RECOMMENDED ACTION: 1) Discuss options for regulating the use of anticoagulant rodenticides in the City; and 2) If the Council wishes to move forward with an amendment to the Local Coastal Program (LCP), a) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 459 (Attachment 1) determining Local Coastal Program Amendment (LCPA) No. 14-001 is exempt from the California Environmental Quality Act and amending the Local Coastal Program Local Implementation Plan to modify Chapter 3 pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a coastal development permit (citywide); b) Direct staff to schedule second reading and adoption of Ordinance No. 459 for the January 13, 2020 Regular City Council meeting; and c) Adopt Resolution No. 19-54 (Attachment 2) determining Local Coastal Program Amendment No. 14-001 is exempt from the California Environmental Quality Act and amending the Local Coastal Program Land Use Plan to modify Chapter 3 and Chapter 5 pertaining to a citywide prohibition of anticoagulant rodenticides for development subject to a coastal development permit (citywide).

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

WORK PLAN: This project is not part of the Adopted Work Plan for Fiscal Year 2019-2020; however, this amendment was initiated by City Council on December 8, 2014.
DISCUSSION: Rodenticides are poisons used for the purpose of pest control for various types of rodents. Anticoagulant rodenticides contain lethal agents that damage blood vessels and cause lethal internal bleeding. Besides being lethal to the animal that ingests the poison, the anticoagulant rodenticides have potentially lethal secondary poisoning effects to pets and wildlife that ingest rodents that have consumed the poison.

The United States Environmental Protection Agency (EPA) and California Department of Pesticide Regulation (DPR) have the sole discretion to regulate rodenticides products. The City Attorney has provided a detailed analysis of the legal challenges with undertaking any regulation on the use of anticoagulant rodenticides because local jurisdictions in California are preempted from regulating rodenticides (Attachment 3).

On December 8, 2014, the City Council initiated LCPA No. 14-001 to consider a change to the LCP pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a coastal development permit. LCPA No. 14-001 was subsequently scheduled for Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) and Planning Commission to review and provide feedback.

The Planning Commission held public hearings on January 19, 2016 and February 16, 2016. The Planning Commission adopted Resolution No. 16-23 recommending that City Council incorporate the provisions prohibiting the use of anticoagulant rodenticides that were included in the certified County LCP into the City’s LCP, make the prohibition of anticoagulant rodenticides a legislative priority and urge the California Legislature to either eliminate local preemption or ban anticoagulant rodenticides statewide, and take other actions to identify and promote rodent control methods that do not involve use of poisons.

Current Legislative and Legal Efforts

Assembly Bill (AB) 1788 (Richard Bloom) would create the California Ecosystems Protection Act of 2019 and expand the existing prohibition against the use of a pesticide containing specified anticoagulants in wildlife habitat areas to the entire state. The bill did not advance in 2019 but the language is being fine-tuned and will be considered in 2020. AB 1788 will become what is called a "two-year bill." California has a two-year legislative session, so bills that moved forward this session still have a chance to become law next year. On March 25, 2019, the City Council authorized the Mayor to send a letter in support of AB 1788. All letters are included as Attachment 5.

The City has also approved an Earth Friendly Management Policy. The policy governs pest management on City-owned, managed or leased property and bans the use of rodenticides on City property and prohibits their use in connection with any contract with the City. In addition, the City currently adds conditions of approval of Coastal Development Permits (CDPs) that prohibit their use when needed to mitigate impacts caused by new development.
Regulatory Context

The City Attorney has addressed this issue in a memorandum (Attachment 3) dated November 18, 2019. As noted in the memorandum, existing state law sets the context in which the City may restrict the use of anticoagulant rodenticides and local jurisdictions do not have the legal authority to adopt or enforce a ban on rodenticides. While banning the use of anticoagulant rodenticides in the City through the Malibu Municipal Code (MMC) or other local regulation is not possible, the County of Los Angeles has attempted to circumvent this limitation by instead restricting use of rodenticides in new development within the Coastal Zone utilizing its LCP. Cities can prohibit the use of pesticides and rodenticides on City-owned property and many cities including Malibu have adopted policies to do so.

Options

1. Coastal Development Permit Conditions of Approval

   Include the condition in every CDP unless a basis cannot be formed for its inclusion. Conditions of approval to prohibit use of anticoagulant rodenticides can be included in City-issued coastal development permits for new development when the record shows that the development would otherwise cause an environmental injury by introducing their use. This is an easy record to create.

2. State Law Change

   Continue to lobby the state legislature to eliminate the local jurisdiction preemption.

3. Outreach, Education and Use of Existing Programs

   Existing citywide water quality regulations and programs address trash management (which is related to rodent control) and include inspection provisions. The City also has several means of outreach at its disposal to promote important information about poison free pest control methods and encourage the community to stop using rodenticides. An aggressive educational outreach strategy could include:

   - Staff outreach to organizations and schools (commercial realtors, homeowners associations, etc.) who could then communicate with property owners/parents
   - Social media
   - Information on city webpages
   - Articles in the City’s quarterly newsletter
   - Educational messaging on City TV
4. **Local Coastal Program Amendment No. 14-001**

Adopt what was proposed to the Planning Commission. Attachments 1 and 2 would amend the City’s LCP in the same manner as the County of Los Angeles Santa Monica Mountains LCP, which was certified by the California Coastal Commission (CCC) on October 10, 2014. The County LCP, like the City’s, has an LUP that includes policies, and a Local Implementation Plan (LIP) that includes the standards and requirements that implement the LUP policies.

The County LUP includes a policy that prohibits the use of anticoagulant rodenticides, and other toxic chemical substances that have the potential to significantly degrade biological resources, in the Biological Resources Section of the Conservation and Open Space Element. The County LUP also includes the following policy:

“CO-59 Work toward a poison free Santa Monica Mountains by exploring the feasibility of eliminating the use of all rodenticides at the soonest practicable date, and identify and promote rodent control methods that do not involve the use of poisons.”

The County LCP Local Implementation Plan (County LIP) implements the prohibition on the use of anticoagulant rodenticides in the Vegetation Management and Landscaping sections of the Community-Wide Development Standards chapter and also in the Development Standards sections of the Area-Specific Development Standards chapter. The County LIP applies the prohibition on the use of anticoagulant rodenticides to new projects as a condition of approval. Because the LCP only applies to new development, it does not apply to existing permitted projects.

If the City Council desires to adopt an anticoagulant rodenticide LCPA, staff recommends the amendments below. The LIP amendments are found in Attachment 2 and the LUP Amendments are found in Attachment 3. Proposed text is shown underlined. Bold text represents the formatting of the existing LCP.

A. Amend LUP Chapter 3, Section C (Land Use Policies) to add subtitle and Policy 3.156 to read as follows:

5. **Anticoagulant Rodenticides**

3.156 The use of anticoagulant rodenticides which has the potential to significantly degrade biological resources, is prohibited.

B. Amend LUP Chapter 5, Section C (Land Use Policies) to add subtitle and Policies 5.66 and 5.67 to read as follows:

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1 County of Los Angeles Santa Monica Mountains LCP – [http://planning.lacounty.gov/coastal/Sm](http://planning.lacounty.gov/coastal/Sm)

2 County of Los Angeles LCP LUP Chapter 11, Section D, CO-58
13. Anticoagulant Rodenticides

5.66 The use of anticoagulant rodenticides, which has the potential to significantly degrade biological resources, is prohibited.

5.67 The City should work toward a poison free environment by exploring the feasibility of eliminating the use of all rodenticides at the soonest practicable date, and identify and promote rodent control methods that do not involve the use of poisons.

C. Amend LIP Chapter 3, Section 3.5 (General Development Standards) to add LIP Section 3.5.3(D) to read as follows:

D. Anticoagulant Rodenticides: The use of anticoagulant rodenticides is prohibited.

D. Amend LIP Chapter 3, Section 3.12.1(E) to read as follows:

E. Landscape Plans.

1. Landscape plans shall be prepared by a licensed landscape architect or qualified resource specialist for all graded or disturbed areas on the project site. The landscape plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in the site landscaping. The landscape plans shall be designed to meet the standards in Sections 3.12.1 (A) through (D) of the Malibu LIP.

2. The use of anticoagulants rodenticides is prohibited.

The City LCP, like the County LCP, applies to new development or modifications to existing development in the Coastal Zone requiring a coastal development permit. All properties within the City of Malibu are located within the Coastal Zone as defined in the California Coastal Act. In some cases, specified types of development are exempt from the requirement to obtain a coastal development permit. Coastal development permit approvals are subject to conditions as necessary to ensure conformance with, and implementation of, the certified LCP.

Therefore, the proposed LCP amendments only apply to development subject to a coastal development permit, which would be subject to a condition of approval to comply with these provisions. Therefore, the concerns related to the use of the anticoagulant rodenticides on existing development or new development exempt from a coastal development permit are not addressed by the proposed LCPA.
While the City Council expressed interest in this type of prohibition, there is no LCP mechanism by which to apply it to existing or exempt development.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA and therefore, does not apply to this application. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect.

CORRESPONDENCE: Staff received correspondence from Poison Free Malibu with that includes its preferred language for an LCPA (Attachment 4). Poison Free Malibu proposes a broader prohibition that would prohibit “the use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substances that has the potential to significantly degrade biological resources.” Poison Free also recommends including a requirement that eradication of invasive plant species or habitat restoration shall first consider the use of non-chemical methods for prevention and management, and that herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and used for a limited time. Finally, Poison Free recommends that the descriptor “anticoagulant” be eliminated from the LCPA so that all rodenticides would be banned.

SUMMARY: Staff recommends that the City Council discuss options for regulating anticoagulant rodenticides and provide direction to staff. If the Council wishes to move forward with the LCPA, the Council may: 1) introduce Ordinance No. 459 on first reading and direct staff to bring it back for second reading and adoption; and 2) adopt Resolution No. 19-54.

ATTACHMENTS:

1. Ordinance No. 459
2. Resolution No. 19-54
3. City Attorney Memorandum, dated November 18, 2019
4. Correspondence from Poison Free Malibu dated November 17, 2019
5. Letters from City in Support of AB 1788
6. Notice of Public Hearing
ORDINANCE NO. 459

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING LOCAL COASTAL PROGRAM AMENDMENT NO. 14-001 IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING THE LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN TO MODIFY CHAPTER 3 PERTAINING TO A CITYWIDE PROHIBITION ON ANTICOAGULANT RODENTICIDES FOR DEVELOPMENT SUBJECT TO A COASTAL DEVELOPMENT PERMIT (CITYWIDE)

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

SECTION 1. Recitals.

A. On July 8, 2013, the City Council adopted Resolution No. 13-28 urging businesses in Malibu to no longer use or sell anticoagulant rodenticides and all property owners to cease the purchase and use of these products, and committing the City of Malibu not to use them in City-owned parks and facilities.

B. On December 8, 2014, in compliance with Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 19.2.1, the City Council adopted Resolution No. 14-73 to initiate a Local Coastal Program Amendment (LCPA) to consider changes to the LCP pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a Coastal Development Permit.

C. The Malibu Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) met on August 11, 2015 and on September 21, 2015 to discuss the regulatory context in which the use of anticoagulant rodenticides may be regulated.

D. On November 4, 2015, a Notice of Planning Commission Public Hearing and Notice of Availability was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

E. On January 19, 2016 and February 9, 2016, the Planning Commission held public hearings and adopted Resolution No. 16-23 recommending the City Council approve LCPA No. 14-001, amending the LCP with provisions to prohibit the use of anticoagulant rodenticides, take additional actions to promote rodent control methods that do not involve the use of poisons, and lobby the California Legislature to either eliminate local preemption or ban use of anticoagulant rodenticides statewide.

F. On May 29, 2018, the City Council authorized Councilmember Rosenthal to request that the League of California Cities Environmental Quality Policy Committee consider adding the potential banning of pesticides, herbicides, rodenticides and insecticides throughout California as a priority issue and directed staff to proceed with a LCPA regarding the use of pesticides, herbicides, rodenticides and insecticides.
G. On March 25, 2019, the City Council authorized the Mayor to send a letter in support of AB 1788, a bill that would expand current regulations prohibiting the use of pesticides containing one or more anticoagulants to the entire State, including State-owned property, unless the Department of Public Health determines there is a public health emergency or California Environmental Protection Agency determines there is an environmental emergency.

H. On June 24, 2019, the City Council approved an update to the City’s Earth Friendly Management Policy. The policy governs pest management on City-owned, managed or leased property and prohibits all poisons, including anticoagulant rodenticides.

I. On November 14, 2019, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu for LCPA No. 14-001.

J. On December 9, 2019, the City Council held a duly noticed public hearing on LCPA No. 14-001, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information in the record.

SECTION 2. Environmental Review.

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

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 14-001 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

1. Chapter 3 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against disruption of habitat values and that development should be designed to prevent impacts and be compatible with the continuance of those habitats.

2. LCP Land Use Plan (LUP) Policy 3.18 states that “[t]he use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas (ESHA), shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration.” LUP Policy 3.42 carries forward policies that minimize the impact of new development on ESHA. The provisions included in the LCPA fulfill and
promote these policies by ensuring that toxic chemical substances that degrade coastal resources are prohibited within the City of Malibu’s jurisdiction. The LCPA is protective of wildlife and riparian habitat, marine resources, and water quality. Therefore, the LCPA meets the requirements of, and is in conformance with the goals, objectives and purposes of the LCP.

3. To fulfill LUP policies, the LCPA includes amendments to LCP Local Implementation Plan (LIP) Sections 3.12.1 and 3.5.3, incorporating development standards to ensure new development is designed and constructed in a manner that minimizes and mitigates impacts from toxic chemical substances to the coastal resources, such as the surface and ocean water quality, ESHA, and marine, wildlife and riparian habitat, where they are unavoidable. Therefore, the LCPA meets the requirements of and is in conformance with the goals, objectives and purposes of the LCP.

SECTION 4. Local Coastal Program Amendment No. 14-001.

LCPA No. 14-001 includes the following amendments to the LCP Local Implementation Plan (LIP) Chapter 3 (Zoning):

1. Add LIP Section 3.5.3(D) to read as follows:

   D. Anticoagulant Rodenticides: The use of anticoagulant rodenticides is prohibited.

2. Amend LIP Section 3.12.1(E) to read as follows:

   E. Landscape Plans.

   1. Landscape plans shall be prepared by a licensed landscape architect or qualified resource specialist for all graded or disturbed areas on the project site. The landscape plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in the site landscaping. The landscape plans shall be designed to meet the standards in Sections 3.12.1 (A) through (D) of the Malibu LIP.

   2. The use of anticoagulants rodenticides is prohibited.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts LCPA No. 14-001, amending the LCP.

SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 14-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code
of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations section 13551, et. seq.

SECTION 7. Effectiveness.

The LCP amendment approved in this Ordinance shall become effective only upon its certification by the CCC.

SECTION 8. The City Clerk shall certify this ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2020.

_____________________________
KAREN FARRER, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: ______________________

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY’S OFFICE
CHRISTI HOGIN, City Attorney
RESOLUTION NO. 19-54

A RESOLUTION OF THE CITY OF MALIBU DETERMINING LOCAL COASTAL PROGRAM AMENDMENT NO. 14-001 IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING THE LOCAL COASTAL PROGRAM LAND USE PLAN TO MODIFY CHAPTER 3 AND CHAPTER 5 PERTAINING TO A CITYWIDE PROHIBITION OF ANTICOAGULANT RODENTICIDES FOR DEVELOPMENT SUBJECT TO A COASTAL DEVELOPMENT PERMIT (CITYWIDE)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On July 8, 2013, the City Council adopted Resolution No. 13-28 urging businesses in Malibu to no longer use or sell anticoagulant rodenticides and all property owners to cease the purchase of and use of these products, and committing the City of Malibu not to use them in City-owned parks and facilities.

B. On December 8, 2014, in compliance with Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 19.2.1, the City Council adopted Resolution No. 14-73 to initiate a Local Coastal Program Amendment (LCPA) to consider changes to the LCP pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a Coastal Development Permit.

C. The Malibu Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) met on August 11, 2015, and on September 21, 2015 to discuss the regulatory context in which the use of anticoagulant rodenticides may be regulated.

D. On November 4, 2015, a Notice of Planning Commission Public Hearing and Notice of Availability was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

E. On January 19, 2016 and February 16, 2016, the Planning Commission held public hearings and adopted Resolution No. 16-23 recommending the City Council approve LCPA No. 14-001, amending the LCP with provisions to prohibit the use of anticoagulant rodenticides, take additional actions to promote rodent control methods that do not involve the use of poisons, and lobby the California Legislature to either eliminate local preemption or ban use of anticoagulant rodenticides statewide.

F. On May 29, 2018, the City Council authorized Councilmember Rosenthal to request that the League of California Cities Environmental Quality Policy Committee consider adding the potential banning of pesticides, herbicides, rodenticides and insecticides throughout California as a priority issue and directed staff to proceed with a LCPA regarding the use of pesticides, herbicides, rodenticides and insecticides.
G. On March 25, 2019, the City Council authorized the Mayor to send a letter in support of AB 1788, a bill that would expand current regulations prohibiting the use of pesticides containing one or more anticoagulants to the entire State, including State-owned property, unless the Department of Public Health determines there is a public health emergency or California Environmental Protection Agency determines there is an environmental emergency.

H. On June 24, 2019 the City Council approved an update to the City’s Earth Friendly Management Policy. The policy governs pest management on City-owned, managed or leased property and prohibits all poisons, including anticoagulant rodenticides.

I. On November 14, 2019, a Notice of Public Hearing and Notice of Availability of LCP Documents for LCPA No. 14-001 was published in a newspaper of general circulation within the City of Malibu.

J. On December 9, 2019, the City Council held a duly noticed public hearing on LCPA No. 14-001, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information in the record.

SECTION 2. Environmental Review.

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

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 14-001 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

1. Chapter 3 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against disruption of habitat values and that development should be designed to prevent impacts and be compatible with the continuance of those habitats.

2. LCP Land Use Plan (LUP) Policy 3.18 states that “[t]he use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas (ESHAs), shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration.” LUP Policy 3.42 carries
forward policies that minimize the impact of new development on ESHA. The provisions included in the LCPA fulfill and promote these policies by ensuring that toxic chemical substances that degrade coastal resources are prohibited within the City of Malibu’s jurisdiction. The LCPA is protective of wildlife and riparian habitat, marine resources, and water quality. Therefore, the LCPA meets the requirements of, and is in conformance with the goals, objectives and purposes of the LCP.

3. To fulfill LUP policies, the LCPA includes amendments to LCP Local Implementation Plan (LIP) Sections 3.12.1 and 3.5.3, incorporating development standards to ensure new development is designed and constructed in a manner that minimizes and mitigates impacts from toxic chemical substances to the coastal resources, such as the surface and ocean water quality, ESHA, and marine, wildlife and riparian habitat, where they are unavoidable. Therefore, the LCPA meets the requirements of and is in conformance with the goals, objectives and purposes of the LCP.

SECTION 4. Local Coastal Program Amendment No. 14-001.

LCPA No. 14-001 includes the following amendments to LUP Chapter 3 (Marine and Land Resources and Chapter 5 – New Development):

A. Amend LUP Chapter 3, Section C (Land Use Policies) to add subtitle and Policy 3.156 to read as follows:

5. Anticoagulant Rodenticides

3.156 The use of anticoagulant rodenticides, which has the potential to significantly degrade biological resources, is prohibited.

B. Amend LUP Chapter 5, Section C (Land Use Policies) to add subtitle and Policies 5.66 and 5.67 to read as follows:

13. Anticoagulant Rodenticides

5.66 The use of anticoagulant rodenticides, which has the potential to significantly degrade biological resources, is prohibited.

5.67 The City should work toward a poison free environment by exploring the feasibility of eliminating the use of all rodenticides at the soonest practicable date, and identify and promote rodent control methods that do not involve the use of poisons.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts LCPA No. 14-001, amending the LCP.
SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 14-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations section 13551, et. seq.

SECTION 7. Effectiveness.

The LCP amendment approved in this Resolution shall become effective only upon its certification by the CCC.

SECTION 8. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of December 2019.

_________________________
KAREN FARRER, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _______________________

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney
Memorandum

To: Mayor Farrer and the Honorable Members of the City Council
From: Christi Hogin, City Attorney
Date: November 18, 2019
Re: Preemption analysis relating to pesticides

The City Council will have an item on its December 9th agenda to create a citywide ban of anticoagulant rodenticides. The purpose of this memorandum is to provide you an analysis of the legal issues surrounding the proposed ban.

Anticoagulant rodenticides are destructive and despicable. Anticoagulant rodenticides contain lethal agents that damage blood vessels and cause death through internal bleeding. The use of anticoagulant rodenticides does not only harm rodents. It also harms and even kills pets and wildlife that consume rodents that have ingested the rodenticide. We have seen the alarming and disgusting effects of these poisons in the recent unnatural deaths of mountain lions in the Santa Monica Mountains.

The City has already adopted a policy banning the use of these poisons on City property and prohibiting their use in connection with any contract with the City. Those measures are completely legal and authorized. They were undertaken by the City in its role as the steward of public property. Banning the use of rodenticides by others on private property requires the City to exercise its legislative authority.

This memo is not about rodenticides or Malibu’s policy decision that it is better off without them. This memo is about the confines of the City’s legislative authority. Specifically, it is about state preemption, which imposes a limit on the City’s legislative authority. I also want to provide a complete explanation of the legal concerns and implications of the proposal to use the LCP to enact the ban, on the theory that the Coastal Act provides the City via the Coastal Commission the authority to adopt a ban despite the conflict with state law.

Before I launch into this, and to avoid this being a page of only problems, let me add that the answer to this problem is state legislation or a statewide initiative. And, by “problem,” I mean that the state may either eliminate the use of these poisons in California (most effective outcome) or eliminate the restriction on the City’s ability to regulate them (limited effect but a start).

In addition, as discussed below, the City may impose (and does!) conditions on CDPs that prohibit their use in order to mitigate an impact created by new development.
1. The County did it, so why can’t Malibu

Los Angeles County adopted a Local Coastal Plan amendment, which was certified by the Coastal Commission. The County’s LCP amendment prohibits the use of anticoagulant rodenticides within the Los Angeles County Coastal Zone. Poison Free Malibu and others have urged the City of Malibu to do the same. County Counsel has endorsed the approach. The County departments that would implement the ban have reported to City staff that they have not tried to enforce the ban against any private party.

It is my understanding that the City is not interested in a mere dead letter, symbolic gesture; instead, the City wants to actually eliminate the use of these poisons. Toward that end, the City has led an effort to coalesce local governments around state legislation and has spearheaded the effort in Sacramento to get legislation passed.

Under current law, the California Food and Agricultural Code expressly prohibits local jurisdictions, such as the City, from banning or otherwise regulating the use of pesticides, including anticoagulant rodenticides. The legal question is whether the Coastal Act changes this for coastal cities.

A. State Preemption

The City of Malibu is a general law city. A general law city may not enact local laws that conflict with general state law.\(^1\) Local law that conflicts with state law is void.\(^2\) A local law conflicts with state law if it (1) duplicates, (2) contradicts, or (3) enters a field that has been fully occupied by state law, whether expressly or by implication. A local law falling into any of these categories is “preempted” and is unenforceable.

State law explicitly bars local governments from regulating or prohibiting pesticide use. This bar is codified in the California Food and Agricultural Code, section 11501.1(a), which reads as follows:

This division and Division 7 . . . are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including,

\(^1\) Cal. Const. art. XI §7. Note that the preemption on the regulation of pesticides also applies to charter cities, such that the form of the local government does not make a difference.

\(^2\) City of Riverside v. Inland Emp Patients Health & Wellness Cntr, Inc. (2013) 56 Cal.4th 729.
but not limited to, an action by a local governmental agency or department, a county board of supervisors, or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, transportation, or use of pesticides, and any of these ordinances, laws or regulations are void and of no force or effect.

State law also authorizes the state to take action against any local entity that promulgates an ordinance or regulation that violates section 11501.1(a). The statute was specifically adopted to overrule a 35 year old court decision in People v. County of Mendocino, which had upheld a local regulation prohibiting aerial application of phenoxy herbicides because the court concluded that state law at that time did not preempt such a prohibition by local government. Subsequently, the state Legislature enacted section 11501.1 specifically to preempt local regulation of pesticides.

The use of pesticides is broadly regulated by state law. In the language of preemption law, the state “occupies the field,” leaving no room for additional local law on the subject. Accordingly, a City ban the use of anticoagulant rodenticides would be unenforceable.

B. Does the Coastal Act Broaden the City’s Legislative Authority or Does the Coastal Commission Have Authority to Act Contrary to the Food & Agricultural Code?

The County takes the position that it is not preempted from enacting in its LCP provisions that conflict with the Food and Agriculture Code because the LCP implements the Coastal Act (which is in the Public Resources Code). The contention is that these are

3 Food and Agric. Code § 11501.1(b). The section provides that the Director of Pesticide Regulation must notify the City if an ordinance or regulation, on its face or in its application, is preempted and must enforce the preemption provisions of state law. I have requested an advisory opinion from the Department, which could alleviate the concerns raised in this memorandum.


6 Note that when the Legislature wants to do the right thing it knows how: In 2014, Assemblymember Bloom’s AB 2657 banned the use of anticoagulants with brodifacoum, bramadiolone, difenacoum or difenacoum from use in any state park, state wildlife refuge or state conservancy. Some exemptions are made for agricultural activities.
both state laws, so there is no preemption obstacle. More specifically, the theory hinges on the premise that, because the Coastal Commission is charged with certifying an LCP pursuant to the Coastal Act, an LCP is not a “local regulation” covered by Food and Agricultural Code Section 11501.1(a) (the pesticide regulation preemption provision quoted above). To contribute to the theory, subsection (c) of Section 11501.1 provides that Section 11501.1(a) (the preemption provision) is not “a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.” The Coastal Commission is a state agency charged with enforcing the Coastal Act. That is the basis for suggesting that the door is open for general regulation of the use of anticoagulant rodenticides by local coastal jurisdictions through the Coastal Commission, even though other state law explicitly prohibits such regulation.

In a recent decision involving a challenge to the certification of the County’s LUP for the Santa Monica Mountains, the Coastal Commission asserted that its certification decisions were not subject to the preemption of local regulation of pesticides. Judge Chalfant of the Los Angeles Superior Court held that Section 11501.1(c) allows the Commission to require the County “to conform to this ban in administering the LCP.” In reaching this conclusion, the court asserts a fundamentally incorrect reading of the Coastal Act: “The Commission may impose land use restrictions to ensure application of Chapter 3 policies. §30512.2.”

However, the Coastal Act does not authorize the Coastal Commission to create new policy or adopt laws that contradict state statutes. The Coastal Commission has no policymaking authority. Indeed, the very Coastal Act provision cited by the court makes that clear:

The following provisions shall apply to the commission's decision to certify or refuse certification of a land use plan pursuant to Section 30512:

(a) The commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.

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7The judge may be familiar. This is the judge that invalidated Measure R and ruled in favor of the City in MTC’s lawsuit against the City.
(b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

Public Resources Code § 30512.2 (emphasis added).

Instead of the Coastal Commission having the authority to set policy, the Coastal Act creates a partnership between state legislature and local government for the purpose of implementing state policies of protecting sensitive coastal resources and assuring maximum public access to the coast. Local governments have legislative authority conferred to them by California Constitution. The Coastal Act mandates local government draft local laws that are consistent with state policy. The definition of an LCP in the Coastal Act is this:

“Local coastal program” means a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.

Public Resources Code § 30108.6. The definition itself makes it pretty clear that the local coastal program is comprised of local laws that implement state policy.

The Coastal Commission certifies that the local laws chosen and adopted by the local government are consistent with state policy. That role is defined in the Coastal Act §30512.2, quoted above. This conclusion is not without legal controversy. The Coastal Commission has taken the position that it has the authority to require certain policies, most recently this perspective is being litigated in cases involving short term vacation rentals. Many local governments, including Malibu, have taken the position that policymaking exceeds the Commission’s jurisdiction.

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8Public Resources Code §30210-30265.5. See Public Resources Code §30500 (requiring preparation of LCPs and expressly preserving local government authority to determine “[t]he precise content of each”).

9The Coastal Commission has been found to have acted in excess of its jurisdiction before. For example, City of Dana Point v. California Coastal Comm’n (2013) 217 Cal.App.4th 170 (Commission exceeded its jurisdiction attempting to review city’s declaration of nuisance); City of Malibu v. California Coastal Comm’n (2012) 206 Cal.App.4th 549 (Commission exceeded its
Indeed, these provisions of the Coastal Act are among the provisions that the City has relied on in the past to protect local control over city land use policy against the Coastal Commission, including in the lawsuits over Ramirez Canyon and the Conservancy’s public works plan. *City of Malibu v. California Coastal Comm’n* (2012) 206 Cal.App.4th 549.

These provisions of the Coastal Act mean that the policymaking function to implement the Coastal Act is limited to the City’s authority but also that the policymaking role is vested in the City. And, as explained above, the City cannot adopt laws that are inconsistent with state law; that is preempted.

Unlike the City, whose zoning authority derives from its constitutional police power, the Coastal Commission is created by the Coastal Act and its authority derives exclusively from the statute. The California Supreme Court examined the Coastal Commission’s statutory authority in *Marine Forests Society v. California Coastal Commission:* 

The Coastal Act authorizes the Coastal Commission to perform a variety of governmental functions, some generally characterized as “executive,” some “quasi-legislative,” and some “quasi-judicial.” As a general matter, the Commission performs an “executive” function insofar as it carries out programs and policies established by the Legislature, and the Commission is included for administrative purposes in the Resources Agency, a part of the executive branch. The Commission performs a “quasi-legislative” function when it engages in rulemaking through the adoption of regulations, and a “quasi-judicial” function when it passes upon applications for coastal development permits, when it reviews jurisdiction attempting to amend a city’s certified local coastal program); *Douda v. California Coastal Com’n.* (2008) 159 Cal.App.4th 1181 (Commission has no power to force a local government to select one land use that conforms to the policies of the Coastal Act over other uses that also conform; only the local government can determine which of multiple conforming uses will be allowed); *Security Nat. Guar., Inc. v. California Coastal Com’n* (2008) 159 Cal.App.4th 402 (Commission exceeded jurisdiction by imposing permit requirement that contradicted local plan); *Schneider v. California Coastal Com’n* (2006) 140 Cal.App.4th 1339 (Commission exceeded its jurisdiction by creating and imposing its own offshore visual and scenic resource protection policy).

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the validity of a local government’s coastal program, and when it issues cease and desist orders with regard to unauthorized development.\textsuperscript{12}

As the California Supreme Court catalogues, the Commission has two categories of authority in relation to cities and they are both “quasi-judicial,” namely (1) certifying that a local coastal program (LCP) implements Chapter 3 policies;\textsuperscript{13} and (2) issuing CDPs for specific development applications until an LCP is certified and, thereafter, determining certain appeals.\textsuperscript{14} The Coastal Act is absolutely clear that the Coastal Commission does not have authority to set local policy. The Legislature left “wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans.”\textsuperscript{15}

The upside of that legal conclusion is that the City gets to choose among policies that conform with the Coastal Act. The downside is that the City’s actions are subject to the constitutional limit on its authority, including that the City cannot adopt laws that conflict with state law.

Whether or not we agree with the state’s policy (and Malibu does not agree with it), applying the legal canons of statutory interpretation, it is hard to avoid the conclusion that the Legislature did not intend to create different rules for the Coastal Zone when it enacted the preemption on regulation of pesticides. If that were the case, regulation of anticoagulant rodenticides would be balkanized. Instead of a single rule statewide, there would be one rule inland and potentially dozens of rules in the Coastal Zone. On the other hand, the Commission did persuade one Superior Court that it had such broad

\textsuperscript{12} Marine Forests Society v. California Coastal Commission (2005) 36 Cal.4th 1, 25-26 (internal citations omitted).

\textsuperscript{13} Pub. Res. Code § 30512.

\textsuperscript{14} Pub. Res. Code §§ 30600, subd. (c), 30601, 30603; Yost v. Thomas (1984) 36 Cal.3d 561, 572-573 (“the Commission in approving or disapproving [an LCP] does not create or originate any land use rules and regulations. It can approve or disapprove but it cannot itself draft any part of the coastal plan.”); City of Malibu v. California Coastal Commission (2012) 206 Cal.App.4th 549, 553-54 (reaffirming that local governments—not the Commission—determine precise content of local policies).

\textsuperscript{15} Yost v. Thomas (1984) 36 Cal.3d 561, 573.
authority. Thus, it is possible that future courts decisions may expand the authority of the Commission.

Absent such case law, the Coastal Act specifically states the following:

“Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the Constitution and laws of this state or that is not specifically delegated pursuant to Section 30519.”

As the City does not have the power to ban anticoagulant rodenticides in the City (pursuant to Section 11501.1(a)), it follows that it cannot assume this power through use of an LCP amendment under the Coastal Act.

For these reasons, if challenged, in my opinion, there is substantial risk that a court would invalidate any LCP provision that conflicts with Section 11501.1(a).

2. Is there any way for the City to prohibit private parties from using anticoagulant rodenticides?

Yes. CDP conditions prohibiting use of rodenticides are legally defensible if sufficient facts are developed in public hearing record. The City may prohibit individual property owners from using them on a case-by-case basis through coastal development permitting (although this is not without legal risk). As an alternative to a citywide ban, the City may prohibit the use of anticoagulant rodenticides as a condition of coastal development permits for new development (where the record shows that the development would otherwise cause an environmental injury by introducing their use, which is an easy record to make).

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16 The Superior Court decision is not legal precedent and cannot be relied on. For our purposes, it does provide evidence of the viability of the Commission’s position. The decision was appealed; however, the plaintiffs did not raise the preemption argument on appeal. That means that this case will not provide any legal authority for whether the Food & Agricultural Code preempts pesticide bans in the Coastal Zone.

Dear Ms Stecko,

Here is the preferred language for the Local Coastal Program Amendment No. 14-001 to be considered at the December 9, 2019 City Council meeting.

"The use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substance that has the potential to significantly degrade biological resources shall be prohibited.

The eradication of invasive plant species or habitat restoration shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicides may be selected only after all other non-chemical methods have been exhausted. Herbicides shall be restricted to the least toxic product and method and, to the maximum extent feasible, shall be biodegradable, derived from natural sources, and used for a limited time."

Our goal was to make it similar to the existing well established LCP for the unincorporated Los Angeles County Santa Monica Mountains LCP (SMMLCP) passed in October 2014. Here it is for reference, the beginning of clause CO-59 in the Land Use Plan:

CO-58. The use of insecticides, herbicides, anti-coagulant rodenticides, or any toxic chemical substance which has the potential to significantly degrade biological resources in the Santa Monica Mountains, shall be prohibited, except where necessary to protect or enhance the habitat itself …

Note that it includes all three - insecticides, herbicides, and anticoagulant rodenticides. We believe that the Malibu LCP Amendment should also cover all three. The major modification we propose from the SMMLCP is to change “anti-coagulant rodenticides” to just “rodenticides.”

A new clear trend has manifested since the 2014 language was written - as the anticoagulants have decreased somewhat in use, there is a trend towards using even more dangerous rodenticides such as bromethalin, cholecalciferol, and even strychnine. These poisons are very fast acting and have no antidote! While the anticoagulants do their damage to wildlife from secondary poisoning, these more commonly are poisoned by non-target animals by direct, primary ingestion. All rodenticides need to be banned.

Thank you,

Kian

Kian Schulman RN,MSN
Email: PoisonFreeMalibu@gmail.com
Website: PoisonFreeMalibu.org
Facebook: Poison Free Malibu
Phone: 310-456-0654
March 26, 2019

Honorable Assemblymember Richard Bloom
California State Assembly, 50th District
State Capitol
P.O. Box 942849
Sacramento, CA 94249

RE: Assembly Bill (AB) 1788 – California Ecosystems Protection Act – SUPPORT

Dear Assemblymember Bloom:

At its Regular meeting on March 25, 2019, the Malibu City Council unanimously voted to support AB 1788, which would ban second generation anticoagulant rodenticides (SGARs) in California – the most toxic “one-feeding kills” poisons – as well as first generation anticoagulants (FGARs) on State-owned properties. These products have widespread impacts on our state’s ecosystems, in particular, California’s treasured wildlife, and pose a great risk to the health and safety of our state’s children and household pets.

Since the California Department of Pesticide Regulation pulled SGARs from consumer shelves in July 2014, there has been no decrease in the rate of wildlife poisoning from these products. The continued use of rodenticides by licensed pest control applicators still allows rodents to consume rodenticides and then poison non-target wildlife and pets who consume the rodents themselves. Based on the California Department of Fish and Wildlife’s studies, from 2014 to 2018, an estimated 70% to 90% of various tested wildlife species in the state were found to have SGARs in their systems. A consumer ban on SGARs alone is insufficient to protect California’s ecosystems and further steps must be taken. AB 1788 would ensure that use of these harmful toxins is prohibited in the State of California, while still leaving licensed applicators and consumers with ample tools to address rodent infestations.

Additionally, AB 1788 would also eliminate the use of dangerous poisons on state properties, many of which are home to wildlife, through the additional prohibition on the use of FGARs on state-owned properties. While SGARs have higher toxicity than prior generations, both first and second generation anticoagulants are responsible for wildlife deaths and sub-lethal impacts that affect the ability of wildlife to survive and thrive. Northern spotted owls, San Joaquin kit foxes, and Pacific fishers are threatened species that are being endangered by FGARs and SGARs. Scientific studies published in 2018 by UC Davis, the California Academy of Sciences, and others show that 70 percent of northern spotted owls have been contaminated with anticoagulant rodenticides. A separate 2018 study by UCLA and others found that these poisons are affecting genes that regulate bobcats’ immune systems.
In addition to harming wildlife, anticoagulants rodenticides pose an unreasonable risk to children who may accidentally ingest these highly toxic poisons. Between 1999 and 2009, the American Association of Poison Control Centers received reports of an average of 17,000 human exposures to rodenticides each year, with 85% of these exposures, approximately 15,000 per year, occurring to children less than 6 years of age.

AB 1788 creates common sense controls on anticoagulant rodenticides by only banning the most toxic rodenticides throughout the state, while providing exemptions for agricultural activities and true public health emergencies. The scientific evidence is clear that anticoagulant rodenticides – particularly SGARs – have a massive impact on California’s ecosystems and the State must act now to prevent the continued degradation of our wildlife and environment.

California has the opportunity to continue to be a world leader on environmental protection and animal welfare through the passage of AB 1788. The City of Malibu thanks you for introducing this vital legislation and urges the Assembly’s Water, Parks, and Wildlife Committee to pass AB 1788 as expeditiously as possible in order to help protect the health of our state’s natural ecosystems and all of the wildlife in the food web.

Sincerely,

Jefferson Wagner
Mayor

Cc: Honorable Members of the Malibu City Council
    Reva Feldman, City Manager
    Honorable Members of the California Assembly Water, Parks, and Wildlife Committee
    Honorable Henry Stern, California State Senate, 27th District
June 24, 2019

Honorable Henry Stern, Chair
California Senate Natural Resources and Water Committee
State Capitol, Room 5046
Sacramento, CA 95814

RE: AB 1788 (California Ecosystems Protection Act) – SUPPORT

Dear Chair Stern and Honorable Members of the California Senate Natural Resources and Water Committee:

I am writing to express my support of AB 1788, introduced by Assemblymember Richard Bloom (D-Santa Monica), which would ban second generation anticoagulant rodenticides (SGARs) – the most toxic, “one-feeding kills” poisons – in California, as well as first generation anticoagulants (FGARs) on State-owned properties. These products are having widespread impacts on our state’s ecosystems, in particular, California’s treasured wildlife, as well as creating unnecessary risk to the health and safety of our state’s children and household pets.

Since the California Department of Pesticide Regulation pulled second generation anticoagulants from consumer shelves in July 2014, there has been no decrease in the rate of wildlife poisoning from these products. The continued use of rodenticides by licensed pest control applicators still allows rodents to consume rodenticides and then poison non-target wildlife (and even pets) who consume the rodents themselves. In fact, based on the California Department of Fish and Wildlife’s own studies from 2014 to 2018, an estimated 70 to 90% of various tested wildlife species in the state were found to have SGARs in their systems. Simply put, the evidence shows that a consumer ban on SGARs alone is insufficient to protect California’s ecosystems and further steps must be taken. AB 1788 would ensure that use of these harmful toxins is prohibited full-stop in the State of California, while still leaving licensed applicators and consumers with ample tools to address rodent infestations.

Additionally, AB 1788 would also help the State eliminate the use of dangerous poisons on State properties, many of which are home to wildlife, through the additional prohibition on the use of FGARs on State-owned properties. While SGARs have higher toxicity than prior generations, both first and second generation anticoagulants are responsible for wildlife deaths and “sublethal” impacts that affect the ability of wildlife to survive and thrive. Northern spotted owls, San Joaquin kit foxes, and Pacific fishers are threatened species that are being endangered by these poisons. New scientific studies published in 2018 by UC Davis, the California Academy of Sciences, and others show that 70 percent of Northern spotted owls have been contaminated with anticoagulant rodenticides. A separate 2018 study by UCLA and others found that these poisons are affecting genes that regulate bobcat immune systems.
In addition to harming wildlife, anticoagulants rodenticides pose an unreasonable risk to children who may accidentally ingest these highly toxic poisons. Between 1999 and 2009, the American Association of Poison Control Centers received reports of an average of 17,000 human exposures to rodenticides each year, with 85% of these exposures, (i.e., approximately 15,000 per year), occurring to children less than six years of age.

AB 1788 allows for common sense controls on anticoagulant rodenticides by only banning the most toxic rodenticides throughout the state, while providing exemptions for agricultural activities and true public health emergencies. The scientific evidence is clear that anticoagulant rodenticides, particularly SGARs, have a massive impact on California’s ecosystems and the State must act now to prevent the continued degradation of our wildlife and environment. Through the passage of AB 1788, California has the opportunity to continue to be a world leader in environmental protection and animal welfare.

At its Regular meeting on March 25, 2019, the Malibu City Council unanimously voted to support AB 1788, and I want to add my personal support and urge you to pass this important bill, which will protect the health of our state’s natural ecosystems, and all of the wildlife in the food web.

Thank you for your attention to this critical issue.

Sincerely,

Jefferson Wagner
Mayor

Cc: Honorable Members of the Malibu City Council
    Reva Feldman, City Manager
    Honorable Richard Bloom, California State Assembly, 50th District
    Jeff Kiernan, Regional Public Affairs Manager, League of California Cities, jkiernan@cacities.org
    Meg Desmond, League of California Cities, cityletters@cacities.org
August 21, 2019

Honorable Senator Anthony J. Portantino, Chair
California Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, CA 95814

RE: Assembly Bill (AB) 1788 – SUPPORT

Dear Chair Portantino and Honorable Members of the Senate Appropriations Committee:

At its Regular meeting on March 25, 2019, the Malibu City Council unanimously voted to support AB 1788, which would ban second generation anticoagulant rodenticides (SGARs) in California – the most toxic “one-feeding kills” poisons – as well as first generation anticoagulants (FGARs) on State-owned properties. These products have widespread impacts on our state’s ecosystems, in particular, California’s treasured wildlife, and pose a great risk to the health and safety of our state’s children and household pets.

Since the California Department of Pesticide Regulation pulled SGARs from consumer shelves in July 2014, there has been no decrease in the rate of wildlife poisoning from these products. The continued use of rodenticides by licensed pest control applicators still allows rodents to consume rodenticides and then poison non-target wildlife and pets who consume the rodents themselves. Based on the California Department of Fish and Wildlife’s studies, from 2014 to 2018, an estimated 70% to 90% of various tested wildlife species in the state were found to have SGARs in their systems. A consumer ban on SGARs alone is insufficient to protect California’s ecosystems and further steps must be taken. AB 1788 would ensure that use of these harmful toxins is prohibited in the State of California, while still leaving licensed applicators and consumers with ample tools to address rodent infestations.

Additionally, AB 1788 would also eliminate the use of dangerous poisons on state properties, many of which are home to wildlife, through the additional prohibition on the use of FGARs on state-owned properties. While SGARs have higher toxicity than prior generations, both first and second generation anticoagulants are responsible for wildlife deaths and sub-lethal impacts that affect the ability of wildlife to survive and thrive. Northern spotted owls, San Joaquin kit foxes, and Pacific fishers are threatened species that are being endangered by FGARs and SGARs. Scientific studies published in 2018 by UC Davis, the California Academy of Sciences, and others show that 70 percent of northern spotted owls have been contaminated with anticoagulant rodenticides. A separate 2018 study by UCLA and others found that these poisons are affecting genes that regulate bobcats’ immune systems.

In addition to harming wildlife, anticoagulants rodenticides pose an unreasonable risk to children who may accidentally ingest these highly toxic poisons. Between 1999 and 2009, the American Association
of Poison Control Centers received reports of an average of 17,000 human exposures to rodenticides each year, with 85% of these exposures, approximately 15,000 per year, occurring to children less than 6 years of age.

AB 1788 creates common sense controls on anticoagulant rodenticides by only banning the most toxic rodenticides throughout the state, while providing exemptions for agricultural activities and true public health emergencies. The scientific evidence is clear that anticoagulant rodenticides – particularly SGARs – have a massive impact on California’s ecosystems and the State must act now to prevent the continued degradation of our wildlife and environment.

California has the opportunity to continue to be a world leader on environmental protection and animal welfare through the passage of AB 1788. The City of Malibu thanks you for introducing this vital legislation and urges the Assembly’s Water, Parks, and Wildlife Committee to pass AB 1788 as expeditiously as possible in order to help protect the health of our state’s natural ecosystems and all of the wildlife in the food web.

Sincerely,

Jefferson Wagner
Mayor

Cc: Honorable Members of the Malibu City Council
    Reva Feldman, City Manager
    Honorable Members of the California Assembly Water, Parks, and Wildlife Committee
    Honorable Henry Stern, California State Senate, 27th District
NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL  

NOTICE OF AVAILABILITY  
OF LCP AMENDMENT MATERIALS  

The Malibu City Council will hold a public hearing on MONDAY, December 9, 2019, at 6:30 p.m. in the Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA, for the project identified below.

LOCAL COASTAL PROGRAM AMENDMENT NO. 14-001 – An amendment to the Local Coastal Program Land Use Plan and Local Implementation Plan to add provisions prohibiting the use of anticoagulant rodenticides.

Applicant: City of Malibu  
Location: Citywide  
City Planner: Bonnie Blue  
(310) 456-2489, extension 258  
bblue@malibucity.org

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

A written staff report will be available at or before the hearing. All persons wishing to address the City Council will be afforded an opportunity in accordance with the Council's procedures.

Copies of all documents relating to the proposed Local Coastal Program Amendment are available for review at City Hall, Malibu Public Library, and the Coastal Commission District office during regular business hours. Written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

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

If there are any questions regarding this notice, please contact Bonnie Blue, at (310) 456-2489, extension 258.

BONNIE BLUE  
Planning Director  

Publish Date: November 14, 2019