

**CITY OF MALIBU
LOS ANGELES COUNTY, CALIFORNIA**

Bond Number: 0732736

Premium: \$24,938.00

FAITHFUL PERFORMANCE BOND

Malibu Development Company LLC
(Name and Tract/Parcel Number of Subdivision)

WHEREAS, Malibu Development Company LLC (hereinafter designated as “Principal”) has executed a Subdivision Improvement Agreement (“Agreement”) with the City of Malibu, a municipal corporation (“City”), whereby Principal agrees to construct, install, complete and guarantee for one year after acceptance thereof certain designated public improvements generally identified as follows: La Paz Traffic Signal and Street Improvement as shown on Caltrans permit 716-6MC-2504 (see Attachment A), and

WHEREAS, said Agreement is incorporated herein by this reference; and

WHEREAS, said Principal is required under the terms of said Agreement to furnish a bond to guarantee the faithful performance of said Agreement;

NOW, THEREFORE, The Principal designated above, and INTERNATIONAL FIDELITY INSURANCE COMPANY as Surety, are held and firmly bound unto the City in the penal sum of two million and six hundred twenty five thousand dollars (\$2,625,000.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Agreement and any modification thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, this obligation shall be and remain in full force and effect.

As a part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

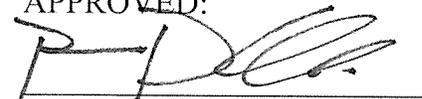
The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, the work to be performed thereunder, or the Improvement Plans and related specifications accompanying the Agreement shall in any manner affect its obligations on this bond. The surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Agreement, the work, or the Improvement Plans and related specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety as of the date or dates set forth below the signatures of their authorized officers.

NOTE: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

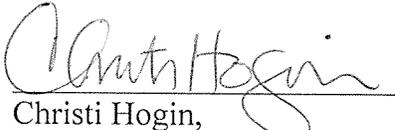
CITY

APPROVED:



City Engineer

APPROVE AS TO FORM:



Christi Hogin,
City Attorney

PRINCIPAL

MALIBU DEVELOPMENT COMPANY LLC

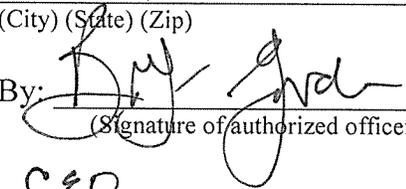
(Type name of Principal)

1317 Fifth Street, Suite 200

(Street Address)

Santa Monica, CA 90401

(City) (State) (Zip)

By: 

(Signature of authorized officer)

CEO

(Title of officer)

Date: 1/3/2018

SURETY

INTERNATIONAL FIDELITY INSURANCE COMPANY

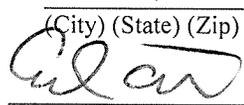
(Type name of surety)

2400 East Katella Avenue, Suite 250

(Street Address)

Anaheim, CA 92806

(City) (State) (Zip)

By: 

(Signature of authorized officer)

Edward C. Spector, Attorney-In-Fact

(Title of officer)

Date: December 21, 2017

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On January 3, 2018 before me, Felice Lipscomb, Notary Public
(Here insert name and title of the officer)

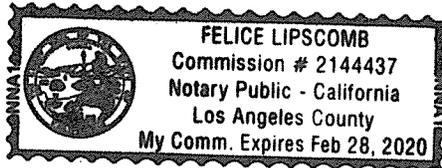
personally appeared Bryan Gordon
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Felice Lipscomb
Notary Public Signature

(Notary Public Seal)



EXPIRES Feb. 28, 2020

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they-, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

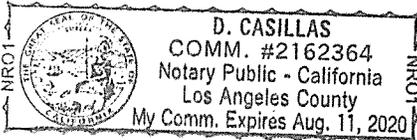
State of California

County of Los Angeles

On DEC 21 2017 before me, D. Casillas, Notary Public, personally appeared Edward C. Spector who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____

D. Casillas
Signature of Notary Public

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of New Jersey, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

JAMES ROSS, TRACY ASTON, EDWARD C. SPECTOR, SIMONE GERHARD, DARAVY MADY, LISA K. CRAIL,
NATHAN VARNOLD, TOM BRANIGAN, PAUL RODRIGUEZ, ASHRAF ELMASRY

Los Angeles, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Chief Executive Officer or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 31st day of December, 2015.



STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Chief Executive Officer (International Fidelity Insurance Company) and President (Allegheny Casualty Company)



On this 31st day of December 2015, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this

day of

DEC 21 2017

MARIA BRANCO, Assistant Secretary

**CITY OF MALIBU
LOS ANGELES COUNTY, CALIFORNIA**

Bond Number: 0732736
Premium: Included in performance
bond

**PAYMENT BOND
(Labor and Materials)**

Malibu Development Company LLC
(Name and Tract/Parcel Number of Subdivision)

WHEREAS, Malibu Development Company LLC, (“Principal”) has executed a Subdivision Improvement Agreement (“Agreement”) with the City of Malibu, a municipal corporation (“City”), whereby Principal agrees to construct, install and complete certain designated public improvements generally identified as follows: La Paz Traffic Signal and Street Improvement as shown on Caltrans permit 716-6MC-2504 (see Attachment A), and

WHEREAS, said Agreement is incorporated herein by this reference; and

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file with the City a good and sufficient payment bond to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, and in Government Code Section 66497;

NOW, THEREFORE, the Principal and the undersigned as Surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of said Agreement and referred to in the above-referenced Civil Code and Government Code in the sum of two million and six hundred twenty five thousand dollars (\$2,625,000.00), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3, (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and under Government Code Section 66497, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement or the Improvement Plans or related specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety as of the date or dates set forth below the signatures of their authorized officers.

NOTE: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

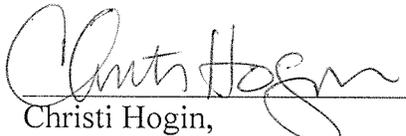
CITY

APPROVED:



City Engineer

APPROVE AS TO FORM:



Christi Hogin,
City Attorney

PRINCIPAL

MALIBU DEVELOPMENT COMPANY LLC

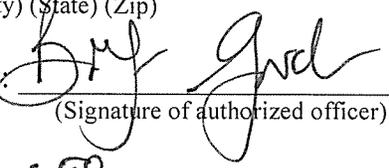
(Type name of Principal)

1317 Fifth Street, Suite 200

(Street Address)

Santa Monica, CA 90401

(City) (State) (Zip)

By: 

(Signature of authorized officer)

CEO

(Title of officer)

Date: 1/3/2018

SURETY

INTERNATIONAL FIDELITY INSURANCE COMPANY

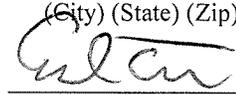
(Type name of surety)

2400 East Katella Avenue, Suite 250

(Street Address)

Anaheim, CA 92806

(City) (State) (Zip)

By: 

(Signature of authorized officer)

Edward C. Spector, Attorney-In-Fact

(Title of officer)

Date: December 21, 2017

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Los Angeles }

On January 3, 2018 before me, Felice Lipscomb, Notary Public
(Here insert name and title of the officer)

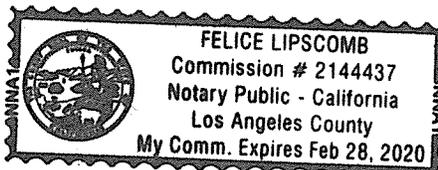
personally appeared Bryan Gordon
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Felice Lipscomb
Notary Public Signature

(Notary Public Seal)



Expires Feb 28, 2020

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

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- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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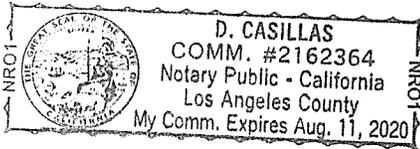
State of California

County of Los Angeles

On DEC 21 2017 before me, D. Casillas, Notary Public, personally appeared Edward C. Spector who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____

D. Casillas
Signature of Notary Public

POWER OF ATTORNEY

INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of New Jersey, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

JAMES ROSS, TRACY ASTON, EDWARD C. SPECTOR, SIMONE GERHARD, DARAVY MADY, LISA K. CRAIL,
NATHAN VARNOLD, TOM BRANIGAN, PAUL RODRIGUEZ, ASHRAF ELMASRY

Los Angeles, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Chief Executive Officer or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 31st day of December, 2015.



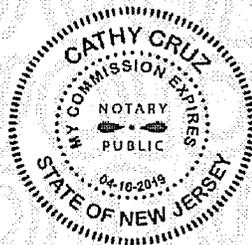
STATE OF NEW JERSEY
County of Essex

ROBERT W. MINSTER
Chief Executive Officer (International Fidelity Insurance Company) and President (Allegheny Casualty Company)



On this 31st day of December 2015, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



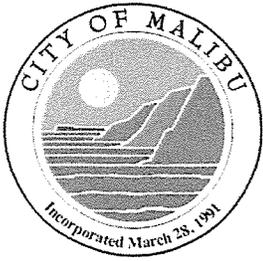
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2019

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this DEC 2 day of 2017

MARIA BRANCO, Assistant Secretary



City of Malibu

23825 Stuart Ranch Road • Malibu, California • 90265-4861
Phone (310) 456-2489 • Fax (310) 456-3356 • www.malibucity.org

March 25, 2015

Pacific Equity Properties, Inc.
1317 Fifth Street, Suite 200
Santa Monica, CA 90401
Attention: Bryan Gordon

James L. Arnone, Esq.
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

Malibu La Paz Ranch, LLC
c/o Sterling Partners
1033 Skokie Blvd., Suite 600
Northbrook, IL 60062
Attn: Jeff Perelman

Donald W. Schmitz, II
Christopher Deleau, Esq.
Schmitz & Associates
29350 W. Pacific Coast Highway, Unit 12
Malibu, CA 90265

Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067

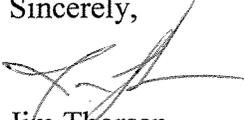
RE: Assignment of the Malibu La Paz Ranch, LLC Development Agreement

Ladies and Gentlemen:

The City received Jeffrey Perelman's March 12, 2015 letter on behalf of La Paz Ranch, LLC, requesting the City's approval of the assignment of its rights and obligations under Development Agreement 07-001 dated November 10, 2008 between the City of Malibu and Malibu La Paz Ranch, LLC. The City Attorney appreciates the proposed buyers' cooperation in providing the required information to determine eligibility for the assignment under the terms of the development agreement. She has determined that the proposed buyers have shown sufficient evidence that they are both financially able and professionally competent to perform La Paz's obligations under the

development agreement, and, on that basis, the City approves the assignment, subject to compliance with all other obligations in the development agreement, including without limitation, that the buyer provide the City the security described in Paragraph 4.6 of the development agreement and an executed agreement as required by Paragraph 4.7.

Sincerely,



Jim Thorsen
City Manager

cc: Mayor Sibert and Honorable Members of the Malibu City Council
Christi Hogin, City Attorney
Bonnie Blue, Planning Director
Agreement file



City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265

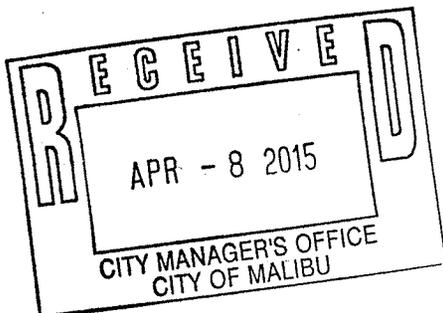
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Jim

Malibu La Paz Ranch, LLC
c/o Sterling Partners
Attn: Jeff Perelman
1033 Skokie
Northbrook,

NIXIE 600 DE 1989 0004/01/15

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD



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4/8/2015 - Re-mailed to:

Malibu La Paz Ranch, LLC
Attn: Jeffrey Perelman
401 N. Michigan Avenue, Suite 3300
Chicago, IL 60611

JENKINS & HOGIN, LLP

A LAW PARTNERSHIP

MEMORANDUM

TO: JIM THORSEN, CITY MANAGER

CC: MAYOR SIBERT AND THE HONORABLE
MEMBERS OF THE CITY COUNCIL
REVA FELDMAN, ASSISTANT CITY MANAGER
BONNIE BLUE, PLANNING DIRECTOR

FROM: CHRISTI HOGIN, CITY ATTORNEY

DATE: MARCH 24, 2015

RE: ASSIGNMENT OF LA PAZ DEVELOPMENT AGREEMENT

Malibu Development Company LLC¹ intends to acquire and Pacific Equity Properties, Inc., a California corporation, intends to develop the La Paz property in the civic center. I'll refer to these two entities together as the Buyer. As you know, the property is the subject of Development Agreement 07-001 dated November 10, 2008 between the City of Malibu and Malibu La Paz Ranch, LLC. The development agreement and associated entitlements underwent environmental review and planning scrutiny in a series of public hearings culminating in the certification of the project's EIR, adoption of the development agreement and associated entitlements. The California Coastal Commission certified LCP amendment for the project on June 10, 2010. By my calculations, the development agreement will not expire sooner than December 20, 2020. I phrase it that particular way because the agreement extends deadlines for various events; to date, with all tolling periods accounted for, the expiration date is December 20, 2020.

The development agreement allows La Paz to assign its interest in the development agreement to a purchaser of the property. Because a development agreement is a contract, which is negotiated between specific parties, the City has

¹Malibu Development LLC has three members: Bonseph Holding La Paz Inc. (a U.S. subsidiary of the Bonseph Group of Toronto); Malibu Equity partners LLC (a new single-purpose investment entity controlled by Bryan Gordon) and Malibu Investment Company LLC (the Managing Partner of which is Bryan Gordon).

an interest in the purchaser to the extent that the City can be assured it will received its bargained-for exchange. The La Paz development agreement is pretty straightforward with respect to public benefits: La Paz will convey 2.3 acre parcel to the City + \$500,000, a bike/pedestrian path, and treated wastewater disposal rights. The development agreement provides that the an assignment of La Paz's rights to the development agreement must be approved by the City; however, the City must give its approval if the assignee assumes all of La Paz's obligations under the development agreement and assignee is financially able to perform La Paz's obligations and possesses the necessary skill to complete the project equivalent to that of La Paz.

The City has been given financial references that have confirmed that the Buyers have financial resources well in excess of what is required to meet the obligations of the development agreement. Pacific Equities Properties, Inc. is a well-established commercial and mixed use real estate developers headquartered in Santa Monica, with projects in Old Pasadena, Belmont Shores, La Jolla and Brentwood. Given that the City is obligated to approve a transfer if one would reasonably conclude that the criteria of Paragraph 4.4.1 are met, the City has no discretion in the matter. The real estate transaction between La Paz and the Buyers in currently in escrow awaiting, in part, the City's approval of the assignment. Having examined the evidence, including the confidential and proprietary information shared with my office for the sole purpose of satisfying the requirements of the development agreement, with sufficient diligence to determine that a reasonable person would find the Buyers both financially able and professionally competent to perform La Paz's obligations under the development agreement, I recommend that you provide the City's written approval of the assignment of the development agreement from La Paz to the Buyers in a letter that states the following:

Pacific Equity Properties, Inc.
1317 Fifth Street, Suite 200
Santa Monica, CA 90401
Attention: Bryan Gordon

James L. Arnone, Esq.
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560

Malibu La Paz Ranch, LLC
c/o Sterling Partners
1033 Skokie Blvd., Suite 600
Northbrook, Illinois 60062
Attn: Jeff Perelman

Donald W. Schmitz, II
Christopher Deleau, Esq.
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, California 90265

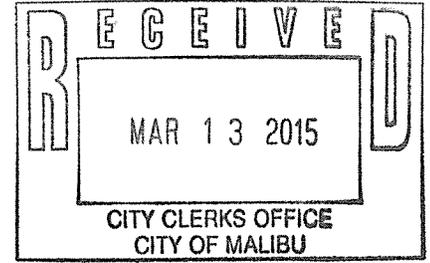
Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067

Ladies and Gentlemen:

The City received Jeffrey Perelman's March 12, 2015 letter on behalf of La Paz Ranch, LLC, requesting the City's approval of the assignment of its rights and obligations under Development Agreement 07-001 dated November 10, 2008 between the City of Malibu and Malibu La Paz Ranch, LLC. The City Attorney appreciates the proposed buyers' cooperation in providing the required information to determine eligibility for the assignment under the terms of the development agreement. She has determined that the proposed buyers have shown sufficient evidence that they are both financially able and professionally competent to perform La Paz's obligations under the development agreement; and, on that basis, the City approves the assignment, subject to compliance with all other obligations in the development agreement, including without limitation, that the buyer provide the City the security described in Paragraph 4.6 of the development agreement and an executed agreement as required by Paragraph 4.7.

By _____
James Thorsen, City Manager
City of Malibu

MALIBU LAPAZ RANCH, LLC
401 N. Michigan Ave., Suite 3300
Chicago, IL 60611



March 12, 2015

VIA FEDERAL EXPRESS

City Clerk
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265

Christi Hogan, Esq.
JENKINS & HOGAN, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266

Re: Malibu La Paz Ranch

Ladies and Gentlemen:

Reference is made to that certain Development Agreement executed on or about February 13, 2010 (the "**Development Agreement**") by and between the City of Malibu ("**City**") and Malibu La Paz Ranch, LLC, a Delaware limited liability company ("**La Paz**"), covering approximately 15.29 acres of property located in Malibu, California (the "**Property**"), as more particularly described in the Development Agreement.

Pursuant to that certain Agreement of Purchase and Sale of Real Property and Escrow Instructions dated October 13, 2014, as amended (the "**Purchase Agreement**") by and between La Paz and Malibu Development Company, LLC, ("**Malibu Development Co.**"), La Paz has agreed to sell the Property to Malibu Development Co. The sale of the Property is conditioned upon, among other matters, the City's consent to an assignment of La Paz's rights and obligations under the Development Agreement. Accordingly, pursuant to Section 4.4.1 of the Development Agreement, La Paz hereby requests that the City consent to an assignment of the rights and obligations of La Paz under the Development Agreement to Malibu Development Co. upon the closing of the sale of the Property (which is expected to occur on or about 3/23/15, 2015).

We also understand the Malibu Development Co. has contacted you regarding delivery of its financial statements and certain requested confidentiality requirements. If this is not

correct, please let us know immediately. Additionally, please let us know if you need additional information regarding the proposed buyer/assignee.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Perelman', written over a horizontal line.

Jeffrey Perelman
Member, Malibu La Paz Ranch, LLC

cc: David C. Klein
Mr. Bryan Gordon
Kevin Ehrhart, Esq.
Elizabeth Levin, Esq.
Mr. Don Schmitz

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California

02/10/15 AT 12:40PM

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THIS FORM IS NOT TO BE DUPLICATED

RECORDED AT REQUEST OF AND
WHEN RECORDED MAIL TO:



CITY CLERK
CITY OF MALIBU
23825 Stuart Ranch Road
Malibu, CA 90265

DEVELOPMENT AGREEMENT BY AND BETWEEN

THE CITY OF MALIBU

and

MALIBU LA PAZ RANCH, LLC

THIS AGREEMENT SHALL BE RECORDED
WITHIN TEN DAYS OF EXECUTION BY
ALL PARTIES HERETO PURSUANT TO
GOVERNMENT CODE § 65868.5

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into on this 10th day of November, 2008, by and between the CITY OF MALIBU ("CITY"), a general law city duly organized and existing under the laws of the State of California, and MALIBU LA PAZ RANCH, LLC ("LA PAZ"), a limited liability company authorized to do business in the State of California. CITY and LA PAZ may be referred to individually as "Party" and collectively as "Parties." (Modified as suggested by Coastal Commission on May 10, 2010)

1. RECITALS

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

1.1 LA PAZ has submitted two applications to CITY for the development of LA PAZ's 15.29 acre property (the "Property"). The applications are for two projects defined hereafter as the Preferred and Alternative Projects (collectively "the Projects"). The Property is described more specifically in the legal description attached as Exhibit 1. A map depicting the Property and its location is attached as Exhibit 2;

1.2 The CITY has asked that LA PAZ include in the Preferred Project a parcel of land for a proposed 20,000 square foot City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.3 LA PAZ has agreed to convey 2.3 acres of the Property to the CITY for a new City Hall, or certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement, and undertake the other obligations set forth herein, if it receives all of the assurances set forth in this Agreement;

1.4 Government Code § 65864, *et seq.* authorizes CITY to enter into binding development agreements such as this Agreement with persons having legal or equitable interests in real property in order to, among other things, provide certainty in the approval of development projects so as to strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, make maximum efficient utilization of resources at the least economic cost to the public and avoid waste of resources escalating the cost of development to the consumer. This Agreement provides assurances to LA PAZ that, if the Preferred Project is approved, during the term of this Agreement it may be implemented in accordance with the CITY's official policies, ordinances, rules and regulations in force as of the date the ordinance approving this Agreement was approved by the City Council;

1.5 Pursuant to Government Code § 65865, CITY has adopted rules and regulations for consideration of development agreements, and proceedings have been taken in accordance with CITY's rules and regulations;

1.6 By entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement and permitted by law;

1.7 The terms and conditions of this Agreement have undergone extensive review by the CITY and City Council. CITY and LA PAZ acknowledge and agree that the consideration to be exchanged pursuant to this Agreement is fair, just and reasonable;

1.8 This Agreement and the Project which is the subject of this Agreement are consistent with the CITY's General Plan, and its Local Coastal Program (LCP);

1.9 CITY has certified a Final Environmental Impact Report, SCH No. 2003011131 for the Project ("the EIR");

1.10 All actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, including hearings by the planning commission and legislative body, findings, votes, and other procedural matters;

1.11 Development of the Preferred Project will further the comprehensive planning objectives contained within the General Plan, and will result in public benefits, including, among others, the following:

1.11.1 Dedication of 2.3 acres of land for a new City Hall, or for certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.2 Provision of \$500,000 for a new City Hall, or for development of certain municipal uses that may in the future be approved by the CITY, as set forth in this Agreement;

1.11.3 Contributing via planned Project improvements to the creation of a linear wetland park;

1.11.4 Providing landscaped and irrigated open space areas, as well as subterranean parking structures, which, under appropriate conditions, may be used as emergency evacuation zones.

1.11.5 Dedication of an internal segment of the Malibu-Pacific trail connecting Serra Retreat to Legacy Park;

1.11.6 Creating significant offsite public improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

2. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

2.1 “Agreement” means this Development Agreement.

2.2 “Vesting Date” means the date on which the ordinance enacting this Agreement was approved by the CITY’s City Council.

2.3 “CITY” means the City of Malibu, a general law city, duly organized and existing under the laws of the State of California.

2.4 “LA PAZ” means Malibu La Paz Ranch, LLC.

2.5 The “Preferred Project” means the project described in Sections 2.14.3 and 5.1.

2.6 “Development” means the entitlement, and improvement of the Property for the purposes of completing the structures, improvements and facilities described herein including, but not limited to: grading; the construction of infrastructure and public facilities related to the Preferred Project (as such Project may be approved), whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping, septic system, retaining walls, drainage devices, retention ponds, drive aisles with at grade parking, subterranean parking structures, fire department turn arounds, water features, public congregation and recreation areas, and hardscaping.

2.7 “Development Agreement Statute” means Government Code § 65864 *et seq.* as it exists on the Effective Date.

2.8 “Project Approvals” means all plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial, necessary in connection with development of the Preferred Project in accordance with this Agreement, which may include but are not limited to:

2.8.1 Compliance with the California Environmental Quality Act, Public Resources Code § 21000 *et seq.* (“CEQA”);

2.8.2 Plot Plans;

2.8.3 Site Plan Review;

2.8.4 Coastal Development Permits ;

2.8.5 General Plan Amendments;

2.8.6 Local Coastal Program amendments;

2.8.7 Zone text amendments;

2.8.8 Conditional Use Permits;

2.8.9 Minor modifications;

2.8.10 Lot line adjustments;

2.8.11 Grading and building permits;

2.9 The “Applicable Rules” shall consist of the following:

2.9.1 The CITY’s General Plan and Local Coastal Program (LCP) as they exist on the Vesting Date;

2.9.2 The CITY’s Municipal Code, including those sections of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date;

2.9.3 Such other laws, ordinances, rules, regulations, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date.

2.10 “Development Exaction” means any requirement of CITY in connection with or pursuant to any Applicable Rule or project approval, for the dedication of land, the construction of improvements or public infrastructure and facilities, or the payment of any type of fees, taxes, and assessments in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

2.11 “Subsequent Rules” means any change in the Applicable Rules, except as provided in Section 2.13, including, without limitation, any change in any applicable general plan or specific plan, local coastal program, zoning, or subdivision regulation, adopted or becoming effective after the Vesting Date, excluding any such change processed concurrently with this Agreement, but including, without limitation, any change effected by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, agency, commission or department of the CITY, or any officer or employee thereof, or by the electorate, as the case may be (collectively the “Subsequent Rules”), which would, absent this Agreement, otherwise be applicable to the Property, shall not be applied by the CITY to any part of the Project, except as LA PAZ may consent to the application thereof pursuant to Section 3.1 of this Agreement.

2.12 “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to LA PAZ and reserved to CITY under this Agreement. Notwithstanding any other provision of this Agreement, the following Subsequent Rules shall apply to the development of the Property.

2.12.1 Processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for development approvals and permits or for monitoring compliance with any development approvals or permits granted or issued. Provided, however, that LA PAZ shall have no obligation for payment of permit or plan check fees with respect to the CITY’s development of Parcel C.

2.12.2 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

2.12.3 Regulations governing construction standards and specifications including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

2.12.4 Regulations that otherwise would not apply to the development of the Property or Project for which LA PAZ has given its written consent to the application of such regulations pursuant to Section 3.1 of this Agreement.

2.13 "Projects" shall mean the Preferred Project and the Alternative Project, collectively.

2.13.1 "Preferred Project," or singular "Project," means the Project more particularly described in Section 5.1.

2.13.2 Preferred Project Parcel Descriptions

2.13.2.1 "Parcel A", identified as Assessor's Parcel Number 4458-022-023, and legally described in Exhibit 3, represents Parcel A as it exists prior to development.

2.13.2.2 "Parcel A, post-lot line adjustment" means the parcel legally described in Exhibit 4.

2.13.2.3 "Parcel B", identified as Assessor's Parcel Number 4458-022-024 and legally described in Exhibit 5, represents Parcel B as it exists prior to development.

2.13.2.4 "Parcel B, post-lot line adjustment" means the parcel legally described in Exhibit 6.

2.13.2.5 "Parcel C" means the real property legally described in Exhibit 7. Parcel C consists of the 2.3 acres to be conveyed by LA PAZ to the CITY for a new City Hall, or for certain municipal uses that may in the future be considered by the City, as set forth in this Agreement;

2.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property.

3. **VESTED DEVELOPMENT RIGHTS**

3.1 LA PAZ is hereby granted the vested right to develop the Preferred Project on the Property, subject to the Applicable Rules, the Project Approvals, and any future approvals applied for by LA PAZ, or its successors, and granted by the CITY for the Preferred Project (the "Future Approvals").

3.1.1 Vested Development Rights. Notwithstanding any future action of the CITY, whether by ordinance, resolution, initiative, or otherwise, the Applicable Rules shall govern the development of the Preferred Project during the term of this Agreement, except and subject to the Reservations of Authority and the terms of this Agreement. In developing the Property, LA PAZ is provided, and assured, the vested right to require that the rules governing the development of the Preferred Project during the term of this Agreement shall be as provided in this Agreement. LA PAZ in its sole discretion may elect to be subject to any Subsequent Rules that may be enacted. Any such election by LA PAZ shall be made in its sole discretion and shall be in writing.

3.1.2 This Agreement does not (1) grant density or intensity in excess of that otherwise established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, or (4) prohibit or, if legally required, indicate Owner's consent to, the Property's inclusion in any public financing district or assessment district, except as specified herein, or (5) confer any vested rights with respect to the Alternative Project.

3.1.3 The Project conditions are attached hereto as Exhibit 8 and constitute the entirety of the conditions imposed upon the Project.

3.2 Purposes of Agreement. This Agreement is entered into in order to provide a mechanism for planning and carrying out the Preferred Project in a manner that will ensure certain anticipated benefits to both CITY, including without limitation the existing and future residents of CITY, and LA PAZ, and to provide to LA PAZ assurances regarding the land use regulations that will be applicable to the development of the Property, including but not limited to, those land use regulations relating to timing, density and intensity of development, that will justify the undertakings and commitments of LA PAZ described in this Agreement and the investment in planning and development of the major on-site and off-site infrastructure and improvements needed for the Projects, and each of them.

3.3 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may reasonably be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations unless compliance with such state or federal laws or regulations causes a material breach or failure of consideration. Upon repeal of any such law or regulation, or the occurrence of any other event removing the effect thereof, the provisions of this Agreement shall be restored to their original effect.

3.4 Ownership of Property. LA PAZ represents and covenants that it is the owner of the fee simple title to the Property.

3.5 Binding Effect of Agreement. All of the Property shall be subject to this Agreement. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, the CITY and LA PAZ. Any and all rights and obligations that are attributed to

LA PAZ under this Agreement shall run with the land, subject to the assignment provisions of Section 4 of this Agreement.

3.6 Term. The term of this Agreement shall commence on the Vesting Date and shall continue for a period of ten years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

3.6.1 Term of Map(s) and Other Project Approvals. Pursuant to Government Code §§ 66452.6(a) and 65863.9, the term of any subdivision or parcel map that has been, or in the future may be, processed on all or any portion of the Property, and the term of each of the Project Approvals, shall be extended through the termination date of this Agreement.

3.6.2 Tolling of Term of Agreement. The term of this Agreement shall be tolled during the time the Project is pending before the California Coastal Commission. The term of this Agreement shall be tolled during any period of time during which a development moratorium is in effect. For purposes of this Agreement a development moratorium shall be deemed to exist (i) during the period that any action or inaction by CITY or other public agency that regulates land use, development or the provision of services to the land prevents, prohibits or delays the use of the approval or the construction of the Project or (ii) during the period any lawsuit is pending brought by any third party concerning this Agreement, any of the Project Approvals, including pursuant to CEQA, or any Subsequent Approval. Any tolling pursuant to this Agreement of the commencement, or running, of LA PAZ's ten year vesting period will likewise, for an equal period of time, toll the performance of CITY's obligations pursuant to Section 6.4 of this Agreement.

3.7 Bargained For Reliance by Parties. The assurances of the CITY to LA PAZ, and of LA PAZ to the CITY, in this Agreement are provided pursuant to, and as contemplated by, the Development Agreement Statute, and are bargained for, and in consideration of, the undertakings of LA PAZ and the CITY set forth in this Agreement.

4. ASSIGNMENT

4.1 LA PAZ may assign or transfer its rights and obligations under this Agreement with respect to the Property, or any portion thereof, pursuant to the following provisions.

4.2 Right to Assign. Subject to Section 4.4, LA PAZ shall have the right to sell, transfer or assign the Property, in whole or in part (provided that no such partial transfer shall be made in violation of the Subdivision Map Act, Government Code §66410 *et seq.*), to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred.

4.3 Partial Transfers. Subject to Section 4.4, the Property currently consists of two parcels, and it may be further subdivided. Pursuant to Section 4.2, LA PAZ's right to sell, transfer or assign the Property includes the right to sell, transfer or assign any portion of the Property and, in such event, the assumption of the obligations of this Agreement shall apply only to the portion or portions of the Property sold, transferred, or assigned. Upon such a partial

transfer, the rights and responsibilities of LA PAZ under this Agreement, and those of its successors and assigns, shall be severable, and a default by the owner of one portion shall not affect the owner, transferee or assignee of the other portion(s).

4.4 Approval By CITY. If LA PAZ transfers its right title or interest in the Property, as defined and limited in Section 4.8 of this Agreement, prior to the completion of construction of the Project, and issuance by CITY of certificates of occupancy for all structures, such transfer shall be made only in accordance with Sections 4.4, 4.5, 4.6 and 4.7 of this Agreement.

4.4.1 At least forty-five days prior to any proposed sale, transfer or assignment of LA PAZ's right, title or interest in the Property, as defined and limited in Section 4.8 hereof, LA PAZ shall submit to the CITY a request for approval of such proposed sale, transfer or assignment, which approval shall not unreasonably be withheld by the CITY. The CITY may not withhold its approval if a reasonable person would find that:

4.4.1.1 The proposed purchaser, transferee or assignee demonstrates the financial ability to perform the obligations of this Agreement; and

4.4.1.2 The proposed purchaser, transferee or assignee has the necessary qualifications, competence, experience or capability to implement the development plan contemplated by the Project Approvals with the skill, expertise and quality equivalent to that of LA PAZ.

4.5 Provision of Information. LA PAZ shall provide promptly to the CITY such information that the CITY reasonably requests so that CITY can make the determinations called for in Sec. 4.4, hereinabove.

4.6 Provision of Security. The proposed purchaser, transferee or assignee shall provide the CITY with security equivalent to any security previously provided by LA PAZ to secure performance of its obligations under this Agreement. Upon provision of such security the CITY shall promptly release any security previously provided by LA PAZ.

4.7 Provision of Executed Agreement. Concurrently with the closing of any approved sale, transfer or assignment, LA PAZ shall provide the CITY with an agreement executed by the purchaser, transferee or assignee, demonstrating compliance with the applicable provisions of this Section 4.

4.8 Applicability. The provisions of Sections 4.4, 4.5, 4.6, 4.7 shall not be applicable to (i) a transfer or assignment of a mortgage or deed of trust, or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof, or (iii) a transfer as a result of which LA PAZ remains the Managing Member with respect to the Project.

4.9 Termination of CITY's Right of Approval. The provisions of Sections 4.4, 4.5, 4.6, 4.7, and 4.8, hereinabove, shall terminate and be of no further force or effect when LA PAZ has completed construction of the Project and CITY has issued certificates of occupancy for all structures located on Parcel A post-lot line adjustment and Parcel B post-lot line adjustment.

4.10 Release of Transferring Owner. A transferring owner shall be released from all obligations under this Agreement with respect to the portions of the Property transferred, provided the transferor has complied with all of the applicable provisions of Section 4 of this Agreement. Upon transfer of any portion of the Property and the express assumption of LA PAZ's obligations under this Agreement by the transferee, the CITY agrees to look solely to the transferee for compliance with the provisions of this Agreement that relate to the portion of the Property acquired by such transferee. Any such transferee shall be entitled to the benefits of this Agreement and shall be subject to the obligations of this Agreement applicable to the parcel(s) transferred. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way LA PAZ's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for satisfying the good faith compliance requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between the CITY and a transferee shall affect only the portion of the Property owned by such transferee.

4.11 Subsequent Assignment. Any subsequent sale, transfer or assignment of the Property, or a portion thereof, after an initial sale, transfer or assignment must be made in accordance with, and subject to, the terms and conditions of this Section 4.

5. DESCRIPTION AND PROCESSING OF THE PROJECTS

5.1 Preferred Project.

5.1.1 General Project Description. The Preferred Project consists of the development of 15.29 acres into a commercial, retail, restaurant and business park center adjacent to the CITY's development on Parcel C. The Preferred Project includes over eight acres of landscaped and open space area, as well as 112,058 square feet of commercial office, restaurants, including two restaurants of up to 10,000 square feet, in Buildings 5, 6 and 7, and retail uses.

5.1.2 General Parcel By Parcel Breakdown of Preferred Project. The following generally summarizes the Preferred Project.

5.1.2.1 Parcel A, post-lot line adjustment, consists of approximately 312,195 square feet of land area (7.16 acres) and will be developed with commercial office, restaurant and retail uses. The development includes five single-story and two two-story buildings with a total developed floor area of 68,997 square feet. The remaining areas include 118,757 square feet of landscaping and 41,923 square feet of open space, with 346 parking spaces, including surface and below grade parking.

5.1.2.2 Parcel B, post-lot line adjustment, includes approximately 248,610 square feet of land area (5.7 acres) and will be developed with commercial office and retail uses. The development includes four buildings with a total floor area of 43,061 square feet. The development includes approximately 99,444 square feet of landscaping and approximately 56,358 square feet of open space, as well as a total of 197 parking spaces, including a below grade parking structure.

5.1.2.3 Parcel C includes approximately 100,000 square feet of land area (2.3 acres) and is contemplated to house the CITY's new City Hall, which will include a maximum of 20,000 square feet of office uses and, in addition thereto, parking as required by CITY's Municipal Code. If CITY in the future determines not to construct the new City Hall it must do so in accordance with the terms and conditions of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement .

5.1.2.4 The Preferred Project is Summarized as Follows:

Building No.	Occupancy	Floor Area (Gross Square Feet)
PARCEL A		
1	Retail	6,200
2	Retail	6,200
3	Retail	10,248
4	Retail	10,240
5	Retail / Office / Restaurant	17,879
6	Retail / Office / Restaurant	17,830
7	Retail	400
Subtotal Parcel A		68,997
PARCEL B		
8	Office / Retail	15,300
9	Office / Retail	15,640
10	Office	7,258
11	Office	4,863
Subtotal Parcel B		43,061
PARCEL C		
1	CITY Office Uses/Council Room	20,000
Subtotal Parcel C		20,000
TOTAL OVERALL FLOOR AREA		132,058 (FAR = 0.20)

5.1.3 Subject to the requirements of Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4, the CITY may in the future determine Parcel C should be used for another municipal purpose not to exceed the maximum development allowed pursuant to Sec. 5.1.2.3 of this Agreement.

5.1.4 Summary of Entitlements for the Preferred Project (.20 FAR):

5.1.4.1 Coastal Development Permit. In accordance with § 13.3 of the LCP, the Preferred Project will require a Coastal Development Permit. In addition to the development of buildings, landscaping, drainage devices, septic system, roadways, etc., a Coastal Development Permit shall be required for the subdivision/lot line adjustment between Parcel A and Parcel B in order to modify the existing parcel boundaries as depicted on the project survey to those boundaries depicted on the project plans. Additionally, LA PAZ will dedicate in fee as part of the consideration for this Agreement the remaining 2.3 acres to the CITY for the purposes of constructing a new City Hall thereon, or such other development as may in the future be

approved in accordance with Secs. 6.3.2, 6.3.2.1, 6.3.2.2, 6.3.3 and 6.3.4 of this Agreement, and furthering the public benefits required under section 3.8(5)(f) of the LCP.

5.1.4.2 Local Coastal Program Amendment. Pursuant to Sections 3.8(5) and 13.28.1 of the LCP, an LCP Amendment is required for the Preferred Project.

5.1.4.3 Development Agreement. This Agreement between the CITY and LA PAZ is entered into pursuant to Section 5.18 of the LUP and Sections 3.8(5)(e) and 13.28 of the LIP, which require that projects proposing FAR of greater than .15 are processed in accordance with either a development agreement (DA) or as a planned development (PD). In either case, the DA or the PD must also be subsequently certified by the California Coastal Commission as an LCP Amendment. LA PAZ has elected to utilize this Development Agreement.

5.1.4.4 Subdivision Map Act. The dedication of Parcel C to the CITY constitutes a subdivision of land for purposes of the Subdivision Map Act because a third parcel is being created where only two existed previously; however, the subdivision is exempt from parcel map requirements pursuant to Govt. Code § 66428(a)(2) as a conveyance of land to a public agency. A conveyance will still be required; however, a parcel map will not. The California Coastal Act, however, is an independent substantive state law and the subdivision is a “development” in accordance with § 30106 of the Public Resources Code. Therefore, the Coastal Development Permit for the Project shall include the processing of a subdivision of land in its description of approved development.

5.1.4.5 Zone Text Amendment. A Zone Text Amendment shall be required to establish new development standards for the Project in accordance with section 3.8(A)(5)(e) of the CITY’s LCP.

5.1.4.6 Lot Line Adjustment/Parcel Configuration. The 15.29 acre property is currently composed of two lots, zoned Community Commercial. Parcel A (4458-022-023) is 6.22 acres and is to be increased in size (via LLA) to 7.16 acres. Parcel B (4458-022-024) is 9.07 acres and is to be decreased in size (via LLA) to 5.7 acres. The remaining 2.3 acres will be conveyed to the CITY in accordance with Sec. 6.1.1, thus creating Parcel C.

5.1.4.7 Conditional Use Permit. A Conditional Use Permit is required for restaurants, in accordance with Section 3.3(I) of the LIP, Table B of the LIP and Sections 17.24 and 17.66 of the CITY’s Municipal Code.

5.2 LA PAZ May Construct Alternative Project. Nothing in this Agreement shall preclude LA PAZ from proceeding independently with the Alternative Project.

5.3 Fees, Exactions, Mitigation Measures, Conditions, Reservations and Dedications. All development Exactions that are applicable to the Preferred Project or the Property are established by the Applicable Rules, the Project Approvals and this Agreement. Other than as set forth herein, this section shall not be construed to limit the authority of CITY to charge LA PAZ the then current normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse

CITY's actual expenses attributable to such application, processing and permitting and are in force and effect on a CITY-wide basis at the time approvals and permits are granted by CITY. LA PAZ waives any and all rights it may have to challenge development fees that are in force as of the Vesting Date. LA PAZ retains the right to challenge amended or increased development fees enacted after the Vesting Date that do not comply with Government Code § 66000 *et seq.*, or any other applicable statute or rule of law, including its right to receive credits against any amended or increased fees.

5.3.1 LA PAZ shall not be responsible for development fees, permit fees, plan check fees, school fees, mitigation fees, or any other fees or exactions related to the development of Parcel C.

5.4 Plan Review. Plans for each building of the Preferred Project, including plans for signage, trash enclosures and screening and landscaping, shall be reviewed and approved by the CITY's Planning and Building Safety Director prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with the Development Standards, the Applicable Rules and Project Approvals.

5.5 CITY Processing of Permit Applications On An Expedited Basis. The CITY shall expedite the processing of all permits needed for the Preferred Project at LA PAZ's expense, including, but not limited to, all plan checking, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, and other permits or approvals necessary, convenient or appropriate for the grading, excavation, construction, development, improvement, use and occupancy of the Projects in accordance with the CITY's accelerated plan check process under the Applicable Rules. Without limiting the foregoing, if requested by LA PAZ, the CITY agrees to utilize contract planners and plan checkers (at LA PAZ's sole cost), and any other reasonably available means, to expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments.

5.6 Issuance of Building Permits. The CITY shall not unreasonably withhold or condition any ministerial permit provided LA PAZ has satisfied all requirements for such permits.

5.7 Satisfaction of Mitigation Measures and Conditions. In the event that any of the mitigation measures or conditions required of LA PAZ hereunder have been implemented by others to the satisfaction of the CITY, LA PAZ shall be conclusively deemed to have satisfied such mitigation measures or conditions, consistent with CEQA and the LCP, or other applicable state or local statute or ordinance. If any such mitigation measures or conditions are rejected by a governmental agency with jurisdiction, LA PAZ may implement reasonably equivalent substitute mitigation measures or conditions, consistent with CEQA, to the CITY's satisfaction, in lieu of the rejected mitigation measures or conditions. Such substitution shall be deemed a clarification pursuant to Section 11.3 of this Agreement.

5.8 Timing of Development. The Parties acknowledge that LA PAZ cannot at this time predict when or the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of LA PAZ, such as market orientation

and demand, interest rates, absorption, completion and other similar factors. In *Pardee Construction Co. v. City of Camarillo (Pardee)*, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development prevailing as against the parties' agreement. CITY and LA PAZ intend to avoid the result in *Pardee* by acknowledging and providing that LA PAZ shall have the right to develop the Property in such order and at such rate and times as LA PAZ deems appropriate solely within the exercise of its subjective business judgment, but LA PAZ shall have no obligation to develop the Project or the Property.

5.8.1 In furtherance of the Parties' intent, as set forth in this Section 5.8, no future amendment of any existing CITY ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or the Project.

5.8.2 Moratorium. The CITY shall not impose a moratorium on the Property or Project unless the CITY has made legislative findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of the entitlement sought by LA PAZ would result in that threat to public health, safety or welfare, and provided that the CITY has otherwise complied with all applicable law.

5.9 Pedestrian and Bike Path Plan. LA PAZ will coordinate and cooperate with the CITY in the development of a pedestrian and bike path plan that will serve the Preferred Project. LA PAZ agrees that these paths may be utilized by golf carts, as well as pedestrians and cyclists.

5.10 Wastewater System. At the City's request, LA PAZ shall grant to the CITY an easement to build, maintain and dispose on LA PAZ's property unless the CITY finds an alternative means of disposing without the LA PAZ property.

The CITY may in the future approve and implement a municipal centralized wastewater treatment facility for the Civic Center area. If the CITY builds such a centralized wastewater treatment facility and it is fully permitted and operational before LA PAZ receives its final grading permit for construction of its wastewater treatment facility for either the Alternative or Preferred Project, whichever occurs first, LA PAZ will hook up to the CITY's centralized municipal facility and pay an amount equivalent to that paid by other property owners that have hooked up to the system. If the CITY's centralized wastewater treatment facility is not fully permitted and operational when LA PAZ receives its grading permit, LA PAZ shall have the right to go forward with its wastewater treatment facility and shall not be required to hook up to the CITY's facility nor to contribute thereto, unless LA PAZ elects to hook-up to the CITY's facility, in which case LA PAZ may be required to pay an amount equivalent to that paid by other property owners that have hooked up to the system.

5.10.1. Separate City Wastewater Treatment Plant & Corresponding Easement: CITY wishes to reserve its right to construct and maintain its own centralized or on-site wastewater treatment facility on Parcel C. In the event CITY opts to construct such a

separate wastewater plant on Parcel C, LA PAZ agrees to grant CITY an easement for the dispersal of effluent only, onto LA PAZ's property not to exceed 600 gallons per day. How and where the effluent is dispersed onto LA PAZ's property shall remain within the exclusive control and discretion of LA PAZ in accordance with and subject to all applicable laws. The Easement shall only permit the dispersal of excess municipal wastewater treated in compliance with Division 4 of TITLE 22 of the California Code of Regulations. All excess municipal wastewater to be disposed of on the La Paz property shall have been processed in a Title 22 wastewater treatment plant approved by, if such approval is otherwise required by law, the City of Malibu, the California Department of Public Health, the Los Angeles County Regional Water Quality Control Board and any other responsible public agency, as well as performing the required daily monitoring of effluent quality. Only Title 22 compliant waters shall be delivered to La Paz.

5.10.2. Overburdening: The easement is intended to permit excess wastewater disposal onto the La Paz property only in amounts commensurate with that generated by the development of a 20,000 sq. ft. City Hall Office Building housing a maximum of 200 employees (approximately 4000 Gallons per day gross code flow wastewater generation prior to reduction from reuse); any development that exceeds these flow parameters will be deemed to be an overburdening of the easement unless CITY and LA PAZ agree in writing and amend this Agreement to so provide. The City, prior to utilizing its easement for disposal on La Paz's property, shall make all reasonable efforts to recycle and reuse its wastewater for in-building toilet reuse and landscaping on its property (85% anticipated reuse potential from in-building toilet reuse alone). CITY shall install dual plumbing (Purple pipe) in whatever municipal structure(s) that may be constructed in order to provide for the intended recycling and reuse potential in compliance with TITLE 22 and applicable law.

6. DEVELOPMENT OF PARCEL C

6.1 LA PAZ's obligations with respect to Parcel C are limited to the following:

6.1.1 Land Conveyance. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum, and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have terminated in final judgment favorable to LA PAZ and the CITY, including all appeals, or litigation has ended in a settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall convey Parcel C to the CITY. Such conveyance is exempt from the Subdivision Map Act, Government Code § 66410 *et seq.*, pursuant to § 66428(a)(2), as a conveyance to a public agency.

6.1.2 Cash Contribution. After the Preferred Project has received all discretionary approvals from all agencies, including without limitation, the CITY and the California Coastal Commission, and the time has passed for a referendum and all statutes of limitations have expired as to legal challenge to all of the discretionary approvals from all agencies, or all litigation shall have proceeded to final judgment favorable to LA PAZ and the

CITY, including all appeals, or settlement acceptable to LA PAZ in its sole discretion, LA PAZ shall, within 30 days of such date, contribute \$500,000 to the CITY to be used for the development of Parcel C. This contribution is LA PAZ's sole monetary obligation with respect to Parcel C.

6.1.3 Reimbursement of CITY's Fees and Costs. Within 10 working days after the Vesting Date, LA PAZ shall pay \$25,000 to the CITY to reimburse CITY for a portion of its attorneys fees and other costs in negotiating this Agreement.

6.2 LA PAZ May Proceed With Preferred Project. When LA PAZ has satisfied its obligations set forth in Sections 6.1.1 and 6.1.2, it may proceed immediately with construction of its Preferred Project, without regard for the status of the CITY's development of Parcel C.

6.3 CITY's Obligations With Respect to Parcel C.

6.3.1 Cost of Construction. Other than the contribution set forth in Section 6.1.2, all costs associated with development of Parcel C shall be borne solely by the CITY. The CITY acknowledges that changes in the economy and construction trades over the anticipated permitting and construction timeline for new City Hall render it impossible to firmly estimate or to judge actual construction costs of a new City Hall as of the Vesting Date of this Agreement. There are no plans for any other potential use of Parcel C that have been prepared; and the nature of any use which may potentially be approved pursuant to Secs. 6.3.2, 6.3.3 and 6.3.4 is unspecified and uncertain, so any analysis or estimation of permitting and construction costs would be wholly speculative. The CITY has not committed any resources which would foreclose meaningful options for any potential future project, mitigation measure or alternative on Parcel C.

6.3.2 Limitations on Use of Parcel C. This Agreement allows the CITY to use Parcel C for its new City Hall, which must be constructed in substantial conformance with Sections 5.1.2.3 and 5.1.2.4 of this Agreement. The CITY, however, wishes to retain flexibility with respect to its future needs and the use of Parcel C. The Parties therefore agree that the CITY may use Parcel C for a new City Hall, or for a library, community center, senior center, centralized wastewater treatment facility, improved park or for similar uses, with structures, of like kind and nature to those structures and uses heretofore listed in this Sec. 6.3.2. The CITY shall not use Parcel C, or cause Parcel C to be used, primarily for any commercial or retail purpose, although may sell city related merchandise or hold special events which have a commercial component.

6.3.2.1 The CITY agrees that any development of, and construction on, Parcel C shall be consistent with that of LA PAZ's Project.

6.3.2.2 The CITY acknowledges its agreement to use Parcel C as provided herein is a material consideration without which LA PAZ would not have entered into this Agreement because, among other things, the City Hall or the other potential uses would provide a substantial public benefit to the CITY and its residents but would not compete with LA PAZ's Project.

6.3.3 Required CEQA and Public Hearing Process. Before implementing any use of Parcel C other than a new City Hall, the CITY, at its sole cost and expense, must conduct adequate review of its proposed project under CEQA, and at a duly noticed public hearing, the City Council must find that the proposed use is consistent with adjacent uses, the General Plan and the LCP, and any other applicable law, policy, rule, regulation or ordinance.

6.3.4 LA PAZ Reservation of Rights. LA PAZ retains all of its rights to oppose, or seek modification of, any project proposed pursuant to sec. 6.3.3 on any ground whatsoever, including without limitation if the project is not consistent with adjacent uses, the General Plan and/or LCP, has not received adequate review under CEQA or other applicable statute or rule of law requiring environmental review, or does not comply with any other applicable standard, policy, law, rule or regulation.

6.4 Reconveyance of Parcel C to LA PAZ.

6.4.1 If CITY does not build either City Hall or another use approved pursuant to the provisions of this Agreement within ten years of the date of conveyance by LA PAZ, CITY shall reconvey Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Sections 6.4.2 through and including 6.4.4. Provided, however, that if CITY has determined to use Parcel C for a park but has not installed any park improvements, the provisions of this Section shall apply. If CITY determines to sell Parcel C within ten years of the Vesting Date, CITY shall first offer to sell Parcel C to LA PAZ on the terms and conditions hereinafter set forth in Section 6.4.1.1 through and including 6.4.4. The word “sell” shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of Parcel C, except for an easement for utility purposes. The purchase price for Parcel C to be paid by LA PAZ (“Purchase Price”) shall be determined pursuant to Section 6.4.2 hereof.

6.4.1.1 CITY shall deliver notice of any sale of Parcel C it proposes to make prior to the expiration of the ten year period to LA PAZ by registered mail. LA PAZ shall have ten business days from the receipt of such notice to accept or reject purchase of Parcel C (“Acceptance Period”) by delivering its written notice of its intent to purchase Parcel C (“Notice of Intent”) to CITY on or before 5:00 p.m. on the last day of the Acceptance Period. If LA PAZ fails to notify the CITY of its intent to purchase Parcel C on or before the last day of the Acceptance Period, the CITY may proceed with its proposed sale.

6.4.2 The Purchase Price shall be determined based upon the value of Parcel C as entitled for 20,000 square feet of office use, regardless of which use the CITY may have intended for Parcel C. The CITY and LA PAZ shall each select an appraiser holding an MAI certification, who shall each appraise Parcel C. If the two appraisers reach values that are not within 5% of each other, the two appraisers shall select a third appraiser who will appraise Parcel C. The third appraiser shall be limited in his or her appraisal to a valuation no lower nor higher than the values arrived at by the first two appraisers. The third appraiser’s valuation will establish the Purchase Price. If the two appraisers reach values within 5% of each other, the Purchase Price will be determined by splitting the difference.

6.4.2.1 The Purchase Price shall be reduced by a sum equal to \$500,000, less reasonable costs incurred by the CITY for the design, engineering and other costs

reasonably related to the development by CITY of a new City Hall or other use approved pursuant to Sections 6.3.2, 6.3.3 and 6.3.4 of this Agreement.

6.4.2.1.1 LA PAZ may demand in writing substantiation of the costs claimed by CITY to have been incurred toward the development of Parcel C and CITY shall provide such written substantiation within five business days of LA PAZ's demand.

6.4.2.1.2 The costs and fees charged by a third appraiser shall be split evenly between the CITY and LA PAZ.

6.4.3 If the CITY is required to reconvey Parcel C pursuant to LA PAZ's Right of First Refusal, an escrow shall immediately be opened by LA PAZ at an escrow company of LA PAZ's choosing, reasonably acceptable to CITY. The escrow instructions shall provide for a closing date 90 days following the delivery of LA PAZ's notice of intent to Purchase Parcel C ("Closing Period"). The escrow instructions shall reflect the terms and conditions set forth in this Section 6.4, including, but not limited to, the deposit by LA PAZ of the Purchase Price and the deposit by CITY of a warranty grant deed reconveying Parcel C to LA PAZ.

6.4.4 Upon reconveyance to it of Parcel C, to the extent allowed by law, LA PAZ shall be entitled to develop Parcel C with 20,000 square feet of commercial office development within a footprint of development generally consistent with that set forth in Section 5.1.2.3 of this Agreement, regardless of which use the CITY may have intended for Parcel C. The EIR shall be relied upon for CEQA compliance for such development, to the maximum extent allowed by the law. In reviewing LA PAZ's commercial development, the CITY may conduct a site plan review pursuant to Malibu Municipal Code Section 17.62.070, as it exists on the Vesting Date. Any such site plan review shall be limited to review of any substantial changes in the footprint and configuration of development on Parcel C as the CITY, in approving the Preferred Project, has already found that the location and configuration of the proposed City Hall building are consistent with the CITY's General Plan and LCP, does not impact any views and thus comports with Section 17.62.060 of the CITY's Municipal Code, and any other rules or regulations that are or may be applicable. No other or further discretionary review shall be required, except as may be required by the Applicable Rules.

7. PROJECT HEARINGS

7.1 Hearing Schedule. The requirements for notice and hearing are governed by the applicable sections of the CITY's LCP and Municipal Code.

7.2 Separate Approvals. The actions of the CITY on each Project shall be separate. Nothing in this Agreement precludes LA PAZ in its sole discretion from proceeding with the Alternative Project.

7.3 Coastal Commission. If the Preferred Project is considered by the California Coastal Commission, and during that consideration modified, then the matter shall be placed on the Planning Commission agenda and, if required, on the City Council agenda, consistent with legal noticing requirements, at the earliest reasonable opportunity, subject to Section 7.3.1.

7.3.1 If the Preferred Project is modified by the California Coastal Commission, LA PAZ in its sole discretion may elect not to proceed with the hearing process. The CITY retains its legal discretion to disapprove a modified project after it conducts the required public hearing process.

8. DEMONSTRATION OF GOOD FAITH COMPLIANCE

8.1 Review of Compliance. In accordance with Government Code § 65865.1, and Malibu Municipal Code § 17.64.130 *et seq.*, this Section 8 and the Applicable Rules, once every 12 months, on or shortly before each anniversary of the Effective Date, the CITY's Manager or his/her designee shall review LA PAZ's compliance with the terms of this Agreement, and shall prepare a report setting forth his or her determination, which must be based on substantial evidence, in accordance with Government Code § 65865.1 and Malibu Municipal Code § 17.64.130 B ("Periodic Review").

8.2 Information to be Provided to LA PAZ. Not later than five business days prior to the Periodic Review, the CITY shall make available to LA PAZ copies of all staff reports which have been prepared in connection with the Periodic Review, written comments from the public and all related exhibits concerning the Periodic Review. If any staff reports, written comments from the public, and related exhibits are completed or received at a later date, they shall be provided to LA PAZ upon completion or receipt.

8.3 Scope of Review. As part of the Periodic Review, LA PAZ shall be given a full and adequate opportunity to be heard, orally and in writing, regarding its performance. It is the duty of LA PAZ to provide evidence of good faith compliance with this Agreement to the City Manager's satisfaction at the time of the review.

8.4 Good Faith Compliance. For purposes of this Agreement, the phrase "good faith compliance" shall mean that LA PAZ has demonstrated that it has acted in a commercially reasonable manner (taking into account the circumstances which then exist) and has substantially complied with LA PAZ's material obligations under this Agreement.

8.5 Notice Of Non-Compliance; Cure Rights. The City Manager or his/her designee shall determine on the basis of substantial evidence that has or has not complied with this Agreement. If, as a result of this review the City Manager determines that the Agreement is not being fulfilled, he or she shall notify LA PAZ of his or her findings as required by law for the service of summons or by registered or certified mail, postage prepaid, return receipt requested, also indicating that failure to comply within a period specified, but in no event less than thirty calendar days, may result in legal action to enforce compliance, termination or modification of this Agreement ("Notice of Violation").

8.5.1 Contents of Notice of Violation. Every Notice of Violation shall state with specificity that it is given pursuant to Section 8.5 of this Agreement, the nature of the alleged breach, including references to the pertinent provisions of this Agreement, the portion of the Property and/or Project involved, and the manner in which the breach may satisfactorily be cured.

8.6 Failure of Periodic Review. The CITY's failure to conduct any Periodic Review shall not constitute a breach, nor be asserted by any Party to be, a breach of this Agreement nor does it constitute a waiver of any Party's obligations hereunder.

8.7 Proceedings Upon Modification or Termination. If, at the end of the time period established by the City Manager, LA PAZ has failed to comply with the terms of this Agreement or, alternatively, submitted additional evidence satisfactorily substantiating such compliance, the Director shall notify the Planning Commission of his or her findings recommending such action as he or she deems appropriate, including legal action to enforce compliance or terminate or modify this Agreement.

8.8 Hearing on Modification or Termination. Where the Director notifies the commission that his or her findings indicate that this Agreement is being violated, a public hearing shall be scheduled before the Planning Commission to consider LA PAZ's reported failure to comply and the action recommended by the Director. Procedures for conduct of such hearing shall be the same as provided in the Municipal Code for initiation and consideration of a development agreement.

8.8.1 If as a result of such hearing, the Planning Commission finds that LA PAZ is in violation of this Agreement, it shall notify the City Council of its findings, recommending such action as it deems appropriate.

8.8.2 If the Planning Commission reports a violation of this Agreement, the City Council may take one of the following actions:

8.8.2.1 Approve the recommendation of the Planning Commission instructing that action be taken as indicated therein, in cases other than a recommendation to terminate or modify this Agreement; or

8.8.2.2 Refer the matter back to the Planning Commission for further proceedings with or without instructions; or

8.8.2.3 Schedule the matter for a public hearing before itself where termination or modification of this Agreement is recommended. Procedures for such hearing shall be as provided in Municipal Code Sections 17.04.160 through 17.04.230.

8.9 This Section 8 is subject to the cure provisions of Section 9.1.

8.10 Certificate of Agreement Compliance. If at the conclusion of a Periodic Review LA PAZ is found to be in good faith compliance with this Agreement, CITY shall, upon request of LA PAZ, issue a Certificate of Compliance with Development Agreement ("Certificate") to LA PAZ stating that after the most recent Periodic Review, and based upon the information known or made known to the CITY, that (1) this Agreement remains in effect, and (2) LA PAZ is not in default. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of the next Periodic Review. LA PAZ may at its sole option record the Certificate with the County Recorder.

9. DEFAULT AND REMEDIES

9.1 Default. Either Party to this Agreement shall be deemed to have breached this Agreement if it materially breaches any of the provisions of this Agreement and the same is not cured within the time set forth in a written Notice of Violation from the non-breaching Party to the breaching Party. The contents of the Notice of Violation shall be as set forth in Section 8.5.1. The period of time to cure shall be not less than thirty days from the date that the Notice of Violation is deemed received; provided, however, that if the breaching Party cannot reasonably cure a default within the time set forth in the Notice of Violation, then the breaching Party shall not be in default if it commences to cure the default within the time limit and diligently effects the cure thereafter.

9.2 Specific Performance. The Parties acknowledge that money damages are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement, and are available to the Parties for the following reasons:

9.2.1 This Agreement involves the planning and development of real property;

9.2.2 Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of the Project has begun. After such implementation has begun, LA PAZ may be foreclosed from other choices it may have had to utilize the Property or portions thereof. LA PAZ has invested significant time and resources and performed extensive planning and processing of the Project, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate LA PAZ for such efforts.

9.3 Remedies in General. LA PAZ's sole remedy against the CITY shall be specific performance. The CITY shall not be liable to LA PAZ in damages for any breach of this Agreement.

10. MORTGAGEE PROTECTION

10.1 Mortgagee Protection. This Agreement shall not prevent or limit LA PAZ, in any manner, in LA PAZ's sole discretion, from encumbering the Property or any portion thereof, or any improvements thereon, by any mortgage, deed of trust or other security device. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property, shall be entitled to the following rights and privileges:

10.1.1 Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform

LA PAZ's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

10.1.2 Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Violation delivered to LA PAZ.

10.1.3 Mortgagee's Time to Cure. The CITY shall provide a copy of any Notice of Violation to the Mortgagee within ten days of delivery of the Notice of Violation to LA PAZ. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty days after receipt of such Notice of Violation. Notwithstanding the foregoing, if the default is a default which can only be remedied by the Mortgagee obtaining possession of the Property, or any portion thereof, and the Mortgagee seeks to obtain possession, the Mortgagee shall have until thirty days after the date of possession to cure or, if such default cannot reasonably be cured within that period, to commence to cure the default, provided that the default is cured no later than one year after Mortgagee obtains possession.

10.1.4 Cure Rights. Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of LA PAZ under this Agreement as to the Property or portion thereof so acquired; provided, however, that in no event shall the Mortgagee be liable for any defaults or monetary obligations of LA PAZ arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees, and other monetary or non-monetary obligations, due under this Agreement for the Property, or portion thereof acquired by the Mortgagee, have been satisfied.

10.1.5 Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure, or other appropriate proceedings in the nature of foreclosure, by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving LA PAZ, the time periods specified in Section 10.1.3 above shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

10.2 Estoppel Certificate. At any time and from time to time, LA PAZ may deliver written notice to CITY and CITY may deliver written notice to LA PAZ, requesting that such Party certify in writing that, to the knowledge of the certifying Party (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended, or if amended, the identity of each amendment, and (c) the requesting Party is not in breach of this Agreement, or if in breach, a description of each breach. The Party receiving such a notice shall execute and return the certificate within thirty days following receipt of the notice. The CITY's Director shall be authorized to execute, on behalf of the CITY, any Estoppel Certificate requested by LA PAZ. CITY acknowledges that an estoppel certificate may be relied upon by successors in interest to LA PAZ and by holders of record of deeds of trust on the portion of the Property in which LA PAZ has a legal interest. The City Council may designate other persons who shall be authorized to execute any Estoppel Certificate requested by LA PAZ.

11. ADMINISTRATION OF AGREEMENT

11.1 Appeal. Any decision by CITY staff concerning the interpretation or administration of this Agreement or development of the Project or Property in accordance herewith, may be appealed by LA PAZ to the Planning Commission, and thereafter, if necessary, to the City Council, following the procedures set forth in the CITY's Municipal Code. All determinations of the CITY's Planning Commission with respect to the Property or Project may be appealed to the City Council pursuant to such Municipal Code procedures. Final determinations by the City Council are subject to judicial review in accordance with California law.

11.2 Certificate of Performance. Upon the completion of the Preferred Project, or the completion of development of any parcel within the Project, or upon completion of performance of this Agreement, or its earlier revocation and termination, the CITY shall provide LA PAZ, upon LA PAZ's request, with a statement ("Certificate of Performance") evidencing the completion or revocation and the release of LA PAZ from further obligations hereunder, excepting any ongoing obligations. The Certificate of Performance shall be signed by the appropriate agents of LA PAZ and the CITY and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a Notice of Completion as referred to in California Civil Code § 3093.

11.3 Clarifications Through Operating Memoranda. During the term of this Agreement, clarifications to this Agreement, and the Applicable Rules may be appropriate with respect to the details of the performances of CITY and LA PAZ. If and when, from time to time, during the term of this Agreement, CITY and LA PAZ agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by CITY and LA PAZ which, after execution, shall be attached hereto and become part of this Agreement, and the same may be further clarified from time to time, as necessary, with future written approval by CITY and LA PAZ. Operating memoranda are not intended to, and shall not, constitute modifications or amendments to this Agreement but are mere ministerial clarifications. Therefore, public notices and hearings shall not be required. The City Attorney shall be authorized to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification constitutes an amendment which requires compliance with the provisions of Section 11.5. The authority to enter into operating memoranda is delegated to the CITY's Manager, and the CITY's Manager is hereby authorized to execute any operating memoranda hereunder without further City Council action.

11.4 Modifications Requiring Amendment of this Agreement. Any proposed modification of the performances of CITY or LA PAZ which results in any of the following shall not constitute a clarification but rather shall require an amendment to this Agreement:

11.4.1 Any decrease in the required building setbacks;

11.4.2 Any increase in the total developable square footage of the entire Property in excess of the maximum FAR allowed under this Agreement;

11.4.3 Any increase in the maximum allowable height of buildings or structures on the Property, as set forth in this Agreement;

11.4.4 Any decrease in the minimum required lot area, as set forth in this Agreement;

11.4.5 Any implementation of a use which is not permitted under this Agreement;

11.4.6 Any material modification to LA PAZ's obligation to convey Parcel C to the CITY and pay the \$500,000 to the CITY, as provided in Section 6.1.1 of this Agreement.

11.4.7 When the City Attorney determines pursuant to Section 11.3 that an amendment is required.

11.5 Amendment or Cancellation of Agreement. Except as otherwise set forth herein, this Agreement may only be amended or cancelled, in whole or in part, by mutual consent of CITY and LA PAZ, and upon compliance with the provisions of Government Code § 65868. This provision shall not limit any remedy of CITY or LA PAZ as provided by this Agreement.

12. TERMINATION

12.1 This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

12.1.1 Expiration of the stated term of this Agreement except for its provisions that are stated to survive its termination.

12.1.2 Entry of a final judgment after all appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

12.1.3 The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.

13. INDEMNIFICATION/DEFENSE

13.1 LA PAZ's Indemnification. LA PAZ shall indemnify, defend, and hold harmless the CITY and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, LA PAZ's performance pursuant to this Agreement, except to the extent such is a result of the CITY'S sole negligence, gross negligence or intentional misconduct. LA PAZ shall indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or the Project Approvals, including without limitation, the CEQA determination. LA PAZ is in no event required to indemnify, defend or hold harmless the CITY with respect to any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or

judgments arising out of, or resulting in any way, from CITY's planning or development of Parcel C, including, without limitation, against any action or proceeding to attack, review, set aside, void or annul CITY's approval of any use on Parcel C.

13.2 Defense of Agreement. The CITY agrees at LA PAZ's expense to, and shall timely take, all actions which are necessary or required to uphold the validity and enforceability of this Agreement and the Applicable Rules. The CITY may choose its own counsel or, at its sole discretion, demand that LA PAZ provide counsel to provide such defense in which event the CITY shall co-operate with such counsel.

13.2.1 The rate per hour billed to LA PAZ for the services of the City Attorney shall be capped at the City Attorney's regular hourly rate billed to the CITY at the time the lawsuit is filed, with persons billing at a lesser rate billed to LA PAZ at their actual rate billed to the CITY at the time the lawsuit is filed.

13.2.2 In defending such joint litigation, the CITY agrees that LA PAZ's counsel may take the laboring oar to avoid duplicative work.

13.2.3 The CITY shall not settle any lawsuit attacking the Project Approvals, or other litigation implicating LA PAZ, without LA PAZ's written consent, obtained in advance.

13.3 This Section 13 shall survive the termination of this Agreement.

14. **TIME OF ESSENCE.** Time is of the essence for each provision of this Agreement of which time is an element.

15. **NOTICES.** As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

15.1 All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage and postal charges prepaid, or by facsimile, as follows:

If to CITY:

City Clerk
City of Malibu
23815 Stuart Ranch Road
Malibu, California 90265
Fax: (310) 456-3356

with copies to:

The City Attorney:
Christi Hogin, Esq.

Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266
Fax: (310) 643-8841

If to LA PAZ:

Malibu La Paz Ranch, LLC
c/o Sterling Partners
1033 Skokie Blvd., Suite 600
Northbrook, Illinois 60062
Attn: Jeff Perelman
Fax: (847) 480-0199

and

Donald W. Schmitz, II
Christopher Deleau, Esq.
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, California 90265
Fax: (310) 589-0353

with copies to:

Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067
Fax: (310) 277-7889

15.2 Either Party may change its designated recipient, mailing address and/or facsimile number, by giving written notice of such change in the manner provided herein. All notices under this Agreement shall be deemed received on the earlier of the date personal delivery is effected or on the date deposited in the mail or the delivery date shown on the return receipt, air bill or facsimile confirmation sheet.

16. MISCELLANEOUS PROVISIONS

16.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City Council within ten days of execution, as required by Government Code § 65868.5.

16.2 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are merged herein. This Agreement shall not be amended, except as expressly provided herein.

16.3 Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

16.4 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, each Party, in its sole discretion, shall have 60 days to determine whether to elect to terminate this Agreement or to deem that the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

16.5 Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint venturers or any other association of any kind or nature between CITY and LA PAZ, jointly or severally.

16.6 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person or party shall have any right of action based upon any provision of this Agreement.

16.7 Cooperation Between CITY and LA PAZ. CITY and LA PAZ shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement.

16.8 Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to conflict with any provision of the Applicable Rules or the Project Approvals or the Future Approvals, the provisions of this Agreement shall control.

16.9 Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.

16.10 Governing Law and Venue. This Agreement is made and entered into in the County of Los Angeles, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the County of Los Angeles.

16.11 Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the

judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

16.13 Weekend/Holiday Dates. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or federal or state holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.

16.14 Not a Public Dedication. Except as otherwise expressly provided herein, nothing herein contained, or shown or graphically depicted on the approved plans for the Project, including without limitation all site plans and surveys, shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to the development of the Project for the purposes herein expressed. LA PAZ shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose which is not consistent with the development of the Project. Any portion of the Property conveyed to the CITY by LA PAZ as provided herein shall be held and used by the CITY only for the purposes contemplated herein or otherwise provided in such conveyance, and the CITY shall not take or permit to be taken (if within the power or authority of the CITY) any action or activity with respect to such portion of the Property that would deprive LA PAZ of the material benefits of this Agreement, or would in any manner interfere with the development of the Project as contemplated by this Agreement.

16.15 Singular and Plural. As used herein, the singular of any word includes the plural.

16.16 Excusable Delays. Performance by any Party of its obligations hereunder shall be excused during any period of "Excusable Delay," as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Party as soon as reasonably possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (f) damage to work in progress by reason of fire, flood, earthquake or other casualty; (g) reasonably unforeseeable delay caused by a reasonably unforeseeable restriction imposed or mandated by a governmental entity other than CITY; (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Future Approval or any other action necessary for development of the Property, (a) delays caused by any default by CITY or LA PAZ hereunder, or (b) delays due to presence or remediation of hazardous materials. The term of this Agreement shall be extended by any period of Excusable Delay.

16.17 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

16.18 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its Property hereunder, and each other person succeeding to an interest in such properties.

16.19 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record any reasonably required instruments and writings, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement and to evidence or consummate the transactions contemplated by this Agreement.

16.20 Authority to Execute.

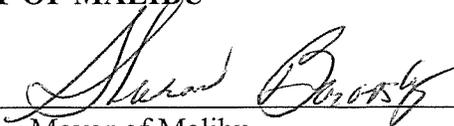
16.20.1 The persons signing below on behalf of LA PAZ warrant and represent that they have the authority to bind LA PAZ and that all necessary partners, managing members, board of directors, shareholders, or other approvals have been obtained.

16.20.2 The persons signing below on behalf of the CITY warrant and represent that they have the authority to bind the CITY and that all necessary approvals from the City Council have been obtained.

16.21 Exhibits. All Exhibits attached to this Agreement are hereby incorporated by reference as if set forth in full.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

Dated: 2/13/2010

CITY OF MALIBU
By: 
Mayor of Malibu

ATTEST:

By: Yvon Pope

(SEAL)

APPROVED AS TO FORM:

By: Christ Hogan
Counsel for the CITY

Dated: 11.20.09

Dated: _____

APPROVED AS TO FORM:

By: _____
Counsel for LA PAZ

MALIBU LA PAZ RANCH, LLC

By: [Signature]
Title: MEMBER

By: _____
Title: _____

ATTEST:

By: _____

(SEAL)

APPROVED AS TO FORM:

By: _____
Counsel for the CITY

MALIBU LA PAZ RANCH, LLC

Dated: _____

By: _____
Title: _____

Dated: _____

By: _____
Title: _____

APPROVED AS TO FORM:

By: *Jamie Stern*
Counsel for LA PAZ

ACQUISITION
DEED



99 1040536

RECORDING REQUESTED BY
GRANTY TITLE
WHEN RECORDED RETURN TO

Name: Pachulski, Strong Zich & Jung
Address: 10150 Santa Monica Blvd
City, St.: Los Angeles, CA 90067
Att: Richard J. Crubel, Esq

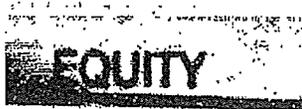
SPACE ABOVE FOR RECORDERS USE

Order No. 995044-20

TITLE(s) OF DOCUMENT

Grant Deed

Assessors Identification Number (AIN) 4458-002 012



RECORDING REQUESTED BY

WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO

Name RICHARD J. GRUBER, ESQ.
Firm PACHULSKI, STANG, ZIEHL & YOUNG
Address 10100 SANTA MONICA BLVD., #1100
City & State LOS ANGELES, CA, 90067

Title Order No. Invoice No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ISS Legal (2/94)

Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ NOT OF PUBLIC RECORD

Parcel No. 4458-023-018 City of

computed on full value of interest or property conveyed, or computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Joan B. Knapp, an unmarried woman,

hereby GRANT(S) to Malibu LaPaz Ranch, LLC, a Delaware limited liability company,

the following described real property in the City of Malibu, county of Los Angeles, state of California:

SEE LEGAL DESCRIPTION OF PROPERTY SET FORTH ON EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

THIS CONVEYANCE IS MADE SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS DATED DECEMBER 2, 1998, EXECUTED BY GRANTOR, WHICH WAS RECORDED ON DECEMBER 24, 1998, AS INSTRUMENT NO. 98-2331444 IN THE OFFICE RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

Dated May 5, 1999

Signature of Joan B. Knapp

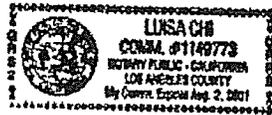
STATE OF CALIFORNIA COUNTY OF Los Angeles } SS.

On May 5, 1999 before me,

LUSA Chi a Notary Public in and for said County and State, personally appeared Joan B. Knapp,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal. Signature



99 1040536

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE. IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE MALIBU LAPAZ RANCH LLC, 650 DUNDIE ROAD, #370, HORTONWOODS, ILLINOIS 60062

Name Street Address City & State

19

JUN 08 1999

EQUITY

EXHIBIT "A"

PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF DEKKER; SOUTH 36° 09' 22" EAST 357.36 FEET AND SOUTH 19° 41' 00" EAST 325.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 14' 00" EAST 195 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO GENERAL TELEPHONE COMPANY OF CALIFORNIA RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY LINE; SOUTH 10° 15' 10" EAST 615.00 FEET TO AN ANGLE POINT; THENCE SOUTH 2° 32' 55" WEST 131.25 FEET; THENCE LEAVING SAID WESTERLY LINE, SOUTH 75° 41' 35" WEST 292.25 FEET; THENCE NORTH 21° 36' 25" WEST 425.91 FEET TO THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DEKKER; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 19° 41' 00" WEST 230.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATER, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 98-01 RECORDED MAY 19, 1998 AS INSTRUMENT NO. 98-838333.

LEGAL, CONTINUED

-1-

99 1040536

JUN 08 1999

EQUITY

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF PARCEL 2 DESCRIBED HEREIN OR THE LAND DESCRIBED IN CERTIFICATE OF COMPLIANCE NO. 99-04 RECORDED CONCURRENTLY HERewith (THE LAND DESCRIBED IN SUCH CERTIFICATE IS REFERRED TO AS THE "OTHER BENEFITED LAND") AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO PARCEL 2 OR THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING PARCEL 2 OR THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HERewith AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

LEGAL, CONTINUED

-2-

99 1040536

JUN 08 1999

EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 DESCRIBED HEREIN AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER(S) OF THE PARCEL(S) FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCELS AFFECTED BY SUCH EASEMENT IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE LAND DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 243, ON DECEMBER 3, 1945 IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND, NORTH 36° 50' 43" EAST 214.36 FEET TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN DEED TO ALGERNON K. BARBER, RECORDED IN BOOK 21317 PAGE 119, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 528.03 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. SHALHOUB, RECORDED IN BOOK 19985 PAGE 226 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 42° 36' 00" WEST 252.04 FEET; THENCE SOUTH 47° 24' 00" EAST 300.00 FEET; THENCE SOUTH 42° 39' 46" WEST 535.43 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY DISTANT SOUTH 36° 09' 22" EAST 357.36 FEET FROM THE MOST NORTHERLY CORNER OF SAID LAND; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID LAND SOUTH 19° 41' 00" EAST 325.00 FEET; THENCE NORTH 63° 14' 00" EAST 195.00 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE MOST WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO THE GENERAL TELEPHONE COMPANY OF CALIFORNIA, RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID MOST WESTERLY LINE NORTH 10° 15' 10" WEST 16.61 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID GENERAL TELEPHONE COMPANY OF CALIFORNIA PARCEL NORTH 79° 44' 50" EAST 170.92 FEET; THENCE NORTH 3° 31' 20" WEST 313.57 FEET; THENCE ALONG THE LAND OF SAID SHALHOUB SOUTH 17° 54' 55" WEST 77.85 FEET, TO THE SOUTHWESTERLY LINE OF SAID LAND OF ROBERT WILLIAMS; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 106 FEET TO THE POINT OF BEGINNING.

LEGAL, CONTINUED

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EQUITY

EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATERS, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 99-03 RECORDED CONCURRENTLY HEREWITH.

RESERVING THEREFROM NON-EXCLUSIVE EASEMENTS AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF THE OTHER BENEFITED LAND AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH TWO STRIPS OF SAID LAND DESCRIBED AS FOLLOWS:

EASEMENT STRIP A:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE SAID LAND OF DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HEREWITH AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 19° 41' 06" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

LEGAL, CONTINUED

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EQUITY

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINABOVE DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

EASEMENT STRIP B:

A STRIP OF LAND 40 FEET IN WIDTH, THE CENTERLINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY TERMINUS OF THE WESTERLY LINE OF STRIP A WITH THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE 99-04; THENCE ALONG SAID SOUTHERLY LINE, NORTH 42° 39' 46" EAST 45.16 FEET TO THE NORTHERLY TERMINUS OF THE EASTERLY LINE OF SAID STRIP A; THENCE ALONG SAID EASTERLY LINE OF SAID STRIP A, SOUTH 19° 41' 00" EAST 146.11 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 11° 50' 54" EAST 44.20 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 80.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 54° 31' 01" AND AN ARC DISTANCE OF 76.12 FEET; THENCE TANGENT TO SAID CURVE, NORTH 66° 21' 43" EAST 81.21 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 80.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 68° 44' 52" AND AN ARC DISTANCE OF 95.99 FEET; THENCE TANGENT TO SAID CURVE, NORTH 02° 23' 13" WEST 139.25 FEET TO THE INTERSECTION WITH THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04.

THE NORTHERLY AND SOUTHERLY LINES OF SAID STRIP SHALL BE PROLONGED AND OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE EASTERLY LINE SAID STRIP A.

LEGAL, CONTINUED

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EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2A:

A NON-EXCLUSIVE EASEMENT FOR RIGHT OF WAY, RIGHT OF ACCESS FOR ALL GOVERNMENT VEHICLES, AND UTILITY EASEMENT OVER, UNDER AND ACROSS THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY ; THENCE ALONG THE NORTHEASTERLY LINE SAID LAND OF DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HEREWITH AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF SAID LAND CONDEMNED FOR ROAD PURPOSES.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN PARCEL 2 HEREINAbove DESCRIBED.

LEGAL, CONTINUED

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EQUITY

SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL AFFECTED BY SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2B:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES, OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, INCLUDING WITHIN THE NORTHEASTERLY 10 FEET OF THE LAND FIRST DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 343 ON DECEMBER 3, 1945, IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY, THE SOUTHWESTERLY LINE OF SAID 10 FOOT STRIP BEING PROLONGED TO INTERSECT THE SOUTHEASTERLY BOUNDARY OF SAID LAND TO ROBERT WILLIAMS.

SAID EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 HEREINAbove DESCRIBED PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER OF THE PARCEL AFFECTED BY SAID NON-EXCLUSIVE EASEMENT (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCEL(S) AFFECTED BY SUCH EASEMENT, IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 3:

NON EXCLUSIVE EASEMENTS FOR THE PURPOSES AND IN THE LOCATIONS STATED IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS" RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444; WITHIN THE FOLLOWING DESCRIBED PARCEL.

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU, SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

LEGAL, CONTINUED

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EQUITY

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. HEALEY, RECORDED IN BOOK 19985 PAGE 226, OF OFFICIAL RECORDS OF SAID COUNTY, DISTANT SOUTH 42° 36' 00" WEST 252.04 FEET FROM THE INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO ALGERNON K. BARNEE, RECORDED IN BOOK 21317 PAGE 119 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 42° 36' 00" WEST 330.00 FEET AND SOUTH 63° 13' 35" WEST 145.04 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DEKKER SOUTH 36° 09' 22" EAST 357.36 FEET; THENCE NORTH 42° 39' 46" EAST 535.43 FEET; THENCE NORTH 47° 24' 00" WEST 300.00 FEET TO THE POINT OF BEGINNING.

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PARCEL 1:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND OF DEKKER; SOUTH 36° 09' 22" EAST 357.36 FEET AND SOUTH 19° 41' 00" EAST 325.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 63° 14' 00" EAST 195 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO GENERAL TELEPHONE COMPANY OF CALIFORNIA RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY LINE; SOUTH 10° 15' 10" EAST 615.00 FEET TO AN ANGLE POINT; THENCE SOUTH 2° 32' 55" WEST 131.25 FEET; THENCE LEAVING SAID WESTERLY LINE, SOUTH 75° 41' 35" WEST 291.25 FEET; THENCE NORTH 21° 36' 25" WEST 425.91 FEET TO THE NORTHEASTERLY LINE OF SAID LAND OF JACOB DEKKER; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 19° 41' 00" WEST 230.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATER, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 98-01 RECORDED MAY 19, 1998 AS INSTRUMENT NO. 98-898333.

LEGAL, CONTINUED

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RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 28, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF PARCEL 2 DESCRIBED HEREIN OR THE LAND DESCRIBED IN CERTIFICATE OF COMPLIANCE NO. 99-04 RECORDED CONCURRENTLY HEREWITH (THE LAND DESCRIBED IN SUCH CERTIFICATE IS REFERRED TO AS THE "OTHER BENEFITED LAND") AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO PARCEL 2 OR THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING PARCEL 2 OR THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

A STRIP OF LAND 40.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID DEKKER, SOUTH 36° 09' 22" EAST 357.36 FEET TO THE SOUTHERLY LINE OF PARCEL NO. 3 OF THE CITY OF MALIBU CERTIFICATE OF COMPLIANCE NO. 99-04, RECORDED CONCURRENTLY HEREWITH AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SAID NORTHEASTERLY LINE, SOUTH 19° 41' 00" EAST 555.00 FEET; THENCE SOUTH 21° 36' 25" EAST 425.91 FEET.

EXCEPT THE SOUTHERLY 30 FEET OF SAID LAND CONDEMNED FOR ROAD PURPOSES, BY DECREE RECORDED MAY 2, 1962 IN BOOK D1601 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY.

THE EASTERLY LINE OF SAID STRIP TO BE PROLONGED OR SHORTENED TO TERMINATE NORTHERLY IN THE SOUTHERLY LINE OF SAID CERTIFICATE OF COMPLIANCE NO. 99-04 AND SOUTHERLY IN THE NORTHERLY LINE OF THAT PORTION OF SAID LAND CONDEMNED FOR ROAD PURPOSES AS DESCRIBED ABOVE.

LEGAL, CONTINUED

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SAID NON-EXCLUSIVE EASEMENT IS APPURTENANT TO AND FOR THE SOLE BENEFIT OF PARCEL 2 DESCRIBED HEREIN AND THE OTHER BENEFITED LAND PROVIDED, HOWEVER, NOTHING HEREIN SHALL IN ANY WAY LIMIT THE RIGHT OF THE OWNER(S) OF THE PARCEL(S) FROM WHICH SAID NON-EXCLUSIVE EASEMENT IS RESERVED (AND SUCH OWNER'S INVITEES) FROM ALSO USING THE PORTION OF SUCH PARCELS AFFECTED BY SUCH EASEMENT IN ANY MANNER THAT DOES NOT INTERFERE WITH THE RESERVED EASEMENT.

PARCEL 2:

A PARCEL OF LAND BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE LAND DESCRIBED IN DEED TO ROBERT WILLIAMS, RECORDED AS INSTRUMENT NO. 243, ON DECEMBER 3, 1945 IN BOOK 22499 PAGE 181, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND, NORTH 36° 50' 43" EAST 214.36 FEET TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN DEED TO ALGERNON K. BARSEE, RECORDED IN BOOK 21317 PAGE 119, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 528.03 FEET TO THE NORTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JOSEPH A. SHALHOUB, RECORDED IN BOOK 19985 PAGE 226 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 42° 36' 00" WEST 252.04 FEET; THENCE SOUTH 47° 24' 00" EAST 300.00 FEET; THENCE SOUTH 42° 39' 46" WEST 535.43 FEET TO THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO JACOB DEKKER, RECORDED IN BOOK 22063 PAGE 104 OF OFFICIAL RECORDS OF SAID COUNTY DISTANT SOUTH 35° 09' 22" EAST 357.36 FEET FROM THE MOST NORTHERLY CORNER OF SAID LAND; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID LAND SOUTH 19° 41' 00" EAST 325.00 FEET; THENCE NORTH 63° 14' 00" EAST 195.00 FEET; THENCE NORTH 12° 30' 00" EAST 100.00 FEET; THENCE NORTH 87° 12' 36" EAST 218.37 FEET TO THE MOST WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM NANCY T. MANDEL TO THE GENERAL TELEPHONE COMPANY OF CALIFORNIA, RECORDED AS DOCUMENT NO. 1046 ON APRIL 18, 1969, OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID MOST WESTERLY LINE NORTH 10° 15' 10" WEST 16.61 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID GENERAL TELEPHONE COMPANY OF CALIFORNIA PARCEL NORTH 79° 44' 50" EAST 170.92 FEET; THENCE NORTH 3° 31' 20" WEST 313.57 FEET; THENCE ALONG THE LAND OF SAID SHALHOUB SOUTH 17° 54' 55" WEST 77.85 FEET, TO THE SOUTHWESTERLY LINE OF SAID LAND OF ROBERT WILLIAMS; THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 46° 40' 53" WEST 106 FEET TO THE POINT OF BEGINNING.

LEGAL, CONTINUED

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EXCEPT ALL MINERALS, OIL, WATER, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS, IN, ON AND UNDER SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED IN BOOK 19985 PAGE 226, OFFICIAL RECORDS AND IN BOOK 20682 PAGE 290, OFFICIAL RECORDS.

ALSO EXCEPT ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND RIPARIAN RIGHTS TO WATERS, IN, ON, WITHIN AND UNDER SAID LANDS, WITHOUT RIGHT OF ENTRY, AS RESERVED BY MARBLEHEAD LAND COMPANY, IN DEED RECORDED MAY 8, 1945 IN BOOK 19977 PAGE 245, OFFICIAL RECORDS.

SAID LAND IS SHOWN IN CERTIFICATE OF COMPLIANCE NO. 99-03 RECORDED CONCURRENTLY HEREWITH.

RESERVING THEREFROM NON-EXCLUSIVE EASEMENTS AS MORE PARTICULARLY PROVIDED FOR IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED DECEMBER 24, 1998 AS INSTRUMENT NO. 98-2331444 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, FOR THE SOLE AND EXCLUSIVE PURPOSES OF (I) INSTALLATION, EXISTENCE, MAINTENANCE AND REPAIR OF A ROADWAY OR DRIVEWAY FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR USE FROM TIME TO TIME BY ANY OWNER OF THE OTHER BENEFITED LAND AND SUCH OWNER'S EMPLOYEES, AGENTS, PATRONS, GUESTS AND INVITEES AND FOR GOVERNMENTAL VEHICLES FROM TIME TO TIME REQUIRING ACCESS TO THE OTHER BENEFITED LAND FOR PURPOSES OF PROVIDING FOR THE PUBLIC HEALTH, SAFETY AND WELFARE, AND (II) THE INSTALLATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITY LINES AND UNDERGROUND DRAINAGE FACILITIES SERVING THE OTHER BENEFITED LAND ON, OVER, UNDER, ACROSS, AND THROUGH TWO STRIPS OF SAID LAND DESCRIBED AS FOLLOWS:

PARCEL "A"

PROJECT DATA

TOTAL LOT AREA:	312,195 SQ. FT.	LANDSCAPE AREA PROVIDED:	107,258 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (40% x LOT)	124,878 SQ. FT.	LANDSCAPE AREA PROVIDED:	107,258 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (25% x LOT)	78,049 SQ. FT.	OPEN SPACE PROVIDED:	64,070 SQ. FT.
3) MAX. IMPERMEABLE AREA: 35% OF LOT AREA	109,268 SQ. FT.	TOTAL IMPERMEABLE AREA	

PARCEL "B"

PROJECT DATA

TOTAL LOT AREA:	249,610 SQ. FT.	LANDSCAPE AREA PROVIDED:	93,444 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (40% x LOT)	99,844 SQ. FT.	LANDSCAPE AREA PROVIDED:	93,444 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (25% x LOT)	62,153 SQ. FT.	OPEN SPACE PROVIDED:	42,748 SQ. FT.
3) MAX. IMPERMEABLE AREA: 35% OF LOT AREA	87,013 SQ. FT.	TOTAL IMPERMEABLE AREA	106,418 SQ. FT.

PARCEL "C"

PROJECT DATA

TOTAL LOT AREA:	100,000 SQ. FT.	LANDSCAPE AREA PROVIDED:	41,500 SQ. FT.
1) LANDSCAPE AREA REQUIRED: (40% x LOT)	40,000 SQ. FT.	LANDSCAPE AREA PROVIDED:	41,500 SQ. FT.
2) OPEN SPACE AREA REQUIRED: (25% x LOT)	25,000 SQ. FT.	OPEN SPACE PROVIDED:	9,352 SQ. FT.
3) MAX. IMPERMEABLE AREA: 35% OF LOT AREA	35,000 SQ. FT.	TOTAL IMPERMEABLE AREA	56,634 SQ. FT.

BUILDING AREAS PARCEL A

BLDG#	RETAIL (FIRST)	OFFICE (SECOND)	TOTAL
1	6,200 GSF		6,200 GSF
2	6,200 GSF		6,200 GSF
3	10,240 GSF		10,240 GSF
4	10,240 GSF		10,240 GSF
5	10,333 GSF	7,540 GSF	17,873 GSF
6	10,250 GSF	7,540 GSF	17,790 GSF
7	400 GSF		400 GSF

SUB TOTAL (PARCEL A) 68,997 GSF

BUILDING AREAS PARCEL B

8	7,702 GSF	7,558 SF	15,300 GSF
9	7,883 GSF	7,757 SF	15,640 GSF
10	5,177 GSF (OFFICE)	2,081 SF	7,258 GSF
11	3,155 GSF (OFFICE)	1,708 SF	4,863 GSF

SUB TOTAL (PARCEL B) 43,061 GSF

CITY HALL (PARCEL C)

BLDG#	DESCRIPTION	TOTAL
1	BLDG. / PLANNING / PUBLIC WORKS DEPARTMENTS	7,500 GSF
2	PARKS & REC. / CLERK / ADMIN / CITY MANAGER / CITY COUNCIL	8,800 GSF
3	COUNCIL ROOM - 188 SEATS	3,700 GSF

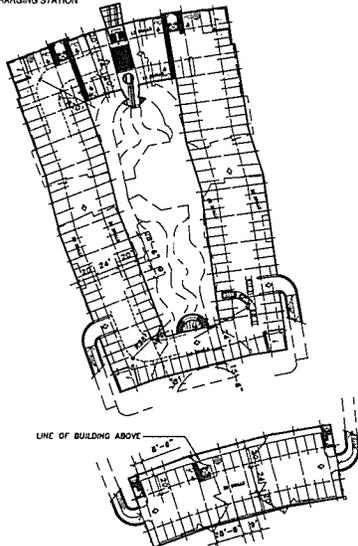
SUB TOTAL (PARCEL C) 20,000 GSF

MAX. GROSS FLOOR AREA: (620,805 SF TOTAL SITE AREA) - 132,161 SF

F.A.R. - 20% LOT AREA

TOTAL FLOOR AREA PROVIDED (PARCEL A,B & C): - 132,058 SF

ELECTRIC CAR RECHARGING STATION



2 SUBTERRANEAN PARKING PLAN

PARKING

PARKING REQUIRED (BASED ON ADJ. G.S.F.)

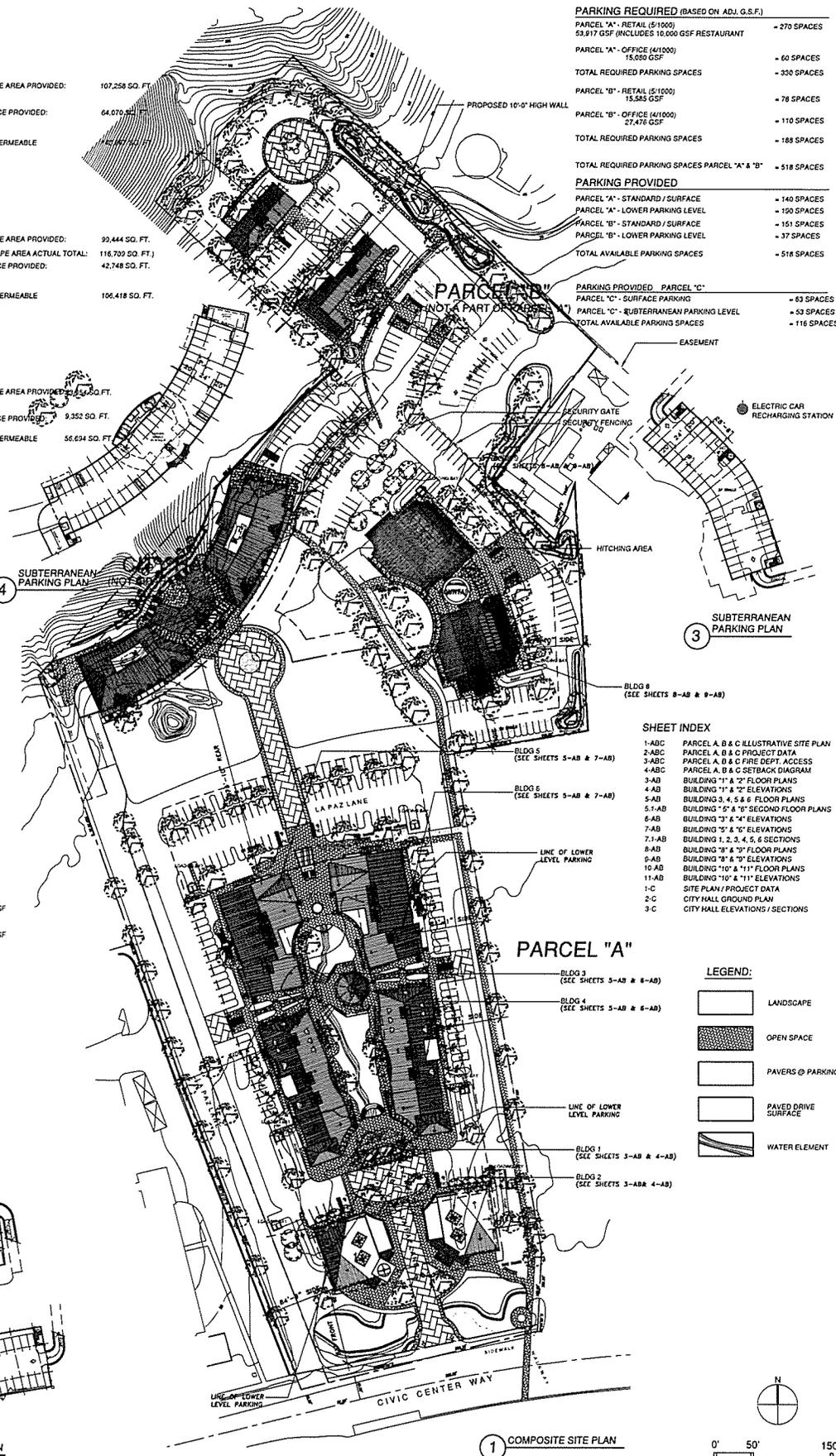
PARCEL "A" - RETAIL (51000)	53,917 GSF (INCLUDES 10,000 GSF RESTAURANT)	- 270 SPACES
PARCEL "A" - OFFICE (41000)	15,080 GSF	- 60 SPACES
TOTAL REQUIRED PARKING SPACES		- 330 SPACES
PARCEL "B" - RETAIL (51000)	15,585 GSF	- 78 SPACES
PARCEL "B" - OFFICE (41000)	27,476 GSF	- 110 SPACES
TOTAL REQUIRED PARKING SPACES		- 188 SPACES
TOTAL REQUIRED PARKING SPACES PARCEL "A" & "B"		- 518 SPACES

PARKING PROVIDED

PARCEL "A" - STANDARD / SURFACE	- 140 SPACES
PARCEL "A" - LOWER PARKING LEVEL	- 190 SPACES
PARCEL "B" - STANDARD / SURFACE	- 151 SPACES
PARCEL "B" - LOWER PARKING LEVEL	- 37 SPACES
TOTAL AVAILABLE PARKING SPACES	- 518 SPACES

PARKING PROVIDED PARCEL "C"

PARCEL "C" - SURFACE PARKING	- 63 SPACES
PARCEL "C" - SUBTERRANEAN PARKING LEVEL	- 53 SPACES
TOTAL AVAILABLE PARKING SPACES	- 116 SPACES

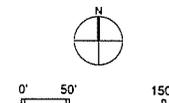


PARCEL "A"

- BLDG 3 (SEE SHEETS 5-AB & 6-AB)
- BLDG 4 (SEE SHEETS 5-AB & 6-AB)
- BLDG 5 (SEE SHEETS 5-AB & 7-AB)
- BLDG 6 (SEE SHEETS 5-AB & 7-AB)
- BLDG 7 (SEE SHEETS 5-AB & 7-AB)
- BLDG 8 (SEE SHEETS 8-AB & 9-AB)
- BLDG 1 (SEE SHEETS 3-AB & 4-AB)
- BLDG 2 (SEE SHEETS 3-AB & 4-AB)

LEGEND:

[Pattern]	LANDSCAPE
[Pattern]	OPEN SPACE
[Pattern]	PAVERS @ PARKING
[Pattern]	PAVED DRIVE SURFACE
[Pattern]	WATER ELEMENT



1 COMPOSITE SITE PLAN

LCA
 DANIEL CHUDNOVSKY, A.I.A. ARCHITECTS, INC.
 1861 WESTWOOD BOULEVARD, SUITE 410, LOS ANGELES, CA 90025
 PHONE: 310-474-6311 FAX: 310-474-6322

DEVELOPER:
MALIBU LA PAZ RANCH, LLC



PROJECT:
**PROJECT: MALIBU CIVIC CENTER MASTER PLAN
 ILLUSTRATIVE SITE PLAN / PROJECT DATA**

08/04/08
 1"-50'-0"
1-ABC
 (20 FAR)

In Lieu of Exhibits 4, 6 & 7

RESOLUTION NO. 08-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE LA PAZ RANCH DEVELOPMENT AGREEMENT (DA .20 PROJECT), LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 AND CORROLLARY ZONING MAP AMENDMENT, ZONING TEXT AMENDMENT, LOT LINE ADJUSTMENT AND LAND CONVEYANCE TO SUPPORT DEVELOPMENT CONSIDERED UNDER THE TERMS AND CONDITIONS OF THE SUBJECT DEVELOPMENT AGREEMENT (MALIBU LA PAZ RANCH, LLC)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

A. On February 17, 2000, Schmitz and Associates, on behalf of La Paz Ranch, LLC, submitted applications for Plot Plan Commercial (PPC) No. 00-005 (Parcel A) and PPC No. 00-006 (Parcel B). Parcel A is identified as Assessor Parcel Number 4458-022-023 and Parcel B is identified as Assessor Parcel Number 4458-022-024. The application requests construction of 99,117 square feet of shopping center and office park development. Subsequently, the property owner revised its proposal, applying for the construction of 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex. However, if the .20 project was not approved, the property owner wanted to pursue the .15 project. To accommodate this alternative, the City bundled two sets of entitlement applications and studied the .15 project as an alternative, although the .20 project was the property owner's preferred alternative.

B. On January 24, 2003, a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was issued for a 30-day public review period.

C. On January 29, 2003, the Governor's Office of Planning and Research distributed the NOP to responsible agencies for comments for a 30-day public review period ending on February 27, 2003 (SCH #200311131).

D. On February 12, 2003, the City of Malibu held a public scoping meeting regarding the preparation of the EIR.

E. During the following years, the Applicant worked with all City Departments in order to obtain an "in-concept" approval for the proposed project.

F. On June 21, 2005, the application was changed to a coastal development permit, conditional use permit, site plan review, minor modification and lot line adjustment application. The entitlements associated with the .15 Project (.15 floor area ratio (FAR)) include: 1) a coastal development permit (CDP No. 05-106) for construction of 99,117 square feet of commercial development; 2) a lot line adjustment (LLA No. 05-003) to adjust property boundaries between the two parcels (A and B); 3) site plan reviews (SPR Nos. 07-126 and 127) for construction in excess of 18 feet in height for the development on both parcels; 4) site plan reviews (SPR Nos. 07-148 and

149) for remedial grading on both parcels; 5) minor modifications (MM Nos. 07-044 and 045) for front yard setbacks on both parcels; 6) a conditional use permit (CUP No. 05-003) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A; and 7) conditional use permits (CUP Nos. 07-018 and 019) for wastewater systems across property lines. The entitlements associated with the .20 Project include: 1) Local Coastal Program (LCP) Local Implementation Plan (LIP) Text Amendment (LCPA No. 06-003) amending Section 3.4 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.4.3 (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant; 2) CDP No. 05-107 for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex; 3) LLA No. 05-004 between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City; and 4) CUP No. 05-004 for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A.

G. On September 28, 2006, the Draft EIR (DEIR) was circulated by the City of Malibu for a 45-day public review period ending on November 13, 2006.

H. On September 29, 2006, the Governor's Office of Planning and Research distributed the DEIR to responsible agencies for a 45-day public review period ending on November 13, 2006 (SCH #200311131).

I. On October 25, 2006, the project was reviewed by the Environmental Review Board (ERB). Since there were only four of the seven ERB members in attendance at the meeting, staff requested that the project be brought back to the November 15, 2006 meeting. On November 15, 2006, the ERB, with additional members in attendance, reviewed the project and made recommendations. These recommendations have been incorporated into the final project.

J. On October 18, 2007, a Notice of Public Hearing and Notice of Availability of Local Coastal Program (LCP) Amendment documents was published in a newspaper of general circulation within the City of Malibu. In addition, on October 18, 2007, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing and Notice of Availability of LCP Amendment documents was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission (CCC).

K. On November 6, 2007, the Planning Commission opened the public hearing, considered the staff report and presentation, took public testimony and continued the item to December 18, 2007.

L. On December 18, 2007, the Planning Commission meeting was cancelled due to a lack of quorum.

M. On January 2, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on January 2, 2008, pursuant to LIP

Section 19.3.2.A, a Notice of Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

N. On January 22, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered written reports, public testimony, and related information, and recommended that the City Council certify the EIR, disapprove the .20 Project, and approve the .15 Project with the following comments:

1. Recommend the Applicant work with the neighbors to address their concerns and incorporate measures which alleviate conflict with the adjacent land use.
2. Address concerns with groundwater and the Water Resources Board
3. Address concerns with traffic
4. Review traffic study submitted at hearing
5. Include 24-hour security for the entire commercial development
6. Fence for Malibu Knolls neighborhood
7. Revise Fuel Modification Plan to reflect information learned during recent fires
8. Include gate/fence/key system for "after hours" at Buildings 10 and 11
9. Include very low lighting throughout development
10. Include conditions regulating hours of operation, including, trash pick-up etc.

O. The Planning Commission acts exclusively as an advisory body to the City Council with respect to development agreements. Pursuant to LIP Section 13.28 and the corollary provisions of the Municipal Code, the Planning Commission makes its recommendation to the City Council and the City Council subsequently renders a decision whether to approve or disapprove the development agreement.

P. On February 19, 2008, the Planning Commission adopted Resolution No. 08-07 memorializing the Commission's action on January 22, 2008.

Q. On February 27, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on February 27, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

R. On March 24, 2008, the City Council continued the hearing to the May 12, 2008, Regular City Council meeting.

S. On April 3, 2008, the applicant submitted a Wastewater Management System Master Plan (WMSMP) prepared by Lombardo Associates, Inc (LAI). The new onsite wastewater treatment system (OWTS) is materially different than the previously reviewed onsite wastewater treatment system as described in the Draft EIR.

T. On May 12, 2008, the City Council did not hear the report but continued the item to a date uncertain to allow analysis of the new onsite wastewater treatment system (OWTS). The agenda

report indicated that "Once the analysis of the new system has been completed and incorporated into the environmental document, the project will be noticed for a public hearing." Since the City Council bases its decision in part based on the recommendation of the Planning Commission and the Commission did not have the opportunity to provide a recommendation on the projects with the revised wastewater systems or the updated EIR, it was determined that the project should return to the Planning Commission so that the recommendation would be based on the most accurate information available.

U. On July 10, 2008, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on July 10, 2008, pursuant to LIP Section 19.3.2.A, a Notice of Planning Commission Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

V. On August 5, 2008, the Planning Commission declined to hear the item indicating by majority vote that it had reviewed the project extensively and that the changes did not warrant further review by the Planning Commission. Subsequently, the project was scheduled for the City Council.

W. On August 28, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on August 28, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

X. On September 22, 2008, the City Council conducted a duly noticed public hearing, heard and reviewed the proposed projects and associated environmental document, and directed staff to negotiate a revision to the development agreement provisions relating to the use of the 2.3 acre parcel for other municipal uses, including but not limited to a wastewater treatment facility for the Civic Center Area, and to change the five-year deadline to develop the property to 10 years. The item was continued to the November 10, 2008 City Council hearing but was to report any revisions to the development agreement to the Planning Commission for recommendation pursuant to Local Coastal Program Local Implementation Plan Section 13.28.5. Subsequently, when the revisions were negotiated, the item was scheduled for the next Planning Commission meeting.

Y. On October 21, 2008, the Planning Commission received the report on the proposed revisions to the development agreement and made a recommendation to the City Council to approve the proposed changes as improvements to the development agreement.

Z. At the November 10, 2008, public hearing, the Council heard and considered all testimony and arguments of all persons desiring to be heard and the Council considered all factors relating to the development agreement and associated entitlements, including, but not limited to, the recommendation from the Planning Commission.

Section 2. CEQA Findings.

The City Council finds as follows:

- A. The California Environmental Quality Act (CEQA) requires decision makers to balance the benefits of a proposed project against its unavoidable environmental impacts. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered “acceptable” by adopting a Statement of Overriding Considerations. This statement sets forth the project benefits or reasons why the Lead Agency, City of Malibu, is in favor of approving and weighs these benefits against the project’s environmental impacts identified in the Final Environmental Impact Report (FEIR) that cannot be mitigated to a level less than significant.
- B. CEQA requires decision makers to adopt a mitigation monitoring and/or reporting program for those mitigation measures identified in the FEIR that would mitigate or avoid each significant effect identified in the EIR, and to incorporate the mitigation monitoring and reporting program including all mitigation measures as conditions of project approval. The DEIR includes an analysis of the extent to which the proposed project’s direct and indirect impacts will commit nonrenewable resources to uses that future generations will probably be unable to reverse.
- C. CEQA requires that the responses to comments in the FEIR demonstrate good faith and a well-reasoned analysis, and may not be conclusory. In response to several comments received, portions of the DEIR have been revised. Although new material has been added to the DEIR through preparation of the FEIR, this new material provides clarification to points and information already included in the DEIR and is not considered to be significant new information or a substantial change to the DEIR that would necessitate recirculation.
- D. The CEQA Guidelines [California Code of Regulations Section 15003(c) and (I)] note that state courts have identified that the EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure.
- E. Comments received on the DEIR during and after the public review period show that there may be disagreements among experts, particularly in the issue areas of traffic, water quality and biological resources. The FEIR includes an additional clarifying narrative and clarifying exhibits for the purposes of fully disclosing the information sources and reasoning by which levels of impact and mitigation measures were established in the DEIR. Further, the clarifying narrative and exhibits in the FEIR serve the purpose of fully disclosing the information sources and reasoning used by various public and agency DEIR commentators who arrived at divergent conclusions. CEQA provides that disagreement

among experts regarding conclusions in the EIR is acceptable, and perfection is not required.

Section 3. Project-Level Impacts Determined to be Significant and Mitigable.

The City Council does hereby find that the FEIR for the La Paz Development Agreement and associated entitlements identifies and discloses project specific impacts and cumulative project impacts. Environmental impacts identified in the FEIR, findings, and facts in support of findings are herein incorporated as Findings Required by CEQA, and are as follows:

- A. The FEIR identifies project-level impacts determined to be significant and mitigable - "Environmental Effects which Have Been Mitigated to a Level Less Than Significant". They are as follows:

1. AESTHETICS

Significant Impact: The project would introduce new development to a site that is primarily vacant. The project would be visible from local and distant viewing locations along portions of City streets (e.g. Civic Center Way, Cross Creek Road, and Malibu Canyon Road) as well as from various residential and/or commercial land uses located along these streets. Existing offsite trees and vegetation would screen some public and private views of the project from these locations. Visibility of the proposed project from these locations is obscured by existing topography, vegetation and existing development within the Civic Center Area. As such, the proposed project would not result in the obstruction of any public scenic views. The proposed project is consistent with the neighborhood in regards to size, design, and height, which includes the surrounding homes and commercial development.

Lighting

The project has the potential to significantly alter the daytime and nighttime visual qualities and conditions of the site and its vicinities. The project has the potential to introduce a greater amount of nighttime lighting to the project site. Light and glare impacts would be potentially significant but can be mitigated to less than significant levels by implementing mitigation measures.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of the Mitigation Measures A-1 through A-3 (Exhibit A) would ensure that the proposed project does not result in any significant aesthetics impacts.

2. AIR QUALITY

Significant Impact: Construction of the proposed project would generate pollutant emissions from the following construction activities: 1) grading and excavation; 2) construction workers traveling to and from project site; 3) delivery and hauling of construction supplies and debris to and from the project site; 4) the fuel combustion by onsite construction equipment; and 5) architectural coating. Estimates of daily particulate matter (PM₁₀) emissions assume proper implementation of South Coast Air Quality Management District (SCAQMD) Rule 403. Estimated daily construction emissions would not exceed any of the SCAQMD thresholds. Therefore, air quality impacts from construction activities would be less than significant.

Operational Impacts

Regional Impacts

Motor vehicles would be the predominate source of long-term emissions associated with the proposed project. The proposed project would not exceed any of the SCAQMD significance thresholds for criteria pollutants. Regional air quality impacts would therefore be less than significant.

Localized Impacts

One-hour Carbon Monoxide (CO) concentrations under “proposed project” conditions would range from approximately 5.4 parts per million (ppm) to 7.1 ppm during the weekday and from approximately 6.1 ppm to 6.6 ppm during the weekend at worst-case sidewalk receptors. The “proposed project” eight-hour CO concentrations are anticipated to range from approximately 3.3 ppm to 4.3 ppm during the weekday and from approximately 3.7 ppm to 4.0 ppm during the weekend. The state’s one and eight-hour standards of 20.0 ppm and 9.0 ppm, respectively, would not be exceeded at worst-case sidewalk receptor locations at the study intersections under “proposed project” conditions. Thus, less than significant impacts are anticipated.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of mitigation measures includes compliance with SCAQMD Rule 40 with policies to regulate construction activities and minimize the impacts of construction related dust and exhaust emissions. Implementation of the MMP mitigation measures B-1 through B-10 would ensure that the proposed project does not result in any significant air quality impacts.

3. CULTURAL RESOURCES

Significant Impact: Archaeological field surveys concluded that there are no observable cultural resources, including artifacts or altered soil, indicating the

presence of prehistoric archaeological remains on the project site. Archaeological records searches revealed that no archaeological or historic sites exist on the project site. Therefore, damage to, destruction, or disturbance of known important cultural, paleontological, or archaeological resources would not be expected to occur.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: As the proposed project would not result in significant impacts to archaeological and paleontological resources, no mitigation measures are necessary. However, implementation of the Mitigation Measures D-1 and D-2 would ensure that the proposed project does not result in any significant cultural resource impacts.

4. GEOLOGY AND SOILS

Significant Impact: Grading/Excavation - Construction of the proposed project would entail approximately 42,507 cubic yards (CY) of cut and 23,299 CY of fill. Of this amount, approximately 2,647 CY would involve remedial cut and 771 would involve remedial fill. The proposed project includes three subterranean parking structures. The subterranean parking structures will require shoring and construction dewatering at a minimum. Shoring and dewatering plans as well as geotechnical reports addressing these issues must be submitted for review to the City Geotechnical staff as part of the building plan check stage.

Geotechnical Hazards

The geotechnical engineering reports for the parcels have been reviewed from a geotechnical perspective and approved-in-concept by the City's consulting Geologist. Based upon the findings of the geotechnical investigation, supplemental response reports, and subsequent conditions imposed through the remarks noted on the City's approval-in-concept for said reports, the site is considered suitable for the planned development.

It is assumed that the Applicant and site developers will be required to comply with all existing local, city, county, state and federal laws, regulations, codes, and statutes applicable to the geology, soils seismicity, and proposed onsite wastewater treatment system (OWTS), conditions outlined in the project geotechnical engineering and investigation reports, and subsequent comments and conditions of the approval in concept granted by the City for each Parcel. Compliance and adherence to project design measures mentioned herein will reduce potentially significant impacts to less than significant levels.

Groundshaking-Seismicity

Property owners and the general public should be aware that any structure in the southern California region is subject to potentially significant damage as a result of a moderate or major earthquake. The project will increase the potential for human health hazards and destruction of property to occur on the project site during a sizable seismic event. The risks associated with seismic activity are unavoidable and inherent to any location throughout the southern California region. While it is impossible to totally prevent structural damage to buildings and loss of life as a result of seismic events, adherence to all applicable building codes and regulations and site-specific engineering specifications can reduce such impacts to less than significant levels.

If engineering studies using state-of-the-practice techniques are employed, the impacts from ground rupture can be accounted for with setbacks and foundation designs to accommodate several inches of movement. Surface rupture potential is considered low to moderate, and the impacts are considered significant but mitigatable.

Secondary Effects of the Proposed Onsite Wastewater Treatment System

The proposed OWTS would effectively treat and dispose wastewater generated by the Proposed project while minimizing impacts to the greatest degree feasible. The proposed OWTS includes a network of underground wastewater treatment tanks proposed to effectively remove solids and floatable oil and grease containing materials from the waste stream prior to discharging effluent on site. The effluent would be processed to meet the minimum requirements of the City of Malibu Uniform Plumbing Code and disposed into a system of leach fields and subsurface drip disposal areas.

The referenced geotechnical investigation and hydrogeological feasibility reports were reviewed by the City's consulting geologist and approved in concept for CDP approval, with conditions to be addressed during the building plan check stages. Based on this review, the project's secondary impacts from the proposed OWTS could be reduced to less than significant with the implementation of the stated mitigation measures.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of Mitigation Measures E1-E9 will reduce the impact to geology and soils to a level less than significant.

5. HYDROLOGY AND WATER QUALITY

Significant Impact: Hydrology/Flooding - Based on the Federal Emergency Management Agency's (FEMA) flood plain elevations, Parcel A is predominately in

an area that is prone to flooding depths of two feet, and portions of Parcels B and C are in areas prone to flooding depths of one foot. The project design incorporates finished floor heights raised well above the flood levels determined by FEMA for the development areas and, as such, would not result in significant flooding impacts. Potential flooding impacts will therefore be avoided through site design and remedial grading planning.

Onsite Drainage

The onsite drainage system designed for the project site includes a 38-inch reinforced concrete pipe (RCP) along the east side of the project site and a 24-inch RCP along the west side of the project site. The storm drain system and the debris basin have been designed to accommodate water flow and debris from the watershed area north of the project site during a 50-year storm. The final drainage plan will be required to be reviewed and approved during approval of the proposed grading and drainage plans. Approval of these plans will ensure all flooding and drainage impacts are addressed on site. As such impacts associated with drainage and flooding will be reduced to less than significant levels.

Water Quality -Construction

During grading and construction activities, there will be a potential for surface water runoff to carry sediment and small quantities of pollutants into the storm water system. The National Pollution Discharge Elimination System (NPDES) requires that a Notice of Intent (NOI) be filed with the State Water Resources Control Board (SWRCB) for construction activities greater than one acre (effective March 1, 2003). A Water Quality Mitigation Plan (WQMP) will be required to be developed, reviewed and approved by the City of Malibu prior to any onsite grading activities. The WQMP will identify BMPs such as sandbag barriers, temporary desilting basins near inlets, gravel driveways, dust controls, employee training, and general good housekeeping practices that help prevent water quality contamination. With the implementation of the BMPs, short-term water quality impacts should be reduced to less than significant levels.

Operational Impacts

Post-development storm water runoff has the potential to contribute pollutants to the storm water conveyance system and ultimately to the ocean. Prior to development, the City will require an approved WQMP prior to the issuance of any building permits. Compliance with the SUSMP and City Ordinance 157 would ensure that the proposed projects would not result in any significant water quality impacts. In addition, the proposed man-made wetlands, which are proposed to control runoff from developed and paved surfaces, would also serve to minimize the introduction of pollutants of concern to offsite water bodies.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of Mitigation Measures F1-F9 will reduce the impact to a level less than significant.

6. LAND USE AND PLANNING

Significant Impact: The proposed project involves the development of a vacant property into three separate commercial development projects for a total development of 132,058 square feet of commercial floor area, including commercial office and retail space on Parcels A and B and a City Hall on Parcel C. Parcel A occupies approximately 312,195 square feet of land area and is proposed to be developed with 68,997 square feet of commercial office and retail uses. The proposed FAR for Parcel A is approximately 0.22:1. Parcel B occupies approximately 248,610 square feet of land area and is proposed to be developed with 43,061 square feet of commercial office and retail uses. The proposed FAR for Parcel B is approximately 0.17:1. Parcel C is comprised of approximately 100,000 square feet of land area and is proposed to be developed with a 20,000 square foot City Hall. The proposed FAR for Parcel C is approximately 0.20:1. The overall FAR for the proposed project as a whole is 0.20:1.

Based on the zoning code, the project would require a total of 466 parking spaces on Parcels A and B. The proposed project would include approximately 609 parking spaces, with 346 spaces on Parcel A, 197 spaces proposed on Parcel B and 66 spaces proposed for Parcel C. The project would meet the parking requirements and parking impacts would be less than significant.

The proposed project is substantially consistent with the Community Commercial land use designation of the General Plan Land Use Element. The proposed project is also substantially consistent with the allowable uses and development standards for Community Commercial zoning designation for the project site, including the minimum parking requirements. Several discretionary land use and entitlement actions (Local Coastal Program Amendment for the Town Center Overlay, Coastal Development Permit, Lot Line Adjustment, and Conditional Use Permit) will be necessary for the project to be constructed as proposed. Procurement of all required land use approvals will mitigate any potential land use impacts to a less than significant level.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of Mitigation Measures G1-G4 will reduce the impact to land use and planning to a level less than significant.

7. PUBLIC UTILITIES

Electricity

Significant Impact: The project site does not currently support any uses that consume electricity resources. Therefore the proposed project would result in an increase in the amount of electricity consumed on the project site. Upon completion, the proposed project is anticipated to consume approximately 4,773 kilowatt hours of electricity per day. The existing electricity infrastructure in the project vicinity is not experiencing any problems or deficiencies and the proposed project would not exceed infrastructure design capacities. According to the Southern California Edison Company, the existing infrastructure would be able to handle the electricity demand of the proposed project. The proposed project would therefore have a less than significant impact on electricity services.

However, temporary disruptions in service may occur during connection of electricity service to the proposed project. In the case that service disruption to adjacent properties is needed, a potentially significant impact would be created. Implementation of Mitigation Measures I-1 through I-17 will reduce the impact to electricity to a level less than significant.

Water Service

Significant Impacts: The proposed project is expected to generate a demand of approximately 43,370 gallons per day (gpd) of water. While adequate water supply in the project area exists, existing storage and distribution infrastructure cannot serve the proposed project. Water mains for the proposed project do not exist, and therefore would need to be constructed. Therefore, a potentially significant impact could occur and mitigation measures are required. Implementation of Mitigation Measures I-18 through I-22 will reduce the impact to water service to a level less than significant.

Wastewater Service

Significant Impact: The proposed project will be served by a proposed onsite wastewater treatment plant. As such the proposed project will be self-efficient with regard to wastewater treatment and will not result in any impacts upon local public wastewater treatment utility providers. Implementation of Mitigation Measures I-23 through I-26 will reduce the impact to wastewater to a level less than significant.

Solid Waste Service

Construction Impacts

Significant Impact: Much of the solid waste generated during the construction phase such as wood, metal scrap, and formed construction board (cement and dry wall

board) would be recycled and salvaged to the maximum feasible extent. Materials not recycled would be disposed of at local landfills, and possibly a Class III landfill for any hazardous materials. With the recycling of most of the solid waste generated by the construction phase of the proposed project, short-term construction impacts to landfills and solid waste service would be less than significant.

Operational Impacts

Upon full occupancy of the proposed project, daily solid waste associated with the proposed project would be approximately 794 pounds of solid waste per day. Solid waste generated onsite would be disposed of in accordance with all applicable federal, state, and local regulations related to solid waste. Correspondence with the G.I. Rubbish Company has suggested that the proposed project would utilize a waste pick up service three times a week, using three trash bins, each three cubic yards in size and a recycling pick up service two times a week, using two trash bins of the same size. This level of service is expected to accommodate the solid waste generated by the proposed project, and impacts would thus be less than significant. Although mitigation is not required, Mitigation Measures I-27 through I-29 will ensure impact to solid waste is a level less than significant.

8. PUBLIC SERVICES

Los Angeles County Fire Department (LACFD) Services

Significant Impact: The proposed project would increase the level of human occupancy and activity on the project site, and this level of activity could result in a likely increase in the percentage of emergency calls to the project site. According to the LACFD, additional service provisions, including staff, equipment, and stations are already needed. Therefore, development of the proposed project could create a potentially significant environmental impact by exacerbating already insufficient service ratios and standards. Mitigation measures are required.

Water Supply and Infrastructure

The project site is not currently served by water infrastructure such as water mains or fire hydrants. This lack of water services for fire protection on the project site would have a significant impact on fire protection services, necessitating the inclusion of mitigation measures to specifically address this impact.

Grading, Slope, and Associated Wildfire Risks

While most of the proposed project is located on land that has a less than ten percent grade, the north boundary is characterized by steeper slopes, which, without mitigation could pose a fire risk to developments located upslope. The development pads will be graded to comply with the LACFD requirements. A Fuel Modification Plan will need to be developed and submitted to the LACFD for approval to mitigate potential grading, slope and associated wildfire impacts within the northern areas of the project site.

Emergency Fire Access

The proposed site plan for the DA .20 project identifies two access roadways including one primary driveway providing access to Parcels A, B, and C, and a secondary extended driveway along the project site's western property line, providing additional access to Parcel C. Both access driveways will be developed in accordance with all applicable fire access codes and standards and the proposed development plans will be required to be submitted to and approved by the LACFD prior to construction. Thus, impacts associated with fire services and apparatus accessibility would be less than significant.

Police Protection Services

Construction Impacts

Significant Impact: Los Angeles County Sheriff Department (LACSD) service requirements would increase over the existing demands during the construction phase of the proposed project. The potential for vandalism and theft would increase due to the presence of construction equipment and building materials, increasing Sheriff's service demands for property protection. Therefore, potentially significant impacts would occur, and mitigation measures are required.

Operational Impacts

The proposed project consists of 132,058 square feet of commercial, retail, and City Hall space that would add incrementally to the existing demands on the LASD in the City of Malibu. According to the LASD, existing staff levels are adequate to meet the needs of the proposed project. Therefore, impacts would be less than significant.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of Mitigation Measures J1-J10 will reduce the impacts to public services to level less than significant.

9. ENVIRONMENTAL HAZARDS

Construction Impacts

Public record research of the project site indicated that no potential environmental hazards which could be upset during construction activities are present on the project site. The site is not listed on any federal, state, or local databases compiled in accordance with Government Code Section 65962.5. Therefore, impacts with respect to this issue are considered less than significant.

Groundwater Impacts

An analysis of groundwater samples at the project site indicated that total petroleum hydrocarbons (TPH) was not detected (ND). Concentrations of benzene and

ethylbenzene ranged from ND to microgram per liter (1 µg/l). Concentrations of toluene were detected at 1 µg/l and concentrations of xylenes ranged from ND to 4 µg/l. All of these concentrations are below the state drinking water standards and, therefore, are not considered to be significant. However, pumped groundwater could potentially draw higher concentrations of contaminants onto the project site, constituting a potentially significant impact and necessitating incorporation of mitigation measures that address the risk of accidental groundwater contamination during construction.

Asbestos Impacts

The structures on the project site may have been built prior to the federal banning of asbestos containing materials (ACMs). Therefore, the existing structures may have been constructed with building materials containing lead-based paint and/or ACMs. The potential release of ACMs is considered to be a significant impact. Mitigation measures are required.

Radon Impacts

Based on the location of the project site, elevated levels of radon are not expected to be of concern, and no impact would occur.

Lead Impacts

It is possible that the existing structures on the project site contain lead-based materials which could be released into the environment during demolition activities. Therefore, a potentially significant impact exists and mitigation measures are required.

Polychlorinated Biphenyl (PCB) Impacts

Within the existing onsite structures, fluorescent light ballasts manufactured prior to 1978 may contain small quantities of PCBs. It is possible that PCBs could be released into the environment during demolition activities. Therefore, a potentially significant impact exists and mitigation measures are required.

Operational Impacts

The proposed project does not involve any materials or activities that would entail the use of hazardous materials that could potentially pose a threat to individuals onsite or on immediately adjacent properties. Based on the proposed project's required compliance with applicable regulations, the risk of upset and accidental conditions involving the release of hazardous materials into the environment is considered to be less than significant.

Finding: Pursuant to CEQA Section 15091(a)(1), changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR.

Facts in Support of Finding: Implementation of Mitigation Measures L1-L4 will reduce the impact to a level less than significant.

Section 4. Alternatives Analyses.

Based upon the testimony and other evidence received, and upon studies and investigation made on its behalf, the City Council further finds that the FEIR analyzes a reasonable range of project alternatives. The alternatives in the FEIR are as follows:

- A. Commercial Buildings with Surface Level Parking only – This alternative was dismissed due to the requirement for 45 percent of the site to be landscaping, 25 percent to be open space, and that no parking could be provided in either the open space or landscaping area. There was no way to achieve the project’s objective of even a .15 FAR with surface level only parking. In addition, the amount of hardscape required for surface level parking was not an environmentally superior alternative.

The Council finds that the surface level parking only concept did not meet the project objectives nor required open space and landscaping requirements of the City’s land use regulatory documents.

- B. Big Box Alternative – Alternative was considered to construct a large building or a series of large buildings which could accommodate a large “big box” retail business or a large supermarket. The positive aspects of this alternative include 11 smaller buildings into one to three larger buildings which would allow locating the structures further to the south away from surrounding residential neighborhood to the north. This would provide for greater buffers from the adjacent residential neighborhoods and possibly allow a reduction in the number of onsite drive aisles and associated hardscaping. The “big box” alternative was rejected as infeasible because it would not be consistent with the City’s General Plan, Zoning and LCP which requires commercial structures be “small scale” or “low rise,” and to be subordinate to the setting, and consistent with the size and character of surrounding residential homes and other development. A “big box” store would be out of scale with surrounding residential homes and commercial development.

The Council finds that the Big Box alternative does not meet the project objectives and is inconsistent with the General Plan and Local Coastal Program Land Use Policies.

- C. The No Project Alternative – This alternative does not alter the site in any way or increase traffic or site lighting. However, this alternative does not meet the project objectives of commercial development on a site designated for such use in all the City’s land use regulatory documents.

The alternative assumes nothing is proposed or approved on the sites and that the current condition on all sites remains. For example, no buildings or structures would be constructed on the site, no landscaping or hardscaping would occur. Any on-going

maintenance that is currently occurring would continue, such as discing for the properties for fire suppression purposes. The No Project Alternative will have reduced environmental impacts when compared to the proposed project but will not meet the project objectives of providing the City and La Paz Ranch, LLC mutual certainty regarding the future development of the large vacant parcels in the Malibu Civic Center.

The City Council finds that the No Project Alternative is infeasible because it would not promote the underlying goals and objectives of the project. Specifically, the No Project Alternative would not allow for the creation of the new location for the City Hall complex in the Malibu Civic Center Area or allow for a variety of commercial choices that allow Malibu residents to minimize trips outside of the City. The No Project Alternative would not allow for realization of the goal of developing residentially scaled garden offices and commercial spaces with shops and food establishments to serve customers and businesses within the City of Malibu. The No Project Alternative would thwart the project goal of developing a project on a currently underutilized site that is financially viable and which provide fiscal benefits, jobs and enhanced tax revenues to the City of Malibu and its residents. The No Project Alternative would thwart the project goal of providing residents with modern, full service retail/commercial with adequate parking which offers the quantity, quality and variety of merchandise and services to serve customers from the City of Malibu, thereby enhancing choice and opportunities for Malibu residents while simultaneously reducing the travel needs of those residents.

- D. Alternate locations on the site and varying degrees of commercial use (variations in the amount of retail to office space) - A variety of site layouts have been considered over the years and the driving design force has been the development standards with the Zoning Code and subsequently, the LCP. The somewhat Z-shaped parcels represent design constraints given the setback requirements of 20 percent front yard, 25 percent cumulative side yard, and a 15 percent rear yard. The setbacks combined with the 40 percent landscaping and 25 percent open space create a very specific development envelope. The Applicant, as part of the Local Coastal Program Amendment, has requested development standards which primarily accommodate the addition of the City Hall complex. There are no large footprint changes to the Applicant's proposed commercial development as part of the DA .20 project. The ratio of retail space and office space is discussed in terms of traffic generation in the EIR. However, since any addition of commercial space in the area will require a statement of overriding considerations, the ratio is more attributable to neighborhood compatibility. For example, the previous iteration of Buildings 10 and 11 were a mix of retail and office and are located closer to the eastern property line. Due to neighbor concerns, the buildings were relocated to the furthest point (respecting setbacks) west and the use limited to the less intensive office-use only.

The alternate locations on the site and varying degrees of commercial uses were studied by the Applicant and City staff. Both the .DA .20 project and the preferred alternative (.15 project) have the most intense uses (shopping center area) located as close as possible to the existing commercial development on Civic Center Way. The less intense use,

primarily day time use of office space, is located closer to the more compatible existing residential development on Cross Creek Road.

The City Council finds that an alternate location on the site or percentage of use on the site will not meet the project objectives and that either the preferred alternative or the DA .20 project are a reasonable mix of uses sensitively sited to adjacent properties.

- E. The Preferred Alternative – This alternative is described in detail throughout the associated staff report as the .15 project. Implementation of this project would have reduced impacts compared to the proposed .20 DA project on noise, air quality, biological resources, cultural resources, hydrology/water quality, geology and soils, and hazard risks as identified throughout the EIR. The project does reduce significant impacts, but meets project objectives of commercial development. Development layouts would be similar to those of the DA .20 project but without the City Hall complex. The preferred alternative would have similar if not slightly less aesthetic impacts due to reduced massing on the sites. The .15 project is in compliance with the LCP commercial development standards and the required findings can be made.
- F. The Proposed .20 DA Project Alternative - This alternative is described in detail throughout the associated staff report. Implementation of this project would have similar impacts as the .15 project, described above as the preferred alternative, the primary difference being that this alternative provides a public benefit.

The City Council finds that although the .15 project meets the LCP development standards and provides desired shopping and restaurants in the Civic Center Area, it would not promote the underlying goals and objectives of the DA .20 project. Specifically, at the heart of the DA .20 project is the development agreement between the City and the Applicant, which is premised upon the Applicant receiving certain rights in exchange for a variety of public benefits inuring to the City and its residents. In other words, the bargain struck between the parties is founded upon the specified exchange of consideration. Those public benefits are key elements of the underlying goals and objectives of the DA .20 project.

Section 5. General Findings.

Based upon the testimony and other evidence received, and upon studies and investigation made on its behalf, the City Council finds:

- A. The FEIR for this project is adequate, complete, and has been prepared in accordance with the California Environmental Quality Act (CEQA).
- B. The City Council has reviewed and considered the FEIR in reaching its conclusion.

- C. In accordance with CEQA Guidelines Sections 15091 and 15093, the EIR includes a description of each potentially significant impact and rationale for finding that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as detailed in Section 3.
- D. In accordance with Public Resources Code Section 21081 and CEQA Guidelines Section 15091, changes and alterations have been required and incorporated into the La Paz Ranch, LLC Development Agreement project and related entitlements which avoid or substantially lessen the significant environmental effect because feasible mitigation measures included in the MMRP are made conditions of approval for this project.
- E. The FEIR reflects the City's independent judgment and analysis.

Section 6. Impacts Determined to be Significant and Unavoidable Requiring a Statement of Overriding Considerations.

Based upon the testimony and other evidence received, and upon studies and investigation made by the City Council and on its behalf, the City Council further finds that there is substantial evidence to support the finding that the La Paz Ranch Development Agreement project will have community benefits, including specific economic, legal, social, technological, and other benefits, that outweigh the significant effects on the environment that cannot be mitigated to a level less than significant. The benefits, which the City acknowledges are of fundamental value to the community, include, among others: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal infrastructure construction fund; 3) a pedestrian and bike path from City Hall (Parcel C area) throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; 5) architectural plans for the proposed City Hall; 6) providing fiscal benefits to the City's general fund; 7) providing both short-term construction employment and long-term permanent employment within the City; and 8) coordinating public facilities with private development. The City Council finds that any one or combination of these specific community benefits would outweigh the unavoidable environmental impact of the project.

The following Statement of Overriding Considerations (SOC) identifies and weighs the significant unavoidable impacts that cannot be mitigated to a level less than significant with the community benefits from this project.

STATEMENT OF OVERRIDING CONSIDERATIONS

The Statement of Overriding Consideration is organized into three sections: Section 1: Project Specific Effects that are Unavoidable Significant Effects which Cannot be Mitigated to a Level Less Than Significant; Section 2: Cumulative Project Effects that are Unavoidable Significant Effects which Cannot be Mitigated to a Level Less Than Significant; and Section 3: Specific Overriding Community Benefits of the Project that Outweigh the Significant Effects of the Environment.

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15091, for those significant effects that cannot be mitigated to less than significant, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment based on substantial evidence in the record. In accordance with the provisions of CEQA and the CEQA Guidelines, this Statement of Overriding Considerations has been prepared to identify and weigh those unavoidable significant effects, which cannot be mitigated to a level less than significant with the community benefits that the La Paz Ranch, LLC Development Agreement and related entitlements provides.

SECTION 1 - PROJECT SPECIFIC EFFECTS - UNAVOIDABLE SIGNIFICANT EFFECTS WHICH CANNOT BE MITIGATED TO A LEVEL LESS THAN SIGNIFICANT

The City Council has determined that, although EIR mitigation measures and conditions of approval imposed on the project will provide substantial mitigation of the identified significant environmental effects, these environmental effects cannot be feasibly mitigated to a level of insignificance. Consequently, in accordance with Section 15093 of the CEQA Guidelines, a Statement of Overriding Considerations has been prepared to substantiate the City's decision to accept these unavoidable significant effects when balanced against the significant benefits afforded by the project.

This section sets forth the significant unavoidable effects of the project and, with respect to each significant impact, identifies one or more of the required CEQA findings, states facts in support of these findings and refers to the Statement of Overriding Considerations.

A. The FEIR identifies "Unavoidable Significant Environmental Effects which Cannot Be Mitigated to a Level Less than Significant." They are as follows:

1. CONSTRUCTION NOISE

Significant Impact: Construction of the proposed project would result in temporary increases in ambient noise levels in the project area on an intermittent basis. The new ambient noise level during the construction phase of the proposed project (with the use of mufflers) would be at least 17 decibels (A-weighted) (dBA) greater than the existing ambient noise level at Receptor 1 and at least 9 dBA greater than existing ambient noise levels at Receptors 2 and 3 (see Figure V.H-1, Noise Monitoring Locations). At Receptor 4, an incremental increase of less than 1 dBA is anticipated during construction. The new ambient noise levels at Receptors 1, 2, and 3 would exceed the significance threshold of a 5 dBA. With the use of mufflers and the application of the prescribed Mitigation Measures listed above, a decrease of approximately 3 dBA in the new ambient sound level is anticipated at Receptor 1, and a decrease of approximately 2 dBA in the new ambient sound level is anticipated at Receptors 2 and 3. However, a significant and unavoidable temporary noise impact during construction would remain at Receptors 1, 2 and 3. In the

event the proposed project is approved despite these significant noise impacts, a Statement of Overriding Considerations will be required to be adopted by the decision makers.

Finding: CEQA requires decision makers to balance the benefits of a proposed project against its unavoidable environmental impacts. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered "acceptable" by adopting a Statement of Overriding Considerations. This statement sets forth the project benefits or reasons why the Lead Agency is in favor of approving and weighs these benefits against the project's environmental impacts identified in the FEIR that cannot be mitigated to a level less than significant.

Facts in Support of Finding: Implementation of Mitigation Measures H-1 through H-4 is required to address construction noise; however, this issue will remain significant and unavoidable during the construction phase of the project. The following facts or mitigation measures indicate that the identified significant effects of the project have been reduced or avoided to the extent feasible; however, those impacts cannot be feasibly mitigated to below a level of significance, and the remaining unavoidable effects are acceptable when balanced against the specific overriding economic, legal, social, technological or other considerations described in the Statement of Overriding Considerations (see discussion below).

- B. The FEIR identifies "Cumulative Impacts Associated with the Project which Remain Potentially Significant and Unavoidable."

1. BIOLOGICAL RESOURCES

Significant Impact: Development of the proposed project would result in the grading (including remedial excavation and re-compaction) of the project site. These operations would remove all native hillside sage scrub habitat and sycamore woodland relic cells. Additionally, non-native Eucalyptus trees and the non-native annual grassland would also be permanently removed. The loss of coastal sage scrub (CSS) is considered an adverse, but less than significant impact due to the disturbed and isolated nature of CSS onsite. Therefore, no mitigation for loss of CSS is required. The loss of onsite sycamore trees is considered to be potentially significant as their removal would conflict with the Malibu LIP Chapter 5. The loss of annual non-native grassland is considered to be a less than significant impact. Landscaping within the resulting undeveloped areas would offset any adverse impacts to non-native grasslands. Removal of Eucalyptus and other invasive, non-native trees and vegetation (e.g., castor bean, mustard, etc.) is considered to be a beneficial impact.

Based on a general biological assessment conducted on the project site, no sensitive flora are known to occur onsite. Further, no wetlands or other jurisdictional features are present. Therefore, no significant impacts to these resources are anticipated.

Impacts to Wildlife

Construction of the proposed project would disturb all wildlife species, which currently reside or utilize the project site through the displacement or killing of such species during grading operations. Most wildlife species present on the project site are common and urban adapted. Highly mobile wildlife would move off the project site during construction, but low mobility organisms (e.g., burrowing mammals, reptiles, etc.) risk destruction. Incidental injuries and kills can be reduced in number with implementation of the recommended mitigation measures.

Most wildlife species present on the project site are common and urban adapted. No endangered or threatened wildlife species are known to be present on the project site. Therefore, no impacts to any endangered, threatened or otherwise protected species would occur.

Finding: CEQA requires decision makers to balance the benefits of a proposed project against its unavoidable environmental impacts. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered "acceptable" by adopting a Statement of Overriding Considerations. This statement sets forth the project benefits or reasons why the Lead Agency is in favor of approving and weighs these benefits against the project's environmental impacts identified in the FEIR that cannot be mitigated to a level less than significant.

Facts in Support of Finding: The following facts or mitigation measures indicate that the identified significant effects of the project have been reduced or avoided to the extent feasible; however, those impacts cannot be feasibly mitigated to below a level of significance, and the remaining unavoidable effects are acceptable when balanced against the specific overriding economic, legal, social, technological or other considerations described in the Statement of Overriding Considerations (see discussion below):

Implementation of Mitigation Measures C-1 through C-8 will reduce the impacts to a less than significant level; however, the cumulative impacts associated with the loss of open space remain significant and unavoidable.

2. TRANSPORTATION

Significant Impact: The project would generate a net increase of 2,863 weekday daily trips, 151 weekday morning peak hour trips and 248 weekday afternoon peak hour trips. For weekends, the project would generate a total of 2,241 daily trips and 197 mid-day peak hour trips. Traffic expected from other specific development projects within the area was considered in formulating a Cumulative Base condition for the analysis. Although most of the related projects are still in the planning stages, the Cumulative Base conditions conservatively assume that all of the related projects (see Table IV-C.1 in the EIR) are fully built in year 2007. The related projects are projected to generate 10,967 weekday daily trips, 714 weekday morning peak hour trips, and 1,249 weekday afternoon peak hour

trips. For Saturday (weekends), the related projects are expected to generate a total of 8,202 daily trips and 1,083 mid-day peak hour trips.

Traffic studies conducted for the proposed project (KAKU Associates 2005 and Priority Engineering 2007) evaluated the potential traffic-related impacts at nine intersections throughout Malibu. The studies concluded that the proposed project would significantly impact five of the nine study intersections and one roadway section. The five intersections are:

- Webb Way at Pacific Coast Highway
- Cross Creek Road at Pacific Coast Highway
- Webb Way at Civic Center Way
- Cross Creek Road at Civic Center Way
- Malibu Canyon Road at Pacific Coast Highway

Of the five impacted intersections, only three intersections have proposed mitigation measures that will effectively mitigate project impacts. Those intersections are Webb Way at Pacific Coast Highway, Cross Creek Road at Pacific Coast Highway and Webb Way at Civic Center Way.

Implementation of the mitigation improvements would be effective in mitigating project impacts at three of the five intersection locations identified in the analysis for the weekday cumulative plus project conditions. However, significant and unavoidable traffic impacts would still remain at two intersection locations, namely: the intersection of Malibu Canyon Road and PCH during the weekday a.m. and p.m. periods, and the intersection of Cross Creek Road and Civic Center Way during the weekday p.m. period. There are no feasible mitigation measures for the intersections at Malibu Canyon Road and Pacific Coast Highway, or at Civic Center Way and Cross Creek Road. Additionally, for the roadway segment of Malibu Canyon Road between the Hughes Research Lab and Piuma Road, no feasible mitigation measures have been identified.

Finding: CEQA requires decision makers to balance the benefits of a proposed project against its unavoidable environmental impacts. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse effects may be considered "acceptable" by adopting a Statement of Overriding Considerations. This statement sets forth the project benefits or reasons why the Lead Agency is in favor of approving and weighs these benefits against the project's environmental impacts identified in the FEIR that cannot be mitigated to a level less than significant.

Facts in Support of Finding: The following facts or mitigation measures indicate that the identified significant effects of the project have been reduced or avoided to the extent feasible; however, those impacts cannot be feasibly mitigated to below a level of significance, and the remaining unavoidable effects are acceptable when balanced against the specific overriding economic, legal, social, technological or other considerations described in the Statement of Overriding Considerations (see discussion below).

Implementation of Mitigation Measures K-1 through K-3 is required; however, impacts to transportation and circulation will remain significant and unavoidable.

**SPECIFIC OVERRIDING COMMUNITY BENEFITS OF THE PROJECT THAT
OUTWEIGH THE SIGNIFICANT EFFECTS ON THE ENVIRONMENT**

1. The project will provide the City 2.3 acres in the Civic Center Area as the location of a future City Hall complex.
2. The project will provide for a donation of \$500,000 from the La Paz Ranch, LLC to help fund construction of the future City Hall complex or municipal infrastructure.
3. The project provides a pedestrian and bike path from City Hall (Parcel 3 area) throughout the project connecting to Civic Center Way.
4. The project will dedicate a trail segment fronting along Civic Center Way.
5. The Applicant has prepared architectural plans for the future City Hall complex at no cost to the City.
6. The project will provide the City with improvements to infrastructure including improvements to Pacific Coast Highway.
7. The project will provide fiscal benefits to the City's general fund.
8. The project will help to develop a "town center" that is geographically centrally located, that provides interdependent uses thereby minimizing trips and enhances the existing Civic Center uses and permanently establish a City Hall in the Civic Center.

Section 7. The City Council has reviewed and considered the environmental information contained in the FEIR (SCH No. 200311131) and determines that it is adequate and in compliance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.). In compliance with Public Resources Code Section 12081 and CEQA Guidelines Section 15093, the Planning Commission has considered the project benefits as balanced against the unavoidable adverse environmental effects and hereby determines that any of the overriding considerations listed in the Statement of Overriding Considerations outweighs the unavoidable adverse environmental effects; therefore, the Planning Commission determines that the adverse environmental effects are considered acceptable.

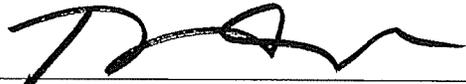
Section 8. The City Council adopts the above Statement of Overriding Considerations.

Section 9. The City Council adopts the Mitigation Monitoring Program attached hereto as "Exhibit A" and made a part hereof.

Section 10. Certification.

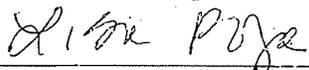
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of November, 2008.



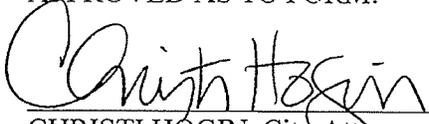
PAMELA CONLEY ULICH, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

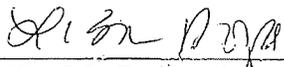
APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 08-51 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 10th day of November, 2008, by the following vote:

AYES:	4	Councilmembers:	Barovsky, Sibert, Stern, Conley Ulich
NOES:	1	Councilmember:	Wagner
ABSTAIN:	0		
ABSENT:	0		



LISA POPE, City Clerk
(seal)

**La Paz Development Agreement Final EIR
Revised Mitigation Monitoring Program**

Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
V.A Aesthetics/Views						
(A-1) All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan, with native plant species, to the satisfaction of the City Planning Department. The final Landscape Plan shall be in substantial compliance with the Landscaping Plan illustrated in Figure V.A-6, V.A-6A, V.A-6B, and V.A-6C and shall include a row of coast live oak trees, which shall be planted 15 feet apart trunk to trunk on center along the northeasterly property boundary and Australian willow and coast live oak around buildings 10 and 11, west of the road.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Environmental and Community Development Department			
(A-2) Outdoor lighting shall incorporate low-level lighting fixtures and shall be designed and installed with directional shields so that the light source cannot be seen from adjacent land uses.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Environmental and Community Development Department			
(A-3) The exterior of the proposed buildings shall be constructed of non-reflective building materials.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Environmental and Community			

Malibu La Paz Development Agreement EIR
 Resolution No. 08-51
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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
			Development Department			
V.B Air Quality						
(B-1) The construction area and vicinity (500-foot radius) shall be swept (preferably with water sweepers) and watered at least twice daily.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-2) All unpaved roads, parking and staging areas shall be watered at least once every two hours of active operations.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-3) Site access points shall be swept/washed of visible dirt deposition at the end of each workday	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-4) On-site stockpiles of debris, dirt or rusty material shall be covered or watered at least twice daily.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
B-5) All haul trucks hauling soil, sand, and other loose materials shall either be	<ul style="list-style-type: none"> Field check to confirm measures are 	<ul style="list-style-type: none"> During construction. 	City of Malibu			

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covered or maintain two feet of freeboard.	implemented.		Department of Engineering Services			
(B-6) All haul trucks shall have a capacity of no less than twelve and three-quarter (12.75) cubic yard.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-7) At least 80 percent of all inactive disturbed surface areas shall be watered on a daily basis when there is evidence of wind-driven fugitive dust.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-8) Operations on any unpaved surfaces shall be suspended when winds exceed 25 mph.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-9) Traffic speeds on unpaved roads shall be limited to 15 miles per hour.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(B-10) Operations on any unpaved surfaces shall be suspended during first and second stage smog alerts.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering			

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			Services			
V.C Biological Resources						
(C-1) Nesting birds are protected by both the California Department of Fish and Game (CDFG) Code and the federal Migratory Bird Treaty Act (MBTA). Removal of, or encroachment into existing on-site vegetation, should be restricted to off-peak bird nesting season, which typically occurs between February 1 and August 30. Should vegetation/tree removal be required during this period, the Applicant shall obtain the services of a qualified biologist, approved by the City, to conduct a series of nesting bird surveys consistent with CDFG recommended nesting bird surveys protocol methods in effect at the time. Any active nests shall be marked and exclusionary fencing shall be placed at a 10-foot radius around the nest (300 feet for raptors). The exclusionary fencing shall remain in place until such time that the biologist determines that the nest is no longer active. All equipment and human activity shall be excluded from these areas during active nesting without exception. Should the actual construction of nests be observed by the project biologist, he/she may, with	<ul style="list-style-type: none"> Grading permit approval 	<ul style="list-style-type: none"> Prior to site grading/tree removal 	City of Malibu Department of Environmental and Community Development			

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direction from the regional CDFG wildlife biologist, remove the nesting materials and/or dissuade further construction of the nest provided no egg-laying has begun						
(C-2) All disturbed and non-vegetated areas of the site must be watered daily during vegetation clearance and grading to minimize the generation of fugitive dust	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During site preparation and grading 	City of Malibu Department of Engineering Services			
(C-3) Prior to the initiation of vegetation clearance and grading, a qualified biologist or ecologist shall monitor the site and attempt to clear the proposed grading area of wildlife. The monitor will be present while all vegetation is removed, and shall direct the equipment operator to avoid impacts to wildlife through normal minimization techniques.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> Prior to/during site preparation and grading 	City of Malibu Department of Environmental and Community Development			
(C-4) Native vegetation shall be used in the landscaping pallet to the greatest extent feasible as required by the City of Malibu in the project's landscaping plan pursuant to mitigation measure A-1 at page V.A-14.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Environmental and Community Development			
(C-5) The lighting plan should be designed in consultation with the City Biologist or a qualified ecologist familiar with best management building practices. All lighting should be of low luminescence,	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Environmental and Community			

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directed downward or toward structures, and shielded to the extent necessary to protect nocturnal biological resources, pursuant to mitigation measure A-2 at page V.A-15.			Development			
(C-6) Native protected tree species (i.e., sycamore) removed on-site shall be replaced in accordance with the Tree Mitigation Plan approved by the City Biologist. The approved plan includes the removal of 6 trees and a replacement on-site at a better than 10:1 ratio.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Environmental and Community Development			
(C-7) Contribution to a restoration program for CSS in the Santa Monica Mountains to an established conservation organization or governmental agency on a 1:1 creation (2:1 enhancement) per/acre basis; or	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Environmental and Community Development			
(C-8) Contribution to an established conservation organization or governmental agency in the Santa Monica Mountains to assist with purchase and set-aside of existing CSS habitat in the Santa Monica Mountains on a 2:1 per/acre basis.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Environmental and Community Development			
V.D Cultural Resources						

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(D-1) In the event that archaeological resources are encountered during the course of grading or construction, all development must temporarily cease in these areas until the resources are properly assessed and subsequent recommendations are determined by a qualified consultant.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Environmental and Community Development			
(D-2) In the event that human remains are discovered, there shall be no disposition of such human remains, other than in accordance with the procedures and requirements set forth in California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98. These code provisions require notification of the County Coroner and the Native American Heritage Commission, who in turn must notify those persons believed to be most likely descended from the deceased Native American for appropriate disposition of the remains. Excavation or disturbance may continue in other areas of the Project Site that are not reasonably suspected to overlie adjacent remains or cultural resources. If undiscovered evidence of prehistoric artifacts is discovered construction activities in the affected areas shall not proceed until written authorization is granted by the City of Malibu Planning Manager	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During site preparation, grading and soils excavation. 	City of Malibu Department of Environmental and Community Development			

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V.E Geology and Soils						
(E-1) The proposed project shall be constructed in accordance with the geotechnical engineering recommendations as presented in the Engineering Geological and Geotechnical Engineering Reports (and subsequent Responses to City Comments), for the Proposed Malibu-La Paz Ranch, LLC, Civic Center Way, City of Malibu California, by Gold Coast GeoServices, Inc.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			
(E-2) All uncertified fill material placed within the fault trenches shall be removed and replaced as 90 percent compacted fill during the planned site preparations and rough grading.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During site preparation and grading. 	City of Malibu Department of Engineering Services			
(E-3) Temporary dewatering and discharge activities shall be monitored by the dewatering contractor and conducted in strict accordance with the Los Angeles Regional Water Quality Control Board's Order No. R4-2003-0111 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties (General Permit No. CAG994004).	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During grading, soils excavation and construction. 	City of Malibu Department of Engineering Services			

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(E-4) As recommended by the Project Geotechnical Engineer, all structures located within the "moderate and high" risk surface manifestation hazard areas that are not situated atop parking structures shall be provided with a minimum 10-foot thick 90% compacted fill blanket. It is recommended that the compacted fill blanket be reinforced with Tensar BX1200 geogrid or equivalent placed at two-foot vertical intervals up to two feet below the planned finish rough grade pad. Recommendations addressing over-excavation, installation of geogrid and backfilling of these areas shall be provided during the plan check approval process that addresses temporary stability of construction excavations and bottoms.	<ul style="list-style-type: none"> Plan approval; Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> Prior to construction; During construction. 	City of Malibu Department of Engineering Services			
(E-5) The structural engineer shall provide a letter along with supporting information, prior to plan check approval, indicating that the proposed buildings can tolerate the anticipated total and differential movements, or that site-specific geotechnical recommendations will be required.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Department of Engineering Services			
(E-6) The proposed structures should be constructed utilizing post-tensioned foundation systems and post-tensioned slabs-on-grade designed by the project structural engineer.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Department of Engineering			

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			Services			
(E-7) The Project Geotechnical Consultant shall provide appropriate geotechnical recommendations for restrained walls and include recommendations for damp-proofing or waterproofing and means for removing any water collected (e.g., sump pump), in accordance with the City's Geotechnical Guidelines.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Engineering Services			
(E-8) Complete grading plans that include the existing and proposed grades, grading yardages, proposed subterranean parking, the limits and depths of removals under the structures and flatwork areas, and grading cross-sections have been submitted to City Geotechnical staff for review. Remedial grading to mitigate liquefaction and other geotechnical hazards must be clearly defined in grading yardages, and illustrated on the Plans. Such plans submitted during final plan check shall reflect the concept plans in this EIR	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Department of Engineering Services			
(E-9) The Applicant shall obtain final construction plan approval (CDP) for the proposed onsite wastewater treatment systems (OWTS) from the City Environmental Health Administrator. Final approval of construction plans is subject to the conditions enumerated in the July 16, 2008 Revised Conformance	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Engineering Services			

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Review by the City's Environmental Health Administrator. The Environmental Health Administrator found that the OWTS is feasible and meets the City's requirements. The final design must be engineered to meet the effluent limits specified in waste discharge requirements (WDR), taking into account the Malibu Lagoon bacteria and nutrient total maximum daily load (TMDL) requirements of the Regional Water Quality Control Board (RWQCB) and the United States Environmental Protection Agency (US EPA)..						
V.F Hydrology/Water Quality						
(F-1) The project shall comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit.	<ul style="list-style-type: none"> Plan approval; Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> Prior to construction 	City of Malibu Department of Engineering Services			

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(F-2) The contractor shall contact the local California State Water Resources Board with any questions concerning Resolution No 2001-046 and to determine if the Project Site will require storm water sampling during construction activities.	<ul style="list-style-type: none"> Contact WRB; Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> During construction. 	Applicant; City of Malibu Department of Engineering Services			
(F-3) The Proposed Project shall conform to its WQMP as reviewed by the City of Malibu in concept and comply with the BMPs in the Jensen Design and Survey and the July 2008 approval of the City's Environmental Health Coordinator.	<ul style="list-style-type: none"> Field check to confirm measures are implemented. 	<ul style="list-style-type: none"> Prior to and during construction. 	City of Malibu Department of Engineering Services			
(F-4) The Proposed Project shall meet the requirements of the City of Malibu's Flood Plain Management Ordinance, Ordinance No. 110.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Prior to construction. 	City of Malibu Department of Engineering Services			

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<p>(F-5) A Water Quality Mitigation Plan is required to reduce pollutants from the sites. Best Management Practices (BMPs) are required and may include, but are not limited to, the following. Additionally BMPs can be found in the California Storm Water Best Management Practice Handbooks for Municipal and Commercial Activities, dated March 1993.</p> <ul style="list-style-type: none"> a. Public education b. Good housekeeping practices c. Storm drain stenciling and signs d. Catch basin/storm drain cleaning e. Sweep/vacuum parking and drive areas f. Material storage control. <p>The drainage plan in the WQMP shall substantially conform to the concept grading and drainage plan in Figures V.F-2 and V.F-3. The WQMP shall be implemented through a maintenance covenant and submitted to the City for review on an annual basis for the life of the project.</p>	<ul style="list-style-type: none"> • Field check to confirm measures are implemented; Annual submittal of a maintenance covenant to the City of Malibu. 	<ul style="list-style-type: none"> • Post-Construction. 	City of Malibu Department of Engineering Services			
<p>(F-6) A detention basin shall be provided that is properly designed and maintained to meet both County SUSMP requirements and City Ordinance 157 to retain or</p>	<ul style="list-style-type: none"> • Plan approval. 	<ul style="list-style-type: none"> • Prior to construction. 	City of Malibu Department of Engineering			

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filter initial rainfall.			Services			
(F-7) Ongoing BMPs outlined in the approved Water Quality Mitigation Plan shall be implemented by owners and tenants.	<ul style="list-style-type: none"> Notification to owners/tenants regarding obligation to implement BMP's. 	<ul style="list-style-type: none"> Post-construction. 	City of Malibu Department of Engineering Services			
(F-8) Long-term, regular maintenance of treatment wetlands shall be required indefinitely. Maintenance should include cleaning of pretreatment areas (dredging of sediment forebays, trash removal, backwashing of sand filters, etc.), harvesting of plant biomass, removal of exotic species and replanting of desired species. All maintenance work shall be scheduled to avoid critical breeding and nesting periods for wetlands species.	<ul style="list-style-type: none"> Annual review of a maintenance covenant. 	<ul style="list-style-type: none"> Post-construction. 	City of Malibu Department of Engineering Services			

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(F-9) The Applicant has obtained final feasibility approval for the proposed onsite wastewater treatment systems (OWTS) for Parcel A, Parcel B, and the City Hall Projects from the City Environmental Health Specialist. In accordance with Chapter 18.4(D) of the City's Local Coastal Plan- Local Implementation Plan (LCP-LIP) the proposed OWTS shall be engineered to meet the effluent limits specified in WDRs, taking into account the Malibu Lagoon bacteria and total maximum daily load requirements (TDMLs) of the RQWCB and the USEPA.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services			
(F-10) The Applicant shall apply recycled wastewater for irrigation purposes within landscape areas consistent with the State Water Resources Control Board Draft Recycled Water Policy.	<ul style="list-style-type: none"> Field check to confirm measures are implemented; Annual submittal of a maintenance covenant to the City of Malibu. 	<ul style="list-style-type: none"> Post-Construction. 	City of Malibu Department of Engineering Services			
(F-11) A salt management plan shall be prepared and approved as a part of the final wastewater system design consistent with the applicable requirements, guidelines and policies identified in Section 2.12 of the Wastewater Management System Master Plan prepared by Lombardo Associates, Inc., dated July 7, 2008.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services			

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(F-12) The Applicant shall obtain a Waste Discharge Requirement (WDR) and a Water Reclamation Requirements (WRR) from the Los Angeles Regional Water Quality Control Board. Prior to reuse or discharge, the effluent shall be processed to meet the requirements of the City of Malibu Plumbing Code, and the WDR/WRR of the RWQCB.	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services			
(F-13) Approval(s) to operate the proposed wastewater reuse system shall be obtained from the California Department of Public Health and the Los Angeles Regional Water Quality Control Board pursuant to the provisions of Title 22 of the California Code of Regulations. The required Engineering Report shall be prepared and submitted to the satisfaction of the California Department of Public Health, and the Los Angeles Regional Water Quality Control Board. Waste discharged into the wastewater treatment plant shall be limited to discharges from commercial and retail business, and City Hall. No water	<ul style="list-style-type: none"> Plan approval. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services			

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softener regeneration brines, industrial wastewaters, or volatile organic compounds shall be allowed to be discharged into the system.						
V.G Land Use and Planning						
(G-1) Grading and Drainage Plans shall be submitted to the Environmental Building and Safety Division for approval with the final Site Plan and Building Plans. No grading permits shall be issued until final building plans have been approved.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Environmental and Community Development			
(G-2) All wastewater shall be treated and managed on-site by the project operators in accordance with all applicable rules and regulations of the County of Los Angeles Health Department. The location of all proposed and abandoned wastewater treatment systems shall be depicted on the final building plans for the City's	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services t			

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approval.						
(G-3) The projects shall be developed in accordance with all site-specific hydrologic, geologic studies and final recommendations from the City Geologist or City Engineer.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Engineering Services			
(G-4) Approval of the Proposed Project shall be contingent on approval of a Coastal Development Permit from the City of Malibu, approval of a Zone Text Amendment, and upon effective certification of the Development Agreement by the CCC.	<ul style="list-style-type: none"> CDP approval; Development Agreement certification. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Environmental and Community Development			
V.H Noise						
(H-1) Construction contracts shall specify that all construction equipment shall be equipped with mufflers and other suitable noise attenuation devices.	<ul style="list-style-type: none"> Include requirement for noise attenuation in all construction contracts. 	<ul style="list-style-type: none"> Pre-construction. 	Applicant			
(H-2) All residential units located within 700 feet of the construction site shall be sent a notice regarding the construction schedule of the Proposed Project. A sign, legible at a distance of 50 feet shall also be posted at the construction site. All notices and the signs shall indicate the dates and duration of construction activities, as well as provide a telephone number where residents can inquire about the construction process and register	<ul style="list-style-type: none"> Notification of construction schedule to adjacent residents. 	<ul style="list-style-type: none"> Pre-construction. 	City of Malibu Department of Environmental and Community Development			

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complaints.						
(H-3) The Project Developer shall designate a "noise disturbance coordinator" who shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within 700 feet of the construction site and all signs posted at the construction site shall list the telephone number for the disturbance coordinator.	<ul style="list-style-type: none"> Designation of a noise disturbance coordinator. 	<ul style="list-style-type: none"> Pre-construction. 	Applicant			
(H-4) Consistent with the City of Malibu Noise Ordinance (Section 4204 G), construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on Saturdays, and prohibited on Sundays and holidays. Special circumstances may arise where construction activities are permitted during prohibited hours by expressed written permission of the City Manager, or if construction is necessary to preserve life or property when such necessity arises (Section 4205 D).	<ul style="list-style-type: none"> Limit hours of construction 	<ul style="list-style-type: none"> During construction. 	City of Malibu Department of Environmental and Community Development			
V.I-1 Public Utilities (Electricity)						

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(I-1) If connection of electricity services will result in a service disruption to surrounding properties, this connection must be done at a time of day that is the least inconvenient	<ul style="list-style-type: none"> Schedule service disruptions 	<ul style="list-style-type: none"> During construction 	Applicant			
(I-2) If a disruption to electricity services must occur, notice shall be provided to all affected properties of the service disruption	<ul style="list-style-type: none"> Provide notice 	<ul style="list-style-type: none"> During construction 	Applicant			
(I-3) High-efficiency air conditioning controlled by a computerized energy-management system shall be installed	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-4) Built-in appliances and space-conditioning equipment should exceed the minimum efficiency levels mandated by Title 24.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-5) Air shall be cascade ventilated from high-priority areas before being exhausted, thereby decreasing the volume of ventilation air required.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-6) Lighting system heat shall be recycled for space heating during cool weather.	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> 				

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(I-7) Low and medium static-pressure terminal units and ductwork shall be installed, and buildings shall be well sealed, to reduce energy consumption by air-distribution systems.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-8) A performance check of the installed space conditioning system shall be completed prior to the issuance of a certificate of occupancy.	<ul style="list-style-type: none"> Building Inspector sign-off 	<ul style="list-style-type: none"> Construction 	City of Malibu Department of Engineering Services			
(I-9) Exterior walls shall be finished with light-colored materials and high-emissivity characteristics to reduce cooling loads.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Environmental and Community Development			
(I-10) White reflective roofing material shall be used to meet standards and reflect heat.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-11) Thermal installation shall be installed in walls and ceilings which exceeds Title 24 regulations.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(I-12) Window systems shall be designed to reduce thermal gain and loss, and shall be fitted with heat-rejecting window treatments, thus reducing cooling loads during warm weather and heating loads during cool weather.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-13) Fluorescent and high-intensity-discharge (HID) lamps shall be installed inside as well as outside.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-14) Photo sensitive controls and dimmable electronic ballasts shall be installed to maximize the use of natural daylight and thus reduce the artificial lighting load.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-15) Occupant controlled light switches and thermostats shall be installed.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
(I-16) Time controlled interior and exterior lighting shall be installed.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(I-17) Passive solar inset of windows or windowless walls shall be incorporated	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			
V.I-2 Public Utilities (Natural Gas)						
No mitigation measures are required.	N/A	N/A	N/A	N/A	N/A	N/A
V.I-3 Public Utilities (Water)						
(I-18) The Applicant shall comply with the requirements of Water District 29 and the LACFD by providing the infrastructure needed to connect to the existing 12-inch water main located in the centerline of Civic Center Way, "T" off from that main and extend new water mains onto and within the project site to serve hydrants throughout the project in accordance with the provisions of the LACFD Code (Title 32) and the specifications listed in the Existing Fire Department Fire Flow/Hydrant Location and Access approvals (see Figure V.J-2 Fire Accessibility Site Plan) and any applicable regulations of the Water District 29.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(I-19) Subsequent to the Planning Commission's consideration of the FEIR, the District has formulated a fair share plan to pay for the construction of the cumulative water system projects (estimated to be \$4.5 million) to address the cumulative impacts for the Proposed Project and related projects within the Civic Center area. Pursuant to the fair share plan, the Applicant shall pay to Waterworks District No. 29, Malibu, when a grading permit is issued, the sum of \$834,625, provided that the District and Applicant have entered into a written agreement in which the District confirms that payment constitutes the entirety of the Applicant's fair share payment in mitigation of the project's cumulative impacts to the District's water system facilities.	<ul style="list-style-type: none"> Payment of Fees/Written Agreement Signed by Water District and Applicant 	<ul style="list-style-type: none"> Grading Permit 	City of Malibu			
(I-20) The Project Applicant shall be responsible for any fees adopted by the City of Malibu and generally and uniformly imposed by the City of Malibu's Environmental and Building Safety Department for construction of new water supply and distribution facilities.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Engineering Services; Los Angeles County Waterworks District 29, and the Los Angeles County Fire			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
			Department.			
(I-21) Automatic sprinkler systems shall be set to irrigate landscaping during early morning hours or during the evening to reduce water loss from evaporation. Care must be taken to reset sprinklers to water less often in cooler months and during the rainfall season to avoid wasting water by excessive landscape irrigation.	<ul style="list-style-type: none"> Irrigation management 	<ul style="list-style-type: none"> Operation 	Property Owner			
(I-22) Selection of native, drought-tolerant, low water consuming plant varieties shall be used to reduce irrigation water consumption to the maximum extent feasible, as reflected in the project's landscape plan; Mitigation Measure A-1, at page V.A-14.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Environmental and Community Development			
(I-23) Treated wastewater shall be used for irrigation of landscaping, as identified in the July 7, 2008 Malibu La Paz Development Wastewater Management System Management Plan (Appendix L), and consistent with the California Department of Public Health Title 22 Disinfected Tertiary Treatment Standards.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Environmental and Community Development			
(I-24) Best Management Practices (BMP's) for water conservation shall be used within buildings to reduce wastewater generation/water use.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-Construction 	City of Malibu Department of Environmental and Community			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
			Development			
V.I-4 Public Utilities (Wastewater)						
(I-25) Detailed plans for the OWTS shall be submitted to the City of Malibu Environmental and Building Safety Department for review and approval.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Environmental and Building Safety Department			
(I-26) The project Applicant shall obtain a Waste Discharge Permit from the Los Angeles Regional Water Quality Control Board (LARWQCB) prior to building permit issuance.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles Regional Water Quality Control Board (LARWQCB)			
(I-27) The project Applicant shall obtain an Operating Permit from the City of Malibu Environmental and Building Safety Department prior to construction.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Environmental and Building Safety Department			
(I-28) Effluent for gray water/re-use irrigation in designated areas on-site shall at all times be a disinfected, high quality, filtered reclaimed water and shall not exceed the effluent quality limits of the RWQCB's Total Daily Maximum Load	<ul style="list-style-type: none"> Comply with requirements of RWQCB for reclaimed water 	<ul style="list-style-type: none"> Operation 	Los Angeles Regional Water Quality Control Board			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(TDML) requirements for the Malibu Creek Watershed.			(LARWQCB)			
V.I-5 Public Utilities (Solid Waste)						
(I-29) The Proposed Project shall recycle all construction debris in a practical, available, and accessible manner, to the maximum extent feasible, during the demolition and construction phases.	<ul style="list-style-type: none"> Recycle 	<ul style="list-style-type: none"> Pre-construction and Construction 	City of Malibu Department of Environmental and Community Development			
(I-30) Where economically feasible, the Proposed Project shall incorporate the use of recycled materials in building materials, furnishing operations and building maintenance	<ul style="list-style-type: none"> Plan Approval; Permit Approval 	<ul style="list-style-type: none"> Construction and Operation 	City of Malibu Department of Environmental and Community Development			
(I-31) The design of the Proposed Project shall allocate space for a recycling collection area for use by both on-site employees and visitors.	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Environmental and Community Development			
V.J-1 Public Services (Fire Protection)						
(J-1) The Project shall comply with all applicable code and ordinance requirements for construction,	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
emergency access, water main fire flows and fire hydrants.			Department			
(J-2) The Applicant shall pay a uniformly applied developer fee or an in-kind consideration in lieu of developer fees, to provide funds for fire protection facilities which are required by new commercial, industrial or residential development in an amount proportionate to the demand created by the Proposed Project. Currently, the developer fee is a set amount per square foot of building space, adjusted annually, and is due and payable at the time a building permit is issued.	<ul style="list-style-type: none"> Pay fee 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Environmental and Building Safety Department			
(J-3) Development may require fire flows up to 2,625 gallons per minute at 20 pounds per square inch residual pressure for up to a two-hour duration, and as specified by the Los Angeles County Fire Department. Final fire flows will be based on the size of the buildings, their relationships to other structures, property lines, and types of construction used.	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			
(J-4) Fire hydrant spacing shall be 300 feet and shall meet the following requirements: a) No portion of lot frontage shall be more than 200 feet via vehicular access from a public fire hydrant. a) No portion of a building shall	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
exceed 400 feet via vehicular access from a properly spaced public fire hydrant. Additional hydrants will be required if hydrant spacing exceeds specified distances.						
(J-5) Turning radii shall not be less than 32 feet. This measurement shall be determined at the centerline of the road. A Fire Department approved turning area shall be provided for all driveways exceeding 150 feet in length and at the end of all cul-de-sacs. The on-site driveway is to be within 150 feet of all portions of the exterior walls of the first story of any building. All on site driveways shall provide a minimum unobstructed width of 26 feet, clear-to-sky. The 26 foot width will be increased to: a) 34 feet in width when parallel parking is allowed on one side of the access roadway/driveway. Preference is that such parking is not adjacent to the structure. b) 42 feet in width when parallel parking is allowed on each side of the access roadway/driveway.	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			
(J-6) "Fire Lanes" are any ingress/egress, roadway/driveway with paving less than 34 feet in width, and will be clear-to-sky. All "Fire Lanes" will be depicted on the final map.	<ul style="list-style-type: none"> Plan Approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(J-7) For streets and driveways with parking restrictions, the entrance to the street/driveway and intermittent spacing distances of 150 feet shall be posted with Fire Department approved signs stating "NO PARKING - FIRE LANE" in three-inch high letters. Driveway labeling is necessary to ensure Fire Department access.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Environmental and Building Safety Department			
(J-8) All proposals for traffic calming measures (speed humps/bumps, traffic circles, roundabouts, etc.) shall be submitted to the Fire Department for review prior to implementation.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			
(J-9) As required by Section 1117.2.1 of the County Fire Code, a Fuel Modification Plan, a landscape plan and an irrigation plan shall be submitted to the LACFD prior to construction. Said plans shall be reviewed and approved by the Forestry Division of the County of Los Angeles Fire Department for reasonable fire safety	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Fire Department			
V.J-2 Public Services (Police Protection)						
(J-10) During construction, the Proposed Project shall: (1) implement a security system; (2) hire private security personnel; and (3) erect perimeter fencing.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Environmental and Building Safety Department			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(J-11) A 6-foot high wrought iron fence shall be constructed along the northern perimeter of the property sufficient to prevent or discourage pedestrians from accessing the Malibu Knolls neighborhood on foot via the hillside.	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	City of Malibu Department of Environmental and Community Development			
V.K. Transportation and Circulation						
(K-1) Webb Way & PCH - Mitigating project impacts at the intersection of Webb Way & PCH would entail re-striping/widening Webb Way between PCH and Civic Center Way to provide a six-lane cross-section with three lanes in each direction. The northbound departure currently provides two travel lanes and widening along the east side of Webb Way north of PCH would be necessary to accommodate the additional northbound lane. The widening of Webb Way to provide a six-lane cross-section would increase the storage capacity on Webb Way in an effort to minimize the potential for overflow conditions. The addition of dual left turn lanes to the eastbound approach on PCH is also recommended; this would entail narrowing the raised center median. The existing travel lanes on PCH at this	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Department of Transportation			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
<p>intersection are substandard (i.e., less than 12 feet wide). This mitigation can fit within the existing traveled way with substandard lane widths (less than 12 feet); the resulting lane configuration would consist of a raised median, an 11- and 10-foot left turn lane, one 11-foot through lane, two 10-foot through lanes, and one 11-foot right-turn lane. Shifting the east and west legs of the intersection (approach and departure) several feet to the north would allow the standard width lanes with this mitigation.</p> <p>Additionally, a guide sign shall be posted facing the eastbound dual left turns from PCH onto Webb Way, so that motorists who wish to make a subsequent right turn onto east bound Civic Center Way would be directed to the "Number 2" left turn lane. The sign may have to be mounted overhead.</p>						
<p>(K-2) Cross Creek Road & PCH - The impact of project traffic on the intersection of Cross Creek Road & PCH could be mitigated by the addition of a right-turn lane westbound on PCH. This mitigation would improve the traffic movement along westbound PCH. If Caltrans does not approve of non-standard narrower lane widths, then roadway widening on the south side of</p>	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	<p>Los Angeles County Department of Transportation; Caltrans</p>			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
PCH on the approach and departure legs would allow the standard width lanes for this mitigation measure.						
(K-3) Webb Way & Civic Center Way – Mitigating the project impact would entail installing a new traffic signal and widening Webb Way to a six-lane cross section south of the intersection of Civic Center Way. The northbound approach and the eastbound approach would each be re-stripped to include one left-turn lane, one through lane, and one right-turn lane. The southbound approach would be widened to provide one left-turn lane and one shared through/right lane. Widening the east side of Webb Way between PCH and Civic Center Way would be necessary for the proposed six-lane cross section. Results of this signal warrant are provided in the project traffic study (see Appendix G)..	<ul style="list-style-type: none"> Plan approval 	<ul style="list-style-type: none"> Pre-construction 	Los Angeles County Department of Transportation			
V.L. Environmental Hazards						
(L-1) The Project Developer shall obtain all necessary permits from the RWQCB prior to the installation of any temporary and/or permanent dewatering systems. Procurement of all applicable RWQCB permits will ensure the water quality of groundwater discharge into the storm drain infrastructure.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-construction 	RWQCB			

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Mitigation Measure/Condition of Approval	Action Required	Monitoring Phase	Responsible Agency or Party	Compliance Verification		
				Initial	Date	Comments
(L-2) A demolition-level asbestos survey by a licensed contractor shall be conducted for the existing on-site structures. If the survey reveals that these structures contain ACMs, the structures shall be stabilized, removed, and disposed of in accordance with applicable regulations, including but not limited to, SCAQMD Rule 1403 and Cal/OSHA requirements.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-demolition 	SCAQMD; City of Malibu Environmental and Building Safety Department			
(L-3) During the demolition of existing structures, building materials shall be handled and disposed of in accordance with applicable local, State, and federal regulations regarding lead-containing materials.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-demolition 	City of Malibu Environmental and Building Safety Department			
(L-4) Fluorescent light ballasts not specifically labeled as not to contain PCBs shall be presumed to contain them and shall be disposed of in accordance with applicable regulations, including but not limited to, Cal/OSHA requirements.	<ul style="list-style-type: none"> Obtain permit 	<ul style="list-style-type: none"> Pre-demolition 	City of Malibu Environmental and Building Safety Department			

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AMENDED BY
RESOLUTION NO. 10-14

RESOLUTION NO. 08-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING DEVELOPMENT AGREEMENT NO. 07-001 "DA .20 PROJECT", LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 (AND COROLLARY AMENDMENTS), COASTAL DEVELOPMENT PERMIT NO. 05-107, LOT LINE ADJUSTMENT NO. 05-004, AND CONDITIONAL USE PERMIT NO. 05-004 TO ALLOW THE CONSTRUCTION OF 112,058 SQUARE FEET OF COMMERCIAL OFFICE AND RETAIL USES AND A 20,000 SQUARE FOOT CITY HALL COMPLEX ADDRESSED AS 3700 LA PAZ LANE (MALIBU LA PAZ RANCH, LLC)

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

Section 1. Recitals.

A. On February 17, 2000, Schmitz and Associates, on behalf of La Paz Ranch, LLC, submitted applications for Plot Plan Commercial (PPC) No. 00-005 (Parcel A) and PPC No. 00-006 (Parcel B). Parcel A is identified as Assessor Parcel Number 4458-022-023 and Parcel B is identified as Assessor Parcel Number 4458-022-024. The application requests construction of 99,117 square feet of shopping center¹ and office park development. Subsequently, the property owner revised its proposal, applying for the construction of 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex. However, if the .20 project was not approved, the property owner wanted to pursue the .15 project. To accommodate this alternative, the City bundled two sets of entitlement applications and studied the .15 project as an alternative, although the .20 project was the property owner's preferred alternative.

B. On January 24, 2003, a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) was issued for a 30-day public review period.

C. On January 29, 2003, the Governor's Office of Planning and Research distributed the NOP to responsible agencies for comments for a 30-day public review period ending on February 27, 2003 (SCH #200311131).

D. On February 12, 2003, the City of Malibu held a public scoping meeting regarding the preparation of the EIR.

E. During the following years, the Applicant worked with all City Departments in order to obtain an "in-concept" approval for the proposed project.

F. On June 21, 2005, the application was changed to a coastal development permit, conditional use permit, site plan review, minor modification and lot line adjustment application. The entitlements associated with the .15 Project (.15 floor area ratio (FAR)) include: 1) a coastal development

¹ Staff uses the term shopping center throughout as a descriptive term for the retail component of the proposed development in the context and scale of Malibu. This term typically denotes much larger scale development in other communities such as regional shopping malls with anchor tenants or "big box" stores.

permit (CDP No. 05-106) for construction of 99,117 square feet of commercial development; 2) a lot line adjustment (LLA No. 05-003) to adjust property boundaries between the two parcels (A and B); 3) site plan reviews (SPR Nos. 07-126 and 127) for construction in excess of 18 feet in height for the development on both parcels; 4) site plan reviews (SPR Nos. 07-148 and 149) for remedial grading on both parcels; 5) minor modifications (MM Nos. 07-044 and 045) for front yard setbacks on both parcels; 6) a conditional use permit (CUP No. 05-003) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A; and 7) conditional use permits (CUP Nos. 07-018 and 019) for wastewater systems across property lines. The entitlements associated with the DA .20 Project include: 1) Local Coastal Program (LCP) Local Implementation Plan (LIP) Text Amendment (LCPA No. 06-003) amending Section 3.4 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.4.3 (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant; 2) CDP No. 05-107 for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex; 3) LLA No. 05-004 between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City; and 4) CUP No. 05-004 for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A.

G. On September 28, 2006, the Draft EIR (DEIR) was circulated by the City of Malibu for a 45-day public review period ending on November 13, 2006.

H. On September 29, 2006, the Governor's Office of Planning and Research distributed the DEIR to responsible agencies for a 45-day public review period ending on November 13, 2006 (SCH #200311131).

I. On October 25, 2006, the project was reviewed by the Environmental Review Board (ERB). Since there were only four of the seven ERB members in attendance, at the meeting, staff requested that the project be brought back to the November 15, 2006 meeting. On November 15, 2006, the ERB, with additional members in attendance reviewed the project and made recommendations. These recommendations have been incorporated into the final project.

J. On October 18, 2007, a Notice of Public Hearing and Notice of Availability of Local Coastal Program (LCP) Amendment documents was published in a newspaper of general circulation within the City of Malibu. In addition, on October 18, 2007, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing and Notice of Availability of LCP Amendment documents was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission (CCC).

K. On November 6, 2007, the Planning Commission opened the public hearing, considered the staff report and presentation, took public testimony and continued the item to December 18, 2007.

L. On December 18, 2007, the Planning Commission meeting was cancelled due to a lack of quorum.

M. On January 2, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on January 2, 2008, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

N. On January 22, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered written reports, public testimony, and related information, and recommended that the City Council certify the EIR, disapprove the .20 Project, and approve the .15 Project with the following comments:

1. Recommend the Applicant work with the neighbors to address their concerns and incorporate measures which alleviate conflict with the adjacent land use
2. Address concerns with groundwater and the Water Resources Board
3. Address concerns with traffic
4. Review Traffic Study submitted at hearing
5. Include 24-hour security for the entire commercial development
6. Fence for Malibu Knolls neighborhood
7. Revise Fuel Modification Plan to reflect information learned during recent fires
8. Include gate/fence/key system for "after hours" at Buildings 10 and 11
9. Include very low lighting throughout development
10. Include conditions regulating hours of operation, including, trash pick-up etc.

O. The Planning Commission acts exclusively as an advisory body to the City Council with respect to development agreements. Pursuant to LIP Section 13.28 and the corollary provisions of the Municipal Code, the Planning Commission makes its recommendation to the City Council and the City Council subsequently renders a decision whether to approve or disapprove the development agreement.

P. On February 19, 2008, the Planning Commission adopted Resolution No. 08-07 memorializing the Commission's action on January 22, 2008.

Q. On February 27, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on February 27, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

R. On March 24, 2008, the City Council continued the hearing to the May 12, 2008, Regular City Council meeting.

S. On April 3, 2008, the applicant submitted a Wastewater Management System Master Plan (WMSMP) prepared by Lombardo Associates, Inc (LAI). The new onsite wastewater treatment system (OWTS) is materially different than the previously reviewed onsite waster treatment system as described in the DEIR.

T. On May 12, 2008, the City Council did not hear the report but continued the item to a date uncertain to allow analysis of the new onsite wastewater treatment system. The agenda report indicated that "Once the analysis of the new system has been completed and incorporated into the environmental document, the project will be noticed for a public hearing." Since the City Council bases its decision in part based on the recommendation of the Planning Commission and the Commission did not have the opportunity to provide a recommendation on the projects with the revised wastewater systems or the updated EIR, it was determined that the project should return to the Planning Commission so that the recommendation would be based on the most accurate information available. The project was subsequently scheduled for Planning Commission on August 5, 2008.

U. On July 10, 2008, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on July 10, 2008, pursuant to LIP Section 19.3.2.A, a Notice of Planning Commission Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

V. On August 5, 2008, the Planning Commission declined to hear the item indicating by majority vote that it had reviewed the project extensively and that the changes did not warrant further review by the Planning Commission. Subsequently, the project was scheduled for the City Council.

W. On August 28, 2008, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on August 28, 2008, pursuant to LIP Section 19.3.2.A, a Notice of City Council Public Hearing was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the CCC.

V. On September 22, 2008, the City Council conducted a duly noticed public hearing, heard and reviewed the proposed projects and associated environmental document, and directed staff to negotiate a revision to the development agreement provisions relating to the use of the 2.3 acre parcel for other municipal uses, including but not limited to a wastewater treatment facility for the Civic Center Area, and to change the five year deadline to develop the property to 10 years. The item was continued to the November 10, 2008 City Council hearing but was to report any revisions to the development agreement to the Planning Commission for recommendation pursuant to Local Coastal Program Local Implementation Plan 13.28.5. Subsequently, when the revisions were negotiated, the item was scheduled for the next Planning Commission meeting.

X. On October 21, 2008, the Planning Commission received the report on the proposed revisions to the development agreement and made a recommendation to the City Council to approve the proposed changes as improvements to the development agreement.

Y. On November 10, 2008, the City Council conducted a public hearing, heard and considered all testimony and arguments of all persons desiring to be heard and the Council considered all factors relating to the coastal development permit and associated entitlements, including, but not limited to, the recommendation from the Planning Commission.

Section 2. Environmental Review.

An EIR was prepared in accordance with California Environmental Quality Act (CEQA) and the CEQA Guidelines. On September 28, 2006, the DEIR was circulated for a 45-day public review period, September 28, 2006 through November 13, 2006. On September 29, 2006, the Governor's Office of Planning and Research distributed the DEIR to responsible agencies for a 45-day public review period, September 29, 2006 through November 13, 2006 (SCH #200311131).

The City's EIR consultant worked with City staff and environmental regulatory agencies to work through issues raised during the DEIR comment period, Environmental Review Board (ERB) meeting, and public comment period. A summary of the significance of the environmental impacts is listed below and explained further in the Executive Summary in the EIR.

Significance for each area required for EIR review:

Less Than Significant Impacts

- Air Quality – post-construction
- Agriculture

Less Than Significant With the Implementation of Mitigation Measures

- Aesthetics
- Air Quality – during construction
- Cultural Resources
- Geotechnical
- Hydrology/Water Quality
- Land Use
- Public Utilities
- Public Services
- Environmental Hazards/Risk of Upset

Mitigation Measures which lessen the impact to a level of less than significant are listed at the end of each impact discussion as well as in the Mitigation Monitoring Report (EIR Table X-1).

Potentially Significant and Unavoidable

- Construction Noise - Construction activities would result in significant and unavoidable temporary noise impact during construction at areas identified in the EIR as sensitive receptors 1, 2 and 3 (single-family residences along Cross Creek Road, Malibu Public Library at 23519 Civic Center Way and Colin McEwen High School at 23410 Civic Center Way).
- Biological Resources - The project's contribution to the regional loss or degradation of undeveloped open space is limited and incremental. However, the cumulative degradation to regional biological resources, with respect to undeveloped open space in the Malibu area, from development of existing residential lots, intensification and improvement of existing land use and development of existing commercial lots such as that proposed, may be regionally significant on a cumulative basis.
- Transportation/Circulation - The impact to transportation and circulation will be unavoidable as additional traffic in the Civic Center Area impacts the existing traffic flow.

Although EIR mitigation measures and conditions of approval imposed on the project will provide substantial mitigation of the identified significant environmental effects, these environmental effects cannot be feasibly mitigated to a level of insignificance. Consequently, in accordance with Section 15093 of the CEQA Guidelines, a Statement of Overriding Considerations (Resolution No. 08-51) will need to be adopted by the City Council to substantiate the City's decision to accept these unavoidable significant effects when balanced against the significant benefits afforded by the project.

Section 3. Development Agreement Findings.

Pursuant to M.M.C. Section 17.64.010, the City Council may enter into a DA for the development of real property with any person having a legal or equitable interest in such property, or having written permission from a person having such interest. The applicant represents the owners of the property and has requested the development agreement.

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The Council may approve an application for a DA where it finds that the information presented by the applicant and/or obtained at a public hearing substantiates all of the required findings.

Finding 1. That the proposed development agreement is consistent with the general plan.

The proposed DA .20 Project is consistent with the General Plan in that the FAR is within the allowable

range for the Community Commercial (CC) land use designation. Chapter 1.4, Land Use Designations of the General Plan states:

“The CC designation is intended to provide for the resident serving needs of the community similar to the Commercial Neighborhood (CN) designation, but on parcels of land more suitable for concentrated commercial activity. Floor-to-Area Ratio (FAR) shall range from a maximum of .15 to .20. Uses that are permitted and conditionally permitted are defined in the Zoning Code but would typically include the following: all permitted uses within the CN designation, financial institutions, medical clinics, restaurants, service stations and health care facilities.”

The proposed LCPA associated with the DA requests uses consistent with those in the General Plan CC land use designation. The locations of the proposed buildings have been sited with concern for adjacent residential development and have been analyzed in the EIR. The application submittal provided site design, proposed location, height, scale, architectural design and circulation of the proposed development. A landscaping plan has been submitted and signage standards have been requested as part of the LCPA. Thus, the application has met the requirements defined above in the CC land use designation text. Therefore, the finding can be made that the proposed DA .20 Project is consistent with the General Plan.

Finding 2. That the proposed development agreement complies with zoning subdivision and other applicable ordinances and regulations.

As a part of the DA .20 Project, a LCPA for the Town Center Overlay (TCO), with site specific development is proposed. The proposed project has been designed to be in compliance with these standards. Once the LCPA is certified by the CCC, the proposed project will be in compliance with the applicable ordinances and regulations.

Finding 3. That the proposed development agreement is consistent with the public convenience, general welfare and good land use practice, making it in the public interest to enter into the development agreement with the applicant.

The development agreement stipulates that 2.3 acres in the Civic Center Area shall be conveyed to the City. In addition, a \$500,000 donation shall be made to the City Hall or municipal infrastructure construction fund associated with development of the 2.3 acre parcel. The proposed 2.3 acre site is a convenient location within the Civic Center area to serve the citizens of Malibu as a City Hall or other municipal use. There have been three City Hall locations since the City's inception in 1991. The first City Hall location was at 23805 Stuart Ranch Road. The next City Hall location was on Civic Center Way at the County government building. The existing City Hall is currently leased space in a commercial building at 23815 Stuart Ranch Road and while the location seems to adequately serve the citizens of Malibu, it is not easily accessible by pedestrians or served by bus lines.

In addition, since the City is a tenant, the costs associated with leasing the space (**approximately \$750,000 per year with projected annual increases**) are not directly controllable. Given the cost and limited availability of land within the Civic Center Area, the DA provides an opportunity to secure a

convenient location for a City Hall on land zoned for such use and in close proximity to the previous and existing City Hall locations.

Finally, the DA provides a bike and pedestrian pathway from the City Hall complex (Parcel C area) to Civic Center and a trail dedication along Civic Center Way. The bike and pedestrian pathway meets the goal of General Plan Policy LU 2.1.6 which states that the City shall encourage pedestrian friendly design in concentrated commercial areas. The trail dedication includes a segment of the planned Malibu Pacific Trail (formerly the Coastal Slope Trail), a trail mapped on the Trails Master Plan adopted by the City as well as identified in the LCP, which appears to run along the frontage of Civic Center Way. This is supported by General Plan Open Space Implementation Measure 53 which states that where possible obtain trail dedications and easements consistent with the trails plan.

Finding 4. That the proposed development agreement will not: a. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; b. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

The DA proposes a commercial shopping center/office park use and a City Hall or municipal use. The proposed site is currently vacant but is planned for this type of use in all the City's regulatory land use documents. It is reasonably foreseeable that such a development would take place on the site. The minor increase in FAR allowed by the DA does not adversely affect development on the site. Site design modifications including the relocation of Buildings 10 and 11 away from the adjacent residential property at 3657 Cross Creek and landscaped buffer areas between the uses for the residents at 3657 and 3661 Cross Creek have been included to ensure that the proposed development is compatible with the surrounding area and is not detrimental to the use, enjoyment or valuation of the surrounding area. The EIR was prepared for the proposed project and evaluated potential development scenarios on the subject property. The EIR found that the proposed DA project would not have adverse impacts to public health (wastewater), safety or general welfare (public services) that cannot be mitigated. The proposed DA project would have impacts which are unavoidable and unmitigatable with regards to construction noise, biological resources/open space and traffic/circulation. A Statement of Overriding Considerations with regard to those impacts will need to be adopted by the City Council upon certification of the EIR.

Finding 5. That the proposed development agreement complies with the terms, conditions, restrictions and requirements of Section 17.64.050.

A. M.M.C. Section 17.64.050.A states that a development agreement entered into by the Council may include the following terms, conditions, restrictions and requirements; provided, however, that such terms, conditions, restrictions or requirements shall not be contrary to zoning, subdivision or other ordinances, laws or regulations applicable to the proposed development:

1. The duration of the agreement, including a specified termination date if appropriate;
2. The uses to be permitted on the property;

3. The density or intensity of use permitted;
4. The maximum height, size and location of buildings permitted;
5. The reservation or dedication of land for public purposes to be accomplished, if any; and
6. The time schedule established for periodic review as required.

In association with the DA, the applicant has proposed a LCPA creating the Town Center Overlay district which establishes the uses permitted on the property, the density (floor area ratio), development standards for height, size, location, landscaping and open space. In addition, a period review of the established use is conditioned via the required CUP. The condition (No. 54.) states: "The CUP and associated conditions are subject to annual review by the City Planning Manager. Violation of any of the conditions of this approval may be cause for revocation of the CUP and termination of all rights granted there under."

B. M.M.C. Section 17.64.050.B states that a development agreement may also include additional terms, conditions, restrictions and requirements for subsequent discretionary actions in addition to those provided above; provided, that such terms, conditions, restrictions and requirements do not prevent development of the lot or parcel of land included in such agreement for the uses and to the density or intensity of development set forth in the agreement, including but not limited to the following:

1. The requirement of development schedules, providing that construction of the proposed development as a total project or in phases to be initiated and/or completed within a specified time period;

The applicant intends to construct the proposed .20 DA Project as one development and does not intend to phase the development.

2. The construction of public facilities required in conjunction with such development, including but not limited to vehicular and pedestrian rights-of-way, drainage and flood-control facilities, parks and other public facilities;

The access improvements, drainage and flood control facilities for the proposed City Hall complex could be constructed by the applicant at the same time those facilities are constructed for Parcels A and B.

3. The prohibition of one or more uses normally listed as permitted, accessory, or subject to permit in the zone where placed;

The list of permitted uses is similar to those currently permitted in the CC zone with the following uses prohibited: fast food restaurants with drive-thru facilities; liquor stores (stand alone); adult book stores; gas stations and hazardous waste facilities.

4. The limitation of future development or requirement of specified conditions under which further development not included in the agreement may occur;

The DA .20 Project allows an FAR for the maximum allowable FAR subject to a public benefit. There is no mechanism in the DA which would allow the applicant or future property owner, to develop the property further.

5. The requirement of a faithful performance bond where deemed necessary to, and in an amount deemed sufficient to guarantee the faithful performance of specified terms, conditions, restrictions and/or requirements of the agreement. In lieu of the required bond, the applicant may deposit with the City Clerk and assign to the city, certificates of deposit or savings and loan certificates or shares equal in amount to the same conditions as set forth herein. Such deposit and assignment shall comply with all the provisions and conditions of M.M.C. Chapter 3.04;

If required, the applicant is prepared to provide such bonds in order to be in compliance with M.M.C. Chapter 3.04, specifically, M.M.C. Section 3.04.020 Bonds-Alternative security.

6. The requirements of specified design criteria for the exteriors of buildings and other structures, including signs;

The architecture is envisioned as Mediterranean with modern updates. The buildings would include the use of textured clay tile, Spanish lace, cement pilasters, rough-hewn wood trellises and exposed wood rafter tails, decorative/battered walls, and an array of arches and colonnades. Included in the LCPA are specific design criteria for signage.

7. The requirement of special yards, open spaces, buffer areas, fences and walls, landscaping and parking facilities, including vehicular and pedestrian ingress and egress;

The LCPA contains development standards for setbacks (yards), open space, landscaping and parking. The difference in what is requested and what is currently allowed is detailed in the LCPA discussion. The differences are not substantial.

8. The regulation of nuisance factors such as noise, vibration, smoke, dust, odors, gasses, garbage, heat and the prevention of glare or direct illumination of adjacent properties;

These factors were analyzed in the EIR and mitigations for construction noise, dust and orders have been addressed. Lighting conditions of approval require that lighting be shielded and that non-reflective building materials be used. In response to comments from adjacent residential neighbors, Buildings 10 and 11 have been pushed back to the extent feasible from the neighboring residential properties. The landscaping plan has been revised to add additional landscaping on this shared property boundary to further shield the residential properties from the commercial uses and associated traffic. In addition, the same types of mitigations will be provided to the residence at Sycamore Farms.

9. The regulation of operating hours and other characteristics of operation which might adversely affect normal neighborhood schedule and functions on surrounding property; and

Operating hours and characteristics of operation are discussed in the conditional use permit findings analysis. The use proposed on Parcel B in Buildings 10 and 11 is 100 percent office use with a basic 9:00 a.m. to 5:00 p.m. schedule anticipated. The proposed uses in Building 8 and 9 are 64 percent office and 36 percent retail. The more intense commercial retail and restaurant uses are limited to Parcel A in order to be more compatible with the neighborhood.

10. The payment of exactions or the provision of other public benefits;

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall (Parcel C area) throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The increase in allowable FAR from .15 (99,117) to .20 (132,058) includes the 20,000 square foot City Hall. The net increase of commercial floor area to the applicant is only 12,941 square feet for a total of 112,058 square feet. Sixty-one percent of the "bonus" square feet is appropriated to the 20,000 square foot City Hall while only 39 percent or 12,941 square feet is used to allow the second floors on Buildings 5 and 6.

C. Unless otherwise provided by a development agreement, the general plan, zoning, subdivision, and other ordinances, rules, regulations and official policies governing permitted uses of land, density, and design, improvement and construction standards, and specifications applicable to property subject to a development agreement shall be those applicable to such development on the date of execution of the development agreement by the council; provided, however, that a development agreement shall not:

1. Be construed to prevent the application of later adopted or amended ordinances, rules, regulations and policies in subsequent applications applicable to the property which do not conflict with such existing ordinances, rules, regulations and policies; or
2. Prevent the approval, approval subject to conditions, or denial of subsequent development applications pursuant to such existing or later adopted or amended ordinances, rules, regulations and policies.

The applicant intends to construct the proposed project as described above in the project description. This section states that should the regulations change and a more permissive FAR is allowed, the applicant is not held to a more restrictive standard if the DA is more restrictive. This will not be applicable since the applicant has requested a LCPA for development standards, Town Center Overlay, which will prescribe future development on the site.

Finding 6. That in consideration of the rights accruing to the developer under the development agreement, the developer shall provide the city or the community with special benefits which might not otherwise be provided by the developer in the absence of an agreement.

The applicant has agreed to provide the following public benefits: 1) 2.3 acres in the Civic Center Area conveyed to the City for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use infrastructure construction fund; 3) a pedestrian and bike path from City Hall throughout the project connecting to Civic Center Way; 4) dedication of trail segment fronting along Civic Center Way; and 5) conceptual architectural plans for the proposed City Hall.

The increase in allowable FAR from .15 (99,117) to .20 (132,058) includes the 20,000 square foot City Hall. The net increase of commercial floor area to the applicant is only 12,941 square feet for a total of 112,058 square feet. Sixty one percent of the “bonus” square feet is appropriated to the 20,000 square foot City Hall while only 39 percent or 12,941 square feet is used to allow the second floors on Buildings 5 and 6.

The proposed 2.3 acre site is a convenient location within the Civic Center area to serve the citizens of Malibu as a City Hall or other municipal use. The applicant has sited the structures in the proposed locations with the intent on complying to the greatest extent possible with existing development standards. However, by including the City Hall or municipal use component, it is no longer feasible for La Paz to strictly comply with all the development standards. An LCPA has been requested to create custom development standards (Town Center Overlay).

Section 4. Local Coastal Program Amendment No. 06-003.

LCP Amendment No. 06-003 includes an amendment to the certified Local Coastal Program Local Implementation Plan, and the corollary amendments to the Zoning Code and Zoning Map. Specifically, the amendment consists of the following:

1. LCP Local Implementation Plan (LIP) Text Amendment amending Section 3.8 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.8.C (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant.
2. Zoning Text Amendment (ZTA) amending Malibu Municipal Code (M.M.C.) to conform to the LCP amendments by amending Title 17 (Zoning) Section 42.020 (Overlay Districts), to include Subsection 17.42.020.J (Town Center Overlay) and associated development standards.
3. Zoning Map Amendment (ZMA) amending the City of Malibu Zoning Map to conform to the LCP amendments by including the Town Center Overlay.

Additional Entitlements Requested include:

4. Coastal Development Permit (CDP) for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex.
5. Lot Line Adjustment (LLA) between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City.
6. Conditional Use Permit (CUP) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A. M.M.C. Section 17.66.030 requires a CUP for restaurant use within the proposed shopping center area.

Section 5. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The proposed LCP text amendment includes a development agreement and associated development standards for the DA .20 Project described above as required by LCP Section 3.8.5. The proposed text amendment and related development do not impede public access to the beach or coastal resources in any way as the proposed development is located inland in the commercially zoned Civic Center Area. The site is not designated as an Environmentally Sensitive Habitat Area (ESHA). Small patches of Coastal Sage Scrub, an ESHA, do exist on the northern edges of the site, and are slated for removal and will be mitigated pursuant to LCP requirements. However, the limited removal does not constitute a significant disruption in ESHA and the text amendment overall is consistent with Chapter 3 of the Coastal Act.

Section 6. Entitlement Request Findings.

A. General Coastal Development Permit (LIP Chapter 13)

The proposed projects have been reviewed for conformance with the LCP and the proposed LCPA by the Planning Division, the City Biologist, the City Environmental Health Administrator, the City Geologist², the City Public Works Department and the Los Angeles County Fire Department (LACFD). Pursuant to LIP Section 13.9, the following four findings need to be made on all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

As shown in the Tables 9 through 13, the projects have been reviewed for conformance with the LCP and

² Due to contractual changes during the project review period, all geological data has been reviewed by a third party geological consulting firm.

proposed LCPA. The .15 Project is in compliance with the LCP, subject to approval of the requested minor modifications and site plan reviews. The proposed DA .20 Project will conform to the LCP upon CCC certification of the LCPA for development agreement and TCO.

Finding 2. If the project is located between the first public road and the sea, that the project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The site is not located between the first public road and the sea. No potential project-related or cumulative impact on public access is anticipated. The properties are not located on the seaward side of PCH and will not interfere with the public's right to access the coast or coastal resources. With regard to recreation, as discussed previously in DA Finding 3, a segment of the planned Malibu Pacific Trail appears to run along the frontage of Civic Center Way and the applicant has agreed to dedicate this trail segment to the City as part of the DA.

Finding 3. The project is the least environmentally damaging alternative.

An EIR was prepared in accordance with CEQA and the CEQA Guidelines. More specifically, the CEQA Guidelines Section 15126.6 require an EIR to describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. The discussion of alternatives, however, need not be exhaustive, but rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives that are deemed "infeasible."

Other alternatives are discussed in depth in Section VII of the EIR and summarized as follows:

- Commercial buildings with Surface Level Parking only – This alternative was dismissed due to the requirement of 45 percent of the site to be landscaping, 25 percent to be open space and that no parking could be provided in either the open space or landscaping area. There was no way to achieve the project's objective of even a .15 FAR with surface level only parking. In addition, the amount of hardscape required for surface level parking was not an environmentally superior alternative.
- Big Box Alternative – This alternative was considered to construct a large building or a series of large buildings which could accommodate a large "big box" retail business or a large supermarket. The positive aspects of this alternative include 11 smaller buildings into one to three larger buildings which would allow locating the structures further to the south away from surrounding residential neighborhood to the north. This would provide for greater buffers from the adjacent residential neighborhoods and possibly allow a reduction in the number of onsite drive aisles and associated hardscaping. The "big box" alternative was rejected as infeasible because it would not be consistent with the City's General Plan, Zoning and LCP which requires

commercial structures be “small scale” or “low rise,” be subordinate to the setting, and be consistent with the size and character of surrounding residential homes and other development. A “big box” store would be out of scale with surrounding residential homes and commercial development.

- The No Project Alternative – This alternative does not alter the site in any way, or increase traffic, or site lighting. However, this alternative does not meet the project objectives of commercial development on a site designated for such use in all the City’s land use regulatory documents.
- Alternate locations on the site and varying degrees of commercial use (variations in the amount of retail to office space. A variety of site layouts have been considered over the years and the driving design force has been the development standards with the Zoning Code and subsequently, the LCP. The somewhat Z-shaped parcels represent design constraints given the setback requirements of 20 percent front yard, 25 percent cumulative side yard, and a 15 percent rear yard. The setbacks combined with the 40 percent landscaping and 25 percent open space create a very specific development envelope. The Applicant, as part of the LCPA, has requested development standards which primarily accommodate the addition of the City Hall complex. There are no large footprint changes to the Applicant’s proposed commercial development as part of the DA .20 Project. The ratio of retail space and office space is discussed in terms of traffic generation in the EIR. However, since any addition of commercial space in the area will require a statement of overriding considerations, the ratio is more attributable to neighborhood compatibility. For example, the previous iteration of Buildings 10 and 11 were a mix of retail and office and located closer to the eastern property line. Due to neighbor concerns, the buildings were relocated to the furthest point (respecting setbacks) west and the use limited to the less intensive office-use only.
- The Preferred Alternative – This alternative is described in detail throughout this document as the .15 Project and meets the commercial development standards of the LCP. Implementation of this project would have similar impacts as the proposed .20 DA Project on noise, air quality, biological resources, cultural resources, hydrology/water quality, geology and soils, and similar hazard risks as identified throughout the EIR. The site preparatory activities for construction of the .15 Project would entail essentially the same area.
- The Proposed .20 DA Project – This alternative is described in detail throughout the document. Implementation of this project would have similar impacts as the .15 Project, as described above, the primary difference being that this alternative provides a public benefit.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The project is not located in or adjacent to an ESHA, however, due to the scope of the project and preparation of an EIR, on October 25, 2006, the project was reviewed by the ERB. Since there were only

four of the seven ERB members in attendance at the October 25th meeting, staff requested that the project be brought back again to the November 15th meeting. On November 15, 2006, the ERB, with additional members in attendance reviewed the project and made recommendations (Attachment 3). These recommendations have been incorporated into the final project designs.

B. Environmentally Sensitive Habitat Area (ESHA) Overlay (LIP Chapter 4)

The site is not located in or adjacent to designated ESHA. Biological studies conducted did not find that the onsite vegetation met the definition of ESHA. LIP Chapter 2 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”.

The biological studies did indicate that two native vegetation communities exist onsite: coastal sage scrub and a small patch of California sycamore trees. Both communities together comprise less than five percent of the onsite vegetative cover.

Coastal sage scrub is confined to the northwest corner of the site on the south-facing slope above site disturbance. The patch of vegetation onsite has been connected to a larger stand offsite to the north. Review of aerial photography; however, revealed the larger hillside area to be truncated at the site’s north end through clearance, presumably for fire protection/fuel modification. The area of coastal sage scrub habitat present onsite (identified in EIR Figure V.C-4) is estimated at 21,500 square feet or roughly one half-acre of the 15.2-acre site. Coastal sage scrub is often considered ESHA because this vegetation association typically provides habitat for several special-status plant and wildlife species. However, the independent biological assessment conducted onsite determined no such special-status species were present. This factor, combined with the relatively small and isolated nature of the coastal sage scrub onsite results in a condition that does not meet the criteria as ESHA. However, the loss of open space that includes the coastal sage scrub habitat has been determined to be a potentially significant impact. Therefore, the Applicant shall provide a compensatory fee for habitat conservation to the Santa Monica Mountains Conservancy’s Habitat Impact Mitigation Fund for the permanent acquisition or preservation of native habitat areas within the Santa Monica Mountains Coastal Zone.

The California sycamore woodland cells consist of several mature sycamore trees (*Platanus racemosa*) in clusters in the central and western areas of the site. The trees are possibly remnants of a riparian woodland or streamside forest. For this reason they were indicated to be sycamore woodland relics in the DEIR. During the course of the required wetland delineation study (LIP Section 3.8.5.E.5), Teracor Resource Management confirmed that the sycamores are intermixed with gum trees (*Eucalyptus sp.*) and date palms (*Phoenix sp.*), suggestive of an ornamental origin, and that the actual origin of the sycamores is not known, though they likely were either planted by property owners many years ago or may be relictual stands of trees no longer associated with freshwater braids of Malibu Creek. In either event, they are not associated with water features at this time and the site is not a wetland (Technical Memorandum, March 27, 2007). As discussed below, in the Native Tree Protection Findings, the removal of the trees will be mitigated pursuant to the requirements of LIP Section 5.5.1 by onsite replanting of sycamores on a

10 to 1 ratio.

Since the project site is not designated ESHA and the biological studies conducted did not find that the onsite vegetation met the definition of ESHA the supplemental ESHA findings in LIP Section 4.7.6 need not be made. Nevertheless, the findings have been made as follows:

Finding 1. Application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.

The application does not include construction of a residence; therefore, the finding is not applicable.

Finding 2. The use proposed by the applicant is consistent with the applicable zoning.

The proposed commercial development of a shopping center/office park is a permitted use in the CC zoning district.

Finding 3. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.

The project site is not designated as ESHA in the LCP nor is the site directly adjacent to ESHA. The site is constrained by a number of factors that preclude total avoidance of biological resource impacts. Given the site dimensions, LCP and other requirements, including but not limited to setbacks, open space, landscaping, fire department requirements, circulation, and wastewater, it is not feasible to site the development of roads and structures to avoid impact to the coastal sage scrub and sycamore relics. Therefore, mitigations as discussed above and in the EIR are required and the project is in compliance with the provisions of Section 4.7.

C. Native Tree Protection (LIP Chapter 5)

Any development that includes the removal of one or more native tree(s) and/or the encroachment of development within the protected zone of one or more native tree(s) may be approved or conditionally approved only if the City Council make the native tree protection findings.

The five findings set forth in LIP Section 6.4 are hereby made as follows.

Finding 1. The proposed project is sited and designed to minimize removal of or encroachment in the protected zone of native trees to the maximum extent feasible.

Six sycamore trees are located in the proposed development area of Parcel A. Given the site dimensions, LCP and other requirements, including but not limited to, setbacks, open space, landscaping, fire department requirements, circulation, and wastewater, it is not feasible to site the development of roads and structures to allow retention of the trees. Any development would be expected to utilize the area of the site supporting these trees given all the constraints of siting development. In addition, the required

onsite grading and re-compaction of the site for Federal Emergency Management Act (FEMA) and geological requirements make it infeasible to site development that avoids encroaching upon and requiring the removal of the sycamore trees. Mitigations for tree removal require the replacement of the sycamore trees at a ratio of 10 to 1 onsite. Pursuant to LIP Section 5.5.1, a tree replacement plan has been submitted and reviewed by the City Biologist and is incorporated into the landscape plans. The approved landscape plans illustrate greater than 60 sycamores will be planted as part of the landscape plan, thus meeting the LCP mitigation requirement for removal of six (6) native sycamore trees.

Finding 2. The adverse impact of tree removal and/or encroachment cannot be avoided because there is no other feasible alternative.

Alternatives to the proposed development have been analyzed and due to location of the trees and required site preparatory activities, encroachment and tree removal cannot be avoided.

Finding 3. All feasible mitigation measures that would substantially lessen any significant impact on native trees have been incorporated into the approved project through design or conditions of approval.

The following protective measures (EIR Mitigation Measures) shall be incorporated into the project to lessen the impact on native trees:

1. Nesting birds are protected by both the California Department of Fish and Game (CDFG) Code and the federal Migratory Bird Treaty Act (MBTA). Removal of, or encroachment into existing onsite vegetation, should be restricted to off-peak bird nesting season, which typically occurs between February 15 and August 15. Should vegetation/tree removal be required during this period, the Applicant shall obtain the services of a qualified biologist, approved by the City, to conduct a series of nesting bird surveys pursuant to the CDFG recommended nesting bird surveys protocol methods. Specifically, the qualified biologist shall conduct a series of eight surveys, no less than seven days apart, in all areas of the subject parcel that may support nesting birds. Any active nests shall be marked and exclusionary fencing shall be placed at a 50-foot radius around the nest (200 feet for raptors). The exclusionary fencing shall remain in place until such time that the biologist determines that the nest is no longer active. All equipment and human activity shall be excluded from these areas during active nesting without exception. Should the actual construction of nests be observed by the project biologist, he/she may, with direction from the regional CDFG wildlife biologist, remove the nesting materials and/or dissuade further construction of the nest provided no egg-laying has begun.
2. Prior to the initiation of vegetation clearance and grading, a qualified biologist or ecologist shall monitor the site and attempt to clear the proposed grading area of wildlife. The monitor will be present while all vegetation is removed, and shall direct the equipment operator to avoid impacts to wildlife through normal minimization techniques.

3. Native protected tree species (i.e., sycamore) removed onsite shall be replaced in accordance with the Tree Mitigation Plan approved by the City Biologist. The approved plan includes the removal of 6 trees and a replacement onsite at a better than 10 to 1 ratio (greater than 60 sycamore trees).
4. Each replacement tree shall be monitored annually for a period of not less than 10 years. An annual monitoring report shall be submitted for the review and approval of the City for each of the 10 years. The monitoring report shall identify the size and health of each replacement tree, comparing this information with the criteria provided in the native tree replacement planting program required in Section 5.5.1.A of the LIP for determining that replacement trees are healthy and growing normally. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the 10 year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of 10 years, the monitoring program shall be extended until the standards are met.

D. Scenic Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project site is slightly visible from scenic roads (PCH at Webb Way) and from Malibu Canyon Road, public areas along Civic Center and Cross Creek Roads, and also adjacent parkland area (newly acquired Legacy Park). Therefore, the Scenic, Visual and Hillside Resource Protection Ordinance applies and the five findings set forth in LIP Section 6.4 are hereby made as follows.

Finding 1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Story poles were placed on the site in March 2007 to demonstrate how the project will change the site's visual properties. Staff visited the site to determine if any public views would be blocked, and found that no scenic views will be blocked by the project.

As discussed in the Site Plan Review Finding for Height, Findings 2 and 3, the project has been designed not to have significant adverse scenic or visual impacts. The proposed project would introduce development to a site that is currently vacant. Either project would be visible from portions of City streets (e.g. Civic Center Way, Cross Creek Road and Malibu Canyon Road) as well as from various residential and/or commercial land uses located along these streets. Visibility of the site from designated scenic routes, including PCH and Malibu Canyon Road is highly limited and obscured by topography, vegetation, and existing commercial development in the Civic Center Area. The site is visible from PCH through Legacy Park but development on the site would not result in the obstruction of any significant public scenic views (e.g. ocean, coastline, Santa Monica Mountains).

LUP Policy 6.20 and LIP Section 6.5.E.5 state, "New commercial development within the Civic Center shall be sited and designed to minimize obstructions to the maximum feasible extent of public views of

the ridgelines and natural features of the Santa Monica Mountains through measures such as clustering development, and restricting height and bulk of structures.”

The proposed development meets the goals of this policy by clustering the shopping center development around a central courtyard area and clustering the office park development away from neighboring properties and toward the knoll to the extent feasible to minimize visual impact. The proposed development sites the single-story structures closest to public streets and the two-story structures in the middle of the site so that the development appears stepped back and clustered. The proposed development has extensive landscaping proposed, the height and bulk is consistent or lower than development in the surrounding area and does not obstruct public views of any significant ridgeline or the Santa Monica Mountains.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As discussed in Finding H. Scenic Visual and Hillside Protection, Finding 1, the proposed projects are not anticipated to have significant adverse scenic or visual impacts.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in A. General Coastal Development Permit, Finding 1, the project could be the least damaging alternative given the public benefit.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Finding H. Scenic Visual and Hillside Protection, Finding 1, the proposed project is not anticipated to have significant adverse scenic or visual impacts.

Finding 5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in the D. Scenic Visual and Hillside Protection, Finding 1, the proposed project is not anticipated to have significant adverse scenic or visual impacts.

E. Transfer Development Credits (LIP Chapter 7)

LIP Chapter 7 Transfer of Development Credits (TDC), applies to land division and/or multi-family residential development in the Multiple Family or Multi-Family Beachfront zoning districts. The intent of this Chapter is to ensure that density increased through new land divisions and new multi-family unit development in the City, excluding affordable housing units, will not be approved unless TDCs are

purchased to retire development rights on existing donor lots in the Santa Monica Mountains Area. A lot from which development rights have been transferred is “retired”, and loses its building potential through recordation of a permanent open space easement. TDC Credit may be obtained through purchase of development rights on donor sites throughout the Santa Monica Mountains Area coastal zone, as defined in the LIP, from private property owners. The responsibility for initiation of a transfer of a development credit is placed on the applicant and the project will be conditioned that the TDC take place prior to final map recordation.

The three findings set forth in LIP Section 7.9 are hereby made as follows:

Finding 1. The requirements for Transfer of Development Credits is necessary to avoid cumulative impacts and find the project consistent with the policies of the certified Malibu LCP.

The proposed DA .20 Project includes a land division, although an argument can be made as to whether or not a TDC should be required. The purpose of the TDC is to ensure that density increases are not permitted without the development potential on another lot being retired. The newly created lot (Parcel C) to be conveyed to the City does not create any additional density allowance as the proposed 20,000 square feet of City Hall space has been deducted from the development bonus given the applicant as part of the DA .20 Project. The DA .20 Project provides for 132,058 square feet to be utilized as follows: 112,058 square feet for the shopping center and office park use and 20,000 square feet to be used as a City Hall complex. The applicant could have requested to utilize all of the 132,058 square feet on the two lots and provided no allowance for square footage of a City Hall. There can be no increase in the density of the lots as the development potential is prescribed as part of the LCPA associated with the DA. In this instance, a requirement for TDC is unwarranted as there are no cumulative impacts of the proposed development with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP.

Finding 2. The new residential building sites and/or units made possible by the purchase of TDC can be developed consistent with the policies of the certified Malibu LCP without the need for a variance or other modifications to LCP standards.

There are no new residential building sites and/or units created by the requested land division. The newly created lot would be zoned commercial as the future City Hall location. No variances or modifications would be requested to develop the property as the LCPA, Town Center Overlay, creates specific development standards for site development.

Finding 3. Open Space easements executed will assure that lot(s) to be retired will remain in permanent open space and that no development will occur on these sites

As discussed above in E. Transfer of Development Credits, Finding 1, there is no increase in density allowed as a result of the land division. In this case, the DA .20 Project, the density would be the same on the project site whether or not an additional parcel was created. Therefore, no lot needs to be retired for permanent open space.

F. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Council has determined that the project is located on a site or in an area where the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed in the EIR for the hazards listed in LIP Section 9 and compliance with the development standards in 9.4.

The project was analyzed in the EIR for the hazards listed in LIP Section 9.2.A. (1-7). Analysis of the project for hazards is discussed thoroughly in EIR Section V.E. Geology/Soils.

Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) Ensitu Engineering Company reports/letters dated 09/19/05, 03/06/06, 03/10/06; 3) Fugro West reports/letters dated 08/09/04, 05/31/05, 10/07/05, 04/10/06, 12/03/07; 4) Geopentech letter dated 12/20/07; 5) GeoSoils Inc. reports/letters dated 10/16/86, 12/12/88, 12/13/88, 03/22/89, 04/11/89, 4/17/89; 6) Gold Coast GeoServices reports/letters dated 11/22/99, 11/9/00, 12/12/01, 02/07/02, 07/28/03, 10/25/03, 06/22/04, 09/14/04, 09/21/04, 10/25/04, 12/13/05, 04/03/06; 7) Hope Engineering letter dated 04/03/06; 8) Hydroquip Pump and Dewatering Corporation letter dated 04/11/06; 9) Jensen Design and Survey dated 01/12/04; and 10) Leighton and Associates report, 1994.

Faulting

The site is not designated within an Alquist-Priolo Special Studies zone. The Malibu Coast fault was mapped by the U.S. Geological Survey projecting through the southern half of the site. However, Gold Coast GeoServices, GeoConcepts and GeoSoils have all independently studied the site and believe that the location of the fault was postulated and not based on an actual subsurface fault investigation. Although the precise location of the fault is not known, it can be concluded that it is not on the project site. References to Parcel A and B in the geo-studies include the area conveyed to as Parcel C as the studies evaluated both existing parcels for their geological characteristics.

Liquefaction

The California Division of Mines and Geology (CDMG) Seismic Hazard Map of the Malibu Beach Quadrangle (2001) indicates the entire Civic Center Area is susceptible to liquefaction. Liquefaction is the process by which water-saturated sediment loses its strength and fails during strong ground shaking, generally associated with moderate to great earthquakes. The greatest potential hazard due to liquefaction at the site is ground settlement. This hazard is mitigated by the geotechnical recommendations for construction as identified below.

Groundwater/Liquefaction

Groundwater encountered as “perched water” was encountered at relatively shallow depths varying from 8 to 29 feet across the property. The top of the groundwater surface slopes northward across the property, ranging from 8 feet mean sea level (msl) in the southern limits of the site to approximately 34 feet msl in the northernmost areas of the site. The groundwater level beneath Parcel A ranges from about 8 feet above mean sea level at the southern most portion of the site (as Civic Center Way) to about 15 feet deep in the northern limits of the proposed boundary for this parcel. The groundwater level underlying Parcel C is approximately 16 feet above msl in the general location of the proposed City Hall. The groundwater level under Parcel B ranges from approximately 13 feet msl at the southern limits of this proposed parcel boundary to approximately 34 feet in the northern limits. Groundwater elevations beneath the site are identified and delineated in EIR Figures V.E-6 and on page V.E-12.

Conventional septic system leach lines are generally feasible in areas of property having groundwater levels deeper than 15 feet. However, because the groundwater occurs at relatively shallow depths, an advanced onsite water treatment system is proposed using a subsurface drip disposal system throughout the project. Due to the relatively shallow groundwater table in the project vicinity, the effects of effluent on an OWTS could result in “groundwater mounding”, which could impact existing septic systems by raising the area water table. In addition, groundwater mounding could adversely alter the characteristics of the soil, thus affecting the liquefaction potential of the soil beneath the proposed structures.

A letter dated November 9, 2007 was submitted by E.D. Michael, Consulting Geologist, representing the property owner at 3657 Cross Creek Road which raised concerns with the groundwater level data. On November 26, 2007, Mr. Michael submitted a 142-page report, entitled “Hydrogeologic Study of the Malibu Floodplain” which provided additional hydrogeological considerations and argued that Fugro’s hydrogeologic assessment of the proposed development and the numerical model developed for their assessment was in error.

The report was reviewed by an independent geotechnical consultant, GeoPentech, which concluded that “The primary basis for Mr. Michael’s assertions were that Fugro used misinterpreted groundwater levels beneath the proposed development and inaccurate hydraulic conductivity values. However, Mr. Micheal’s interpretation of groundwater levels in the proposed development did not consider the measurements that were collected by Fugro from monitoring wells on the La Paz site. These measurements supported Fugro’s interpretation and indicated the water levels used in Fugro’s assessment were conservative with respect to their analysis of possible maximum groundwater level rise.” In addition, “The results of the sensitivity analysis further indicated that the proposed development would not cause a hydrogeologic issue as a result of groundwater mounding. Our preliminary review of the other hydrogeologic issues that were identified by Mr. Michael and were not considered in Fugro’s assessment would also not likely change Fugro’s conclusions regarding possible maximum groundwater level rise as a result of wastewater disposal.”

The issue of groundwater mounding has been evaluated by project hydrogeologic consultant Fugro West Inc. and Ensitu Engineering. They have demonstrated that the proposed OWTS will not result in a significant rise in groundwater levels across the site including areas adjacent to the subterranean parking structures.

Landslide

The presence of landslides on the site was extensively analyzed as discussed in the EIR (see Landslide Hazards). In addition, fault trenching was performed across the subject site and adjacent properties, as were additional Cone Penetrometer Test borings, and no conclusive evidence of faulting across the site and adjacent properties was discovered.

The ERB requested staff to verify that Parcel C did not contain a landslide. Staff has verified that there is no landslide on Parcel C.

Flood

The proposed site was evaluated for flood hazards and as discussed throughout the report, the project has been designed to meet the FEMA requirements.

Fire

The entire City of Malibu is located within the fire hazard zone. The fuel modification plan was revised per ERB recommendations however a condition of approval requires that fuel modification plan be revised (if necessary) and re-approved by the Los Angeles County Fire Department.

The five findings set forth in LIP Section 9.3 are hereby made as follows.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The projects will incorporate all recommendations contained in the above cited geotechnical report and the following EIR Mitigation Measures, as such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

The proposed project shall be constructed in accordance with the geotechnical engineering recommendations as presented in the Engineering Geological and Geotechnical Engineering Reports (and subsequent Responses to City Comments), for the Proposed Malibu-La Paz Ranch, LLC, Civic Center Way, City of Malibu California, by Gold Coast GeoServices, Inc.

1. All uncertified fill material placed within the fault trenches shall be removed and replaced as 90 percent compacted fill during the planned site preparations and rough grading.
2. Temporary dewatering and discharge activities shall be monitored by the dewatering contractor and conducted in strict accordance with the Los Angeles Regional Water Quality Control Board's

Order No. R4-2003-0111 (Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties (General Permit No. CAG994004).

3. As recommended by the Project Geotechnical Engineer, all structures located within the “moderate and high” risk surface manifestation hazard areas shall be provided with a minimum 10-foot thick 90 percent compacted fill blanket. It is recommended that the compacted fill blanket be reinforced with *Tensar BX1200* geogrid or equivalent placed at two-foot vertical intervals up to two feet below the planned finish rough grade pad. Recommendations addressing over-excavation, installation of geogrid and backfilling of these areas shall be provided during the plan check approval process that addresses temporary stability of construction excavations and bottoms.
4. The structural engineer shall provide a letter along with supporting information, prior to plan check approval, indicating that the proposed buildings can tolerate the anticipated total and differential movements, or that site-specific geotechnical recommendations will be required.
5. The proposed structures should be constructed utilizing post-tensioned foundation systems and post-tensioned slabs-on-grade designed by the project structural engineer.
6. The Project Geotechnical Consultant shall provide appropriate geotechnical recommendations for restrained walls and include recommendations for damp-proofing or waterproofing and means for removing any water collected (e.g., sump pump), in accordance with the City’s Geotechnical Guidelines.
7. Complete grading plans that include the existing and proposed grades, grading yardages, proposed subterranean parking, the limits and depths of removals under the structures and flatwork areas, and grading cross-sections have been submitted to City Geotechnical staff for review. Remedial grading to mitigate liquefaction and other geotechnical hazards must be clearly defined in grading yardages, and illustrated on the plans. Such plans submitted during final plan check shall substantially reflect the concept plans in this EIR.
8. The Applicant shall obtain final construction plan approval for the proposed OWTS for Parcel A, Parcel B, and the City Hall Projects from the City Environmental Health Administrator. Final approval of construction plans are subject to the conditions enumerated in the October 4, 2006 Conformance Review by the City’s Environmental Health Administrator. The Environmental Health Administrator found that the OWTS were feasible and met the City’s requirements. The final design must be engineered to meet the effluent limits specified in Waste Discharge Requirements (WDR), taking into account the Malibu Lagoon bacteria and nutrient total maximum daily load (TMDL) requirements of the California Regional Water Quality Control Board (RWQCB) and the United States Environmental Protection Agency (US EPA).

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Hazards Finding 1 above, the proposed projects as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will have no significant adverse impacts on the site stability or structural integrity.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in A. General Coastal Development Permit, Finding 1, the project could be the least damaging alternative given the public benefit.

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

The projects are specifically cited to meet LCP setback standards or as close as possible on the DA .20 project. The entire site, with the exception of the proposed City Hall location is within the floodplain with similar geologic issues, as such, there are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As stated in F. Hazards, Findings 1 and 4 above, the proposed projects as designed, conditioned, and approved by the City Geologist, City Public Works Department and the LACFD, will have no significant adverse impacts on the site stability or structural integrity. Therefore, no adverse impacts are anticipated to result from hazards or conflict with sensitive resource protection policies contained in the LCP.

In addition, pursuant to LIP Section 9.4.19 (X and Y), the property owner will be required, as a condition of approval, to record a deed restriction acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project is subject to flooding, geologic hazards and wildfire hazards and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any injury or damage due to such hazards.

G. Shoreline and Bluff Development (LIP Chapter 10)

The subject project is not located on or along the shoreline or any bluff as defined in the LCP. Findings per Section 10.2 of the LCP are not applicable.

H. Public Access (LIP Chapter 12)

The subject property is not located between the first public road and the sea and will not hinder the public's right or ability to access the coast, either during short-term construction activities or through long-term operation of a shopping center and office park. Findings for lateral, vertical and bluff top access are not applicable.

Trail/Recreational Access. A segment of the "Planned" Malibu Pacific Trail (former Coastal Slope Trail) mapped on the City's Master Trail Plan and LCP Trails map is shown crossing the front of the subject property parallel to Civic Center Way. The applicant is proposing an offer to dedicate (OTD) for this trail segment as part of the DA.

I. Land Division (LIP Chapter 15)

The DA .20 Project requests a lot line adjustment to realign two adjacent parcels (A and B). Subsequently, 2.3 acres of Parcel B will be conveyed to the City as a public benefit. However, according to a letter from CCC staff dated November 9, 2006 (received during the DEIR comment period), "The proposed project involves a land division in order to create three parcels from two existing parcels....The project should be evaluated for conformance with the applicable provisions of Chapter 15." As discussed previously under F. Transfer Development Credits, the conveyance does not constitute a land division and the findings for land division need not be made. Nevertheless, the 16 findings have been made and are listed below. The required findings for a lot line adjustment are first (Sections I - LCP and J - M.M.C.) and are followed by the LCP required land division findings (Section K).

The six findings set forth in LIP Section 15.5 are hereby made as follows.

Finding 1. All the parcels involved in lot line adjustment are legal parcels.

Staff has confirmed that all parcels involved in the proposed LLA are legal parcels. Examination of the Certificates of Compliance for existing Parcel A and B, No. 98-01 and No.99-03 respectively, found that the parcels previously received Certificates of Exception from the County of Los Angeles on May 7, 1970 and are in compliance with the provisions of the Subdivision Map Act.

Finding 2. The lot line adjustment complies with the applicable provisions of the Subdivision Map Act.

Staff has determined that the proposed LLA complies with the Subdivision Map Act. Government Code Section 66412.d requires conformance with the general plan, any applicable coastal plan, zoning and building ordinances. A. General Coastal Development Permit, Finding 1 substantiates that the proposed project will comply with the LCP upon certification of the LCPA.

Finding 3. The reconfigured parcels comply with the LCP size standards and the parcels can be developed consistent with all LCP policies and standards or, if the existing parcels do not meet this

requirement, then the reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than would have occurred from development on the existing parcels.

The irregular Z-shape of the existing parcel configuration created problems with siting building locations meeting setback requirements and pushed development out toward the edges of the parcel versus the current configuration with the DA .20 Project development project which allows a greater clustering of development while still meeting current LCP setback standards on two out of three parcels (A and B). The LCPA for the TCO has specific setback standards for Parcel C due to orientation and proposed use of the structure and the proposed project will comply with the LCP upon certification of the LCPA.

The lot line adjustment is necessary to accommodate the proposed configuration of the buildings and provide ample yard setbacks, landscaping and open space. This parcel configuration allows for the more “intense” retail uses to be positioned as far forward (to the South of the property adjacent to Civic Center Way) as is feasible. This clustering of the retail use allows for the most intense commercial activities (including traffic circulation) to occur farthest from the surrounding residential districts and it also maximizes contiguous open space.

Increasing the size of Parcel A to accommodate more development area, by taking that area from Parcel B, results in a reduction to required fuel modification for those undisturbed areas of chaparral and coastal Sage Scrub to the north of the property. This lot line configuration also allows the development which would have otherwise been sited on existing Parcel B (Parcel B having a steeper average gradient than existing Parcel A) to be sited on flatter land. Thus, the LLA allows for reduction in landform alteration, clustering of development near existing adjacent “commercial” development, reduction in fuel modification, and siting of commercial development as far from residential zones as feasible.

In addition, as discussed in A. General Coastal Development Permit, Finding 3, the proposed reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than that which could have occurred from development on the existing parcels.

Finding 4. If environmentally sensitive habitat is present on any of the parcels involved in the lot line adjustment, the lot line adjustment will not increase the amount of environmentally sensitive habitat that would be damaged or destroyed by development on any of the parcels, including any necessary road extensions, driveways, and required fuel modification.

As discussed in the EIR, and Finding C, least damaging alternative, the site is not designated ESHA and the small Sycamore Woodland relic cells are in the very center of the existing Parcel A and any development of the site would be expected to utilize the center given all the constraints of siting development. The small patches of coastal sage scrub would be equally impacted if the lots lines were not realigned as they would still be within the fuel modification zone of any proposed development on the site.

Finding 5. As a result of the lot line adjustment, future development on the reconfigured parcels will

not increase the amount of landform alteration (including from any necessary road extensions or driveways) from what would have been necessary for development on the existing parcels.

There will be no increase in landform alteration, including roads and driveway as a result of the lot line adjustment. The lot line adjustment moves the northernmost property boundary of Parcel A further northward encompassing the flat disturbed area currently shared with Parcel B, no additional building area is created by the lot line adjustment. Since any roadway to Parcel B would have to traverse Parcel A, there is no additional landform alteration required with the realigned Parcels A and B.

Finding 6. As a result of the lot line adjustment, future development on the reconfigured parcels will not have greater adverse visual impacts from a scenic road, public trail or trail easement, or public beach than what would have occurred from development on the existing parcels.

The proposed LLA is a minor boundary change moving the northern property line of existing Parcel A further northward to encompass existing disturbed area currently shared by Parcel B. There is no greater visual impact from any scenic viewing areas as the setbacks are roughly the same and the proposed development is still subject to the standards of the LCP with regard to visual impacts.

J. Malibu Municipal Code (M.M.C.) Findings – Lot Line Adjustment

M.M.C. Title 16 (Subdivisions) implements the Subdivision Map Act for land divisions in the City. M.M.C. Section 16.28.020 requires the following findings for lot line adjustments.

Finding A. The lots proposed to be created by the lot line adjustment comply with all applicable zoning regulations, except lot size requirements; however, the lots created shall each comply with the dimension requirement of the zoning ordinance.

The realigned lots comply with all the applicable lot dimension requirements of the existing CC zoning.

Finding B. The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.

The LLA is a boundary change on paper and in itself will not result in the need for additional improvements and/or facilities.

Finding C. No additional parcels shall result from the lot line adjustment, and any land taken from the one parcel shall be added to an adjacent parcel.

No new parcels will be created as a result of this lot line adjustment.

Finding D. The proposed adjustment will result in a generally continuous and straight property line extending the full length of the property's dimensions.

The realigned parcels are generally continuous with straightened property lines.

Finding E. Adjacent property owner(s) directly involved in the lot line adjustment have provided written authorization to the applicant supporting the proposed action.

All properties directly involved in the lot line adjustment are currently owned by the property owners on record requesting this CDP.

K. Findings for Land Division LIP Chapter 15

Finding 1. Does not create any parcels that do not contain an identified building site that: a. Could be developed consistent with all policies and standards of the LCP; b. Is safe from flooding, erosion, geologic and extreme fire hazards; c. Is not located on slopes over 30 percent and will not result in grading on slopes over 30 percent. All required approvals certifying that these conditions are met shall be obtained.

The proposed lot line adjustment and conveyance to a public entity does not create parcels with identified building sites that cannot be developed consistent with all policies and standards of the proposed LCPA. The proposed development will not be subject to flooding, erosion, geologic or extreme fire hazards if constructed per the recommendations and requirements of the City Geologist, City Coastal Engineer, City Public Works Department and LACFD.

Finding 2. Is designed to cluster development, including building pads, if any, to maximize open space and minimize site disturbance, erosion, sedimentation and required fuel modification.

The proposed lot line adjustment clusters development on each parcel while maximizing open space and landscaping. Parcel C is conveyed as public benefit to house a City Hall complex. Thus the size and shape of Parcels A and B mimic the proposed design of the City Hall complex while the open space and landscaping within the rear yard of Parcel A and front yard of Parcel B maximize the sense of public open space.

The impacts of developing the proposed 3-parcel configuration (DA .20 Project) have been analyzed in the EIR. Specifically addressing site disturbance is the section on Geology and Soils (V.E), and addressing sedimentation is the section on Hydrology and Water (V.E – V.F).

Finding 3. Does not create any parcels where a safe, all-weather access road and driveway cannot be constructed that complies with all applicable policies of the LCP and all applicable fire safety regulations; is not located on slopes over 30 percent and does not result in grading on slopes over 30 percent. All required approvals certifying that these conditions are met shall be obtained.

Access to all three parcels is shown on the site plan, Figure III-3 of the EIR. All proposed access roads will be all-weather safe, meet LACFD regulations and do not involve slopes over 30 percent.

Finding 4. Does not create any parcels without the legal rights that are necessary to use, improve, and/or construct an all-weather access road to the parcel from an existing, improved public road.

As identified on the Illustrative Site Plan, vehicular access to the project site for Parcels A and B is proposed via the central ingress/egress driveway from Civic Center Way (identified as La Paz Lane). An easement is proposed for Parcel B to take legal access through Parcel A. Parcel C, the City Hall complex is to be served by a new, un-named public street.

Finding 5. Is designed to minimize impacts to visual resources by complying with the following: a. Clustering the building sites to minimize site disturbance and maximize open space; b. Prohibiting building sites on ridgelines; Minimizing the length of access roads and driveways; d. Using shared driveways to access development on adjacent lots; e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas; f. Minimizing grading and alteration of natural landforms, consistent with Chapter 8 of the Malibu LIP; g. Landscaping or revegetating all cut and fill slopes and other disturbed areas at the completion of grading, consistent with Section 3.10 of the Malibu LIP; h. Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.

The proposed lot line adjustment and conveyance minimize visual resources and complies by: a. having building sites clustered to the extent feasible while still meeting setbacks and maximizing open space and landscaping; b. not building on ridgelines; c and d. providing access for all three parcels as described above in Finding 4; e. not increasing the density as discussed in the Transfer of Development discussion; f. limiting grading to the minimum required to meet geotechnical and flood safety requirements; g and h. landscaping any graded slopes in accordance with the LCP requirements.

Finding 6. Avoids or minimizes impacts to visual resources, consistent with all scenic and visual resources policies of the LCP.

As discussed in D. Scenic Visual and Hillside Resource Protection Ordinance, Finding 1, the proposed lot line adjustment and conveyance are consistent with all scenic and visual resource policies of the LCP.

Finding 7. Does not create any additional parcels in an area where adequate public services are not available and will not have significant effects, either individually or cumulatively, on coastal resources.

The adequacy of public services was analyzed in the EIR, Section V.J. Public Services. As mitigated, the proposed project with the City Hall complex is anticipated to have a less than significant impact to public services.

Finding 8. Does not create any parcels without the appropriate conditions for a properly functioning septic system or without an adequate water supply for domestic use. All required approvals certifying that these requirements are met must be obtained.

The adequacy of the water supply and appropriate conditions for an OWTS were analyzed in the EIR,

Section V.F. Hydrology/Water Quality. The site is to be served by Water District 29 which has adequate water supply. The project would connect to the existing 12-inch water main located in the centerline of Civic Center Way. The project will “T” off from that main and extend new water mains onto and within the project site to serve hydrants throughout the project in accordance in the provisions of the Los Angeles County Fire Code (Title 32). With regard to wastewater, Applicant has obtained final feasibility approval from the City Environmental Health Administrator for the OWTS for the proposed project including the additional parcel and City Hall complex. The Regional Water Quality Control Board (RWQCB) will review the final OWTS design during the issuance of the WDR permit to ensure compliance with the TMDL (TDML)/Clean Water Act Section 303d requirements.

Finding 9. Is consistent with the maximum density designated for the property by the Land Use Plan map and the slope density criteria (pursuant to Section 15.6 of the Malibu LIP).

A LCPA, the Town Center Overlay, creating specific development standards is requested as part of this application. As such, the proposed development is consistent with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP. The slope density criteria are not applicable as it only applies to parcels zoned Rural Residential.

Finding 10. Does not create any parcels that are smaller than the average size of surrounding parcels.

The parcel sizes of the project are specified in the Town Center Overlay LCPA as Parcel A (7.16 acres), Parcel B (5.7 acres) and Parcel C (2.3 acres). Upon certification of the LCPA, the proposed project will be consistent with the policies of the LCP.

Finding 11. Does not subdivide a parcel that consists entirely of ESHA and/or ESHA buffer or create a new parcel that consists entirely of ESHA and/or ESHA buffer.

The originating parcels are not designated ESHA or ESHA buffer and the newly conveyed land does not consist of ESHA or ESHA buffer.

Finding 12. Does not create any new parcels without an identified, feasible building site that is located outside of ESHA and the ESHA buffer required in the LCP and that would not require vegetation removal or thinning for fuel modification in ESHA and/or the ESHA buffer.

The originating parcels are not designated ESHA or ESHA buffer and the conveyed land does not consist of ESHA or ESHA buffer. The fuel modification does not impact ESHA or ESHA buffer as the surrounding parcels are not designated as ESHA.

Finding 13. Does not result in construction of roads and/or driveways in ESHA, ESHA buffer, on a coastal bluff or on a beach.

The project site is not on a coastal bluff or beach and the originating parcels are not designated ESHA or ESHA buffer and the conveyed land does not consist of ESHA or ESHA buffer.

Finding 14. Does not create any parcel where a shoreline protection structure or bluff stabilization structure would be necessary to protect development on the parcel from wave action, erosion or other hazards at any time during the full 100 year life of such development.

The project site is not located on the beach; therefore, the finding is not applicable.

Finding 15. If located on a beachfront parcel, only creates parcels that contain sufficient area to site a dwelling or other principal structure, onsite sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs.

The project site is not located on the beach; therefore, the finding is not applicable.

Finding 16. Includes the requirement to acquire transfer of development credits in compliance with the provisions of the LCP, when those credits are required by the Land Use Plan policies of the LCP.

As discussed in E. Transfer of Development Credits, a requirement for TDC is unwarranted as there are no cumulative impacts of the proposed development with regard to density and upon certification of the LCPA the proposed project will be consistent with the policies of the LCP.

L. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The City of Malibu Environmental Health Administrator has found that the WMSMP for the OWTS is feasible and meets the requirements of the City of Malibu. The OWTS options were analyzed in the EIR, Section V.F. Hydrology / Water Quality.

The wastewater management master plan (WMSMP) prepared by Lombardo and Associates, Inc. dated April 1, 2008, describes a wastewater system and its operation for the Proposed Project that provides “no net discharge” to groundwater (see Appendix L of the EIR). This Plan is intended to address the requirements of Title 22, Disinfected Tertiary Treatment Standards, of the State of California Health and Safety Code, the Los Angeles Regional Water Quality Control Board, and the City of Malibu regulations applicable to wastewater management systems and the reuse of treated wastewater. The WMSMP identifies a wastewater management system which includes wastewater collection, treatment, and reuse of treated wastewater to provide for the wastewater management needs of the Proposed Project, as well as to provide a source of non-potable water for reuse in commercial buildings (i.e., toilet flushing only) and within landscape areas. Thus, the wastewater management system would effectively treat wastewater generated by the Proposed Project while minimizing potable water demand and environmental impacts through the reuse of treated effluent (generated by the wastewater system) for toilet flushing and landscape irrigation.

The maximum sustained daily wastewater flow from the wastewater treatment system is estimated at

24,700 gpd.³ The wastewater system capacity is 28,000 gpd. The proposed design of the wastewater system would result in a net zero discharge to groundwater during normal operations. Should the system operate outside of its specifications, “off-specification” wastewater would be discharged through a subsurface drip irrigation system for up to 20 days, consistent with The California Code of Regulations, Title 22, Division 4, Chapter 3, Article 10, Section 60341(b).⁴ Specifically, 100% of the properly treated effluent from the wastewater system would be reused for landscape irrigation and toilet flushing purposes. An effluent storage tank would be provided for seasonal periods when treated effluent generation is greater than the Proposed Project water demand (for landscape irrigation and toilet flushing only). The effluent storage tank would provide for 76 days of recycled water storage at the design dispersal rates.⁵ The proposed storage volume of the effluent storage tank is 800,000 gallons.⁶ For seasonal periods when treated effluent generation is less than landscape irrigation water demand, an additional source of potable water would be required. Table 1 below identifies the proposed components and technology for the wastewater system. Figure III-18 in the EIR presents a conceptual process flow diagram of the proposed wastewater system.

Table 1
Proposed Project Wastewater Management System

Wastewater Component	Technology
Collection	Grease Traps, Septic Tanks & Effluent Collection System.
Treatment	Title 22 Compliant System using recirculating synthetic media filters, Nitrex™ denitrification filter and UV – Ozone disinfection with influent equalization storage.
Reuse – in buildings	Dual piping (purple pipe system) to convey treated wastewater to restrooms for reuse (flushing toilets).
Reuse – in landscape irrigation	Drip irrigation system, with some spray irrigation.
Storage Tank	Discharge flow storage tank for effluent storage during seasonal low evapotranspiration periods.
Source Lombardo and Associates, Inc., Wastewater Management Master Plan (Table 2.14), July 2008, and Christopher A. Joseph and Associates, Inc., July 2008.	

Unless otherwise noted, the following summary of the proposed wastewater treatment system shown in Figure III-18 is excerpted from the Wastewater Management System Master Plan prepared by Lombardo Associates, Inc., dated July 7, 2008 (See Appendix L of the EIR):

Collection. This would include grease traps, septic tanks, and the associated effluent collection system sized based on the L.A County Plumbing Code Table K-3 design flows associated with the buildings they would serve (see Appendix __, Table 2-16 for grease trap and septic tank sizes). Each septic tank would have duplex pumps to pump septic tank effluent to the wastewater treatment site through a 2-inch

³ City of Malibu Hydrogeology Review Sheet (Comment #11), June 26, 2008.

⁴ Soil leaching with treated wastewater or potable water would occur to flush out the accumulated salts resulting from evapotranspiration of the irrigation water, consistent with Section 2.12 (Salt Leaching and Nutrient Management) of the WMMP.

⁵ City of Malibu Hydrogeology Review Sheet (Comment #5), June 26, 2008.

⁶ Lombardo and Associates, Inc., Wastewater Management Master Plan (Table 2.7), July 2008

pressure pipe. A 3-inch pipe would be used where more than two septic tank effluent pipes converge.

Treatment. A flow equalization tank of 28,000 gallon capacity is included in the process to ensure as steady a flow through the treatment system as possible. The recirculating media filter (RMF) treatment systems require recirculation tanks in addition to treatment units. The Nitrex™ denitrification filter can be utilized as a wetland system and thereby achieve additional treatment and aesthetic improvements.

Two identical filtration systems would be used to ensure turbidity levels are within permit/reuse requirements prior to disinfection. The pre-and final filters would consist of: 1) Multi-Media pressure filter – at 5 gpm/sf; and 2) Dual Micron Filters (Cartridge or Backwashable) 10 microns and 5 microns, respectively. The disinfection system would consist of an ozone and an UV system. The disinfection system would be sized for an average flow rate of 18 gpm (28,000 gpd), with the capability of treating peak flows up to 25 gpm (36,000 gpd).

Storage Tank. The storage tank for treated wastewater would be sized for the extreme rainfall events of the mid 1990's and would provide for 76 days of recycled water storage at the design dispersal rate. The wastewater generation rate during winter months (when most rainfall occurs) would be expected to be less than the design rate.⁷ The storage tank is sized at 800,000 gallons and to be located under the parking area, just north of Building 6.

Reuse. Treated wastewater effluent would be used for toilet flushing via a dual plumbing system (purple pipe) and landscape irrigation predominately via drip irrigation, with some spray irrigation. The drip and spray irrigation system average application rate would be 0.063 inches/day (0.039 gpd/sf). Drip irrigation of Title 22 Disinfected Tertiary Treated Wastewater would occur at approximately 6 – 8 inch soil depth. Drip dispersal of “off-spec” wastewater, as discussed above, would occur with a redundant parallel drip dispersion system at 24+ - 30 inches, unless the LARWQCB allows the shallow drip system to be used for both purposes. Automatic valves would be activated to direct treated wastewater to the lower drip irrigation system when continuous turbidity measurements or total coliform laboratory results indicate Department of Public Health standards for unrestricted water reuse are not being met.

The non-potable, treated wastewater, would be conveyed in purple pipes with appropriate backflow preventors as required by Title 22 regulations to avoid connection to the potable water supply. No reuse of the non-potable, treated wastewater within restaurant bathrooms has been included within the WMSMP. The WMSMP also includes odor control features, electrical controls and monitoring, reliability features for each unit process including an emergency generator, and a performance monitoring plan. Site plans of the proposed wastewater system showing the dispersal areas and the landscape areas are presented in EIR Section V.I.4 Public Utilities – Wastewater.

M. Conditional Use Permit and Findings for Restaurant Use (M.M.C. Section 17.66.080)

The applicant is requesting a CUP for both projects to allow up to 10,000 square feet of Buildings 5, 6

⁷ City of Malibu Hydrogeology Review Sheet (Comment #5), June 26, 2008.

and 7 to be used as restaurant space with outdoor seating (restaurants propose to serve beer, wine and liquor) and no amplified entertainment. The restaurant use is part of the variety of uses envisioned in the shopping center as prescribed in the LCPA request for the TCO. The proposed hours of operation for the restaurants are Sunday-Thursday 8:00 a.m. – 12:00 a.m., and Friday-Saturday 8:00 a.m. - 1:00 a.m.

Pursuant to M.M.C. Section 17.66.080, the City Council may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The CUP findings can be supported based on the findings below:

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The proposed restaurants are conditionally permitted uses in the underlying CC zoning district as well as the TCO. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The restaurant uses are consistent with the uses envisioned in a shopping center and have been sited in the center of the subject property to have the least impact upon adjacent residentially zoned properties.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

The OWTS requirements for the proposed development, including restaurant use, have been analyzed in the EIR, V.F. Hydrology/Water Quality and have been found to be feasible on the proposed site.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The subject site is commercially zoned but currently vacant. The site is surrounded by a variety of uses including residential to the north and upslope. The proposed hours of operation are limited to 8:00 a.m. to 12:00 a.m., Sunday through Thursday, and from 8:00 a.m. to 1:00 a.m., Friday through Sunday. The proposed project has been designed to be sensitive to the existing residential development by its siting (respecting privacy through vegetative screening, shielding lighting to eliminate glow and night lighting) and overall site landscaping to soften the visual impact of new development and change of use at the site. The proposed development and limited restaurant use will not interfere with the parking and circulation in the area as the site has adequate onsite parking and the daytime uses will offset the demand for later, evening restaurant uses and overall the use is compatible with similar adjacent commercial uses in the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

As conditioned, the proposed restaurant use will have limited hours of operation. No amplified entertainment will be permitted. The proposed uses are not anticipated to generate any impacts that would be incompatible with uses permitted by the General Plan, LCP or M.M.C., or any uses in the vicinity.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

The adequacy of public utilities and services has been analyzed in the EIR, Section I, Public Utilities and J, Public Services. The 10,000 square feet of restaurant use is approximately 14 percent of the overall (68,997 square feet) development proposed for Parcel A of DA .20 Project.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

The proposed development and limited restaurant use will not interfere with the parking and circulation in the area as the site has adequate onsite parking and the daytime uses will offset the demand for later, evening restaurant uses and overall the use is compatible with similar adjacent commercial uses in the surrounding neighborhood.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

As discussed in LCPA Finding 1, a shopping center is to provide a variety of uses, including restaurants.

Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of state and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as Alcoholic Beverage Control (ABC).

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The subject application proposes limited restaurant use in Buildings 5, 6 and 7 of the subject shopping center portion of the development. Applications for restaurants to serve beer, wine and liquor are conditionally permitted uses in a commercial zone. As the TCO will have an underlying commercial, the proposed uses will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project site is located within a Federal Emergency Management Administration (FEMA) designated flood zone. The project had been designed to FEMA development requirements by raising the finished floor on average approximately three feet. Due to the slight grade on the project site, the actual finished floor varies from building to building as the development moves to the rear of the site.

Section 9. Conditions of Approval.

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves DA No. 07-001, LCPA No. 06-003 (and corollary amendments), CDP No. 05-107, LLA No. 05-004 and CUP No.05-004 subject to the conditions listed below. In addition to the conditions listed below, the mitigations from the Mitigation Monitoring Program, Table X-1 of Environmental Impact Report No. 06-001 shall apply.

1. The Applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. The project is to construct 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex as depicted on the project plans on two realigned parcels and contains the following:
 - a. Fuel Modification plan for wildfire hazard reduction
 - b. Alternative onsite wastewater treatment system
 - c. Grading consisting of 25,445 cubic yards of non-exempt grading— with 35,634 cubic yards of export and 14,545 cubic yards of import
 - d. Driveway and safety access improvements
 - e. Lot Line Adjustment to adjust property boundaries
 - f. Development Agreement No. 07-001
 - g. Local Coastal Program Amendment No. 06-003
 - h. Conditional Use Permit for up to 10,000 square feet of restaurant use in Buildings 4, 5 and 6

No building permits shall be issued until the Applicant has supplied proof that LLA No. 05-004 had been recorded by Los Angeles County and proof that the recorded LLA has been provided to the Los Angeles County Assessor's Office.

Subsequent submittals for this project shall be in substantial compliance with the plans referenced above. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the associated agenda report for this project. In the event the project plans conflict with any conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The Applicant shall file this form with the Planning Division within 10 days of the City Council's decision and prior to issuance of any development permits.
4. Coastal Development Permit No. 05-107 shall not become effective unless and until the following legislative act (LCPA No. 06-003) is approved and in effect.
5. This permit shall be null and void if the project has not commenced within four (4) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the Applicant or authorized agent at least two (2) weeks prior to the expiration of the four -year period and shall set forth the reasons for the request.
6. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the LLA plans submitted to the City of Malibu Public Works/Engineering Services Department for Lot Line Adjustment recordation.
7. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and attached to the revised property deed and legal descriptions which shall be submitted to the Planning Division for review prior to recordation of revised property deeds.
8. This resolution and the referral sheets attached to the associated agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
9. The project shall conform to all requirements of the City of Malibu Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, Los Angeles County Water District No. 29, and Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
11. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.

12. Minor changes to the approved plans or the conditions may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
13. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code.
14. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 48 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Geologist

15. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction.
16. Final plans approved by the City Geologist shall be in substantial conformance with the approved coastal development permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment to this coastal development permit or a new Coastal Development Permit.

Public Works/Grading

17. This project proposes to construct improvements within the Public Street right-of-way. The applicant shall obtain encroachment permits from the Public Works Department prior to commencement of any work within the Public right-of-way.
18. Street improvements are required for Civic Center Way abutting the project. Street improvements shall be to the satisfaction of the Director of Public Works and shall include curb, gutter, pave out and sidewalk.
19. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

20. Grading and Drainage plan shall be approved by the Public Works Department and Environmental and Building Safety Division prior to the issuance of grading permits for the project. This plan shall include:
 - a. Public Works Department general notes.
 - b. Slopes created for development shall not exceed 3 (horizontal) to 1 (vertical).
 - c. The existing and proposed square footage of impervious coverage on the property shall be shown on the Grading Plan (including separate areas for buildings driveways, walkways, and parking areas).
 - d. The limits of land to be disturbed during project development shall be delineated on the grading plan and a total area shown on the plan. Areas disturbed by grading equipment beyond the limits of grading shall be included within the area delineated.
 - e. The grading limits shall include temporary cuts made for retaining walls, buttresses, and over excavations for fill slopes and shall be shown on the grading plan.
 - f. Private storm drain systems shall be shown on the Grading Plan.
 - g. Public storm drain modifications shown on the Grading Plan shall be approved by the Public Works Department or by the County Flood Control District prior to the issuance of the Grading permit.

21. A State Construction Activity Permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the waste discharge identification number (WDID) prior to the issuance of grading permits.

22. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the raining season). The following elements shall be included:
 - a. Locations where concentrated runoff will occur.
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures.
 - c. The plans shall identify erosion control materials such as rolled products, straw or compost slope protection or the use of polymers to stabilize disturbed areas as required by the State General Construction Activity Permit.
 - d. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
 - e. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.

23. A Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the grading permits for the project. This plan shall include:
 - a. Dust control plan for the management of fugitive dust during extended periods without rain.
 - b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff.
 - c. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset.

- d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
24. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2.B.2.
 25. A Water Quality Mitigation Plan (WQMP) is required for this project. This document is also commonly known as a Standard Urban Stormwater Management Plan (SUSMP). The WQMP shall be supported by hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the pre-development and post-development drainage of the site. The preliminary WQMP submitted in September of 2006 shall be used as the basis of the final WQMP. The Engineer shall submit detailed design and siting information on all Best Management Practices (BMPs) proposed for inclusion within the project. The following elements shall be included within the WQMP:
 - a. Site Design
 - b. Source Control BMPs
 - c. Treatment Control BMPs
 - d. Drainage Improvements
 - e. Methods for onsite percolation, site re-vegetation and an analysis for off-site project impacts.
 - f. Measures to treat and infiltrate runoff from impervious areas.
 - g. A plan for the maintenance and monitoring of the proposed treatment BMPs for the expected life of the structure.
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain the water quality measures installed during the construction prior to the issuance of grading permits.
 - i. The WQMP (SUSMP) shall be submitted as part of the building plan check submittal and the fees prescribed by Council, shall be paid prior to the start of technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded at the County Recorder.
 - j. The project appears to incorporate many Water Quality BMPs. It is suggested that the applicant seek recognition under the Leadership in Energy and Environmental Design (LEED) program sponsored by the Green Building Council, www.usgbc.org.
 26. A preliminary Elevation Certificate is required for all developments located within Special Flood Areas. The final Elevation Certificate, based on actual construction, will be required prior to receiving final approval of the construction.
 27. Geology and Geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.

28. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

Water Service

29. Prior to the issuance of a building permit, the applicant shall submit a Will Serve letter from the Los Angeles County Waterworks District No. 29 indicating the ability of the proposed project to receive adequate water service.

Onsite Wastewater Treatment System

30. Prior to issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of the Section 18.9 of the LCP related to continued operation, maintenance and monitoring of onsite facilities.

Solid Waste

31. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.

Framing

32. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
33. No structure may exceed 32 feet in height as measured from finished grade, pursuant to the Town Center Overlay development standards.

Colors/Materials

34. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
35. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

36. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible. All windows shall be comprised of non-glare glass.

Lighting

37. A Lighting Plan (including all proposed light standards, shielding and wattage) for the entire site shall be submitted for review and approval by Planning Division Staff prior to Plan Check submittal of the project. Permitted lighting shall conform to the following standards:
- a. Exterior lighting shall be minimized and restricted to low intensity features shielded, so that no light source is directly visible from public viewing areas.
 - b. All lighting fixtures shall be located so as to shield direct rays from adjoining properties. Said shielding shall be required so that light measured five feet outside the property boundary shall not exceed one foot-candle.
 - c. Luminaries/light standards shall be of a low level, indirect diffused type and shall not exceed fifteen feet in height.
 - b. Security lighting controlled by motion detectors may be attached to the building provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent
 - e. Site perimeter lighting shall be prohibited.
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
 - g. Only low level landscape lighting shall be permitted within the 50 foot landscape buffer area on Parcel B.
38. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot-candle.

Security

39. Twenty-four hour "roving" security shall be provided for the entire commercial development. A security guard shall patrol the parking lot during all non-daylight hours to ensure that the parking areas do not become an attractive nuisance.
40. A fence shall be added along the northern property line to prohibit pedestrian traffic to the Malibu

Knolls neighborhood.

41. A gate with a key system for “after hours” tenant-only use shall be installed on Parcel B for access to Buildings 10 and 11.

Biology/Landscape

42. Invasive plant species, as determined by the City of Malibu, are prohibited.
43. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
44. Grading shall be scheduled only during the dry season from April 1 through October 31st. If it becomes necessary to conduct grading activities from November 1 through March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
45. Grading scheduled between February 15 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of grading activities. Should active nests be identified, a buffer area no less than 100 feet (250 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on site.
46. The landscape and fuel modification plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the landscape and fuel modification plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project. The fuel modification plan shall be revised (if necessary) and re-approved by the Los Angeles County Fire Department prior to plan check submittal.

Prior to Occupancy

47. Prior to issuing a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
48. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
49. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be

issued until the Planning Division has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

Restaurant

50. The proposed hours of operation are limited to 8:00 a.m. to midnight Sunday through Thursday, and from 8:00 a.m. - 1:00 a.m. on Friday through Sunday.
51. No live entertainment or amplified sound will be permitted without a Conditional Use Permit in accordance with the provisions of the Town Center Overlay District. Additionally, no outdoor speaker/pager system or shall be allowed.
52. No trash or recycling pick up is permitted between the hours of 10:00 p.m. and 8:00 a.m.
53. Once obtained, the applicant is required to provide to the Planning Division a copy of the California Department of Alcohol Beverage Control issued On-Premise Consumption License.
54. The CUP and associated conditions are subject to annual review by the City Planning Manager. Violation of any of the conditions of this approval may be cause for revocation of the CUP and termination of all rights granted there under.

Fixed Conditions

55. This coastal development permit runs with the land and binds all future owners of the property.
56. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
57. The project shall be designed so that it is capable of connecting to any future municipal wastewater treatment facility in the Civic Center Area.
58. The pathway and onsite trails at the La Paz Ranch development site shall be permitted to be used by pedestrians and golf carts, as well as for emergency evacuation routes.
59. The landscaping for the La Paz site shall be coordinated with the landscaping proposed for the Legacy and Linear Parks in the Civic Center Area. Compliance with this condition will require landscaping plans to be reviewed by Planning Division staff in conjunction with the City Biologist.
60. An evacuation plan for the La Paz Project shall incorporate the use of the facility for emergency use by the surrounding property owners as well as emergency responders. The evacuation plan

shall be prepared in conjunction with the City's Emergency Services Coordinator.

Section 10. Approval of Amendments to the Certified Local Coastal Program LIP.

Subject to the contingency set forth in Section 11, the City Council hereby adopts Local Coastal Program Amendment No. 06-003 amending the Local Implementation Plan.

Section 11. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit DA No. 07-001 and LCPA No. 06-003 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, 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 12. Effectiveness.

The LCP amendments and the corollary amendments approved in this resolution shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 13. Certification.

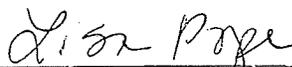
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th of November, 2008.

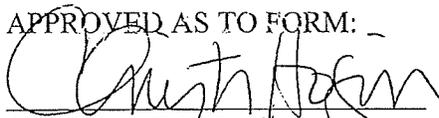


PAMELA CONLEY ULICH, Mayor

ATTEST:



LISA POPE, City clerk
(seal)

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

RESOLUTION NO. 10-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ACKNOWLEDGING RECEIPT OF THE CALIFORNIA COASTAL COMMISSION RESOLUTION OF CERTIFICATION WITH SUGGESTED MODIFICATIONS TO LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 AND ADOPTING REVISIONS TO LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 (MALIBU LA PAZ RANCH, LLC)

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

Section 1. Recitals.

A. On February 17, 2000, Schmitz and Associates, on behalf of La Paz Ranch, LLC, submitted applications for Plot Plan Commercial (PPC) No. 00-005 (Parcel A) and PPC No. 00-006 (Parcel B). Parcel A is identified as Assessor Parcel Number 4458-022-023 and Parcel B is identified as Assessor Parcel Number 4458-022-024. The application requested construction of 99,117 square feet of shopping center and office park development (.15 floor area ratio (FAR)). Subsequently, the property owner revised its proposal, applying for the construction of 112,058 square feet of shopping center and office park development and a 20,000 square foot City Hall complex (.20 FAR). However, if the .20 project was not approved, the property owner wanted to pursue the .15 project. To accommodate this alternative, the City bundled two sets of entitlement applications and studied the .15 project as an alternative, although the .20 project was the property owner's preferred alternative.

B. On June 21, 2005, the application was changed to a coastal development permit, conditional use permit, site plan review, minor modification and lot line adjustment application. The entitlements associated with the .15 FAR Project include: 1) a coastal development permit (CDP No. 05-106) for construction of 99,117 square feet of commercial development; 2) a lot line adjustment (LLA No. 05-003) to adjust property boundaries between the two parcels (A and B); 3) site plan reviews (SPR Nos. 07-126 and 127) for construction in excess of 18 feet in height for the development on both parcels; 4) site plan reviews (SPR Nos. 07-148 and 149) for remedial grading on both parcels; 5) minor modifications (MM Nos. 07-044 and 045) for front yard setbacks on both parcels; 6) a conditional use permit (CUP No. 05-003) for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A; and 7) conditional use permits (CUP Nos. 07-018 and 019) for wastewater systems across property lines. The entitlements associated with the DA .20 FAR Project include: 1) Local Coastal Program (LCP) Local Implementation Plan (LIP) Text Amendment (LCPA No. 06-003) amending Section 3.4 (Zoning Designations and Permitted Uses – Overlay Zones) to include Subsection 3.4.3 (Town Center Overlay) and associated development standards in conjunction with the associated Development Agreement between the City and the project Applicant; 2) CDP No. 05-107 for construction of 112,058 square feet of commercial floor area, including retail, restaurant and office uses and a 20,000 square foot City Hall complex; 3) LLA No. 05-004 between two adjacent parcels and the subsequent conveyance of a portion of one parcel (2.3 acres) to the City; and 4) CUP No. 05-004 for up to 10,000 square feet of restaurant use in Buildings 5, 6 and 7 on Parcel A.

C. On October 18, 2007, a Notice of Public Hearing and Notice of Availability of Local Coastal Program Amendment (LCPA) documents was published in a newspaper of general circulation within the City of Malibu. In addition, on October 18, 2007, pursuant to LIP Section 19.3.2.A, a Notice of Public Hearing and Notice of Availability of LCP Amendment documents was mailed to all interested parties; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission (CCC).

D. On November 10, 2008, the City Council the Council heard and considered the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission and the Environmental Review Board and 1) adopted Resolution No. 08-51 certifying the Environmental Impact Report and adopting a statement of overriding considerations; 2) introduced on first reading of Ordinance No. 330, the Development Agreement between the City of Malibu and Malibu La Paz Ranch, LLC and Ordinance No. 329, the Town Center Overlay District; 3) directed staff to schedule second reading and adoption of Ordinance Nos. 330 and 329 for the November 24, 2008 City Council meeting; and 4) adopted Resolution No. 08-52, as amended, conditionally approving the DA .20 Project and associated entitlements and discretionary requests subject to certification LCPA No. 06-003.

E. On November 24, 2008, the City Council adopted Ordinance No. 329, adopting an amendment of the Malibu LCP LIP and corollary zoning text and zoning map amendments and directing staff to submit LCPA No. 06-003 to the CCC for certification.

F. On December 31, 2008, the LCPA was submitted to the CCC. On January 12, 2009, the submittal, identified by the CCC as MAL-MAJ-3-08 (La Paz Ranch Project), was reviewed by Commission staff and determined to be complete.

G. At the April 9, 2009 CCC hearing, the Commission extended the deadline to act on MAL-MAJ-3-08 for a period of one year.

H. On March 10, 2010, the CCC conditionally certified MAL-MAJ-3-08 (LCPA No. 06-003) subject to modifications as set forth in the Resolution of Certification adopted by the CCC on March 10, 2010. The modifications are non-substantive in nature and within the scope of the previously approved amendment.

I. On March 29, 2010, the City received said Resolution of Certification.

J. On April 1, 2010, a one-quarter page public hearing notice for a City Council meeting to be held on April 12, 2010 was published in a newspaper of general circulation within the City. In addition, the notice was mailed to interested parties, pertinent agencies, and to all property owners and occupants within a 500 foot radius of the subject property.

K. On April 12, 2010, the City Council held a duly noticed public hearing.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, the City is not required to undertake a complete California Environmental Quality Act (CEQA) analysis in connection with proposed amendments to a certified local coastal program, as those amendments are of no force or effect unless and until they are ultimately certified by the California Coastal Commission pursuant to its certified regulatory program. Nevertheless, and without waiving the applicable statutory exemption, staff prepared an Environmental Impact Report (EIR) in connection with the project which includes an analysis of Local Coastal Program Amendment (LCPA) No. 06-003. The EIR was certified on November 10, 2008.

Section 3. Approval of Local Coastal Program Amendment No. 06-003.

A. Pursuant to the California Coastal Commission's Administrative Regulations Section 13544.5, the LCP amendment certification shall not be deemed final and effective until all of the following occur: 1) the City Council: a) acknowledges receipt of the Commission's resolution of certification, including any terms or modifications suggested for final certification; b) accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications; and c) agrees to issue coastal development permits for the total area included in the certified Local Coastal Program; 2) the Executive Director determines in writing that the City's action is legally adequate to satisfy any specific requirements set forth in the Commission's certification order and the Director reports the determination to the Commission at its next regularly scheduled meeting; 3) if the Director finds that the City's action does not conform to the Commission's order, the Commission shall review the City action as if it were a resubmittal; and 4) notice of the certification shall be filed with the Secretary of the Resources Agency for posting and inspection.

B. The City Council acknowledges receipt of the California Coastal Commission's modifications to LCPA No. 06-003. The City Council further accepts and agrees to the modified language suggested by the California Coastal Commission pertaining to the Local Implementation Plan and approves revisions to LCPA No. 06-003 without further changes. The City Council hereby incorporates the administrative record of the Coastal Commission's proceedings as support for accepting the suggested modifications.

C. The City of Malibu agrees to issue coastal development permits for the total area included in the certified LCP.

D. The proposed amendments to the Local Coastal Program meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act to the extent necessary to achieve the basic State goals specified in Public Resources Code Section 30001.

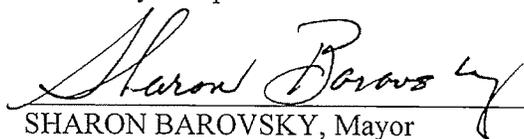
Section 4. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this Resolution to the Commission per Title 14, California Code of Regulations Section 134544.5(a).

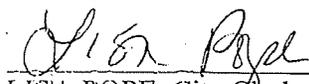
Section 5. Certification.

The City Clerk shall certify the adoption of this Resolution.

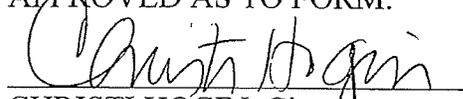
PASSED, APPROVED AND ADOPTED this 12th day of April 2010.


SHARON BAROVSKY, Mayor

ATTEST:


LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 10-14 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 12th day of April, 2010, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, Sibert, Stern, Wagner, Barovsky
NOES: 0
ABSTAIN: 0
ABSENT: 0


LISA POPE, City Clerk
(seal)

ORDINANCE NO. 329

AN ORDINANCE OF THE CITY OF MALIBU APPROVING LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 TO INCLUDE LAND USE AND DEVELOPMENT STANDARDS FOR A TOWN CENTER OVERLAY DISTRICT, AMENDING THE LAND USE MAP AND MAKE COROLLARY AMENDMENTS TO THE ZONING MAP AND ZONING CODE

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

A. The history of this Local Coastal Program (LCP) amendment is set forth in the recitals of Resolution No. 08-52, in which the City Council approved the Development Agreement and Coastal Development Permit and associated entitlements, subject to certification by the Coastal Commission.

B. At the November 10, 2008, public hearing, the Council heard and considered the evidence and information provided in support of and in opposition to the application, public testimony of all interested persons and the recommendations of the Planning Commission and the Environmental Review Board.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, the City is not required to undertake a complete California Environmental Quality Act (CEQA) analysis in connection with proposed amendments to a certified local coastal program, as those amendments are of no force or effect unless and until they are ultimately certified by the California Coastal Commission pursuant to its certified regulatory program. Nevertheless, and without waiving the applicable statutory exemption, staff prepared an Environmental Impact Report (EIR) in connection with the project which includes an analysis of Local Coastal Program Amendment (LCPA) No. 06-003.

Section 3. Local Coastal Program Amendment No. 06-003.

LCP Amendment No. 06-003 includes an amendment to the certified Local Coastal Program Local Implementation Plan, Land Use Map, and corollary amendments to the General Plan and the Zoning Code and Zoning Map. Amendments to the LIP are identified in Section 4 of this ordinance and changes to the LUP are identified in City Council Resolution No. 08-52.

Section 4. Local Coastal Program Local Implementation Plan Amendments.

A. Chapter 3 (Zoning Designations and Permitted Uses) is hereby amended to include Subsection 3.4.3 (Town Center Overlay District) as follows:

Chapter 3.4.3 – CUSTOM DEVELOPMENT CRITERIA (COMMERCIAL)

A. Purpose.

The Overlay meets the intent of LUP Policy 5.17 to provide specific development criteria for parcels within the Civic Center Area. These include land use designations and permitted uses; maximum density and intensity standards, including floor area ratios for commercial use not to exceed the maximum floor area ratio currently allowed pursuant to the LUP where public benefits and amenities are provided as part of the project; development standards, including heights, lot coverage, setbacks, and open space requirements; and provisions for shared or consolidated parking areas.

B. Description of Area Subject to LIP Section 3.4.3.

The provisions of this chapter shall apply to the 15.2 acre site currently identified as Los Angeles County Assessor Parcel Numbers 4458-022-023 and 4458-022-024. The site, currently addressed as 3700 La Paz Lane, is surrounded by a largely undeveloped hillside to the northwest, a single-family residence to the northeast, vacant land directly to the east, commercial uses the future Malibu Legacy Park site across Civic Center Way to the south and the Los Angeles County government building complex to the west as indicated on the Overlay Map.

C. Applicability.

These implementing measures establish the specific uses and development standards for the commercial development of the site. The Overlay will help guide development toward a “town center” that is geographically centrally located, that provides interdependent uses thereby minimizing trips and enhances the existing civic center uses and permanently establishes a City Hall in the Civic Center.

Where any policy or standard provided in this chapter conflicts with any other policy or standard contained in the City’s General Plan, Zoning Code or other City-adopted plan, resolution or ordinance not included in the LCP, and it is not possible for the development to comply with both the Town Center Overlay and other plan, resolution or ordinance, the policies, standards or provisions contained herein shall govern.

D. Development Standards.

Town Center Overlay District

1. La Paz Site: Parcel A

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel A Post Lot Line Adjustment."

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel A:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Parks and playgrounds
- vii. Special events for public congregation or entertainment, which are temporary in nature
- viii. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book stores
- iv. Hazardous waste facilities
- v. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:

- i. Restaurants
- ii. Cocktail lounges, ancillary to restaurant use
- iii. Cultural and artistic uses (museums, galleries, and performing arts studios)
- iv. Live entertainment scheduled to occur after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iv. Nursery schools and day care facilities
- v. Veterinary hospitals
- vi. Churches, temples, mosques and other places of worship
- vii. Hand car washing and detailing

- viii. Wireless telecommunications antennae and facilities
- ix. Emergency communication and service facilities

d. Development Standards

Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of avg lot width
Maximum Building Height	32' from finished grade for Buildings 5 and 6; 28' from finished grade for all other buildings
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	2,000 cubic yards of grading per acre excluding all exempt and remedial grading
Parking Requirements	1 space/ 250 square feet of office 1 space/ 200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign and General Sign Requirements	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements</p>

	<p>from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>
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2. La Paz Site: Parcel B

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel B Post Lot Line Adjustment."

a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel B:

- i. All uses permitted within the Community Commercial zoning district
- ii. Post offices operated by the Federal Government
- iii. Offices
- iv. Medical offices
- v. Onsite or offsite wastewater treatment facilities
- vi. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.

b. Prohibited Uses. The following uses are specifically prohibited:

- i. Fast food restaurants with drive-thru facilities
- ii. Liquor stores (stand alone)
- iii. Adult book stores
- vi. Hazardous waste facilities
- vii. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Code:

- i. Cultural and artistic uses, such as museums, galleries, and performing arts
- ii. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iii. Nursery schools and day care facilities
- iv. Veterinary hospitals

- v. Churches, temples, mosques and other places of worship
- vi. Hand car washing and detailing
- vii. Wireless telecommunications antennae and facilities
- viii. Emergency communication and service facilities
- ix. Parks and playgrounds
- x. Special events for public congregation or entertainment, which are temporary in nature

d. Development Standards

Average Lot Width (minimum required)	238 feet
Average Lot Depth (minimum required)	500 feet
Maximum Floor Area Ratio (F.A.R)	.20 cumulative maximum F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	20% of average lot depth
Minimum Rear Yard Setback	15% of average lot depth
Minimum Side Yard Setback	10% of average lot width
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Maximum Perimeter Wall Height	10 feet from average grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	2,500 cubic yards per acre excluding all exempt and remedial grading
Parking Requirements	1 space/250 square feet. of office 1 space/200 square feet of retail/ restaurant – shopping center
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with LIP Section 3.12.4.
Monument Sign	Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section: The provisions of LIP Section 3.13.6.A.7 shall not apply.

	<p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>
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3. La Paz Site: Parcel C

The following uses and design standards are applicable to the parcel referred to in the La Paz Development Agreement and Zoning Map as "Parcel C Post Lot Line Adjustment":

- a. Permitted Uses. The following uses and structures are permitted within Town Center Overlay District, Parcel C:
- i. All uses permitted within the Community Commercial zoning district
 - ii. Post offices operated by the Federal Government
 - iii. Offices
 - iv. Medical offices
 - v. Onsite or offsite wastewater treatment facilities
 - vi. Community centers
 - vii. Parks and playgrounds
 - viii. Special events for public congregation or entertainment, which are temporary in nature
 - ix. Other uses determined by the planning director to be of a similar nature to uses permitted in this district.
- b. Prohibited Uses. The following uses are specifically prohibited:
- i. Fast food restaurants with drive-thru facilities
 - ii. Liquor stores (stand alone)
 - iii. Adult book Stores
 - iv. Hazardous waste facilities

v. Gas stations

c. Conditionally Permitted Uses: The following uses may be permitted subject to obtaining a Conditional Use Permit in accordance with the requirements of the City's Zoning Ordinance:

- i. Restaurants
- ii. Cocktail lounges, ancillary to restaurant use
- iii. Cultural and artistic uses, such as museums, galleries, and performing arts studios
- iv. Live entertainment that occurs after 7:00 p.m. – Live entertainment scheduled prior to 7:00 p.m. shall require a Temporary Use Permit
- iv. Nursery schools and day care facilities
- v. Veterinary hospitals
- vi. Churches, temples, mosques and other places of worship
- vii. Hand car washing and detailing
- viii. Wireless telecommunications antennae and facilities
- ix. Emergency communication and service facilities

d. Development Standards

Minimum Lot Size	2.3 acres
Average Lot Width (minimum required)	350 feet
Average Lot Depth (minimum required)	141 feet
Maximum Floor Area Ratio (F.A.R.)	.20 cumulative max F.A.R. for Parcels A, B, and C
Minimum Front Yard Setback	10% of average lot depth
Minimum Rear Yard Setback	9% of average lot depth.
Minimum Side Yard Setback	10% of average lot width.
Minimum Side Yard Setback (Cumulative)	25% of average lot width
Maximum Building Height	28 feet from finished grade
Minimum Onsite Landscaping	35% of cumulative lot area for Parcels A, B, and C
Minimum Onsite Open Space	17% of cumulative lot area for Parcels A, B, and C
Maximum Grading	3,000 cubic yards per acre excluding all exempt and remedial grading.
Structures Sited on Slopes	Structures may be sited on slopes as great as, but no greater than, 1:1
Parking Requirements	Government facility/offices (1 space/250 square feet)

	Council Chamber is a reciprocal/conjunctive use, no additional parking required
Parking Location	Entire site and subterranean. Compact spaces permitted in accordance with existing code requirements. Shared parking permitted in accordance with the Zoning Code.
Monument Sign	<p>Monument Signs shall be permitted in accordance with the Provisions of Section 3.13.6. of the LIP with the following modifications made to the provisions of that Section:</p> <p>The provisions of LIP Section 3.13.6.A.7 shall not apply.</p> <p>Monument Signs shall be permitted up to a maximum of 48 square feet excluding the base area supporting the sign. One monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setback requirements from rights of way or property lines for monument signs.</p> <p>Address Monument signs shall be permitted up to a maximum of 16 square feet excluding the base. One address monument sign shall be permitted for every parcel of land that exceeds 2 acres in size. There shall be no setbacks required from rights of way or property lines for monument signs.</p>

Section 5. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The City Council hereby finds that the proposed LCP text amendment (which includes a DA and associated development standards for the DA .20 Project described above as required by LIP Section 3.8.5), does not impede public access to the beach or coastal resources in any way or disrupt environmentally sensitive habitat areas as the related proposed development is located inland in the commercially zoned Civic Center Area on a site that is not designated as Environmentally Sensitive Habitat Area. Therefore, the overall text amendment is consistent with Chapter 3 of the Coastal Act.

Section 6. Zoning Text Amendment No. 07-002.

Subject to the contingency of Section 11, Malibu Municipal Code (M.M.C.) Title 17 (Zoning), Section 42.020 (Overlay Districts), is hereby amended to include Subsection 17.42.020.J (Town Center Overlay) and associated development standards as prescribed in Section 4 with the corollary numerical changes in M.M.C.

Section 7. Finding for Zoning Text Amendment.

The City Council hereby finds that the Zoning Text amendment is necessary for the proposed LCP amendment and recommends that the City Council approve zoning text amendment only if it approves the LCP amendment and on the condition that the zoning text amendment only take effect if the LCP amendment is certified by the California Coastal Commission. Pursuant to M.M.C. Section 17.74.040, the City Council further finds that the subject zoning text amendments are consistent with the objectives, policies, and general land uses in the General Plan, as amended by the LCP amendment. The zoning text amendments will allow the text of the M.M.C. to be amended consistent with the amended LCP and is only corollary of that action.

Section 8. Zoning Map Amendment No. 07-002.

Subject to the contingency of Section 11, the City of Malibu Zoning Map is hereby amended to include the Town Center Overlay over the parcels currently zoned Community Commercial and identified as Assessor Parcel Numbers 4458-022-023 and 4458-022-024.

Section 9. Finding for Zoning Text and Zoning Map Amendment.

The City Council hereby finds that the zoning map amendment is necessary for the proposed LCP amendment and recommends that the City Council approve the zoning map amendment only if it approves the LCP amendment and on the condition that the zoning map amendment only take effect if the LCP amendment is certified by the California Coastal Commission. Pursuant to M.M.C. Section 17.74.050(E), the City Council further finds that the zoning map amendment is consistent with the objectives, policies and general land uses in the General Plan,

as amended by the LCP amendment. The zoning map amendments will allow the M.M.C. to be amended and be consistent with the amended LCP zoning map and is only a corollary of that action.

Section 10. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit DA No. 07-001 and LCPA No. 07-001 to the California Coastal Commission for certification, in conformance with the submittal requirements specified in California Code of Regulation, 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 11. Effectiveness.

The LCP amendments, zoning code amendments and zoning map amendments approved in this ordinance shall become effective only upon certification by the California Coastal Commission of these amendments to the LCP.

Section 12. Certification.

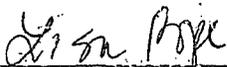
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 24th day of November 2008.

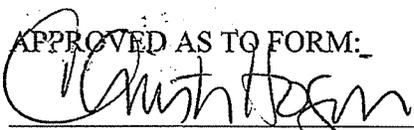


PAMELA CONLEY ULICH, Mayor

ATTEST:



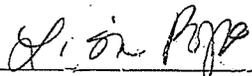
LISA FOPE, City clerk
(seal)

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 329 was passed and adopted at the regular City Council meeting of November 24, 2008, by the following vote:

AYES:	4	Councilmembers:	Sibert, Barovsky, Stern, Conley Ulich
NOES:	1	Councilmember:	Wagner
ABSTAIN:	0		
ABSENT:	0		



LISA POPE, City Clerk
(seal)

ORDINANCE NO. 346

AN ORDINANCE OF THE CITY OF MALIBU ADOPTING REVISIONS TO LOCAL COASTAL PROGRAM AMENDMENT NO. 06-003 TO INCLUDE LAND USE AND DEVELOPMENT STANDARDS AND INCORPORATING THE COASTAL COMMISSION SUGGESTED MODIFICATIONS FOR A TOWN CENTER OVERLAY DISTRICT (MALIBU LA PAZ RANCH, LLC)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

- A. The history of this Local Coastal Program (LCP) amendment is set forth in the recitals of Resolution No. 08-52 in which the City Council approved the Development Agreement and Coastal Development Permit and associated entitlements, subject to certification by the Coastal Commission (CCC).
- B. On November 24, 2008, the City Council adopted Ordinance No. 329, adopting an amendment of the Malibu LCP LIP and corollary zoning text and zoning map amendments and directing staff to submit Local Coastal Program Amendment (LCPA) No. 06-003 to the CCC for certification.
- C. On December 31, 2008, the LCPA was submitted to the CCC. On January 12, 2009, the submittal, identified by the CCC as MAL-MAJ-3-08 (La Paz Ranch Project), was reviewed by Commission staff and determined to be complete.
- D. At the April 9, 2009 CCC hearing, the Commission extended the deadline to act on MAL-MAJ-3-08 for a period of one year.
- E. On March 10, 2010, the CCC conditionally certified MAL-MAJ-3-08 (LCPA No. 06-003) subject to modifications as set forth in the Resolution of Certification adopted by the CCC on March 10, 2010. The modifications are non-substantive in nature and within the scope of the previously approved amendment. The modifications are incorporated into Section 3, Part C (Applicability) to add specific site regulations, and adding Part D (Development Agreement) to Local Implementation Plan (LIP) Section 3.4.3 (Town Center Overlay - Custom Development Criteria -Commercial) and adding a map showing the boundaries of the Town Center Overlay District (Exhibit A – Town Center Overlay District).
- F. On March 16, 2010, the City received said Resolution of Certification.
- G. On April 1, 2010, a one-quarter page public hearing notice for a City Council meeting to be held on April 12, 2010 was published in a newspaper of general circulation within the City. In addition, the notice was mailed to interested parties, pertinent agencies, and to all property owners and occupants within a 500 foot radius of the subject property.
- H. On April 12, 2010, the City Council held a duly noticed public hearing.

Section 2. Environmental Review.

Pursuant to Public Resources Code Sections 21080.5 and 21080.9, the City is not required to undertake a complete California Environmental Quality Act (CEQA) analysis in connection with proposed amendments to a certified local coastal program, as those amendments are of no force or effect unless and until they are certified by the California Coastal Commission pursuant to its certified regulatory program. Nevertheless, and without waiving the applicable statutory exemption, staff prepared an Environmental Impact Report (EIR) in connection with the project which includes an analysis of Local Coastal Program Amendment (LCPA) No. 06-003. The EIR was certified on November 10, 2008.

Section 3. Local Coastal Program Local Implementation Plan Amendments.

LCP Amendment No. 06-003 is hereby augmented to include the modifications noted below to Chapter 3 (Zoning Designations and Permitted Uses), Subsection 3.4.3 (Town Center Overlay District).

a) Subsection C. Applicability is hereby amended to add the following language at the end of the last paragraph.

The following special site-specific regulations shall also apply to the subject Overlay:

1. *Los Angeles County Waterworks District No. 29*

Development of any parcel within the Overlay area shall demonstrate that Los Angeles County Waterworks District 29 has reviewed and approved the potable water supply for the proposed development, including water requirements for fire suppression.

2. *California Department of Transportation (CalTrans)*

Development of any parcel within the Overlay area shall demonstrate that CalTrans has reviewed the proposed traffic and circulation plans and mitigation measures.

b) A new subsection entitled *D. Development Agreement* is hereby added to read as follows and the following subsection are renumbered.

Pursuant to a Development Agreement between the property owner and the City of Malibu, the allowable Floor to Area Ratio (FAR) is increased from 0.15 to 0.20 for the following public benefits: 1) 2.3 acres to be conveyed to the City of Malibu for the purpose of a City Hall or municipal use; 2) \$500,000 contribution to the City Hall or municipal use Infrastructure Construction Fund associated with development of the 2.3-acre parcel; 3) a pedestrian and bike path from City Hall throughout the project

connecting to Civic Center Way; 4) Offer-to-Dedicate a public trail easement fronting along Civic Center Way (segment of the planned Malibu Pacific Trail/Coastal Slope Trail); and 5) conceptual architectural plans for the City Hall.

- c) The Exhibits in the LIP are hereby amended to include a map of Town Center Overlay District. The map is attached as Exhibit A to this Ordinance.
- d) Any amendments to the Land Use Map authorized by Resolution No. 08-52 and Ordinance No. 329 are hereby rescinded.

Section 4. Local Coastal Program Amendment Findings.

In order to amend the LCP, the City Council must make the finding listed below.

Finding A. The text amendment to the Land Use Plan and Land Use Implementation Plan is consistent with Chapter 3 of the Coastal Act.

Chapter 3 of the Coastal Act states that any new development must not impede or adversely impact public access to the beach, must protect marine resources and scenic views, and must not significantly disrupt environmentally sensitive habitat areas.

The City Council hereby finds that the proposed LCP text (which includes a DA and associated development standards for the DA .20 Project described above as required by LIP Section 3.8.5), and the addition of a LIP Town Center Overlay District map does not impede public access to the beach or coastal resources in any way or disrupt environmentally sensitive habitat areas as the related proposed development is located inland in the commercially zoned Civic Center Area on a site that is not designated as Environmentally Sensitive Habitat Area. Therefore, the overall text amendment is consistent with Chapter 3 of the Coastal Act.

Section 5. Approval of Local Coastal Program Amendment No. 06-003.

A. Pursuant to the California Coastal Commission's Administrative Regulations Section 13544.5, the LCP amendment certification shall not be deemed final and effective until all of the following occur: 1) the City Council: a) acknowledges receipt of the Commission's resolution of certification, including any terms or modifications suggested for final certification; b) accepts and agrees to any such terms and modifications and takes whatever formal action is required to satisfy the terms and modifications; and c) agrees to issue coastal development permits for the total area included in the certified Local Coastal Program; 2) the Executive Director determines in writing that the City's action is legally adequate to satisfy any specific requirements set forth in the Commission's certification order and the Director reports the determination to the Commission at its next regularly scheduled meeting; 3) if the Director finds that the City's action does not conform to the Commission's order, the Commission shall review the City action as if it were a resubmittal; and 4) notice of the certification shall be filed with the Secretary of the Resources Agency for posting and inspection.

B. The City Council acknowledges receipt of the California Coastal Commission's modifications to LCPA No. 06-003. The City Council further accepts and agrees to the modified language suggested by the California Coastal Commission pertaining to the Local Implementation Plan and approves revisions to LCP Amendment No. 06-003 without further changes.

C. The City of Malibu agrees to issue coastal development permits for the total area included in the certified LCP.

D. The proposed amendments to the Local Coastal Program Local Implementation Plan meet the requirements of, and are in conformance with the policies and requirements of Chapter 3 of the California Coastal Act to the extent necessary to achieve the basic State goals specified in Public Resources Code Section 30001.

Section 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit a copy of this Ordinance to the Commission per Title 14, California Code of Regulations Section 13544.5(a).

Section 7. Certification.

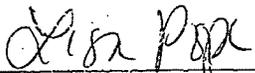
The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 10th day of May 2010.



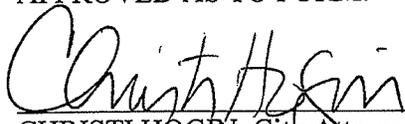
JEFFERSON WAGNER, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:



CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 346 was passed and adopted at the regular City Council meeting of May 10, 2010, by the following vote:

AYES: 5 Councilmembers: Conley Ulich, La Monte, Rosenthal, Sibert, Wagner
NOES: 0
ABSTAIN: 0
ABSENT: 0



LISA POPE, City Clerk
(seal)

Town Center Overlay District

Harbor Vista Drive

Parcel B

Parcel C

Parcel A

Cross Creek Road

Civic Center Way

Cross Creek Road

City of Malibu



EXHIBIT A

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AGREEMENT REGARDING MAINTENANCE OF REAL PROPERTY

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2008 by and between the COUNTY OF LOS ANGELES ("COUNTY") and the CITY OF MALIBU ("CITY") (collectively, the "Parties").

WHEREAS a dispute has arisen between the Parties as to which of the Parties holds fee title to the real property (the "Property") particularly described in Exhibit A hereto;

WHEREAS, the COUNTY has been funding and performing all of the requisite maintenance on the Property from approximately 1945 to the present;

WHEREAS the Parties desire to resolve their dispute over which party legally holds fee title to the Property and is, therefore, responsible for its ongoing maintenance;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. **ACKNOWLEDGMENT OF OWNERSHIP.** In consideration for, and conditioned upon, COUNTY's promise to perform all necessary maintenance (as defined) on the Property for the term set forth herein, and for COUNTY's promise to abide by all terms of this Agreement, CITY hereby waives its right to challenge COUNTY'S claim that CITY, by operation of Streets & Highways Code Section 989, is the fee owner of the Property.
2. **CONSIDERATION.**
 - A. As partial consideration, COUNTY agrees to continue to perform all necessary maintenance on the Property, and to bear the cost of said maintenance, until and through the date of execution of this Agreement by all Parties. COUNTY will, in a workmanlike manner, furnish all of the labor, technical, administrative, professional other personnel, all supplies and materials equipment, vehicles, and transportation necessary or proper to perform and complete the maintenance required of COUNTY by this Agreement.;
 - B. COUNTY waives any and all claims against CITY relating to COUNTY's past maintenance of the Property, and the costs and obligations incurred therefor;
 - C. CITY agrees to assume responsibility for the Property's maintenance on upon execution of this Agreement by all Parties;
 - D. As additional consideration, CITY and COUNTY agree to abide by the terms and conditions contained in this Agreement;

3. **TERMINATION.** Neither Party may terminate this Agreement without the express written consent of the other.
4. **MUTUAL RELEASE.** CITY and COUNTY agree forever to release each other from any and all claims arising from the dispute over the ownership of the Property and the COUNTY's costs and obligations incurred with respect to COUNTY's past maintenance of the Property.

5. **INDEMNIFICATION.**

- A. COUNTY indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, to the extent caused by COUNTY's performance of this Agreement. Should CITY be named in any suit, or should any claim be brought against CITY by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, COUNTY will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.
- B. CITY indemnifies and holds COUNTY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, to the extent caused by CITY's performance of this Agreement. Should COUNTY be named in any suit, or should any claim be brought against COUNTY by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CITY will defend COUNTY (at COUNTY's request and with counsel satisfactory to COUNTY) and will indemnify COUNTY for any judgment rendered against it or any sums paid out in settlement or otherwise.
- C. For purposes of this section "COUNTY" includes COUNTY's officers, officials, employees, agents, representatives, contractors, and volunteers and "CITY" similarly includes the CITY's officers, officials, employees, agents, representatives, and volunteers.
- D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

6. **NOTICES.**

- A. All notices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by mail. Notice sent by mail will be addressed as follows:

To CITY: City of Malibu
Attn: City Manager
23815 Stuart Ranch Road
Malibu, CA 90265

To COUNTY: County of Los Angeles
Department of Public Works
Attn: Road Maintenance Division
900 S. Fremont Ave.,
Alhambra, CA 91803

- B. When addressed in accordance with this paragraph, notices will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery.
- C. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

7. **WAIVER.** A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

8. **CONSTRUCTION.** The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.

9. **CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not effect the interpretation of this Agreement.

10. **INTERPRETATION.** This Agreement was drafted in, and will be construed in accordance with laws of the State of California, and exclusive venue for any action involving this Agreement will be in Los Angeles County.

11. **AUTHORITY/MODIFICATION.** This Agreement is subject to and conditional upon approval and ratification by the City Council of the City of Malibu and the Board of Supervisors of the County of Los Angeles. This Agreement is not binding upon the parties until executed by an individual authorized to do so by action of the City Council and an individual authorized to do so by the Board of Supervisors. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written agreement.

12. **ACCEPTANCE OF FACSIMILE SIGNATURE.** The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original.
13. **ENTIRE AGREEMENT.** This Agreement and its one attachment constitutes the sole agreement between COUNTY and CITY with respect to the maintenance of the Property. There are no other understandings, terms or other agreements expressed or implied, oral or written.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

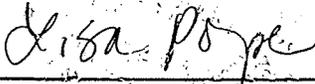
CITY OF MALIBU

COUNTY OF LOS ANGELES



Jim Thorsen,
City Manager

ATTEST:



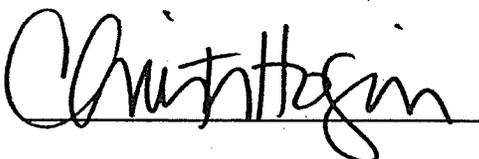
Lisa Pope,
City Clerk
(Seal)

Conny McCormack
County Clerk
(Seal)

APPROVED AS TO FORM:

Christi Hogin, City Attorney

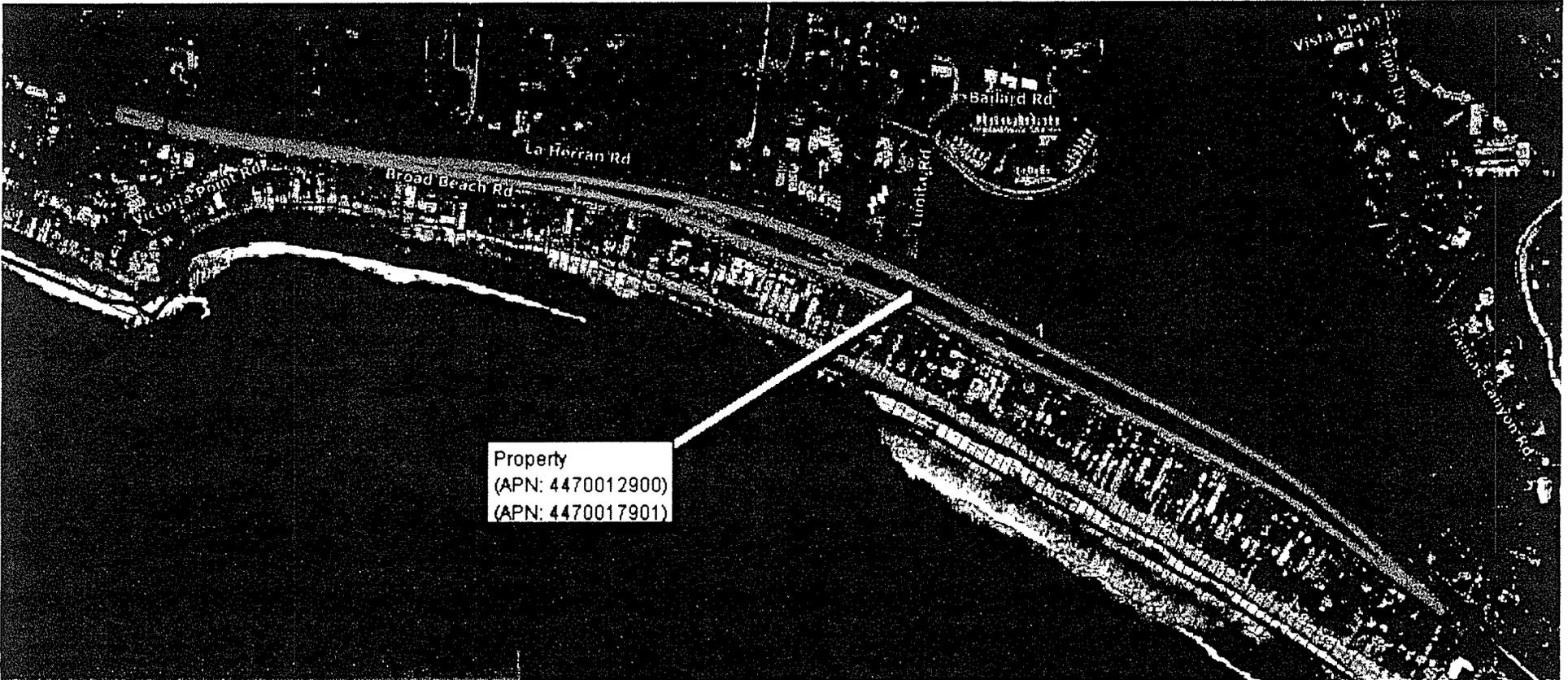
Warren R. Wellen,
Principal Deputy County Counsel

By: 

By: _____

EXHIBIT A

PROPERTY MAP



Page 5 of 5

ACCESS AND USE AGREEMENT

Identification of Parties

1. This Access and Use Agreement (hereinafter referred to as the "Agreement") is entered into on September 8, 2010 by and between Malibu La Paz Ranch, LLC (hereinafter referred to as "Owner"), and the City of Malibu (hereinafter referred to as "User").

Description of Property and Warranty of Authority

2. Owner warrants that it holds a fee simple title to 15.29 acres of certain real property situated at 3700 La Paz Lane, Malibu, California 90265 [Los Angeles County Assessor Parcel Number 4458-022-023 and 4458-022-024] (hereinafter referred to as "Subject Property") or otherwise has the right to occupy the Subject Property and grant a right of access to a third party for the purpose(s) set forth herein.

Request for Access to Subject Property

3. Owner has been requested by User to permit User, its employees, contractors and consultants, access onto the Subject Property in order to temporarily place and maintain 6 storage containers (the "Containers"), each approximately 20 feet long by 8 feet wide by 8 feet tall during the renovation of the nearby Malibu Library building.

Grant of Permission to Enter Property and Perform Work

4. Owner hereby grants permission to User, its employees, contractors and consultants, the right of ingress and egress in, on and upon the Subject Property in order to place, maintain and access the Containers subject to the provisions of this agreement.

Incidental Rights

5. This Agreement includes the following incidental rights to the Subject Property:

A. To access the Subject Property with vehicles necessary and appropriate for the task of transporting and loading/unloading the Containers, and;

B. To access the Subject Property as necessary to inspect, maintain, move or remove the Containers as necessary during the term of this Agreement.

In exercising these rights, or any other rights set forth in this Agreement, User agrees to exercise reasonable care and protect and not damage any and all improvements and/or utilities belonging to Owner and/or any and all public agencies and/or persons.

General and Automobile Liability Program with a liability limit of five million dollars (\$5,000,000) per occurrence, and an aggregate limit of ten million dollars (\$10,000,000); and

All Risk Property Program providing for replacement cost coverage on scheduled property at declared values. User shall provide Owner with documentation from the SCJPIA evidencing that Owner is named as an additional insured with respect to the above-referenced coverage.

Notice to Parties

11. Notice to Owner and User shall be made via certified mail as follows:

To Owner: Malibu La Paz Ranch, LLC
C/o Sterling Partners
1033 Skokie Blvd Suite 600
Northbrook, Ill 60062

To User: City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265
Attn: City Manager

Copies to: Christi Hogin
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266

Waiver and Amendment

12. No provision hereof may be waived unless in writing, signed by all parties to this Agreement. This Agreement may be modified or amended only by written agreement executed by all of the parties.

Captions

13. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of the Agreement or the intent of any provision hereof.

Counterparts

14. This Agreement may be executed in counterparts, each of which shall be deemed an original Agreement, and all of which taken together shall constitute one and the same Agreement.

Term

6. This Agreement shall remain in effect until December 31, 2011, until the renovation of the Malibu Library is complete, or until this agreement is terminated whichever occurs soonest.

Termination

7. Notwithstanding any other provision in this agreement either party may terminate this Agreement, with or without cause, upon 30 days written notice to the other.

Cost and Expense

8. User will bear the cost and expense associated with the transportation, placement and maintenance of the Containers on the Subject Property.

User's Duty to Inspect Premises; Assumption of Risk; Hold Harmless

9. User acknowledges that there are hazardous conditions on the Subject Property both natural and artificial which may not be plainly visible except upon a careful and diligent inspection of the subject property (e.g., holes, ditches, snakes, garbage buried in the underbrush, etc.). User agrees to thoroughly and carefully inspect the premises for possible hazards each time it comes onto owner's property. User agrees to assume the risk of any and all possible injury or damages that may arise as a result of user's use of the Subject Property. User agrees to hold Owner harmless for and on account of any damage or injury to any person and/or personal property of any person, (1) arising from User's use of the Subject Property, or; (2) User's failure to keep the part of the Subject Property being used by User in a clean and good condition.

Indemnity

10. User agrees to indemnify Owner and its officers, members, officials, employees, and agents from and against all claims, demands and causes of action by third parties on account of personal injuries or death or on account of property damage arising out of the use of the Subject Property by User hereunder.

Insurance

10. User warrants that it is a member of the Southern California Joint Powers Insurance Authority ("SCJPIA") through which it participates in the following self-insurance and loss-pooling programs administered by the SCJPIA for its members:

Warranty of Authority

15. Each of the parties to this Agreement personally warrants that he, she, or it is authorized to enter this Agreement on behalf of any principal for whom this Agreement purports to be signed. This Agreement constitutes a valid and binding obligation on each party, enforceable in accordance with its terms. In the event any challenge of this authority is ever made, the signing party shall personally indemnify and hold the other party harmless from any resulting claim.

Entire Agreement

16. This Agreement constitutes the entire contract between User and Owner relating to the Agreement. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by User and Owner.

“OWNER”

“USER”

MALIBU LA PAZ RANCH, LLC

CITY OF MALIBU

Executed On: 9.7, 2010

Executed On: 9/7, 2010





By: JEFFREY PERELMAN

By: Reva Feldman

Its: MEMBER

Its: Assistant City Manager



City of Malibu

23815 Stuart Ranch Road-Malibu, California - 90265-4861
Phone (310) 456-2489 - Fax (310) 456-2760 - www.ci.malibu.ca.us

April 1, 2010

Tamar C. Stein
Cox Castle & Nicholson LLP
2049 Century Park East, Suite 2800
Los Angeles, CA 90067-3284

Re: La Paz Development Agreement

Dear Ms. Stein:

Enclosed is the exhibits to La Paz Development Agreement that you had requested. These copies are yours to retain.

Please contact me at (310) 456-2489, extension 246 if you have any questions.

Sincerely,

Kelsey Bealer
Deputy City Clerk
City of Malibu
kbealer@ci.malibu.ca.us

Enclosure

Cc: Malibu La Paz Development Agreement File



City of Malibu

23815 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.ci.malibu.ca.us

March 5, 2010

Tamar C. Stein, Esq.
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067

Re: Agreement with City of Malibu/ Malibu La Paz Ranch, LLC Development Agreement

Dear Ms. Stein:

Enclosed is an original Agreement between the City of Malibu and Malibu La Paz Ranch, LLC Development. This is your copy to retain.

Please contact me at (310) 456-2489, extension 246 if you have any questions.

Very truly yours,

Kelsey Bealer
Deputy City Clerk
City of Malibu
kbealer@ci.malibu.ca.us



Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

Tamar C. Stein
310.284.2248
tstein@coxcastle.com

File No. 47864

November 20, 2009

VIA U.S. MAIL

Christi Hogin, Esq.
Jenkins & Hogin LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266

Re: City of Malibu/Malibu La Paz Ranch, LLC Development Agreement

Dear Christi:

Enclosed herewith are two original signature pages to the Development Agreement, signed by Jeff Perelman on behalf of Malibu La Paz Ranch, LLC. You are authorized to use these signature pages with a fully assembled Development Agreement, including all exhibits and a correction in Section 6.4.1 reflecting a cross-reference to Section 6.4.2, rather than to 6.5.2.

We look forward to having the Development Agreement fully executed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tamar C. Stein".

Tamar C. Stein

TCS/nmg
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Council Agenda Report

To: Mayor Conley Ulich and Honorable Members of the City Council

Prepared by: Stefanie Edmondson, AICP, Principal Planner *[Signature]*

Reviewed by: Stacey Rice, Ph.D., AICP, Planning Manager *[Signature]*
Victor Peterson, Community Development Director

Approved by: Jim Thorsen, City Manager *[Signature]*

Date prepared: October 21, 2008 Meeting: November 10, 2008

Subject: Malibu La Paz Ranch - Two Proposed Alternative Projects: 1) The La Paz Development Agreement Project, a proposal for the construction of 112,058 square feet of commercial office and retail uses and a 20,000 square foot City Hall/municipal building complex; and 2) A proposal for the construction of 99,177 square feet of commercial office and retail uses only (Continued from September 22, 2008)

Application No: 1) **DA .20 Project**

Development Agreement No. 07-001
Local Coastal Program Amendment No. 06-003
Coastal Development Permit No. 05-107
Lot Line Adjustment No. 05-004
Conditional Use Permit No. 05-004
Environmental Impact Report No. 06-001

2) **.15 Project**

Coastal Development Permit No. 05-106
Lot Line Adjustment No. 05-003
Site Plan Review No. 07-126
Site Plan Review No. 07-127
Site Plan Review No. 07-148
Site Plan Review No. 07-149
Minor Modification No. 07-044
Minor Modification No. 07-045
Conditional Use Permit No. 05-003
Conditional Use Permit No. 07-018

Conditional Use Permit No. 07-019
Conditional Use Permit No. 08-013
Environmental Impact Report No. 06-001
Application Date: February 17, 2000
Applicant: Schmitz and Associates, Inc.
Owner: Malibu La Paz Ranch, LLC
Location: 3700 La Paz Lane in the non-appealable
coastal zone
APNs: 4458-022-023 and 4458-022-024
Zoning: Community Commercial (CC)

RECOMMENDED ACTION: Hold a public hearing, review the proposed projects and associated environmental document and approve either the Development Agreement Project (DA .20 Project) or the .15 Project. The DA .20 Project will require review and approval by the California Coastal Commission (CCC).

If the Council determines to approve the DA .20 Project: 1) adopt Resolution No. 08-51 certifying the Environmental Impact Report (EIR) and adopting a statement of overriding considerations (Attachment 1); 2) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 330, the Development Agreement between the City of Malibu and Malibu La Paz Ranch, LLC (Attachment 2), and Ordinance No. 329, the Town Center Overlay District (Attachment 3); 3) direct staff to schedule second reading and adoption of Ordinance Nos. 330 and 329 for the November 24, 2008 City Council meeting; and 4) adopt Resolution No. 08-52 approving the DA .20 Project and associated entitlements and discretionary requests (Attachment 4). The matter would subsequently be submitted to the CCC for certification of the Local Coastal Program Amendment.

If the Council determines to approve the .15 Project: 1) adopt Resolution No. 08-53 certifying the EIR and adopting a statement of overriding considerations (Attachment 5); and 2) adopt Resolution No. 08-54 approving Coastal Development Permit No. 05-106 and associated discretionary requests (Attachment 6).

DISCUSSION: On September 22, 2008, the City Council held a public hearing, reviewed the proposed projects and associated environmental document, and provided direction to staff to conduct research and follow-up on three subjects: 1) the Development Agreement; 2) potential changes in site layout and auxiliary uses; and 3) additional conditions of project approval.

1. Development Agreement (DA)

The Council directed staff to negotiate a revision to the DA provisions relating to the use of the 2.3 acre parcel for other municipal uses, including, but not limited to, a wastewater

treatment facility for the Civic Center Area, and to change the five-year deadline to develop the property to 10 years. The City Attorney indicated that staff would also analyze the result of the negotiations to determine whether additional California Environmental Quality Act (CEQA) review is necessary and whether the matter must be heard before the Planning Commission.

Pursuant to the Local Coastal Program Local Implementation Plan Section 13.28.5, the Council may approve, modify or disapprove a Planning Commission recommendation involving a development agreement, provided that any modification of the DA by the Council not previously considered by the Planning Commission during its hearing shall first be referred to the Planning Commission for report and recommendation, but the Commission shall not be required to hold a public hearing thereon. Subsequently, the negotiated revisions to the DA, listed below, were reviewed by the Planning Commission on October 21, 2008. The Planning Commission received the report on the proposed revisions and made a recommendation to the City Council to approve the proposed changes as improvements to the DA.

The two revisions to the DA reviewed by the Planning Commission are as follows:

- A. Create parity between the lengths of time for vested rights conferred to La Paz by the DA (10 years) with length of time the City has to make use of donated parcel for municipal purpose. CHANGE "five" to "ten" in 6.5.1 and 6.5.1.1.
- B. Create flexibility for future use of parcel to "any municipal purpose, including but not limited to a City Hall, library, community center, water quality infrastructure, park, or open space, provided the City Council at a public hearing finds the use to be consistent with the adjacent uses, the General Plan and the Local Coastal Program."

Do the proposed changes to the DA require additional CEQA review? The City Hall use is reasonably foreseeable and has been studied. Any future use identified in this revised "municipal purpose" would undergo additional environmental review as part of any required permitting process.

2. Potential Changes to Site Layout and Auxiliary Use

The Council also directed staff to: a) explore whether it is desirable to switch the location of the offices to the back of the property with a municipal use; b) explore how future connection of the new Civic Center system to the site could occur; and c) whether it is feasible and desirable to have a pathway for golf carts, as well as for emergency access, throughout the Civic Center Area.

- a. Staff has reviewed the potential to switch the location of the offices on Parcel B with the municipal use on Parcel C. While the potential exists, it is essentially starting

the entire project over with a redesign of all the proposed parcel lines, and a completely different project description requiring all new environmental review. This potential alternative has not been studied in the EIR and according to the Applicant, the potential change is not supported by the property owner.

- b. Staff has conceptually reviewed how future connection of the future Civic Center Area wastewater system to the site could occur. As there currently is no definite plan to address this concern, the project will be conditioned to provide for this future capability to connect when feasible. This condition has been added as Condition No. 57 in Resolution No. 08-52 (DA .20 Project) and Condition No. 60 in Resolution No. 08-54 (.15 Project).
- c. Staff has conceptually reviewed the feasibility of pathways for golf carts for emergency access throughout the Civic Center Area. While there is no plan for this use throughout the entire Civic Center Area, the La Paz Project has been designed to provide pedestrian access and pathways throughout, including connection to the potential City Hall or municipal use area, that can be used for golf carts or emergency access. In addition, a condition of project approval has been added to permit use of trails for golf carts and pedestrians and evacuation at City's discretion. This condition has been added as Condition No. 58 in Resolution No. 08-52 (DA .20 Project) and Condition No. 61 in Resolution No. 08-54 (.15 Project).

3. Additional Conditions of Approval

The Council further directed staff to add the following: a) a condition be added to the resolutions of approval that require the landscaping to be coordinated with Legacy and Linear Parks for both the .15 and .20 Project; b) a condition be added to require the property owners to cooperate with the neighborhood in developing an evacuation plan with possible emergency use of underground parking; and c) review the proposed conditions to verify that the developer's concessions are compatible with the neighbors' requests and that these conditions are included.

- a. Condition Nos. 59 and 62 have been added to the respective approvals for the .15 and .20 Projects requiring landscaping to be coordinated with the Legacy and Linear Parks in the Civic Center Area. Compliance with this condition will require that the landscaping plans be reviewed by Planning Division staff in conjunction with the City Biologist.
- b. Condition Nos. 60 and 63 have been added to the respective approvals for the .15 and .20 Projects requiring an evacuation plan for the La Paz Project that incorporates use of the facility for emergency use by the surrounding property owners as well as emergency responders.

- c. Staff has reviewed the proposed conditions and verified that Condition Nos. 37, 39, 40, 41, 51 and 52 in Resolution No. 08-52 (DA .20 Project) and Condition Nos. 37, 39, 40, 41, 55, and 56 in Resolution No. 08-54 (.15 Project) are consistent with the developer's concessions and the neighbors' requests and also address the compatibility issue.

ATTACHMENTS:

The following attachments have been provided to the City Council and are available for review at City Hall or on the City's website at www.ci.malibu.ca.us.

For the DA .20 Project

1. Resolution No. 08-51 certifying the EIR
2. Ordinance No. 330 approving the DA
3. Ordinance No. 329 creating the Town Center Overlay District
4. Resolution No. 08-52 approving the DA .20 Project

For the .15 Project

5. Resolution No. 08-53 certifying the EIR
6. Resolution No. 08-54 approving .15 Project

7. September 22, 2008 City Council Agenda Report

Kelsey Bealer

From: Christi Hogin [CHogin@localgovlaw.com]
Sent: Thursday, April 01, 2010 12:37 PM
To: Kelsey Bealer
Cc: Lisa Pope; Gregg Kovacevich
Subject: FW: La Paz DA Exhibits
Attachments: LA PAZ EXHIBIT 1.pdf; LA PAZ EXHIBIT 2.pdf; LA PAZ EXHIBIT 3.doc; LA PAZ EXHIBIT 5.doc; Site Plan (20 FAR) potential exhibit in lieu of Exhibits 4, 6 and 7..pdf

The exhibits were attached to the council item too.

From: Stein, Tamar C. [mailto:TStein@coxcastle.com]
Sent: Tuesday, September 22, 2009 5:59 PM
To: Christi Hogin; Gregg Kovacevich
Cc: jrepking@coxcastle.com; Paradise, Kate J.
Subject: La Paz DA Exhibits

Per earlier email, attached are the La Paz DA exhibits that we received from Schmitz in November. I believe I originally forwarded them to you the day of the hearing. I'll need to contact Chris Deleau if there is anything you haven't received.

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