Commission Agenda Report

Planning Commission Meeting
11-02-26
Item 5.D.

To: Chair Kamins and Members of the Planning Commission

Prepared by: Tyler Eaton, AICP, Assistant Community Development Director and Joseph Smith, AICP, Contract Principal Planner

Approved by: Yolanda Bundy, MS, PE, CBO, CFCO, Community Development Director

Date prepared: October 22, 2026 Meeting date: November 2, 2026

Subject: Policies for Administering Mitigation Protocols in the Local Coastal Program for Environmentally Sensitive Habitat Areas and Protected Native Trees

Applicant: City of Malibu
Location: Citywide

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 26-67 (Attachment 1) recommending that the City Council approve two policies (Attachment 1 - Exhibits A and B) to administer mitigation protocols in the Local Coastal Program (LCP) for Environmentally Sensitive Habitat Areas (ESHA) and protected native trees.

SUMMARY: The item before the Planning Commission is consideration of two policies to improve the City's review process when administering mitigation protocols in the LCP to address unavoidable impacts to ESHA and protected native trees resulting from development. The proposed policies would not change City practices but would memorialize and strengthen the City's longstanding application of these protocols. The proposed policies were reviewed by the City Council's Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) on September 30, 2026, where it was recommended that the Planning Division advance the policies to the City Council following review and recommendation by the Planning Commission. Based on feedback received by the ZORACES members and public, the policies were updated to incorporate additional clarifications regarding native tree replanting and post-construction inspections by the City Biologist. The Planning Commission is requested to review the policies and provide any recommendations prior to the City Council's review. Amendments to the LCP are not necessary for the content in the policies as the LCP Local Implementation Plan (LIP) and LCP Land Use Plan (LUP) have existing provisions to support their administration.

DISCUSSION: The Planning Division maintains a Zoning Code and LCP Interpretations and Policy Manual (Manual) that is comprised of various determinations made by the City Council, Planning Commission, and Community Development Director on protocols and zoning code provisions in the Malibu Municipal Code (MMC) and LCP. The Manual is used by staff, the City's decision makers, and the public when seeking further clarity on protocols and specific code issues. As used in the Manual, an *interpretation* resolves what an ambiguous LCP or MMC provision means, while a *policy* establishes how the City will consistently administer provisions in the LCP and MMC whose meaning is already clear.

To-date, the Manual includes the following contents:

- Zoning Code Policies 1 and 2
- Zoning Code Interpretations 1 through 15
- LCP Policies 1 through 6
- LCP Interpretations 1 through 24

Commonly referenced policies include story poles, substantial conformance review, and fuel modification. Commonly used interpretations include determining setbacks from private streets, establishing setbacks on irregularly shaped lots, including outdoor covered areas in the total development square footage (TDSF), how to implement ridgeline standards, and evaluating ancillary food and beverage uses within recreational facilities.

If adopted by the City Council, the proposed policies would be incorporated as LCP Policies 7 and 8.

Proposed Policies

Draft LCP Policy 7: Establish a policy to clarify how the City's mitigation requirements apply to unavoidable impacts to ESHA and protected native trees.

ESHA Component: The LCP requires that new development shall be sited and designed to avoid impacts to ESHA.[1] It further requires that where there is no feasible alternative that can eliminate all impacts, the alternative that would result in the fewest or least significant impacts shall be selected. When development results in unavoidable impacts to ESHA, the LCP mandates that those impacts be fully mitigated, with priority given to onsite mitigation. Impacts could occur in various forms of development such as the creation of a driveway, necessary grading to create a building pad, remediation of a geologic hazard, construction of a structure, voluntary vegetation management, or required fuel modification. LIP Section 4.8.1 provides three methods to mitigate ESHA

[1] LIP §2.1 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 and which could be easily disturbed or degraded by human activities and developments." Additional criteria to be used when determining ESHA is provided in LIP §4.3(B).

impacts: 1) habitat restoration; 2) habitat conservation; or 3) an in-lieu fee for habitat conservation.

Protected Native Tree Component: The LCP requires that new development shall be sited and designed to avoid impacts to native trees[2] to the maximum extent feasible. It further requires that where there is no feasible alternative that can prevent tree removal or encroachment, then the alternative that would result in the fewest or least significant impacts shall be selected. When development results in unavoidable impacts to native trees, the LCP mandates that those impacts be fully mitigated, with priority given to onsite mitigation. LIP Section 5.5 provides three methods to mitigate for protected native tree impacts: 1) onsite tree replacement at a 10 to 1 ratio; 2) offsite mitigation at a 10 to 1 ratio on a site that is restricted from development or is public parkland; and 3) an in-lieu fee to restore or create protected native tree woodland or savannah habitat.

LIP Chapters 4 (ESHA) and 5 (Native Tree Protection) emphasize the importance of fully mitigating impacts onsite. LIP Section 4.8(A) stipulates that offsite mitigation is only permitted when onsite mitigation proves infeasible. Additionally, LUP Policy 3.51 mandates that measures to restore disturbed or degraded habitat on the affected property must be included as mitigation when new development removes or adversely impacts native vegetation.

Despite the LCP's emphasis for onsite mitigation, it is staff's experience that the methods described in LIP Sections 4.8.1 (ESHA) and 5.5 (Native Trees) are often viewed by the public as a menu of mitigation options rather than a mitigation hierarchy. In practice, this view has resulted in the many applications proposing in-lieu fees without first documenting whether restoration or conservation on a subject parcel, or offsite location, is achievable.[3] Because the LIP does not explicitly require an applicant to demonstrate infeasibility for each mitigation method before considering the next, it can be challenging to compel an applicant to use a more protective mitigation method without a definitive City policy. As a result, impacts to ESHA and protected native trees that occur within the City are not always offset within the City. When in lieu fees are paid, they are routed to an outside agency (Santa Monica Mountains Conservancy) that uses the funds to support habitat restoration and implementation projects in the Santa Monica Mountains; however, there is no certainty that the fees would directly result in improving habitats in the City. Further, the City does not have a clear mechanism in the LIP to require that mitigation be provided in proximity to the ESHA or protected native tree(s) that were impacted by development.

[2] LIP §5.1 defines protected native trees as native oak, walnut, sycamore, alder, and toyon, where there is at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, measured at four and one-half feet above natural grade.

[3] Two common reasons why an applicant desires to pay an in-lieu fee are: 1) less burdensome than restoration or conserving land; and 2) restoration may fail following installation. Regarding restoration performance, the LIP contains implementation safeguards that address this concern. LIP §4.8.1(A)(2) requires two performance bonds prior to building permit issuance, one for labor and materials and one for five years of maintenance and monitoring and authorizes the City to collect the security and complete the work on the property if the applicant fails to perform.

Draft LCP Policy 7 would mandate that ESHA and protected native tree mitigation shall be provided in a hierarchy, with methods based on an order of priority. The policy would allow an applicant to propose any mitigation method only upon demonstrating, with substantial evidence and subject to the review and acceptance by the City Biologist and the Community Development Director, that each higher mitigation method is infeasible. If an applicant is unable to demonstrate infeasibility, then the higher method would be required to mitigate for impacts. This hierarchy will help staff provide concrete guidance to applicants and ensure most of the mitigation/restoration, if not all, happens within the City.

The mitigation hierarchy clarified in the policy reads as follows:

Method 1. Complete avoidance of ESHA/protected native trees wherever feasible.

Method 2. Onsite mitigation on the subject parcel, through habitat restoration or habitat conservation, at the required ratios indicated in the LIP Chapters 4 and 5 respectively. This method is strongly preferred and would be the default expectation for all projects.

Method 3. Offsite mitigation at a location within the City, where onsite mitigation is demonstrated to be infeasible. This method gives strong preference that the offsite location be as close to the area impacted as feasible.

Method 4. Offsite mitigation at a location within the Santa Monica Mountains Coastal Zone near the City, where no feasible mitigation opportunity exists within the City.

Method 5. Payment of an in-lieu fee, only where mitigation is demonstrated to be infeasible at each of the higher methods. This method would be considered a *last resort* and would not be accepted by the City as a matter of applicant preference, cost, or convenience.

Method 6. A combination of the hierarchy in this order.

Some lots that cannot accommodate a full onsite replacement may substitute some onsite mitigation for offsite mitigation first, then in lieu fees if there are no other options (Method 6). For example, if two protected native trees were impacted from a development project, the LIP requires that the trees be replaced at a 10 to 1 ratio, so 20 trees of the same species would need to be planted and monitored for their survival over the course of a 10-year period. If the lot was smaller and only could accommodate the planting of 12 trees onsite, and the applicant proves with substantial evidence that the remaining onsite mitigation is not feasible, they would be required to locate an alternative site within the City to plant the remaining 8 trees before turning to in lieu fees.

The proposed policy clarifies the City's expectations to applicants and the public, and would also be used by staff and the City's decision makers when reviewing coastal development permit (CDP) applications. In particular, the policy would guide the City's determination when making the third finding required for all CDPs – that the project is the least environmentally damaging alternative (LIP Section 13.9(C)). If the City's decision makers find that a higher ESHA mitigation method is feasible and available to an applicant, but it was not adequately considered, the project's approval may be conditioned to require the higher method or the project application may be denied since the finding in LIP Section 13.9(C) cannot be made. Specific to protected native trees, LIP Section 5.7(C) requires a finding that all feasible mitigation measures that would substantially lessen significant impacts have been incorporated. Similarly, if the City's decision makers find that a higher protected native tree mitigation method is feasible and available to an applicant, but it was not adequately considered, the project's approval may be conditioned to require the higher method or may be denied since the finding in LIP Section 5.7(C) cannot be made.

The policy clarifies how the City can address replacement tree size through performance criteria by requiring the protected native tree replacement planting program to include measurable size-based standards (i.e., height, trunk diameter, canopy condition, and survival rate) at intervals through the 10-year monitoring period, as required by LIP Section 5.6.2 and subject to the City Biologist's review and acceptance. This is because LIP Sections 5.5.1(B) and 5.5.2(a) require replacement trees to be planted "as seedlings less than one year old," and the policy cannot establish a minimum planting size without an LCP amendment.

An amendment to the LCP is not necessary for the content of this policy as the LIP and LUP have existing language to support a hierarchy of mitigation for unavoidable impacts to ESHA and protected native trees.[4]

Draft LCP Policy 8: Establish a policy to require the City Biologist conduct a site inspection, at the applicant's expense, when impacts to ESHA and protected native trees may occur.

LIP Section 4.3(A) requires the City to determine the physical extent of habitat that meets the LIP's definition of ESHA on a project site. This determination is based on the applicant's site-specific biological study and other relevant sources. Additionally, LIP Section 4.3(D) requires that the City must make findings regarding the physical extent of ESHA present. These findings are based on the applicant's study and other relevant sources, and reviews by the City Biologist and the Environmental Review Board (ERB).

[4] An LCPA is required only where the City proposes to change the text of the LCP or to apply a standard the LCP does not support. Neither of the policies described in Components 1 and 2 do so. The first policy states the priority for onsite mitigation is already established by LIP §§4.8(A) and 5.5 and LUP Policies 3.14 and 3.51, and the inspection policy applies the City Biologist review already required by LIP §§4.3(D) and 5.8(B). Both rest on authority the LCP already assigns to the City, including the Planning Commission's authority to find conformance with the LCP (LIP §§13.7(B) and 13.9(A) and (D)), to impose conditions necessary to ensure LCP conformance (LIP §13.8), and to require supporting information and fees (LIP §§13.6.1(A) and 13.6.3; LUP Policy 3.39)

Historically, the City requires an onsite investigation by the City Biologist for projects with the potential to affect ESHA and protected native trees, in addition to post-construction monitoring of ESHA mitigation sites and/or protected native tree replanting; however, while this requirement is inferred as part of the responsibilities of the City's Biologist, it is not expressly stated in LIP Chapters 4 or 5. The policy memorializes the City's longstanding practice based on existing LCP language and clarifies to applicants that the City Biologist is expected to conduct a site visit at the applicant's expense. The City Biologist's review of a project site is important because relying upon a review of maps and records alone is not a sufficient basis for the findings required by LIP Sections 4.3(D) and 5.7. The City Biologist would conduct the inspection and prepare a written ESHA determination identifying habitat types observed, the mapped extent of ESHA, protected native trees and their protected zones, applicable buffers under LIP Section 4.6.1, and the preliminary applicability of LIP Sections 4.6, 4.7, 4.8 and Chapter 5. The determination would be transmitted to the project planner and the applicant and incorporated into the staff report and any recommended conditions of approval. Additionally, for projects where a condition of approval is included requiring post-construction monitoring of ESHA mitigation sites and/or protected native tree replanting, in-person site inspections are necessary for the City Biologist to verify information contained with annual performance reports, adherence to criteria in the LCP, and to issue corrective actions when applicable.

An amendment to the LCP is not necessary for the content of this policy as the LIP and LUP have existing language to support site inspections by the City Biologist.

ZORACES

The proposed policies were reviewed by ZORACES at its meeting on September 30, 2026. ZORACES members voted 2-0 to advance the policies to the City Council for review following a recommendation by the Planning Commission. Feedback was received from the ZORACES members and public as follows. Staff has provided a response to each.

Draft LCP Policy 7 – Mitigation Hierarchy

1) *Public comment:* Requested the policy also address impacts to ESHA buffers.

   Staff response: The policy provides the hierarchy an applicant would follow when required to mitigate for impacts to ESHA. Pursuant to LIP Section 4.8, mitigation is not required for impacts to ESHA buffers. In order to keep the policy focused on ESHA mitigation as required by the LCP, the policy was not updated to include mitigation requirements for impacts to ESHA buffers. Note that LIP Section 4.6.1 already provides criteria for development to avoid encroachment into ESHA buffers. Should the Planning Commission desire that mitigation for ESHA buffers be formally included in the LCP, it can include feedback to the City Council to consider initiating an amendment to the LCP.

2) *Subcommittee and public comments:* Requested the policy to stipulate that larger tree replanting should be required when mitigating for impacts to protected native trees.

   Staff response: The comment seeks to ensure that replacement trees are appropriately sized and survive replanting. However, LIP Sections 5.5.1(B) and 5.5.2(a) require that replacement trees be planted as "seedlings, less than one year old." Likewise, oak tree mitigation requires the seedlings to "be grown from acorns collected in the area." Because the item before the Planning Commission is a policy and not an amendment to the LCP, the policy cannot establish a minimum planting size contrary to what is currently stated in the LCP.

   However, the policy can address tree size through performance rather than at installation, because LIP Section 5.6.2 (Replacement Trees) requires each annual monitoring report to identify the size and health of every replacement tree and compare that information against the criteria in the protected native tree replacement planting program required by LIP Section 5.5.1(A). In response to the comment, staff has updated the policy accordingly to clarify that that the planting program shall establish measurable, size-based performance standards, such as expected height, trunk diameter, and survival rate at intervals through the 10-year monitoring period, subject to the City Biologist's review and acceptance (see Draft LCP Policy 8 below for inspections).

   Should the Planning Commission desire that a minimum tree planting size be formally included in the LCP, it can include feedback to the City Council to consider initiating an amendment to the LCP.

3) *Subcommittee comment:* Requested the policy to consider allowing non-like-for-like habitat ("out-of-kind mitigation") when mitigation is required, such as coastal dune habitat where another type of habitat is impacted by development.

   Staff response: The comment seeks to provide for habitat replacement that may be considered of more value or necessary than other types of habitat impacted by a specific project. However, LIP Sections 4.8.1(A)(1) and 4.8.1(B) require that habitat restoration and habitat conservation be provided on an area of habitat "equivalent to the affected habitat," and expressly require the City to determine that the mitigation site is of "equivalent type and acreage" to the impacted habitat. LIP Section 4.8.2(A) applies an even stricter standard to wetlands, requiring wetlands "of the same type as the affected wetland."

   The LCP does contemplate some degree of flexibility for potential out-of-kind mitigation as part of a broader conservation plan (versus case-by-base situations), but it is in the context of an LCP amendment. Pursuant to LIP Section 4.8(A) and

LUP Policy 3.14, deviating from standard mitigation could be allowed for offsite mitigation where it is found to be "more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the Malibu LCP."

Because the item before the Planning Commission is a policy and not an amendment to the LCP, the policy cannot authorize out-of-kind mitigation, such as the restoration of coastal dune habitat to offset impacts to another type of habitat. Codifying which habitats could be mitigated with offsite "out-of-kind" restorative projects should be sought in an amendment to the LCP and is something the Commission can recommend to the Council.

Draft LCP Policy 8 – Inspections

1) *Subcommittee comment:* Requested the policy also address any required post-construction inspections by the City Biologist.

   Staff response: In response to the comment, staff updated the policy to also clarify that the City Biologist would conduct post-construction site inspections at the applicant's expense whenever monitoring of ESHA mitigation sites and/or protected native tree replanting is required as a condition of approval (e.g., 1 inspection per year for a period of 10 years).

LUP & General Plan Consistency

The following LUP and General Plan Conservation (CON) Element policies support the proposed mitigation framework.

LUP

1) Policy 3.14: New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

2) Policy 3.51: Disturbed areas' ESHAs shall not be further degraded, and if feasible, restored. If new development removes or adversely impacts native vegetation,

measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.

3) Policy 3.30: Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

4) Policy 3.39 (excerpt): The ERB, in consultation with the City Biologist, shall review development within or adjacent to designated ESHA or other areas containing ESHA identified through a biological study as required pursuant to Policy 3.37. The City may impose a fee on applicants to recover the cost of review of a proposed project by the ERB when required by this policy.

5) Policy 3.65: Where the removal of protected native trees cannot be avoided through the implementation of project alternatives or where development encroachments into the protected zone of protected native trees result in the loss or worsened health of the trees, mitigation measures shall include, at a minimum, the planting of replacement trees on-site, if suitable area exists on the project site, at a ratio of 10 replacement trees for every 1 tree removed. Where on-site mitigation is not feasible, off-site mitigation shall be provided through planting replacement trees or by providing an in-lieu fee, based on the type, size and age of the tree(s) removed.

General Plan

1) CON Policy 1.1.4: The City shall protect ESHAs as a priority over development and against any significant disruption of habitat values.

2) CON Policy 1.1.2: The City shall protect riparian areas and undisturbed areas within significant watersheds and wildlife habitat linkages through the use of open space or conservation easements or equivalent measures.

3) CON Policy 1.1.6: The City shall restore Disturbed Sensitive Resource Areas to the extent feasible and ecologically desirable.

4) CON Policy 1.2.1: The City shall preserve wildlife habitats and habitat linkages.

5) CON Policy 1.2.3: The City shall mitigate net loss of very threatened plant communities.

NEXT STEPS: A proposed resolution with the policies attached as exhibits will be presented to the City Council, including the recommendation by the Planning Commission. If adopted by the City Council, the policies would be in effect immediately. Staff would update the Zoning Code and LCP Interpretations and Policy Manual on the City's website.

ENVIRONMENTAL REVIEW: The proposed Planning Commission recommendation actions do not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because they will not have a potential to result in a direct or indirect physical change in the environment beyond what is already required by and administered pursuant to the City's certified LCP. Therefore, the proposed actions are not subject to CEQA and no further action under CEQA is required.

CORRESPONDENCE: As of publication of this report, no correspondence has been received by staff concerning the proposed policies.

PUBLIC NOTICE: Information regarding the public hearing was published in the meeting agenda ten days prior to the meeting.

ATTACHMENT:

1. Planning Commission Resolution No. 26-67, including:
   Exhibit A – Draft LCP Policy 7 (Mitigation Hierarchy)
   Exhibit B – Draft LCP Policy 8 (City Biologist Inspections)

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 26-67

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DETERMINING THE POLICIES ARE NOT A PROJECT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND RECOMMENDING THAT THE CITY COUNCIL ADOPT TWO POLICIES FOR ADMINISTERING MITIGATION PROTOCOLS IN THE LOCAL COASTAL PROGRAM FOR ENVIRONMENTALLY SENSITIVE HABITAT AREAS AND PROTECTED NATIVE TREES

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

Section 1. Recitals.

A. On September 30, 2026, the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) met to discuss two proposed policies for administering mitigation protocols in the Local Coastal Program (LCP) for Environmentally Sensitive Habitat Area (ESHA) and protected native trees, where it was recommended that the Planning Division advance the policies to the City Council following review and recommendation by the Planning Commission. Based on feedback received by the ZORACES members and public, the policies were updated to incorporate additional clarifications regarding native tree replanting and post-construction inspections by the City Biologist.

B. On October 23, 2026, information regarding the public hearing was published in the meeting agenda.

C. On November 2, 2026, the Planning Commission held a duly noticed public hearing on the proposed policies, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record.

Section 2. Environmental Review.

The Planning Commission actions do not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because they will not have a potential to result in a direct or indirect physical change in the environment beyond what is already required by and administered pursuant to City's certified LCP. Therefore, the actions are not subject to CEQA and no further action under CEQA is required.

Section 3. Planning Commission Action.

Based on the foregoing findings and evidence contained in the record, the Planning Commission has reviewed the proposed policies for administering mitigation protocols in the LCP for ESHA and protected native trees. The Planning Commission hereby recommends that the City Council adopt the two policies as proposed and attached hereto as Exhibits A and B to this resolution.

Section 4. The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 2nd day of November 2026.

MARNI KAMINS, Planning Commission Chair

ATTEST:

REBECCA EVANS, Recording Secretary

Exhibit A: Draft LCP Policy 7 (Mitigation Hierarchy)
Exhibit B: Draft LCP Policy 8 (City Biologist Inspections)

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 26-67 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 2nd day of November, 2026, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

REBECCA EVANS, Recording Secretary

City of Malibu

Planning Division

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DRAFT *LCP Policy 7: Mitigation Hierarchy for ESHA & Protected Native Trees*

Policy Statement

ESHA Component: The Local Coastal Program (LCP) requires that new development shall be sited and designed to avoid impacts to Environmentally Sensitive Habitat Area (ESHA). It further requires that where there is no feasible alternative that can eliminate all impacts, the alternative that would result in the fewest or least significant impacts shall be selected. When development results in unavoidable impacts to ESHA, the LCP mandates that those impacts be fully mitigated, with priority given to onsite mitigation. LCP Local Implementation Plan (LIP) §4.8.1 provides three methods to mitigate ESHA impacts: 1) habitat restoration; 2) habitat conservation; or 3) an in-lieu fee for habitat conservation.

Protected Native Tree Component: The LCP requires that new development shall be sited and designed to avoid impacts to protected native trees to the maximum extent feasible. It further requires that where there is no feasible alternative that can prevent tree removal or encroachment, then the alternative that would result in the fewest or least significant impacts shall be selected. When development results in unavoidable impacts to protected native trees, the LCP mandates that those impacts be fully mitigated, with priority given to onsite mitigation. LIP §5.5 provides three methods to mitigate for protected native tree impacts: 1) onsite tree replacement at a 10 to 1 ratio; 2) offsite mitigation at a 10 to 1 ratio on a site that is restricted from development or is public parkland; and 3) an in-lieu fee to restore or create native tree woodland or savannah habitat.

LIP Chapters 4 (ESHA) and 5 (Native Tree Protection) emphasize the importance of fully mitigating impacts onsite. LIP §4.8(A) stipulates that offsite mitigation is only permitted when onsite mitigation proves infeasible. Additionally, LCP Land Use Policy (LUP) Policy 3.51 mandates that measures to restore disturbed or degraded habitat on the affected property must be included as mitigation when new development removes or adversely impacts native vegetation.

Application

ESHA and protected native tree mitigation shall be provided in a hierarchy, with methods based on an order of priority. A project applicant may propose any mitigation method but only upon demonstrating, with substantial evidence and subject to the City Biologist's review and acceptance, that each higher method is infeasible. If an applicant is unable to demonstrate infeasibility, then the higher method would be required to mitigate for impacts.

Mitigation Hierarchy:

Method 1. Complete avoidance of ESHA/protected native trees wherever feasible.

Method 2. Onsite mitigation on the subject parcel, through habitat restoration or habitat conservation, at the required ratios indicated in the LIP Chapters 4 and 5 respectively. This method is strongly preferred and would be the default expectation for all projects.

Method 3. Offsite mitigation at a location within the City, where onsite mitigation is demonstrated to be infeasible. This method gives strong preference that the offsite location be as close to the area impacted as feasible.

Method 4. Offsite mitigation at a location within the Santa Monica Mountains Coastal Zone near the City, where no feasible mitigation opportunity exists within the City.

Method 5. Payment of an in-lieu fee, only where mitigation is demonstrated to be infeasible at each of the higher methods. This method would be considered a last resort and would not be accepted by the City as a matter of applicant preference, cost, or convenience.

Method 6. A combination of the hierarchy in this order.

Some lots that cannot accommodate a full onsite replacement may substitute some onsite mitigation for offsite mitigation first, then in-lieu fees if there are no other options (Method 6). After all, within City boundaries there are a plethora of sensitive habitats that can use restoration and/or mitigative improvements. For example, if two native protected trees were impacted from a development project, the LIP requires that the trees be replaced at a 10:1 ratio, so 20 trees of the same species would need to be planted and monitored for their survival over the course of a 10-year period. If the lot was smaller and only could accommodate the planting of 12 trees onsite, and the applicant proves with substantial evidence that the remaining onsite mitigation is not feasible, they would be required to locate an alternative site within the City to plant the remaining 8 trees before turning to in-lieu fees.

Replacement Tree Size and Performance

LIP §5.5.1(B) requires that onsite replacement trees be planted as "seedlings, less than one year old," and that oak seedlings "be grown from acorns collected in the area." LIP §5.5.2(a) applies the same requirement to offsite replacement planting. These are standards of the City's certified LCP. Accordingly, this policy does not establish a minimum planting size, and larger nursery stock may not be substituted for, or reduce the number of, the seedlings required by the applicable 10 to 1 ratio.

The LCP instead addresses the size of replacement trees through performance over time rather than through the size of the plant at installation. LIP §5.5.1(A) requires the protected native tree replacement planting program to specify tree or seedling size, planting specifications, and performance standards for determining whether replacement trees are healthy and growing normally. LIP §5.6.2 requires that each annual monitoring report identify the size and health of each replacement tree and compare that information against the criteria established in the planting program.

Accordingly, the protected native tree replacement planting program shall include the following, subject to the review and acceptance of the City Biologist:

1) Size-based performance standards. Measurable standards stating the expected height, trunk diameter, and canopy condition of a healthy replacement tree, and the survival rate to be achieved, at years 1, 3, 5, 7, and 10 of the monitoring period required by LIP §5.6.2.
2) Survival and replacement. A requirement that any replacement tree that dies, or that fails to meet the performance standards, be replaced in kind as a mid-course correction under LIP §5.6.2, and that the monitoring period be extended until the standards are met.
3) Planting specifications and protection measures. Measures reasonably necessary to establish the seedlings, which may include protection from seed and seedling predation and browsing, weed and competing vegetation control, soil preparation, temporary irrigation during the establishment period with a schedule for weaning from irrigation, and protective caging or fencing.
4) Provenance documentation. For oaks, documentation of the collection location and date of the acorns. For other protected native trees, documentation that stock is of local genetic origin to the maximum extent feasible.
5) Supplemental plantings. An applicant may propose container or box stock in addition to the replacement seedlings required by LIP §§5.5.1(B) and 5.5.2(a), where the City Biologist determines the additional plantings are appropriate to site conditions and will not compromise establishment of the required seedlings. Supplemental plantings shall not reduce the number of seedlings required and shall be included in the monitoring program.

City Determinations on Coastal Development Permits (CDP)

This policy also provides guidance to staff and the City's decision makers when reviewing CDP applications. In particular, the policy guides the City's determination when making the third finding required for all CDPs – that the project is the least environmentally damaging alternative (LIP §13.9(C)).

For impacts to ESHA, if the City's decision makers find that a higher mitigation method is feasible for and available to an applicant, but it was not adequately considered, the project's approval may be conditioned to require the higher method or the project application may be denied since the finding in LIP §13.9(C) cannot be made.

For impacts to protected native trees, LIP §5.7(C) requires a finding that all feasible mitigation measures that would substantially lessen significant impacts have been incorporated. If the City's decision makers find that a higher mitigation method is feasible and available to an applicant, but it was not adequately considered, the project's approval may be conditioned to require the higher method or the project application may be denied since the finding in LIP §5.7(C) cannot be made.

City of Malibu

Planning Division

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DRAFT *LCP Policy 8: Inspections by the City Biologist*

Policy Statement

Local Coastal Program (LCP) Local Implementation Plan (LIP) §4.3 requires the City to determine the physical extent of habitat that meets the LIP's definition of Environmentally Sensitive Habitat Area (ESHA) on a project site. This determination is based on the applicant's site-specific biological study and other relevant sources. Additionally, LIP Chapter 5 requires the protection of protected native trees subject to a tree protection plan and tree assessment.

The City Biologist reviews site-specific studies, biological records, tree protection plans, and assessments, and applies applicable LCP provisions. If ESHA or native trees are present, the City Biologist determines its extent and the application of LIP requirements, including development standards (LIP §§4.6 and 5.4), economically viable use provisions (LIP §4.7), and mitigation requirements (LIP §§4.8 and 5.5). If post-construction monitoring is required, the City Biologist reviews performance reports for adherence to criteria in the LCP, issues corrective actions, and conducts site inspections (LIP §4.8, 5.6, and 5.7).

Application

To verify the presence of ESHA or protected native trees and to verify the evidence presented in a biological study, an in-person inspection by the City Biologist is mandatory for all proposed development where ESHA or protected native trees are documented, mapped, or has the potential to qualify as ESHA or a protected native tree(s). Additionally, for projects where a condition of approval is included requiring post-construction monitoring of ESHA mitigation sites and/or protected native tree replanting, in-person site inspections are mandatory by the City Biologist (e.g., 1 inspection per year for a period of 10 years).

Project applicants must submit payment for the City Biologist inspection fee according to the City's current fee schedule, as adopted by the City Council.

Policy established by the _____ on XXXXXX, 202X by Resolution No. XX-XX.

Procedure

1. If the project contains or is adjacent to mapped ESHA or the project materials indicate the potential presence of ESHA or protected native trees (whether on or adjacent to the project site), the City Biologist will coordinate a site inspection with the project applicant and include an invoice with the inspection fee. The Biologist may also be required to visit the site to confirm nearby ESHA, if the project has the potential to impact ESHA or an ESHA buffer through its proposed development including fuel modification. This procedure also applies when an approved project is conditioned to require post-construction monitoring of ESHA mitigation and/or protected native tree replanting.

2. Applicant shall submit payment and notify the City Biologist.

3. City Biologist will conduct the site inspection and document the City's records.

4. City Biologist will notify the project planner and applicant of the determination in writing, confirming or rebutting the evidence presented in the biological study/protected native tree survey. For post-construction monitoring, the City Biologist shall update the City's record database with the inspection and performance status, and notify the project planner as applicable.

5. If additional site inspections are warranted, the City Biologist may request additional site inspections pursuant to this policy.