

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 center<sup>1</sup> 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

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<sup>1</sup> 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 Geologist<sup>2</sup>, 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

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<sup>2</sup> 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

