for the circulation of traffic, and emergency response issues.

5. Every building constructed shall be accessible to Fire Department apparatus by way of access roadways, with an all-weather surface of not less than the prescribed width. The roadway shall be extended to within 150 feet of all portions of the exterior walls when measured by an unobstructed route around the exterior of the building.

6. Access roads shall be maintained with a minimum of 10 feet of brush clearance on each side. Fire access roads shall have an unobstructed vertical clearance clear-to-sky with the exception of protected tree species. Protected tree species overhanging fire access roads shall be maintained to provide a vertical clearance of 13 feet 6 inches.

7. When a bridge is required to be used as part of a fire access road, it shall be constructed and maintained in accordance with nationally recognized standards and designed for a live load sufficient to carry a minimum of 75,000 pounds. All water crossing designs are required to be approved by the public works department prior to installation. 4.4

8. The maximum allowable grade shall not exceed 15% except where topography makes it impractical to keep within such grade. In such cases, an absolute maximum of 20% will be allowed for up to 150 feet in distance. The average maximum allowed grade, including topographical difficulties, shall be no more than 17%. Grade breaks shall not exceed 10% in ten feet.

9. When involved with subdivision in a city contracting fire protection with the County of Los Angeles Fire Department, Fire Department requirements for access, fire flows and hydrants are addressed during the subdivision tentative map stage.

10. Fire sprinkler systems are required in some residential and most commercial occupancies. For those occupancies not requiring fire sprinkler systems, it is strongly suggested that fire sprinkler systems be installed. This will reduce potential fire and life losses. Systems are now technically and economically feasible for residential use.

11. HIGH DENSITY RESIDENTIAL: The development may require fire flows up to 5,000 gallons per minute at 20 pounds per square inch residual pressure for up to a five-hour duration. Final fire flows will be based on the size of the buildings, their relationship to other structures, property lines, and types of construction used.

12. HIGH DENSITY RESIDENTIAL: Fire hydrant spacing shall be 300 feet and shall meet the following requirements:

    a) No portion of lot frontage shall be more than 200 feet via vehicular access from a public fire hydrant.

b) No portion of a building shall exceed 400 feet via vehicular access from a properly spaced fire hydrant.

c) When cul-de-sac depth exceeds 200 feet, hydrants will be required at the corner and mid-block.

d) Additional hydrants will be required if the hydrant spacing exceeds specified distances.

13. HIGH DENSITY RESIDENTIAL: Turning radii shall not be less than 32 feet. This measurement shall be determined at the centerline of the road. A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in-length and at the end of all cul-de-sacs.

14. HIGH DENSITY RESIDENTIAL: All on-site driveways shall provide a minimum unobstructed width of 28 feet, clear-to-sky. The 28 foot width does not allow for parking, and shall be designated as a "Fire Lane" and have appropriate signage. The centerline of the on-site driveway shall be located parallel to and within 30 feet of an exterior wall on one side of the proposed structure. The on-site driveway is to be within 150 feet of all portions of the exterior walls of the first story of any building.

4.4

15. HIGH DENSITY RESIDENTIAL: The 28 feet in width shall be increased to:

a) 34 feet in width when parallel parking is allowed on one side of the access way.

b) 36 feet in width when parallel parking is allowed on both sides of the access way.

c) Any access way less than 34 feet in width shall be labeled “Fire Lane” on the final recording map, and final building plans.

d) For streets or driveways with parking restrictions: The entrance to the street/driveway and intermittent spacing distances of 150 feet shall be posted with Fire Department approved signs stating “NO PARKING - FIRE LANE” in three-inch high letters. Driveway labeling is necessary to ensure access for Fire Department use.

16. HIGH DENSITY RESIDENTIAL: When serving land zoned for residential uses having a density of more than four units per net acre:

a) A cul-de-sac shall be a minimum of 34 feet in width and shall not be more than 700 feet in length.

b) The length of the cul-de-sac may be increased to 1,000 feet if a minimum of 36 feet in width is provided.

c) A Fire Department approved turning area shall be provided at the end of a cul-de-sac.

17. SINGLE FAMILY DWELLINGS: Single family detached homes shall require a minimum fire flow of 1,250 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. Two family dwelling units (duplexes) shall require a fire flow of 1,500 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. When there

are five or more units taking access on a single driveway, the minimum fire flow shall be increased to 1,500 gallons per minute at 20 pounds per square inch residual pressure for a two-hour duration. For structures that exceed 3,600 square feet the fire flow shall be in accordance with Appendix B, Table B105.1 of the 2011 County of Los Angeles Fire Code.

18. SINGLE FAMILY DWELLINGS: Fire hydrant spacing shall be 600 feet and shall meet the following requirements:

    a) No portion of lot frontage shall be more than 450 feet via vehicular access from a public fire hydrant.

    b) No portion of a structure should be placed on a lot where it exceeds 750 feet via vehicular access from a properly spaced public fire hydrant.

    c) When cul-de-sac depth exceeds 450 feet on a residential street, hydrants shall be required at the corner and mid-block.

    d) Additional hydrants will be required if hydrant spacing exceeds specified distances.

19. SINGLE FAMILY DWELLINGS: A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in-length and at the end of all cul-de-sacs.

20. SINGLE FAMILY DWELLINGS: Fire Department access shall provide a minimum unobstructed width of 28 feet, clear-to-sky and be within 150 feet of all portions of the exterior walls of the first story of any single unit. If exceeding 150 feet, provide 20 feet minimum paved width "Private Driveway/Fire Lane" clear-to-sky to within 150 feet of all portions of the exterior walls of the unit. Fire Lanes serving three or more units shall be increased to 26 feet.

4.4

21. SINGLE FAMILY DWELLINGS: Streets or driveways within the development shall be provided with the following:

    a) Provide 36 feet in width on all streets where parking is allowed on both sides.

    b) Provide 34 feet in width on cul-de-sacs up to 700 feet in length. This allows parking on both sides of the street.

    c) Provide 36 feet in width on cul-de-sacs from 701 to 1,000 feet in length. This allows parking on both sides of the street.

    d) For streets or driveways with parking restrictions: The entrance to the street/driveway and intermittent spacing distances of 150 feet shall be posted with Fire Department approved signs stating "NO PARKING - FIRE LANE" in three-inch high letters. Driveway labeling is necessary to ensure access for Fire Department use. Turning radii shall not be less than 32 feet. This measurement shall be determined at the centerline of the road.

22. All access devices and gates shall meet the following requirements:

    a) Any single gated opening used for ingress and egress shall be a minimum of 26 feet in-width, clear-to-sky.

b) Any divided gate opening (when each gate is used for a single direction of travel i.e., ingress or egress) shall be a minimum width of 20 feet clear-to-sky.

c) Gates and/or control devices shall be positioned a minimum of 50 feet from a public right-of-way, and shall be provided with a turnaround having a minimum of 32 feet of turning radius. If an intercom system is used, the 50 feet shall be measured from the right-of-way to the intercom control device.

d) All limited access devices shall be of a type approved by the Fire Department.

e) Gate plans shall be submitted to the Fire Department, prior to installation. These plans shall show all locations, widths and details of the proposed gates.

23. All proposals for traffic calming measures (speed humps/bumps/cushions, traffic circles, roundabouts, etc.) shall be submitted to the Fire Department for review, prior to implementation.

4.4

24. Notify the County of Los Angeles Fire Department, Fire Stations 71, (310) 457-2578, and Fire Station 88, (310) 456-2812, at least three days in advance of any street closures that may affect Fire/Paramedic responses in the area.

25. Disruptions to water service shall be coordinated with the County of Los Angeles Fire Department and alternate water sources shall be provided for fire protection during such disruptions.

26. Submit three sets of water plans to the County of Los Angeles Fire Department, Land Development Unit. The plans must show all proposed changes to the fire protection water system, such as fire hydrant locations and main sizes. The plans shall be submitted through the local water company.

27. The County of Los Angeles Fire Department, Land Development Unit's comments are only general requirements. Specific fire and life safety requirements and conditions set during the environmental review process will be addressed and conditions set at the building and fire plan check phase. Once the official plans are submitted for review there may be additional requirements.

28. Should any questions arise regarding subdivision, water systems, or access, please contact the County of Los Angeles Fire Department, Land Development Unit, Inspector Nancy Rodeheffer, at (323) 890-4243 or nrodeheffer@fire.lacounty.gov.

29. The County of Los Angeles Fire Department, Land Development Unit appreciates the opportunity to comment on this project.

FORESTRY DIVISION – OTHER ENVIRONMENTAL CONCERNS:

4.5

1. The statutory responsibilities of the County of Los Angeles Fire Department, Forestry Division include erosion control, watershed management, rare and endangered species, vegetation,

fuel modification for Very High Fire Hazard Severity Zones or Fire Zone 4, archeological and cultural resources, and the County Oak Tree Ordinance.

2. A fuel management/modification and fire hazard reduction plan should be developed and implemented prior to construction.

3. Landscape design and construction should consider utilizing low fuel volume and drought tolerant species.

4. Due to the wildland fire hazard surrounding the project we do not recommend using highly flammable and heavy fuel volume Eucalyptus, Pines, Junipers or Cypress plant species.

5. In order to limit the threat of wildfire, the use of native/low fuel volume plants should be mandatory in the landscape plan for this project.

6. This property is located within the area described by the Forester and Fire Warden as a Very High Fire Hazard Severity Zone or Fire Zone 4. The development of this project must comply with all Very High Fire Hazard Severity Zone code and ordinance requirements for fuel modification.

4.5

HEALTH HAZARDOUS MATERIALS DIVISION:

1. The Health Hazardous Materials Division has no objection to the proposed project. However, it should be noted that any property with historical use and/or storage of hazardous materials including agricultural use must be assessed and if required mitigated under oversight of the Department of Toxic Substances Control or the Los Angeles County Fire Department prior to grading and construction activities.

4.6

If you have any additional questions, please contact this office at (323) 890-4330.

Very truly yours,

Frank Vidales

FRANK VIDALES, ACTING CHIEF, FORESTRY DIVISION
PREVENTION SERVICES BUREAU

FV:ij

Letter 4

COMMENTER: Frank Vidales, Acting Chief, Forestry Division, Prevention Services Bureau, County of Los Angeles Fire Department

DATE: June 12, 2013

Response 4.1

The commenter provides updated information about how many cities Los Angeles County Fire Department (LACFD) serves. The following text has been updated on page 4.12-1 of the FEIR to address this comment:

> LAFCD operations are divided into nine operational Divisions, which are composed of 22 Battalions serving unincorporated area of Los Angeles County and ~~57~~ 58 contract cities, including the City of Malibu.

Response 4.2

The commenter provides updated information about staffing levels at Fire Station 71. The following text has been updated on page 4.12-1 of the FEIR to address this comment:

> Fire Station 71 ~~has three firefighters on duty at all times,~~ is staffed with a 3-person engine company (consisting of one Fire Captain, one Fire Fighter Specialist and one Fire Fighter Paramedic) and a 2-person paramedic squad (consisting of two Fire Fighter Paramedics) (LACFD Comment Letter, June 12, 2013). ~~and equipment includes one Fire Engine and one Paramedic Ambulance (City of Malibu General Plan, Chapter 4, Section 4.3 Public Services, 1991)~~ Equipment includes one Fire Engine, one Paramedic Ambulance and one patrol unit (Captain Leary, Personal Communication, April 24, 2013).

Response 4.3

The commenter provides updated information about staffing levels at Fire Station 88. The following text has been updated on page 4.12-1 of the FEIR to address this comment:

> Fire Station 88 ~~has three firefighters on duty at all times,~~ is staffed with a 3-person engine company (consisting of one Fire Captain, one Fire Fighter Specialist and one Fire Fighter Paramedic) and a 2-person paramedic squad (consisting of two Fire Fighter Paramedics) (LACFD Comment Letter, June 12, 2013). ~~and equipment includes Telesquirt1 and one Paramedic Ambulance (City of Malibu General Plan, Chapter 4, Section 4.3 Public Services, 1991)~~ Equipment includes one Fire Engine and one Paramedic Ambulance (Steinberger, John. Personal Communication, April 24, 2013).

Response 4.4

The commenter lists all of the requirements of the Land Development Unit of the LACFD. As is stated in Section 4.12, *Public Services,* development of the Candidate Sites and development associated with the policies and programs of the Housing Element Update would be required to comply with all applicable fire code regulations.

Response 4.5

The commenter lists all of the requirements of the Forestry Division of the LACFD. As is stated in Section 4.12, *Public Services,* development of the Candidate Sites and development associated with the policies and programs of the Housing Element Update would be required to comply with all applicable fire code regulations.

Response 4.6

The commenter states a requirement of the Health Hazardous Materials Division of the LACFD that property with historical use and/or storage of hazardous materials including agriculture must be assessed and if required under oversight of the Department of Toxic Substances Control or the LACFD. As discussed in Section 4.7, *Hazards and Hazardous Material,* Candidate Site #7 was previously used for agriculture. However, previous environmental review included mitigation measures to ensure compliance with applicable regulations and would reduce impacts to a less than significant level.