



Commission Agenda Report

Planning Commission
Meeting
03-15-21

**Item
5.A.**

To: Chair Jennings and Members of the Planning Commission

Prepared by: Kathy Shin, City Attorney's Office

Approved by: Richard Mollica, Planning Director

Date prepared: February 22, 2021 Meeting date: March 15, 2021

Subject: Local Coastal Program Amendment No. 20-001 - An Amendment to the Malibu Local Coastal Program Sign Regulations

Applicant: City of Malibu
Location: Citywide

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 21-22 (Attachment 1) recommending that the City Council approve Local Coastal Program Amendment (LCPA) No. 20-001, which amends the Malibu Local Coastal Program (LCP) sign regulations, specifically, sections 3.15.3(X) and 3.15.4(C) of the LCP Local Implementation Plan (LIP) and section 2.81 of the LCP Land Use Plan (LUP).

DISCUSSION:

On November 9, 2020, the City Council adopted Resolution No. 20-60 to initiate the amendments to the LCP proposed in Attachment 1. In initiating the LCPA, the Council directed the Planning Commission to consider provisions of the LCP sign regulations in light of the "constitutionally protected rights of private property owners" recognized in the California Coastal Act. (See Cal. Pub. Res. Code, § 30001.5(c).)

On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) violate residents' right to speech under the First Amendment to the United States Constitution.¹

Plaintiffs, the Seiders, reside in Latigo Beach. As relevant here, a lateral public access easement encumbers their residence, and the Seiders now seek to post signs that would purport to demarcate the boundary between the easement area and unencumbered,

¹ *Dennis Seider and Leah Seider, as Trustees of the Seider Family Trust v. City of Malibu* (Case No. 2:20-cv-8781).

private beach. (The easement was recorded pursuant to a condition in the original CDP authorizing development of the residence.) Prior to filing their lawsuit, the Seiders had posted two “PRIVATE BEACH” signs on their property without the benefit of a CDP. Under the LIP, a CDP is required for any such development on beachfront properties.

On April 29, 2020, the California Coastal Commission (CCC) issued the Seiders a Notice of Violation of the California Coastal Act. The Notice states that the Seiders’ signs discouraged public access to the coast and purported to identify the boundary between private property and public beach. Accordingly, even if the Seiders were to apply for a CDP, the Notice states “it is unlikely that Commission staff would recommend approval of the signs since the signs are inconsistent with the Coastal Act and City of Malibu LCP public access policies”² Among other grounds for denial, CCC staff determined that the signs are prohibited by LIP Section 3.15.3(X).

LIP Section 3.15.3(X) reads as follows:

“Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands, and private property shall not be permitted.”

The Seiders challenge this section as an unconstitutional content-based regulation of speech in violation of the First Amendment. They also challenge the criteria by which sign permit applications are reviewed as inherently subjective. Specifically, the Seiders contend that paragraphs 3, 5, and 9 of LIP section 3.15.4(C) give City officials “unbridled discretion to deny a sign CDP,” and thereby result in an unconstitutional prior restraint on speech. The challenged criteria read as follows:

3. That the sign is not detrimental to the public health, safety, or welfare;
5. That the size, shape, color, and placement of the sign is compatible with the neighborhood and other lawful signs in the area;
9. That the location and design of a proposed sign in close proximity to any residential district does not adversely affect the quality or character of such residential area.

Staff has since determined that Sections 2.80 and 2.81 of the LUP contain the same or substantially similar restriction on signs as that challenged in LIP Section 3.15.3(X). See italicized provisions below:

² Because the public access easement encumbering the Seiders’ property was recorded as a condition for a CDP issued by the South Coast Regional Commission (a predecessor agency to the CCC), the sign CDP the Seiders now seek may be subject to the CCC’s original permitting jurisdiction. Under LIP § 13.10.2(B)(2), the CCC retains jurisdiction over “development that would lessen or negate the purpose of any specific permit condition . . . of a Commission-issued coastal permit.”

“2.80. In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. *In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.*”

“2.81. No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. *Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.*”

For consistency, staff recommends that the foregoing language in LUP Sections 2.80 and 2.81 be amended in the same manner as LIP Section 3.15.3(X).

Proposed Amendments

The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech. Therefore, the proposed LCP amendment removes LIP Section 3.15.3(X) and paragraphs 3, 5, and 9 of LIP Section 3.15.4(C) from the Malibu LCP to avoid any implementation that might infringe on residents’ constitutional rights. The amendment also removes the second sentence in LUP Section 2.80 and the second sentence in LUP Section 2.81 from the text.

Findings of Consistency with Coastal Act and LCP:

The proposed amendments meet the requirements of, and are in conformance with, the LCP and the policies of Chapter 3 the California Coastal Act.

Chapter 2 of the LUP incorporates the public access policies set forth in the Coastal Act, including Public Resources Code section 30210, which reads as follows (with relevant text italicized):

“In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, *rights of private property owners*, and natural resource areas from overuse.”

Public Resources Code Section 30001.5(c) also declares that one goal of the Act is to pursue public access policies consistent with the “constitutionally protected rights of private property owners.” Taken together, Section 30210 of the Coastal Act, Section 30001.5(c), and Chapter 2 of the LUP support the amendments proposed herein.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, City activities and approvals necessary for the preparation and adoption of an LCP, including the recommended LCPA, are exempt from the requirements of the California Environmental Quality Act (CEQA). The recommended application is for an amendment to the LCP, which must be certified by the California Coastal Commission before the amendments take effect.

CORRESPONDENCE: No written public correspondence has been received to date.

PUBLIC NOTICE: On February 18, 2021, a Notice of Public Hearing was published in a newspaper of general circulation in the City of Malibu and mailed to all interested parties (Attachment 2).

CONCLUSION: Staff recommends that the Planning Commission adopt Resolution No. 21-22 (Attachment 1) recommending that the City Council approve Local Coastal Program Amendment No. 20-001.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-22
2. Hearing Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU RECOMMENDING THAT THE CITY COUNCIL APPROVE LOCAL COASTAL PROGRAM AMENDMENT NO. 20-001, AN AMENDMENT TO THE LOCAL COASTAL PROGRAM SIGN REGULATIONS, AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

A. On October 22, 2020, the City of Malibu was served with a lawsuit in federal district court alleging that the sign regulations in the Malibu Local Coastal Program (LCP)—specifically, Section 3.15.3(X) and paragraphs 3, 5, and 9 of Section 3.15.4(C) of the LCP Local Implementation Plan (LIP)—violate residents’ rights to speech under the First Amendment to the United States Constitution.

B. The City does not oppose the right of residents to protect their private property or to exercise their freedom of speech.

C. On November 9, 2020, the City Council adopted Resolution No. 20-60, initiating a Local Coastal Program Amendment (LCPA), to consider the challenged provisions of the LIP in light of constitutionally protected rights of private property owners recognized in the California Coastal Act and to determine if amendments to the Malibu LCP are necessary.

D. Resolution No. 20-60 also directs the Planning Commission to schedule a public hearing on the proposed amendment in accordance with the requirements of LIP Chapter 19.

E. On February 18, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation in the City of Malibu.

F. On March 15, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 20-001, at which time it reviewed and considered the Commission Agenda Report, public testimony, and related information in the record.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, City activities and approvals necessary for the preparation and adoption of an LCP, including the proposed LCPA, are exempt from the requirements of the California Environmental Quality Act (CEQA). The proposed application is for an amendment to the LCP, which must be certified by the California Coastal Commission before the amendments take effect.

SECTION 3. Local Coastal Program Amendment Findings.

Based on the evidence in the whole record, the Planning Commission hereby finds as follows:

- A. LCPA No. 20-001, as set forth in Section 4 below, meets the requirements of, and is in conformity with, the LCP and the policies of Chapter 3 the California Coastal Act.
- B. Section 30210 of Chapter 3 of the Act requires the State to advance the public right of access to coastal resources, including through local coastal programs, in a manner consistent with the rights of private property owners.
- C. Chapter 2 of the Malibu Land Use Plan (LUP) incorporates the Act's public access policies, including Section 30210.
- D. As relevant here, the Legislature's statement of goals in Section 30001.5(c) of the Act also declares an intent to maximize public access to the coast "consistent with . . . constitutionally protected rights of private property owners."
- E. Section 2.80 and Section 2.81 of the LUP contain restrictions on permissible signs that are substantially similar to the restriction in LIP section 3.15.3(X). Consistency within the LCP, and with the concern for private property owners' constitutional rights in the Act, requires that all three restrictions be removed from the LCP.

SECTION 4. Local Coastal Program Amendment No. 20-001.

Based on the foregoing findings and record evidence, the Planning Commission hereby recommends that the LCP be amended as follows:

1. Remove section 3.15.3(X) from the LIP.
2. Remove paragraphs 3, 5, and 9 from section 3.15.4(C) of the LIP.
3. Amend section 2.80 of the LUP to read as follows:

"In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed."

4. Amend section 2.81 of the LUP to read as follows:

"No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit."

SECTION 5. Planning Commission Recommendation.

Pursuant to Section 19.3.2(C) of the LIP, the Planning Commission hereby recommends that the City Council approve LCPA No. 20-001.

SECTION 6. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 15th day of March, 2021.

JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-22 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 15th day of March, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHLEEN STECKO, Recording Secretary



City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489
www.malibucity.org

PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING AND
NOTICE OF AVAILABILITY OF LCP
AMENDMENT MATERIALS

**NOTICE OF PUBLIC HEARING
AND NOTICE OF AVAILABILITY OF
LCP AMENDMENT MATERIALS**

The Malibu Planning Commission will hold a public hearing on **Monday, March 15, 2021, at 6:30 p.m.** for the project identified below which will be held via teleconference only in order to reduce the risk of spreading COVID-19 pursuant to the Governor's Executive Orders N-25-20 & N-29-20 & the County of Los Angeles Public Health Officer's Safer at Home Order

LOCAL COASTAL PROGRAM AMENDMENT NO. 20-001 - An amendment to the sign regulations in the certified Malibu Local Coastal Program (LCP), including Local Implementation Plan Sections 3.15.3(X) and 3.15.4 and Land Use Plan Sections 2.80 and 2.81

APPLICANT: City of Malibu
LOCATION: Citywide Project
CASE PLANNER: Justine Kendall, Associate Planner, jkendall@malibucity.org (310) 456-2489, ext. 301

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 Local Coastal Program (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 for the project. All persons wishing to address the Commission regarding this matter will be afforded an opportunity in accordance with the Commission's procedures.

To view or sign up to speak during the meeting, visit www.malibucity.org/virtualmeeting.

Copies of all related documents including review drafts can be reviewed by any interested person by contacting the Case Planner during regular business hours. Oral and written comments may be presented to the Planning Commission on, or before, the date of the meeting.

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.

RICHARD MOLLICA, Planning Director

Date: February 18, 2021