

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

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 25<sup>th</sup> meeting, staff requested that the project be brought back again to the November 15<sup>th</sup> 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 inquiry 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 alternation, 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.<sup>3</sup> 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).<sup>4</sup> 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.<sup>5</sup> The proposed storage volume of the effluent storage tank is 800,000 gallons.<sup>6</sup> 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

<sup>3</sup> City of Malibu Hydrogeology Review Sheet (Comment #11), June 26, 2008.

<sup>4</sup> 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.

<sup>5</sup> City of Malibu Hydrogeology Review Sheet (Comment #5), June 26, 2008.

<sup>6</sup> 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<sup>TM</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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](http://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.

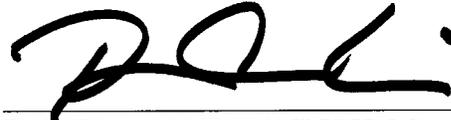
Section 12. Effectiveness.

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.

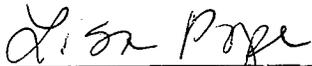
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> of November, 2008.



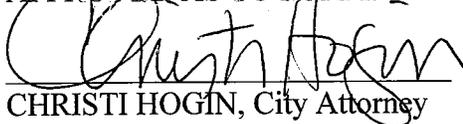
\_\_\_\_\_  
PAMELA CONLEY ULICH, Mayor

ATTEST:



\_\_\_\_\_  
LISA POPE, City clerk  
(seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney