APPENDIX G

BIOLOGICAL INVENTORY REPORTS

RANCHO MALIBU, LLC
Post Office Box 6528
Malibu, CA 90264

PHONE (310) 457-8130
FAX (310) 457-8128

David Maffit
Project manager

February 28, 2008

Ms. Suk-Ann Yee
Associate Biologist
ESA Biological Resources
21650 Oxnard Street, Suite 1680
Woodland Hills, CA 91367 fax: (818) 703 5118

Re: Biological Inventory Report

Dear Ms. Yee,

Following on our conversation this morning at the project site, I am sending you the following documents:

1. The "Biological Inventory Report" for the site prepared by Rincon Consultants, Inc. and dated May 9, 2007. This report has been filed with the City of Malibu.
2. A copy of the Conservation Easement on the Francisco Property done in 2001.

Kind regards,

Dave Maffit

C: Vance Pomeroy fax: (310) 456 7650

Rincon Consultants, Inc.
[illegible]
Ventura, California 93001
[illegible]
[illegible]
[illegible]

May 9, 2007
Project Number 07-92070

Dave Maffit
Project Manager
Rancho Malibu, LLC
26880 Pacific Coast Highway
Malibu, CA 90265

Subject: **Biological Inventory Report for Malibu Canyon Road at Pacific Coast Highway Parcels 1-3, Malibu, Los Angeles County, California**

Dear Mr. Maffit:

The purpose of this letter is to provide the results of our biological reconnaissance of the above referenced site. Included is information about the dominant plant species present onsite; wildlife observed and anticipated onsite; photo-documentation of existing site conditions; description of site conditions, including habitat types and surrounding development; and biological resources that meet the definition of an Environmentally Sensitive Habitat Area (ESHA) pursuant to guidelines in the City of Malibu Local Coastal Program (LCP) adopted by the California Coastal Commission (CCC) in 2002. The site visit was conducted in accordance with our proposal dated March 28, 2007, and was performed by Rincon Consultants, Inc. (Rincon) biologists Nancy Fox-Fernandez and Julie Broughton on April 18, 2007. The project activity proposed for the subject site involves building a hotel, which will involve clearing all vegetation on the top of the bluff and building a fire road on the steep slopes on the south and east portions of the site.

An Environmental Impact Report (EIR) was prepared for this site (CBA, 1997) and certified by the City of Malibu City Council (March 23, 1998) along with conditions of approval contained in Conditional Use Permit No. 96-005. The CUP contained specific conditions to mitigate for the loss of habitats and associated sensitive species onsite.

SITE CONDITIONS

The proposed project site is on top of and along a coastal bluff on three parcels that total approximately 28 acres (APN 4458-030-007, 4458-028-015, and 4458-028-019) located at the junctions of Malibu Canyon Road, Pacific Coast Highway (PCH), and Civic Center Way. The property to the west is Pepperdine University, the property to the northeast is developed in institutional and multi-family residential uses, and the property to the south is open but recently disturbed by wildfire (Figure 1). The parcel adjacent to the subject property to the east is in commercial use. No drainages cross the site, however, a 20 foot deep gully is located at the southeast corner of the site (Figure 1).

The project site is accessed directly from PCH and Malibu Canyon Road. The bluff top of the site contains drivable dirt roads as the site was formerly used as a nursery. No

structures remain on the property, but vagrant activity is evident. The property has a substantial amount of coastal sage scrub, but also contains many non-native nursery trees and shrubs. Although much of the central portions of the property are open and disturbed, the majority of the landscape provides cover and habitat for birds and small animals.

PLANT SPECIES

The site contains a mix of well established coastal sage scrub, and less dense and more disturbed, recovering coastal sage scrub. The latter habitat contains non-native planted nursery vegetation and is associated with disturbed non-native grassland (Figures 1 and 2). The site also contains a ruderal, open area of mostly dirt at the northern tip. Per the 1997 EIR, the site contained approximately 8 acres of undisturbed coastal sage scrub along the northern bluff, 18 acres of recovering coastal scrub mixed with landscaping plantson the bluff top, and about 1.8 acres dominated by landscaping and ornamental plants. Based on our field reconnaissance, the plant communities have changed little in the intervening 10 years (Figure 1), except that about 0.8 acre along Malibu Canyon Road is now more disturbed coastal scrub than indicated in the 1997 EIR.

Dominant plants in the dense coastal sage scrub include California sagebrush (*Artemisia californica*), chamise (*Adenostoma fasciculatum*), white sage (*Salvia apiana*), purple sage (*Salvia leucophylla*), laurel sumac (*Malosma laurina*), and coyote brush (*Baccharis pilularis*). More open areas containing recovering coastal sage scrub contain dominants such as deerweed (*Lotus scoparius*), California everlasting (*Gnaphalium californica*), purple needlegrass (*Nassella pulchra*), *Bromus* sp., wild oats (*Avena fatua*), and flat-topped buckwheat (*Eriogonum fasciculatum*). Five coast live oaks (*Quercus agrifolia*) were found onsite, and all were on the flat, former nursery section of the site. Dominants in this section include myoporum (*Myoporum* sp.), palm tree (unknown species), fennel (*Foeniculum vulgare*), ice plant (*Carpobrotus chinensis*), castor bean (*Ricinus communis*), *Eucalyptus* sp., salt grass (*Distichlis spicata*), California sagebrush, and sawtooth goldenbush (*Hazardia squarrosa*).

WILDLIFE SPECIES

Wildlife either observed or heard onsite were limited to "common" (not sensitive) species and included American crow (*Corvus brachyrhynchos*), wrentit (*Chamaea fasciata*), California towhee (*Pipilo fuscus*), red-shouldered hawk (*Buteo lineatus*), Anna's hummingbird (*Calypte anna*), gopher (probably *Thomomys bottae* evident by numerous holes) ground squirrel (*Spermophilus beecheyi*), coyote (*Canis latrans* evident by scat), and rabbit scat (probably *Sylvilagus audubonii*). Other wildlife that might be expected to occupy thearea would be western fence lizard (*Sceloporus occidentalis*), side-blotched lizard (*Uta stansburiana*), mourning dove (*Zenaida macroura*), house finch (*Carpodacus mexicanus*), American goldfinch (*Carduelis tristis*), and house sparrow (*Passer domesticus*).

Given the level of disturbance within and surrounding the proposed development area, there is limited potential for special-status wildlife species to occur onsite. Soils are sandstone and not volcanic, therefore they do not support most rare plants foundin the area. However, the coastal sage scrub and large trees could be attractive for nesting birds protected under the California Fish and Game Code. Although accessible trees and shrubs

throughout the property were examined with binoculars and no active nests were observed, birds may nest onsite generally between February 15 and August 15.

ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

No areas onsite are mapped as ESHA according to the City of Malibu LCP ESHA Overlay Map 3: *Dan Blocker to Malibu Pier.* The gully at the southeast corner does not have a definable bed, bank, and channel, nor an ordinary high water mark, and appears to be erosional in nature. Therefore, modifying this area is not likely to requirepermits from CDFG, Army Corps of Engineers (ACOE), or Los Angeles Water Quality Control Board (RWQCB).

The coastal sage scrub on the northern bluff was considered sensitive by the City of Malibu per the 1997 EIR as it is relatively undisturbed and contiguous. However, it does not connect to other nearby native habitats. This areacurrently amounts to approximately 7.2 acres of coastal sage scrub. The property is not within a currently mapped ESHA in the CCC approved City of Malibu LCP Land Use Plan, however, unmapped coastal sage scrub can nonetheless be defined as an ESHA per the City of Malibu LCP. In order to be considered ESHA, the coastal sage scrub would need to meet the following definition:

> "...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." Malibu LCP LIP, page 10

Further instruction regarding the ESHA designation is provided on page 48 of the Malibu LCP Land Use Plan (Land Use Plan Policy 3.1):

> "...The ESHAs in the City of Malibu areriparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem... Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA"

It is unlikely that any wildlife species requiring a home range of greater than 6 acres would use the site as it is not contiguous with other habitats, and as such is isolated. However, loggerhead shrikes (*Lanius ludovicianus*, California species of special concern while nesting) must have at least 5 acres of contiguous habitat in which to nest, and therefore could potentially use the site for nesting, though these birds were not seen at the site during the current survey conducted during the breeding season. Home ranges for Coastal western whiptail (*Aspidoscelis tigris stejnegeri*, California species of special concern) must be at least 0.25 acres, therefore this species could also potentially use the site. The coastal sage scrub on the subject property could qualify as an ESHA based on the wildlife observed and expected on site; however, as noted above, this isolated locale may not qualify for ESHA status. Isolated areas tend to lose rare species over time through changes in the local environment

that create conditions that are no longer conducive to their existence. If locally extirpated, the chance of re-colonization is substantially decreased because of the isolation. The plants and animals observed at the site during the brief field visit are allrelatively common. Based on the limited biological study to date, no special rare species or particular values (beyond erosion control along the bluff) are known for the onsite coastal sage scrub habitat. The adjacent urban activity also limits the potential for rare species to occur at the site.

During conversations with you, it was indicated that theLos Angeles County Fire Department (LACFD) is requiring a fire road through the coastal sage scrub. According to LACFD, the fire road shall ring the site at the top of the slope, be 26 feet wide, and be placed at least 150 feet from all structures. This fire road would remove a portion (less than 1 acre) of this coastal sage scrub habitat. Where fuel modification is required by the Fire Department, the area cannot be considered ESHA.

Policy 3.10 of the City of Malibu LCP Land Use Plan [page 50] is also instructive with respect to the issue of ESHA where a "taking" issue is involved. This policy indicates that where designation as an ESHA would constitute a taking of property rights "then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking." Given that the land use rights provided by City Councilin 1998 appear to involve the entire site, the planned use would appear to be consistent with this aspect of the LCP.

Based on the discussion above, the site as an isolated localeshould not be considered an ESHA given the lack of any known rare species specifically associated with the site. Nonetheless, the loss of coastal sage scrub habitat even if not an ESHA can be considered significant under CEQA, as was indicated in the1997 EIR certified by City Council. The loss of the intact coastal sage scrub (8 acres) was required by the City Council in 1998 to be mitigated for through the acquisition and set aside as a permanent conservation parcel the 30 acre "Francisco Property" or other similar alternative site that would provide an at least 2:1 ratio of lost coastal sage scrub to conserved habitat. Based on the conservation easement (No. 01-0985737, recorded June 7, 2001) provided to us, the Francisco Property has been conserved and this condition of approval has been met.

CONCLUSION AND RECOMMENDATIONS

No sensitive plant or animal species were identified onsite, nor were active nests of any raptors or migratory birds observed. An eroded gully is located at the southeastern corner of the property; however, this area does not appear to have the characteristics of a jurisdictional drainage. The conservation of 30 acres of coastal sage scrub at the "Francisco Property" has mitigated for the loss of undisturbed coastal sage scrub on this property. This is a replacement ratio of more than 3:1.

The following measure is recommended to maintain compliance with the California Fish and Game Code:

- If initial clearing activities take place between February 15 and August 15, a nesting bird survey is recommended to be performed by a qualified biologist with results reported subsequently to the City of Malibu prior to grading and clearing. If nesting birds are found, a City-approved construction buffer of at least 200' may be required until all young are no longer dependent on the nest.

LIMITATIONS

This document was prepared for use solely and exclusively by David Maffit ofRancho Malibu, LLC. Mr. Maffit has requested this assessment and may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. This work has been performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The findings and opinions conveyed in this report are based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the special-status species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. The findings and opinions conveyed in this report are based on this methodology. It is understood that Rincon is to be held harmless for any inverse condemnation or devaluation of said property that may resultif Rincon's report or information generated during our performance of services is used for other purposes.

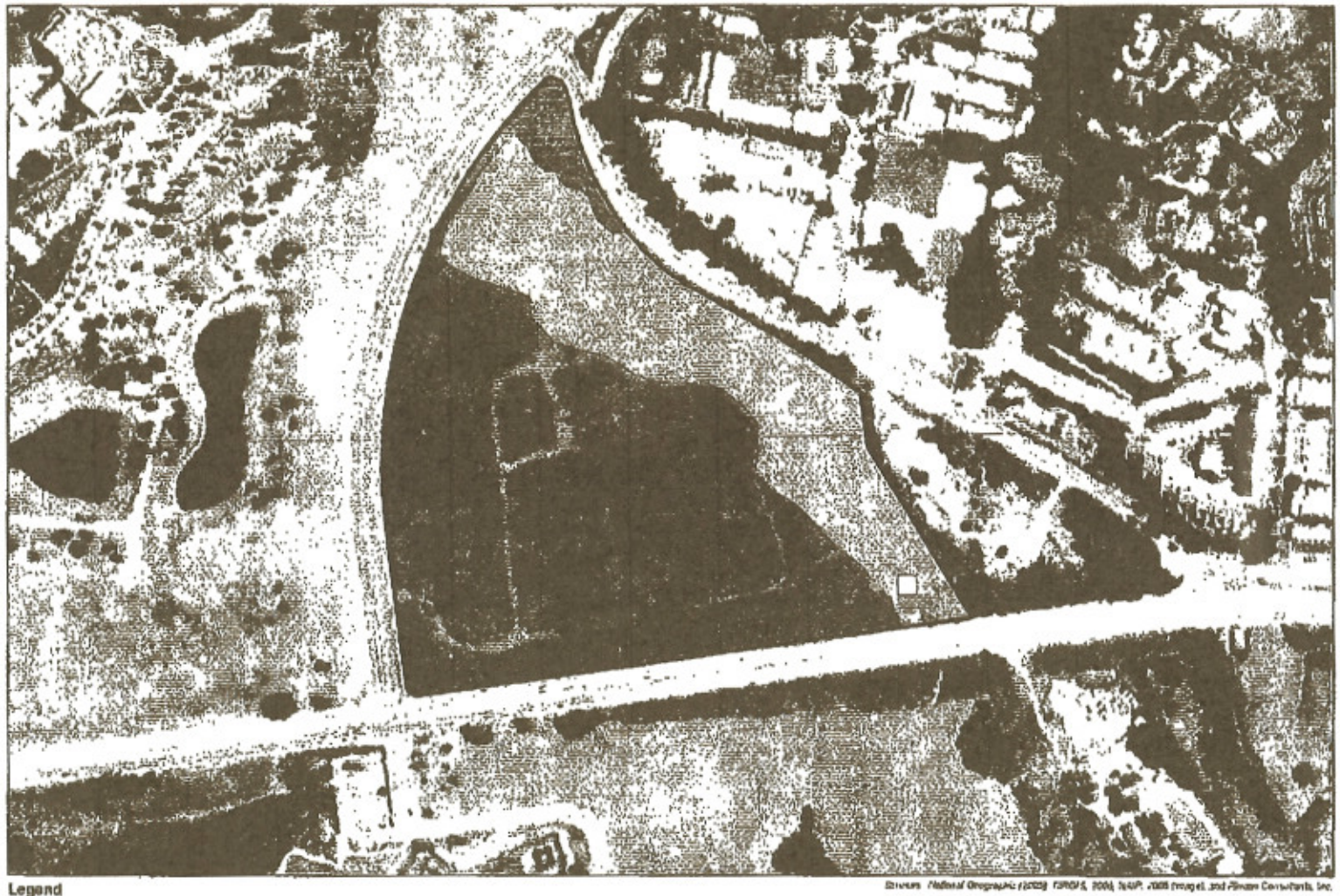
Thank you for the opportunity to assist you with this project. If you have any questions regarding this biological inventory report, please contact us at (805) 641-1000.

Sincerely,
RINCON CONSULTANTS, INC.

Nancy Fox-Fernandez, M.S.
Associate Biologist

Duane Vander Pluym, D.ESE
Principal

Attachments: *Photo sheets*
Aerial Photo and Vegetation Map



Sources: National Geographic (2003), ESRI/IGS, 2006, NAIP, 2008 (Image) and Glenn Consultants, Inc.

Legend

- Site Boundary
- Dense Coastal Sage Scrub
- Disturbed, Ruderal
- Sparse Coastal Sage Scrub Mixed with Non-native Vegetation
- Location of Concrete Box
- Approximate Location of Eroded Canyon

N

0 125 250 375 500 Feet

Aerial Photograph and Vegetation Map

Figure 1

Rancho Malibu, LLC

Photo 1 - Looking west, view of south-facing slope off the Pacific Coast Highway (southern section of site).

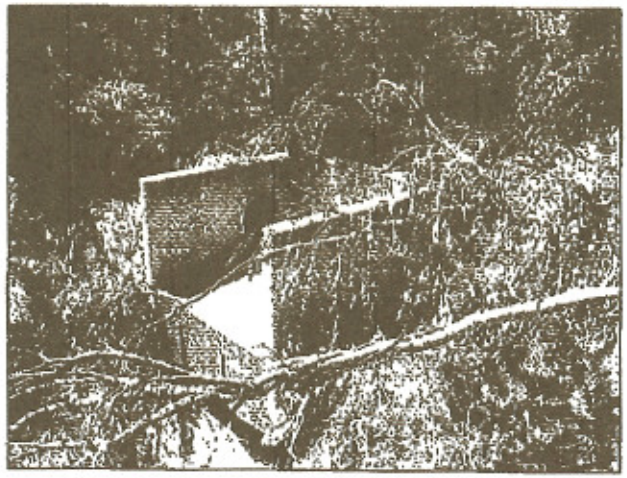


Photo 2 - Concrete box connecting to drainage pipes at southeast corner of site.

Photo 3 - Eroded canyon section just north of concrete box in previous photo.

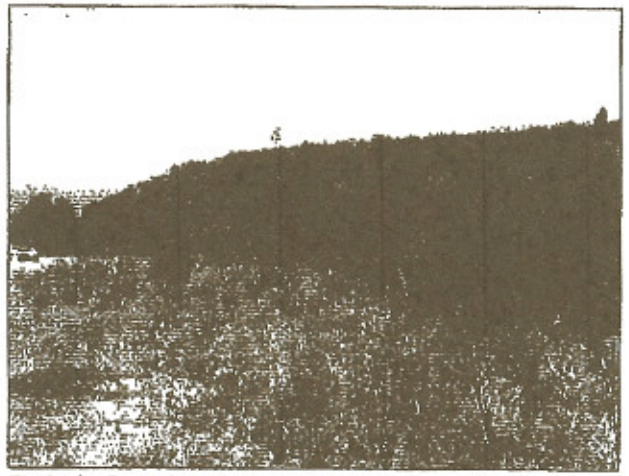


Photo 4 - Coastal sage scrub on hillside looking southeast from northernmost portion of site. Civic Center Way on left of photo.

Site Photographs

Figure 2

Rancho Malibu, LLC

Fidelity National Title Company

Title
19019 Ventura Boulevard • Tarzana, CA 91356
(818) 881-7800 • FAX (818) 776-6528

Carol
C/O Hill Farrer & Burril
300 South Grand Ave 27th Fl
Los Angeles, Ca.

DATE: July 23, 2001
ESCROW NO: SWEENEY
PROPERTY ADDRESS:
Vacant Land, County of Los Angeles, California

Enclosed please find the following:

Copy of Conservation Easement per your request

Sincerely,

Sheila Isham - 818-758-5718

enclosure(s)

[redacted] [redacted]

Recording Requested by and
When Recorded Mail To:

City Clerk
City of Malibu
23555 Civic Center Way
Malibu, CA 90265

01 0985737

DEED OF CONSERVATION EASEMENT FOR WILDLIFE HABITAT AND OPEN SPACE RESOURCES

APN Nos.: 4456-034-021; 4457-002-016; 4457-002-026; 4457-004-011; 4457-004-015; 4457-004-016; 4457-004-037

This DEED OF CONSERVATION EASEMENT is made this ___th day of June, 2001, by THE ADAMSON COMPANIES, a California limited partnership ("LANDOWNER" or "GRANTOR"), in favor of the CITY OF MALIBU, a California municipal corporation ("CITY" or "GRANTEE"), for the purpose of granting in perpetuity the conservation easement and associated rights described below.

WHEREAS, LANDOWNER is the owner in fee simple of certain real property located in the unincorporated area of the County Los Angeles, State of California, identified as Assessor's Parcel Nos. 4456-034-021; 4457-002-016; 4457-002-026; 4457-004-011; 4457-004-015; 4457-004-016; 4457-004-037; and more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference ("Francisco Property"); and

WHEREAS, LANDOWNER is the owner in fee simple of certain real property located in City of Malibu, State of California, identified as Assessor's Parcel Nos. 4458-028-015, 4458-028-019 and 4458-030-007 and more particularly described in "Exhibit B" attached hereto and incorporated herein by this reference ("Hotel Property"); and

WHEREAS, portions of the Hotel Property contains coastal sage scrub of biological importance to LANDOWNER, the people of the City of Malibu and the people of the State of California; and

WHEREAS, thirty (30) acres of the Francisco Property, more particularly described in "Exhibit C" attached hereto and incorporated herein by this reference and depicted in the map attached hereto as "Exhibit D" and incorporated herein by this reference ("Easement Area") possess outstanding conservation values and consist in part of unique, significant and undisturbed chaparral habitat ("Conservation Values") of great importance to LANDOWNER, the people of the City of Malibu and the people of the State of California, the preservation and management of which is consistent with the present and continued use of the Easement Area for habitat and open space purposes; and

Revised May 21, 2001 [illegible]

SB 263288 v 2:[illegible]

[redacted]

CERTIFIED TO BE A TRUE AND EXACT
COPY OF THE ORIGINAL
FIDELITY NATIONAL TITLE
RECORDED: June 7, 01
INSTRUMENT NO. 01-985737
BY Sheila Isham

[redacted] [redacted] E.

WHEREAS, on March 27, 1996 the ADAMSON COMPANIES, *dba* the Malibu Land Company, submitted an application for a conditional use permit, variance and site plan to construct a hotel and cultural heritage center on the Hotel Property ("Hotel Project"); and

WHEREAS, on November 3, 1997 the CITY'S Planning Commission held a duly noticed public hearing regarding applications for Conditional Use Permit No. 96-005, Variance No. 96-010, Site Plan Review No. 96-015 and certification of the Final Environmental Impact Report ("EIR") pertaining to the Hotel Project and adopted Resolution Nos. 97-042 and 97-043, certifying the EIR and denying the variance to construct with a Floor Area Ratio ("FAR") of 2.20, respectively; and

WHEREAS, on November 17, 1997 the CITY'S Planning Commission adopted Resolutions Nos. 97-044, 97-045 and 97-046 approving Conditional Use Permit No. 96-005, Variance No. 96-010 and Site Plan Review No. 96-015; and

WHEREAS, on November 26, 1997 the Malibu Road Owner's Association and the Malibu Township Council appealed the Planning Commission's adoption of Resolutions Nos. 97-044, 97-045 and 97-046; and

WHEREAS, the Malibu City Council held duly noticed public hearings regarding the appeal of said resolutions on January 12, 1998, February 3, 1998 and March 23, 1998; and

WHEREAS, on March 23, 1998 City Council adopted Resolution No. 98-001, a copy of which is attached hereto as "Exhibit E" and is incorporated herein as if fully set forth herein by this reference, approving, with conditions, Conditional Use Permit No. 96-005, Variance No. 96-010 and Site Plan Review No. 96-015 to construct a 146 room hotel on the Hotel Property; and

WHEREAS, Section 5 of Conditional Use Permit No. 96-005 adopts the mitigation monitoring program attached as Exhibits A and B to Conditional Use Permit 96-005 in its entirety; and

WHEREAS, Mitigation Measure 6.2 of the mitigation monitoring program attached as Exhibits A and B to Conditional Use Permit 96-005 require the preservation of thirty (30) acres on the Francisco Property as an off-site mitigation measure for the Hotel Project, in accordance with the conditions set forth in mitigation measure 6.2, in order to mitigate the impacts resulting from the loss of 8.04 acres of undisturbed coastal sage scrub habitat on the Hotel Property; and

WHEREAS, Section 12, condition "k" of Conditional Use Permit No. 96-005 requires the preservation of thirty (30) undisturbed acres of chaparral habitat on the Francisco Property in order to mitigate the loss of 8.04 acres of coastal sage scrub, a threatened plant community, on the Hotel Property; and

WHEREAS, Section 22.b. of the Site Plan Review finds that the Hotel Project complies with the City of Malibu's land use policies, goals and objectives because thirty (30) acres of off-site chaparral habitat on the Francisco Property shall be preserved as an off-site mitigation measure; and

[redacted]

[redacted]E

WHEREAS, LANDOWNER, THE ADAMSON COMPANIES, intends and desires to convey to the CITY the right to preserve and protect the Conservation Values of the Easement Area in perpetuity by granting the present Deed of Conservation Easement For Wildlife Habitat and Open Space Resources ("Easement"); and

WHEREAS, the CITY desires to accept said Easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California, including but not limited to Sections 815-816 of the California Civil Code, LANDOWNER does hereby grant, convey, and dedicate to the CITY an easement in perpetuity over the Easement Area, of the nature and character and to the extent hereinafter set forth.

1. PURPOSE. It is the purpose of this Easement to ensure that the Easement Area will be retained in perpetuity in its natural state, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with its Conservation Values. GRANTOR intends that this Easement will confine the use of the Easement Area to such activities, including, without limitation, those relating to open space and habitat preservation, which are consistent with the purpose of this Easement.

2. AFFIRMATIVE RIGHTS CONVEYED TO THE CITY. To accomplish the purpose of this Easement, the following rights and interests are conveyed to the CITY by this Easement:

(a) Identify Resources and Values. To identify, preserve and protect in perpetuity the Conservation Values of the Easement Area.

(b) Monitor Uses and Practices. To enter upon, inspect, observe, and study the Easement Area for the purposes of identifying the current uses and practices thereon and the baseline condition thereof, to conduct research on and make scientific observations of the ecological systems, and to monitor the uses and practices regarding the Easement Area to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to LANDOWNER, and shall be made in a manner that will not unreasonably interfere with LANDOWNER'S use and quiet enjoyment of the Easement Area.

(c) Prevent Inconsistent Uses. To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

(d) Scientific, Restoration and Educational Access. Subject to LANDOWNER'S approval, which shall not be unreasonably withheld, to encourage and allow access to the Easement Area for the purpose of identifying, studying and implementing ecological or natural resource management improvements. Any activities allowed pursuant to

this section shall not impose involuntary costs on LANDOWNER, and shall not unduly interfere with the permitted uses in or adjacent to the Easement Area or with LANDOWNER'S quiet enjoyment of the Property.

3. PERMITTED USES AND PRACTICES. LANDOWNER and CITY intend that this Easement shall confine the uses of the Property to open space, habitat conservation and such other related uses as are described herein. The LANDOWNER shall give to the City at least fifteen calendar days' written notice, as set forth in paragraph 17(h) of this Easement, prior to undertaking any activity permitted by this Easement. The following uses and practices, if in accordance with federal, state and county laws and ordinances, and to the extent not inconsistent with the purpose of this Easement, are permitted:

(a) Maintenance and Repair. To maintain, repair and replace existing ditches, water lines, and other existing improvements on in the Easement Area.

(b) Water Resources. To develop and maintain such water resources and improvements in the Easement Area as are necessary or convenient for conservation in a manner consistent with the purpose of this Easement, provided such activities will ensure preservation and protection of the Conservation Values of the Easement Area.

4. PROHIBITED USES. Any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the Conservation Values of this Easement and are expressly prohibited:

(a) Commercial or Industrial Uses. The establishment of any commercial, residential or industrial uses, including the construction, placement or erection of any commercial signs or billboards.

(b) Roads or Structures. The grading, paving or construction of any road or structure.

(c) Motorized Vehicles. The use of motorized and/or off-road vehicles, except by LANDOWNER or emergency response personnel, when necessary for maintenance or for emergency purposes.

(d) Dumping or Disposal. The dumping or other disposal of wastes, refuse or debris in the Easement Area. Nothing in this paragraph shall prohibit the trimming of vegetation in the Easement Area and the leaving of those trimmings in the Easement Area.

(e) Erosion. Any use or activity which causes significant degradation of topsoil quality, significant pollution or a significant increase in the risk of erosion.

(f) Alteration of Topography. Any alteration of the general topography or natural drainage of the Easement Area, including, without limitation, the excavation or removal of soil, sand, gravel or rock, except as may be required for maintenance of existing roadways.

[redacted]

(a) **Watercourses.** The alteration or manipulation of watercourses located on in the Easement Area, the creation of new water impoundments or watercourses for any purpose other than for enhancement of natural habitat values.

(b) **Other Incompatible Uses.** The use of the Easement Area for construction or operation of a golf course, commercial recreational facility, Christmas tree farm, or any other activity that is incompatible with the purpose of this Easement.

5. **RESERVED RIGHTS.** LANDOWNER reserves to itself, and to its representatives, heirs, successors and assigns, all rights accruing from the ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) **Water Rights.** All right, title, and interest in and to all tributary and non-tributary water, water rights, and related interest in, on, under or appurtenant to the Easement Area; provided, however, that such water rights are used on the Easement Area in a manner consistent with the purpose of this Easement.

(b) **Mineral Rights.** All right, title, and interest in subsurface oil, gas, and minerals; provided, however, that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the protected Conservation Values of the Property, and shall be limited to such activities as are permitted under Internal Revenue Code Section 170(h)(5) and applicable Treasury Regulations.

6. **NOTICE AND APPROVAL.** The purpose of requiring LANDOWNER to notify CITY prior to undertaking certain permitted activities is to afford the CITY an adequate opportunity to monitor the activities in question, to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, LANDOWNER shall notify CITY in writing not less than fifteen (15) days prior to the date LANDOWNER intends to undertake the activity in question. The notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit CITY to make an informed judgment as to its consistency with the purpose of this Easement. CITY shall respond in writing within twenty (20) days of receipt of LANDOWNER'S written request.

7. **ARBITRATION.** If a dispute arises between the parties concerning the consistency of any existing or proposed use or activity with the purpose of this Easement, the parties are encouraged to refer the dispute to arbitration as an alternative to judicial proceedings.

8. **CITY'S REMEDIES.**

(a) **Notice of Violation.** If the CITY determines that a violation of any of the terms, conditions, covenants or restrictions contained in this Easement has occurred or is threatened, CITY shall give written notice to LANDOWNER of such violation and demand

Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, California 93003

805 644 4455
FAX 644 4240

info@rinconconsultants.com
www.rinconconsultants.com

September 2, 2011
Project Number 11-98710

Green Acres, LLC.
Mr. Bruce McBride - Development Consultant
P.O. Box 6528
Malibu, CA 90264
Via Email: *bmcbride@pda-llc.net*

Subject: **Revised Biological Inventory Report for the Rancho Malibu Resort Project, 4000 Malibu Canyon Road, City of Malibu, California**

The purpose of this letter is to provide the results of our biological reconnaissance of the Rancho Malibu Resort project site. The intent of this current survey is to update the previous Biological Inventory Report (BIR) prepared by Rincon Consultants and dated May 9, 2007. As required by the City of Malibu, this BIR includes the project site biological documentation regarding dominant plant species present onsite, wildlife observed and anticipated onsite, site conditions, habitat types, surrounding development, native trees, jurisdictional streams, and biological resources that meet the definition of an Environmentally Sensitive Habitat Area (ESHA) pursuant to guidelines in the City of Malibu Local Coastal Program (LCP) Land Use Plan adopted by the California Coastal Commission (CCC) in 2002 and as updated through March 2011. The preparation of this BIR was conducted in accordance with Rincon's proposal dated August 19, 2011.

The current project entails development of a 146 room luxury hotel and related facilities on a 25.2- acre site located at 4000 Malibu Canyon Road. The project activity involves the development of a resort, which would involve clearing all vegetation on the top of the bluff and building a fire road on the south and east portions of the site.

Rincon performed a field reconnaissance for the previous BIR on April 18, 2007 by Biologists Nancy Fox-Fernandez and Julie Broughton. Prior to that investigation, an Environmental Impact Report (EIR) was prepared for this site (CBA, 1997) and certified by the City of Malibu City Council (March 23, 1998) along with conditions of approval contained in Conditional Use Permit No. 96-005. The CUP contained specific conditions to mitigate for the loss of habitats and associated sensitive species onsite. This letter provides an update to the previous findings regarding onsite biological resources.

METHODOLOGY

The biological inventory for the project site included a review of relevant literature available for the site and was followed by a field reconnaissance survey. Rincon conducted a search of the most current version of California Department of Fish and Game's (CDFG's)

California Natural Diversity Data Base (CNDDB) RareFind3 (July 2, 2011, expires July 2, 2012) for the Malibu Beach Quadrangle to provide recently tracked occurrences of special-status species or other special-status biological resources in the vicinity of the project site since 2007. Rincon also reviewed the data layers from the City for updates to ESHAs and other sensitive biological resources or planning areas. Site plans provided by the client, aerial photographs, and topographic maps were also examined. The field survey was conducted on August 23, 2011 by Senior Biologist/Botanist, Cher Batchelor. The field survey documented existing site conditions and was conducted on foot within easily accessible areas of the site to inventory the biological resources present.

SITE CONDITIONS

The proposed project site is on top of and along a coastal bluff on three parcels that total approximately 25.2 acres (APN 4458-030-007, 4458-028-015, and 4458-028-019) located at the junctions of Malibu Canyon Road, Pacific Coast Highway (PCH), and Civic Center Way (Figure 1). Property owned by Pepperdine University is across Malibu Canyon Road to the west of the project site, the area across Civic Center Way to the northeast is developed with institutional and multi-family residential uses, and the areas across PCH to the south is mostly open with disced fields, mixed with coastal sage scrub, baseball fields, and scattered development. The parcel east of and adjacent to the subject site is currently in commercial use. No drainages cross the site; however, a 20 foot deep gully is located at the southeastern-most corner of the site.

The project site is accessed directly from PCH and Malibu Canyon Road. The bluff top of the site contains drivable dirt roads as the site was formerly used as a nursery. No structures remain on the property, but vagrant activity is evident. The property vegetation is generally comprised of coastal sage scrub and native grasslands, but also contains many non-native nursery trees and shrubs and patches of ruderal grassland. Much of the central portions of the property are open and disturbed; however, the majority of the landscape is succeeding to coastal sage scrub habitat, and the general landscape provides cover and habitat for a variety of common native birds, reptiles, and small mammals.

Vegetation

Two California Native Plant Society (CNPS) List 4 species were observed onsite: Plummer's baccharis (*Baccharis plummerae* var. *plummerae*) and southern California black walnut *(Juglans californica* var. *californica*). Both species are on the Watch List as "limited in distribution" in California. A complete list of all plant species observed onsite is attached.

Per the 1997 EIR, the site contained approximately 8 acres of undisturbed coastal sage scrub along the northern bluff, 18 acres of recovering coastal scrub mixed with landscaping plants on the bluff top, and about 1.8 acres dominated by landscaping and ornamental plants.

Based on field reconnaissance surveys, the plant communities are similar to that in 1997 except for the continued succession of coastal sage scrub into the abandoned nursery area

and the establishment of a native saltgrass- fasciculed tarplant grassland. Currently, the site vegetation is comprised of five general plant communities. These plant communities are mapped on Figure 1, represented in Figure 2, and discussed in the bullets below:

- ***Dense, Intact Coastal Sage Scrub.*** The lower, north-facing slope (bluff face) in the northeastern portion of the site contains dense, intact coastal sage scrub. The established coastal sage scrub is dominated by laurelleaf sumac (*Malosma laurina*). Associate species of the intact coastal sage scrub onsite include California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), southern California black walnut (*Juglans californica* var. *californica*), coast ash buckwheat (*Eriogonum cinereum*), white sage (*Salvia apiana*), purple sage (*Salvia leucophylla*), and sawtooth goldenbush (*Hazardia squarrosa*). The openings of this area contain Foothill Needlegrass Patches discussed below.
- ***Foothill Needlegrass Patches.*** The foothill needlegrass patches observed onsite are located along the top of the north-facing slope between the abandoned nursery and the intact coastal sage scrub. These patches are dominated by *Nassella lepida* (foothill needlegrass), and associate species includes cudweed aster (*Lessingia filaginifolia*), soap plant (*Chlorogalum pomeridianum* var. *pomeridianum*), and small-flowered melicgrass (*Melica imperfecta*), with elements of coastal sage scrub mixed in at lesser levels. The largest patch was approximately 14,700 square feet, and they totaled about 0.6 acres.
- ***Successional Coastal Sage Scrub with Ornamentals.*** The majority of the project site is comprised of remnant and successional coastal sage scrub with abandoned/escaped nursery/ornamental plantings. The successional coastal sage scrub onsite is less dense and more disturbed than that on the north-facing bluff, and is also dominated by laurelleaf sumac. The associate species in this portion of the site include those mentioned above for the intact coastal sage scrub, but this area also includes a significant number of species such as myoporum (*Myoporum laetum*), Mexican fan palm (*Washingtonia robusta*), European olive (*Olea europia*), Tasmanian blue gum (*Eucalyptus globulus*), Brazilian pepper tree (*Schinus terebenthifolius*), and fountain grass (*Pennisetum setaceum*). The understory contains species such as red brome (*Bromus madritensis* ssp. *rubens*), soft chess (*Bromus hordeaceus*), sweet fennel (*Foeniculum vulgare*), black mustard (*Brassica nigra*), and summer mustard (*Hirschfeldia incana*). Five coast live oaks (*Quercus agrifolia*) were found onsite, and all were on the flat, former nursery section of the site. The openings of this area contain saltgrass-fasciculed tarplant fields discussed below.
- ***Saltgrass-Fasciculed Tarplant Fields.*** Open field areas dominated by two native species, the perennial, alkaline saltgrass (*Distichlis spicata*) and fasciculed tarplant (*Deinandra fasciculata*), were observed in several large openings of the abandoned nursery. Other associate species include western ragweed (*Ambrosia psilostachya* var. *californica*), scarlet pimpernel (*Anagallis arvensis*), southwestern carrot (*Daucus pusillus*), cudweed aster, green everlasting (*Pseudognaphalium californicum*), deerweed (*Lotus scoparius*), coast prickly-pear (*Opuntia litorallis*), and annual grasses. The patches range in size from 2,000 – 19,700 square feet and total about 1.8 acres.
- ***Disturbed/Ruderal.*** The site also contains several open dirt areas with sparse ruderal vegetation, in particular an approximate 0.5 acre area at the northern tip of the project

site. Species observed here include horsetail (*Conyza canadensis*), summer mustard (*Hirschfeldia incana*), tree tobacco (*Nicotiana glauca*), and annual grasses.

Common Wildlife

Wildlife either observed or detected onsite during the 2007 and 2011 surveys included the following common species:

- Western fence lizard *(Sceloporus occidentalis)*
- California side-blotched lizard (*Uta stansburiana*)
- Red-shouldered hawk (*Buteo lineatus*)
- Greater roadrunner *(Geococcyx californianus)*
- Mourning dove *(Zenaida macroura)*
- California towhee (*Melozone crissalis)*
- American crow (*Corvus brachyrhynchos*)
- House finch (*Carpodacus mexicanus*)
- Wrentit (*Chamaea fasciata*)
- Anna's hummingbird (*Calypte anna*)
- Botta's pocket gopher *(Thomomys bottae)*
- Audubon's cottontail *(Sylvilagus audubonii)*
- California ground squirrel *(Spermophilus beecheyi)*
- Coyote (*Canis latrans)* evident by scat

Other common wildlife species that might be expected to frequent the area would include:

- Western rattlesnake (*Crotalus viridis*)
- Gophersnake (*Pituophis catenifer*)
- American goldfinch (*Carduelis tristis*)
- Red-tailed hawk (*Buteo jamaicensis*)
- California quail (*Callipepla californica*)
- Western scrub-jay (*Aphelocoma californica*)
- American crow (*Corvus brachyrhynchos*)
- Wrentit (*Chamaea fasciata*)
- House sparrow (*Passer domesticus*)
- Common bushtit (*Psaltriparus minimus*)
- American kestrel (*Falco sparverius*)
- Turkey vulture (*Cathartes aura*)
- Pacific-slope flycatcher (*Empidonax difficilis*)
- Western bluebird (*Sialia mexicana*)
- Yellow-rumped warbler (*Dendroica coronata*)
- Black phoebe (*Sayornis nigricans*)
- Big-eared woodrat (*Neotoma macrotis*)
- Brush rabbit (*Sylvilagus bachmani*)
- Mule deer (*Odocoileus hemionus*)

No special-status wildlife species were observed onsite.

POTENTIAL FOR SPECIAL-STATUS SPECIES AND HABITATS

In addition to the 2 special-status ***plant*** species observed onsite (Plummer's baccharis and southern California black walnut), CNDDB tracks 12 special-status plant species within the Malibu Beach Quadrangle. Suitable habitat exists onsite for 4 of the 12 tracked plant species, including Coulter's saltbush (*Atriplex coulteri*), slender mariposa-lily (*Calochortus clavatus* var. *gracilis*), Plummer's mariposa-lily (*Calochortus plummerae*), and Santa Monica dudleya (*Dudleya cymosa* ssp. *ovatifolia*). None of these special-status plant species were observed during the 2007 or the 2011 reconnaissance surveys; however, a moderate potential exists for these species to occur onsite in the intact coastal sage scrub area. The complete CNDDB report for the Malibu Beach Quadrangle is attached.

CNDDB also tracks 16 special-status ***wildlife*** species within the Malibu Beach Quadrangle. Suitable habitat for 3 of the 16 special-status wildlife species tracked by CNDDB occurs within the project site, including coastal whiptail (*Aspidoscelis tigris stejnegeri*), Bryant's [San Diego desert] woodrat (*Neotoma bryanti* [*N. lepida intermedia*]), and coast horned lizard (*Phrynosoma blainvillii*). None of these special-status species were observed during the 2007 or the 2011 reconnaissance surveys; however, a moderate potential exists for these species to occur onsite in the intact coastal sage scrub. An additional special-status species discussion with respect to ESHA designation is also presented below in the ESHA Section).

Coastal sage scrub and large trees could be attractive for ***nesting birds*** protected under the California Fish and Game Code. Although accessible trees and shrubs throughout the property were examined with binoculars and no active nests were observed, birds are expected to nest within the habitats and trees onsite generally between February 15 and August 15.

CNDDB tracks 4 sensitive ***habitat*** types in the vicinity: Southern California Coastal Lagoon, Southern California Steelhead Stream, Southern Coastal Salt Marsh, and Valley Oak Woodland. None of these habitats exist onsite. The coastal sage scrub on the northern bluff was considered sensitive by the City of Malibu per the 1997 EIR as it was relatively undisturbed habitat. Though burned in the 2007 fires, this area is still largely intact, but is relatively isolated from other coastal sage scrub habitat.

The closest mapped federal designated ***critical habitat*** from the project site is for tidewater goby (*Eucyclogobius newberryi*), which is approximately 0.85 mile east of the project site in Malibu Canyon Creek. No critical habitat is mapped onsite and the project would not affect any federal designated critical habitat.

ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

No areas onsite are mapped as ESHA according to the City of Malibu LCP ESHA Overlay Map 3: *Dan Blocker to Malibu Pier* (Malibu LCP, as updated through March 2011). The gully

at the southeast corner does not have a definable bed, bank, and channel, nor an ordinary high water mark, and appears to be erosional in nature. Therefore, modifying this area is not likely to require permits from CDFG, U.S. Army Corps of Engineers (USACE), or Los Angeles Regional Water Quality Control Board (RWQCB). As stated above, the coastal sage scrub on the northern bluff was previously considered sensitive by the City of Malibu. However, this area lacks connectivity to other nearby native habitat blocks. The property is not within a currently mapped ESHA in the CCC-approved City of Malibu LCP Land Use Plan. Unmapped coastal sage scrub or the native grassland patches can nonetheless be defined as an ESHA per the City of Malibu LCP. In order to be considered ESHA, these areas would need to meet the following definition:

> "…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." Malibu LCP LIP, page 10.

Further instruction regarding the ESHA designation is provided on page 48 of the Malibu LCP Land Use Plan (Land Use Plan Policy 3.1):

> "…The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem… Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA."

It is unlikely that any wildlife species requiring a home range of greater than 6 acres would use the site as it is not contiguous with other habitats, and as such, is isolated. However, special-status species such as loggerhead shrikes (*Lanius ludovicianus*, California species of special concern while nesting) must have at least 5 acres of contiguous habitat in which to nest, and therefore, could potentially use the site for nesting, though these birds were not seen at the site during the surveys conducted during the breeding season, and this species no longer breeds regularly along coastal southern California. Home ranges for coastal western whiptail (*Aspidoscelis tigris stejnegeri)*, a California species of special concern, must be at least 0.25 acre; therefore, this species could potentially use the coastal sage scrub block onsite. It is noted that isolated areas tend to lose rare species over time through changes in the local environment that create conditions that are no longer conducive to their existence. If locally extirpated, the chance of re-colonization is substantially decreased because of the isolation. The recent 2007 fire could be such a local extinction event. The plants and animals observed at the site during the brief field visits are all relatively common. Based on the limited biological study to date, no special-status species or particular values (beyond erosion control along the bluff, and 2 CNPS List 4 plant species) are known from the onsite coastal sage scrub habitat. The native grassland patches that are developing within the site are currently relatively small, and are isolated from similar habitat. The adjacent urban activity also limits the potential for rare species to occur at the site.

During past communication, it was indicated that the Los Angeles County Fire Department (LACFD) is requiring a fire road through the coastal sage scrub. According to LACFD, the fire road shall ring around the site at the top of the slope, be 26 feet wide, and be placed at least 150 feet from all structures. This fire road would remove a portion (less than 1 acre) of this coastal sage scrub habitat. Where fuel modification is required by the Fire Department, the area cannot be considered ESHA.

CONCLUSION AND RECOMMENDATIONS

The project site coastal sage scrub and native grassland patches do not qualify as ESHA for the following reasons:

- While two locally important plant species were observed onsite, the presence of these species alone does not qualify the onsite habitat to be ESHA since the species are not considered to be especially valuable as they lack special nature and specific roles in the onsite ecosystem. They also are not either List 1 or 2 plants, which are considered worthy of rarity status as noted in the Malibu LCP Land Use Plan Policy 3.4.d.
- The coastal sage scrub habitat onsite would also not qualify as ESHA since this area lacks connectivity to other nearby large native habitat blocks.
- No sensitive animal species were identified onsite, but the surveys were limited and not of the nature to detect specific rare animals. However, the amount of suitable habitat present is limited and consequentially, any population of such animals would also be limited.
- An eroded gully is located at the southeastern corner of the property; however, this area does not appear to have the characteristics of a jurisdictional drainage and does not appear to provide any riparian or wetland habitat that would qualify as ESHA.
- The native grassland patches have developed within the former nursery area possibly in response to soil and fertilizer inputs from the past use. These patches are relatively small, with no single patch greater than 0.5 acres, and are isolated from other known ESHA grasslands in the area to the west, and do not contain rare plant species. They do not appear to be "especially valuable because of its special nature or role in the ecosystem" given that the onsite ecosystem is a former nursery within which native vegetation is mixed extensively with well-established non-native horticultural species.

Although no ESHA occurs onsite, several measures are recommended herein to avoid and minimize potential impacts that could result from the proposed project to other regulated resources.

The following measure is recommended to maintain compliance with the California Fish and Game Code with respect to ***nesting birds***:

- If initial clearing activities take place between February 15 and August 15, nesting bird surveys are recommended to be performed by a qualified biologist/ornithologist with results reported subsequently to the City of Malibu prior to grading and clearing. If nesting birds are found, a City-approved construction buffer of at least 200' may be required until all young are no longer dependent on the nest.

Due to the occurrence of two locally important ***plant species*** and the potential for other special-status plant species to occur, the following measure is recommended to minimize and avoid impacts to special status plant species:

- Prior to vegetation clearing/ground disturbance, seasonal rare plant surveys are recommended to be conducted by a qualified botanist. Surveys should be conducted during the blooming periods of special-status species with the potential to occur on site (typically up to 3 surveys between March and July). Rare plant surveys should be conducted in accordance with CNPS and CDFG protocol.
- If rare plant species (CNPS List 1 or 2) are discovered, then a recovery and revegetation plan shall be implemented in the event that they cannot be avoided by site design. Alternatively, in lieu fees for conserved habitat in the Santa Monica Mountains suitable for the species found may be provided at a mitigation ratio of 5:1 for the onsite occupied habitat.

Due to the potential for special-status ***wildlife species***, such as coastal whiptail, coast horned lizard, and Bryant's woodrat, to occur onsite, the following measure is recommended to minimize and avoid impacts to special-status wildlife species:

- Prior to ground disturbance, a qualified biologist should conduct wildlife clearance surveys for animals within the proposed areas of disturbance. The biologist should also be present during initial ground disturbance activities and until clearance has been completed. If woodrat middens are located within the construction footprint to be disturbed, the middens and any associated nests will be carefully dismantled allowing the woodrats to leave on their own. The midden materials will be relocated to suitable undisturbed habitat so that they may be reused by woodrats. If coast horned lizards, coastal whiptails, or other special status animal species are present within the disturbance area, the biologist will relocate them to suitable habitat away from the edge of the construction footprint. CDFG and City should be notified and consulted regarding the presence of a special-status wildlife species onsite. If a federally listed species is found prior to grading of the site, the USFWS shall also be notified. Only a USFWS approved biologist would be allowed to capture and relocate these animals pursuant to the necessary take authorization. Such authorization may require the development and approval of an Endangered Species Act Section 10 Habitat Conservation Plan.

Although the ***coastal sage scrub habitat*** onsite does not necessarily qualify as ESHA, this habitat is still considered sensitive by the City of Malibu. Rincon concurs, as the habitat is located within the coastal zone within the Santa Monica Mountains and provides suitable

habitat for local wildlife species. Any potential impacts to the intact coastal sage scrub may be required to be mitigated to compensate for the loss of coastal habitat. Similarly, while the ***foothill needlegrass and saltgrass- fasciculed tarplant grassland*** patches do not appear to qualify as ESHA, they nonetheless could still be considered sensitive by the City of Malibu and mitigation required.

LIMITATIONS

This document was prepared for use solely and exclusively by Green Acres, LLC, care of Bruce K. McBride, Managing Partner, of Project Delivery Analysts, LLC. Mr. McBride has requested this assessment on behalf of Green Acres, LLC, who may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. This work has been performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The findings and opinions conveyed in this report are based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the special-status species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. The findings and opinions conveyed in this report are based on this methodology. It is understood that Rincon is to be held harmless for any inverse condemnation or devaluation of said property that may result if Rincon's report or information generated during our performance of services is used for other purposes.

Thank you for the opportunity to assist you with this project. If you have any questions regarding this biological inventory report, please contact us at 805/644-4455.

Sincerely,
RINCON CONSULTANTS, INC.

Cher Batchelor
Senior Biologist/Project Manager

Duane Vander Pluym, D.Env.
Principal Biologist

Attachments: *Figure 1. Aerial Photograph and Vegetation Map*
Figure 2. Site Photographs
Plant Species Observed Onsite
CNDDB RareFind3 Report (Malibu Beach Quadrangle)

Aerial Photograph and Vegetation Map

Figure 1

Photo 1 - View looking west from western portion of site showing disturbed portions of the site with mix of remnant/ successional scrub species, ornamental trees/shrubs, and native and nonnative herbs and grasses.

Photo 2 - View looking west from middle of site showing mix of native and ornamental species.

Photo 3 - View looking south from middle of site showing field dominated by native saltgrass and fasciculed tarplant.

Photo 4 - View looking southeast of ridgeline and boundary between abandoned nursery area to the south and intact coastal sage scrub to the north.

Site Photographs

Figure 2a

Photo 5 - View looking northwest of north-facing slope on north/northeast portion of the site occupied by dense relatively undisturbed coastal sage scrub.

Photo 6 - View looking southeast of same north-facing slope occupied by coastal sage scrub and needlegrass grassland patches.

Photo 7 - View looking south from dirt lot/ruderal field at north tip of site showing north-facing slope with southern California black walnut specimens emergent from the coastal sage scrub (light green background).

Photo 8 - Plummer's baccharis along the north ridgeline in the middle of the site; observed in a needlegrass opening within the coastal sage scrub.

Site Photographs

Figure 2b

<table>
<tr><th colspan="2">Biology</th></tr>
<tr><td>AMEC Comment Number</td><td>Response</td></tr>
<tr><td>1</td><td>Vegetation was mapped via a site visit. No willow species were observed within the area and while Eucalyptus species were present in the area, these species are not considered obligate wetland species. We currently stand by the original assessment of the area as written including the assessment of ESHA areas with the following clarification: A small stand of Eucalyptus sp. are located south of the eroded gully area. No riparian or wetland habitat exists within the project area.</td></tr>
<tr><td>2</td><td>As discussed, it is unlikely that any wildlife species requiring a home range of greater than 6 acres would use the site as it is not contiguous with other habitats, and as such is isolated. The project site is located east of maintained non-native lawn, north of disked fields, baseball fields, parking, and residential housing, east of residential housing, and south of residential, commercial, and open space. The site is boardered on all sides by roadways including main thoroughfares and multi-lane roadways such as Highway 1. Due to these facts, the site is considered isolated and would provide limited habitat for avian species and small mammals. Bluffs Parks was not analyzed in this study and would require additional survey efforts to identify species use.</td></tr>
<tr><td>3</td><td>The study was revised to show the site is 27.8 acres. The project site was mapped on ground with GPS units. The report referred to in this comment is over 14 years old and as such the discrepancy between reports regarding dense coastal sage scrub cannot be analyzed as the project site is not in the same condition as it was in 1997. The follow are the calculated acreages per habitat type according to Rincon’s 2011 survey:

<table>
<tr><td>Habitat type</td><td>Acres</td></tr>
<tr><td>Dense Coastal Sage Scrub</td><td>10.81</td></tr>
<tr><td>Disturbed, Ruderal</td><td>0.86</td></tr>
<tr><td>Foothill Needlegrass Patches</td><td>0.60</td></tr>
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<tr><td>Sparse Coastal Sage Scrub Mixed with Non-native Vegetation</td><td>13.84</td></tr>
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</table>
</td></tr>
<tr><td>4</td><td>Please refer to response to comment 3 above.</td></tr>
</table>

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September 2, 2011
Project Number 11-98710

Green Acres, LLC.
Mr. Bruce McBride - Development Consultant
P.O. Box 6528
Malibu, CA 90264
Via Email: bmcbride@pda-llc.net

Subject: **Revised Biological Inventory Report for the Rancho Malibu Resort Project, 4000 Malibu Canyon Road, City of Malibu, California**

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Based on field reconnaissance surveys, the plant communities are similar to that in 1997 except for the continued succession of coastal sage scrub into the abandoned nursery area

and the establishment of a native saltgrass- fasciculed tarplant grassland. Currently, the site vegetation is comprised of five general plant communities. These plant communities are mapped on Figure 1, represented in Figure 2, and discussed in the bullets below:

- ***Dense, Intact Coastal Sage Scrub.*** The lower, north-facing slope (bluff face) in the northeastern portion of the site contains dense, intact coastal sage scrub. The established coastal sage scrub is dominated by laurelleaf sumac (*Malosma laurina*). Associate species of the intact coastal sage scrub onsite include California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), southern California black walnut (*Juglans californica* var. *californica*), coast ash buckwheat (*Eriogonum cinereum*), white sage (*Salvia apiana*), purple sage (*Salvia leucophylla*), and sawtooth goldenbush (*Hazardia squarrosa*). The openings of this area contain Foothill Needlegrass Patches discussed below.
- ***Foothill Needlegrass Patches.*** The foothill needlegrass patches observed onsite are located along the top of the north-facing slope between the abandoned nursery and the intact coastal sage scrub. These patches are dominated by *Nassella lepida* (foothill needlegrass), and associate species includes cudweed aster (*Lessingia filaginifolia*), soap plant (*Chlorogalum pomeridianum* var. *pomeridianum*), and small-flowered melicgrass (*Melica imperfecta*), with elements of coastal sage scrub mixed in at lesser levels. The largest patch was approximately 14,700 square feet, and they totaled about 0.6 acres.
- ***Successional Coastal Sage Scrub with Ornamentals.*** The majority of the project site is comprised of remnant and successional coastal sage scrub with abandoned/escaped nursery/ornamental plantings. The successional coastal sage scrub onsite is less dense and more disturbed than that on the north-facing bluff, and is also dominated by laurelleaf sumac. The associate species in this portion of the site include those mentioned above for the intact coastal sage scrub, but this area also includes a significant number of species such as myoporum (*Myoporum laetum*), Mexican fan palm (*Washingtonia robusta*), European olive (*Olea europia*), Tasmanian blue gum (*Eucalyptus globulus*), Brazilian pepper tree (*Schinus terebenthifolius*), and fountain grass (*Pennisetum setaceum*). The understory contains species such as red brome (*Bromus madritensis* ssp. *rubens*), soft chess (*Bromus hordeaceus*), sweet fennel (*Foeniculum vulgare*), black mustard (*Brassica nigra*), and summer mustard (*Hirschfeldia incana*). Five coast live oaks (*Quercus agrifolia*) were found onsite, and all were on the flat, former nursery section of the site. The openings of this area contain saltgrass-fasciculed tarplant fields discussed below.
- ***Saltgrass-Fasciculed Tarplant Fields.*** Open field areas dominated by two native species, the perennial, alkaline saltgrass (*Distichlis spicata*) and fasciculed tarplant (*Deinandra fasciculata*), were observed in several large openings of the abandoned nursery. Other associate species include western ragweed (*Ambrosia psilostachya* var. *californica*), scarlet pimpernel (*Anagallis arvensis*), southwestern carrot (*Daucus pusillus*), cudweed aster, green everlasting (*Pseudognaphalium californicum*), deerweed (*Lotus scoparius*), coast prickly-pear (*Opuntia litorallis*), and annual grasses. The patches range in size from 2,000 – 19,700 square feet and total about 1.8 acres.
- ***Disturbed/Ruderal.*** The site also contains several open dirt areas with sparse ruderal vegetation, in particular an approximate 0.5 acre area at the northern tip of the project

site. Species observed here include horsetail (*Conyza canadensis*), summer mustard (*Hirschfeldia incana*), tree tobacco (*Nicotiana glauca*), and annual grasses.

Common Wildlife

Wildlife either observed or detected onsite during the 2007 and 2011 surveys included the following common species:

- Western fence lizard *(Sceloporus occidentalis)*
- California side-blotched lizard (*Uta stansburiana*)
- Red-shouldered hawk (*Buteo lineatus*)
- Greater roadrunner *(Geococcyx californianus)*
- Mourning dove *(Zenaida macroura)*
- California towhee (*Melozone crissalis)*
- American crow (*Corvus brachyrhynchos*)
- House finch (*Carpodacus mexicanus*)
- Wrentit (*Chamaea fasciata*)
- Anna's hummingbird (*Calypte anna*)
- Botta's pocket gopher *(Thomomys bottae)*
- Audubon's cottontail *(Sylvilagus audubonii)*
- California ground squirrel *(Spermophilus beecheyi)*
- Coyote (*Canis latrans)* evident by scat

Other common wildlife species that might be expected to frequent the area would include:

- Western rattlesnake (*Crotalus viridis*)
- Gophersnake (*Pituophis catenifer*)
- American goldfinch (*Carduelis tristis*)
- Red-tailed hawk (*Buteo jamaicensis*)
- California quail (*Callipepla californica*)
- Western scrub-jay (*Aphelocoma californica*)
- American crow (*Corvus brachyrhynchos*)
- Wrentit (*Chamaea fasciata*)
- House sparrow (*Passer domesticus*)
- Common bushtit (*Psaltriparus minimus*)
- American kestrel (*Falco sparverius*)
- Turkey vulture (*Cathartes aura*)
- Pacific-slope flycatcher (*Empidonax difficilis*)
- Western bluebird (*Sialia mexicana*)
- Yellow-rumped warbler (*Dendroica coronata*)
- Black phoebe (*Sayornis nigricans*)
- Big-eared woodrat (*Neotoma macrotis*)
- Brush rabbit (*Sylvilagus bachmani*)
- Mule deer (*Odocoileus hemionus*)

No special-status wildlife species were observed onsite.

POTENTIAL FOR SPECIAL-STATUS SPECIES AND HABITATS

In addition to the 2 special-status ***plant*** species observed onsite (Plummer's baccharis and southern California black walnut), CNDDB tracks 12 special-status plant species within the Malibu Beach Quadrangle. Suitable habitat exists onsite for 4 of the 12 tracked plant species, including Coulter's saltbush (*Atriplex coulteri*), slender mariposa-lily (*Calochortus clavatus* var. *gracilis*), Plummer's mariposa-lily (*Calochortus plummerae*), and Santa Monica dudleya (*Dudleya cymosa* ssp. *ovatifolia*). None of these special-status plant species were observed during the 2007 or the 2011 reconnaissance surveys; however, a moderate potential exists for these species to occur onsite in the intact coastal sage scrub area. The complete CNDDB report for the Malibu Beach Quadrangle is attached.

CNDDB also tracks 16 special-status ***wildlife*** species within the Malibu Beach Quadrangle. Suitable habitat for 3 of the 16 special-status wildlife species tracked by CNDDB occurs within the project site, including coastal whiptail (*Aspidoscelis tigris stejnegeri*), Bryant's [San Diego desert] woodrat (*Neotoma bryanti* [*N. lepida intermedia*]), and coast horned lizard (*Phrynosoma blainvillii*). None of these special-status species were observed during the 2007 or the 2011 reconnaissance surveys; however, a moderate potential exists for these species to occur onsite in the intact coastal sage scrub. An additional special-status species discussion with respect to ESHA designation is also presented below in the ESHA Section).

Coastal sage scrub and large trees could be attractive for ***nesting birds*** protected under the California Fish and Game Code. Although accessible trees and shrubs throughout the property were examined with binoculars and no active nests were observed, birds are expected to nest within the habitats and trees onsite generally between February 15 and August 15.

CNDDB tracks 4 sensitive ***habitat*** types in the vicinity: Southern California Coastal Lagoon, Southern California Steelhead Stream, Southern Coastal Salt Marsh, and Valley Oak Woodland. None of these habitats exist onsite. The coastal sage scrub on the northern bluff was considered sensitive by the City of Malibu per the 1997 EIR as it was relatively undisturbed habitat. Though burned in the 2007 fires, this area is still largely intact, but is relatively isolated from other coastal sage scrub habitat.

The closest mapped federal designated ***critical habitat*** from the project site is for tidewater goby (*Eucyclogobius newberryi*), which is approximately 0.85 mile east of the project site in Malibu Canyon Creek. No critical habitat is mapped onsite and the project would not affect any federal designated critical habitat.

ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

No areas onsite are mapped as ESHA according to the City of Malibu LCP ESHA Overlay Map 3: *Dan Blocker to Malibu Pier* (Malibu LCP, as updated through March 2011). The gully

at the southeast corner does not have a definable bed, bank, and channel, nor an ordinary high water mark, and appears to be erosional in nature. Therefore, modifying this area is not likely to require permits from CDFG, U.S. Army Corps of Engineers (USACE), or Los Angeles Regional Water Quality Control Board (RWQCB). As stated above, the coastal sage scrub on the northern bluff was previously considered sensitive by the City of Malibu. However, this area lacks connectivity to other nearby native habitat blocks. The property is not within a currently mapped ESHA in the CCC-approved City of Malibu LCP Land Use Plan. Unmapped coastal sage scrub or the native grassland patches can nonetheless be defined as an ESHA per the City of Malibu LCP. In order to be considered ESHA, these areas would need to meet the following definition:

> "…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." Malibu LCP LIP, page 10.

Further instruction regarding the ESHA designation is provided on page 48 of the Malibu LCP Land Use Plan (Land Use Plan Policy 3.1):

> "…The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem… Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA."

It is unlikely that any wildlife species requiring a home range of greater than 6 acres would use the site as it is not contiguous with other habitats, and as such, is isolated. However, special-status species such as loggerhead shrikes (*Lanius ludovicianus*, California species of special concern while nesting) must have at least 5 acres of contiguous habitat in which to nest, and therefore, could potentially use the site for nesting, though these birds were not seen at the site during the surveys conducted during the breeding season, and this species no longer breeds regularly along coastal southern California. Home ranges for coastal western whiptail (*Aspidoscelis tigris stejnegeri)*, a California species of special concern, must be at least 0.25 acre; therefore, this species could potentially use the coastal sage scrub block onsite. It is noted that isolated areas tend to lose rare species over time through changes in the local environment that create conditions that are no longer conducive to their existence. If locally extirpated, the chance of re-colonization is substantially decreased because of the isolation. The recent 2007 fire could be such a local extinction event. The plants and animals observed at the site during the brief field visits are all relatively common. Based on the limited biological study to date, no special-status species or particular values (beyond erosion control along the bluff, and 2 CNPS List 4 plant species) are known from the onsite coastal sage scrub habitat. The native grassland patches that are developing within the site are currently relatively small, and are isolated from similar habitat. The adjacent urban activity also limits the potential for rare species to occur at the site.

During past communication, it was indicated that the Los Angeles County Fire Department (LACFD) is requiring a fire road through the coastal sage scrub. According to LACFD, the fire road shall ring around the site at the top of the slope, be 26 feet wide, and be placed at least 150 feet from all structures. This fire road would remove a portion (less than 1 acre) of this coastal sage scrub habitat. Where fuel modification is required by the Fire Department, the area cannot be considered ESHA.

CONCLUSION AND RECOMMENDATIONS

The project site coastal sage scrub and native grassland patches do not qualify as ESHA for the following reasons:

- While two locally important plant species were observed onsite, the presence of these species alone does not qualify the onsite habitat to be ESHA since the species are not considered to be especially valuable as they lack special nature and specific roles in the onsite ecosystem. They also are not either List 1 or 2 plants, which are considered worthy of rarity status as noted in the Malibu LCP Land Use Plan Policy 3.4.d.
- The coastal sage scrub habitat onsite would also not qualify as ESHA since this area lacks connectivity to other nearby large native habitat blocks.
- No sensitive animal species were identified onsite, but the surveys were limited and not of the nature to detect specific rare animals. However, the amount of suitable habitat present is limited and consequentially, any population of such animals would also be limited.
- An eroded gully is located at the southeastern corner of the property; however, this area does not appear to have the characteristics of a jurisdictional drainage and does not appear to provide any riparian or wetland habitat that would qualify as ESHA.
- The native grassland patches have developed within the former nursery area possibly in response to soil and fertilizer inputs from the past use. These patches are relatively small, with no single patch greater than 0.5 acres, and are isolated from other known ESHA grasslands in the area to the west, and do not contain rare plant species. They do not appear to be "especially valuable because of its special nature or role in the ecosystem" given that the onsite ecosystem is a former nursery within which native vegetation is mixed extensively with well-established non-native horticultural species.

Although no ESHA occurs onsite, several measures are recommended herein to avoid and minimize potential impacts that could result from the proposed project to other regulated resources.

The following measure is recommended to maintain compliance with the California Fish and Game Code with respect to ***nesting birds***:

- If initial clearing activities take place between February 15 and August 15, nesting bird surveys are recommended to be performed by a qualified biologist/ornithologist with results reported subsequently to the City of Malibu prior to grading and clearing. If nesting birds are found, a City-approved construction buffer of at least 200' may be required until all young are no longer dependent on the nest.

Due to the occurrence of two locally important ***plant species*** and the potential for other special-status plant species to occur, the following measure is recommended to minimize and avoid impacts to special status plant species:

- Prior to vegetation clearing/ground disturbance, seasonal rare plant surveys are recommended to be conducted by a qualified botanist. Surveys should be conducted during the blooming periods of special-status species with the potential to occur on site (typically up to 3 surveys between March and July). Rare plant surveys should be conducted in accordance with CNPS and CDFG protocol.
- If rare plant species (CNPS List 1 or 2) are discovered, then a recovery and revegetation plan shall be implemented in the event that they cannot be avoided by site design. Alternatively, in lieu fees for conserved habitat in the Santa Monica Mountains suitable for the species found may be provided at a mitigation ratio of 5:1 for the onsite occupied habitat.

Due to the potential for special-status ***wildlife species***, such as coastal whiptail, coast horned lizard, and Bryant's woodrat, to occur onsite, the following measure is recommended to minimize and avoid impacts to special-status wildlife species:

- Prior to ground disturbance, a qualified biologist should conduct wildlife clearance surveys for animals within the proposed areas of disturbance. The biologist should also be present during initial ground disturbance activities and until clearance has been completed. If woodrat middens are located within the construction footprint to be disturbed, the middens and any associated nests will be carefully dismantled allowing the woodrats to leave on their own. The midden materials will be relocated to suitable undisturbed habitat so that they may be reused by woodrats. If coast horned lizards, coastal whiptails, or other special status animal species are present within the disturbance area, the biologist will relocate them to suitable habitat away from the edge of the construction footprint. CDFG and City should be notified and consulted regarding the presence of a special-status wildlife species onsite. If a federally listed species is found prior to grading of the site, the USFWS shall also be notified. Only a USFWS approved biologist would be allowed to capture and relocate these animals pursuant to the necessary take authorization. Such authorization may require the development and approval of an Endangered Species Act Section 10 Habitat Conservation Plan.

Although the ***coastal sage scrub habitat*** onsite does not necessarily qualify as ESHA, this habitat is still considered sensitive by the City of Malibu. Rincon concurs, as the habitat is located within the coastal zone within the Santa Monica Mountains and provides suitable

habitat for local wildlife species. Any potential impacts to the intact coastal sage scrub may be required to be mitigated to compensate for the loss of coastal habitat. Similarly, while the ***foothill needlegrass and saltgrass- fasciculed tarplant grassland*** patches do not appear to qualify as ESHA, they nonetheless could still be considered sensitive by the City of Malibu and mitigation required.

LIMITATIONS

This document was prepared for use solely and exclusively by Green Acres, LLC, care of Bruce K. McBride, Managing Partner, of Project Delivery Analysts, LLC. Mr. McBride has requested this assessment on behalf of Green Acres, LLC, who may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. This work has been performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The findings and opinions conveyed in this report are based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the special-status species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. The findings and opinions conveyed in this report are based on this methodology. It is understood that Rincon is to be held harmless for any inverse condemnation or devaluation of said property that may result if Rincon's report or information generated during our performance of services is used for other purposes.

Thank you for the opportunity to assist you with this project. If you have any questions regarding this biological inventory report, please contact us at 805/644-4455.

Sincerely,
RINCON CONSULTANTS, INC.

Cher Batchelor
Senior Biologist/Project Manager

Duane Vander Pluym, D.Env.
Principal Biologist

Attachments: *Figure 1. Aerial Photograph and Vegetation Map*
Figure 2. Site Photographs
Plant Species Observed Onsite
CNDDB RareFind3 Report (Malibu Beach Quadrangle)

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Project Number 11-98710

Green Acres, LLC.
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Via Email: bmcbride@pda-llc.net

Subject: Response to Santa Monica Mountains Conservancy comments on the Notice of Preparation for Environmental Impact Report No. 12-001, Coastal Development Permit No 11-028, for the Rancho Malibu Resort Project

Dear Mr. McBride,

The purpose of this letter is to respond to comments prepared by the Santa Monica Mountains Conservancy (SMMC) regarding the Notice of Preparation for an Environmental Impact Report (No. 12-001) and Coastal Development Permit (No. 11-028) for the Rancho Malibu Hotel Project (Project). The Project entails development of a 146 room luxury hotel and related facilities on a 27.8- acre site located at 4000 Malibu Canyon Road. The development of the resort would involve clearing all vegetation on the top of the bluff and building a fire road on the south and east portions of the site.

The SMMC currently owns the 84 acre Malibu Bluffs Open Space, located south and west of the City's Malibu Bluffs Park. The SMMC has received approval to move forward with park enhancements (35 campsites, parking, trails and other support facilities) proposed for the Malibu Bluffs Open Space area.

SMMC's comment letter, dated May 21, 2012, lists several concerns regarding the Project's potential impacts, including lighting on the proposed new campsites, habitat connectivity from the Malibu Bluffs through the hotel property to the greater Santa Monica Mountains, and maintenance of scenic views from public viewing areas in the Santa Monica Mountains. This letter is intended to only address the SMMC's concerns that the Project would disrupt a possible habitat linkage between the Malibu Bluffs and the greater Santa Monica Mountains. Specifically, the SMMC opines that the Project serves as an important habitat linkage and contains a contiguous block of high quality coastal sage scrub habitat. The letter states that "virtually all mammal, and selected bird populations, will experience an ongoing decline in vigor if this habitat block becomes isolated from the main body of the Santa Monica Mountains."

To address these issues the SMMC recommends the EIR examine at least one alternative shifting the easternmost units to the center of the site to maintain the coastal sage scrub

along the eastern site boundary. The SMMC recommends preserving a 25-30 foot wide corridor along the eastern border of the site, adjacent to Civic Center Way. If this alternative is deemed infeasible, the SMMC recommends a second approach, to propose a fuel modification plan, for Fire Department approval, that does not require any thinning or irrigation in a 25 foot wide swath along the eastern Project boundary. In essence, this approach would request a reduced fuel modification zone.

The following discussions address the current function of the Project site as a habitat linkage.

General Resource Studies

Several resource studies have been prepared that address the general biological resource values within the Project site and general vicinity. These studies include the Malibu Parks Public Access Enhancement Plan (MPPAEP) Environmental Impact Report (EIR) (Dudek, 2010), Revised Biological Inventory Report (Rincon Consultants Inc, 2011), and South Coast Missing Linkages Project Santa Monica-Sierra Madre Connection (South Coast Wildlands, 2006). These reports are incorporated by reference herein.

1. Malibu Parks Public Access Enhancement Plan EIR (Dudek, 2010)

The MPPAEP EIR addressed at a project-level the potential environmental effects associated with implementation of the Malibu Parks Public Access Enhancement Plan – Public Works Plan (Plan), which includes the construction and operation of park facilities, camping and trail improvements; various park programs, a fire protection and emergency evacuation plan; and related Plan policies and implementation measures. The Plan focuses on a coastal area in Malibu and the Santa Monica Mountains located along the southern California coastline. The Plan site includes public recreation areas (parklands and trail corridors) starting on the west at the east edge of Kanan-Dume Road. The Plan site extends easterly to the Malibu Bluffs Conservancy Property (Malibu Bluffs). It extends southerly to Pacific Coast Highway at Corral Canyon Park and to Malibu Road by the Malibu Bluffs. It extends northerly beyond the City of Malibu/Unincorporated Los Angeles County Boundary to the Santa Monica Mountains "ridgeline" in Malibu Creek State Park in Corral Canyon. Public lands addressed in the Plan include Ramirez Canyon Park, Escondido Canyon Park, the Latigo Trailhead property, Solstice Canyon Park, Corral Canyon Park, Malibu Bluffs, National Park Service-owned land in Ramirez Canyon, Los Angeles County-owned land, City of Los Angeles Department of Water and Power property, and State Parks-owned and National Park Service-owned land in upper Corral Canyon. Although the Biological Resources Impact Evaluation of the MPPAEP EIR identified important habitat linkages associated with these Park lands, the Project site was not mentioned either in the regional or Malibu Bluffs Park evaluation.

2. Revised Biological Inventory Report (Rincon Consultants Inc, 2011)

The 2011 Biological Inventory Report (BIR) prepared for the Project was prepared by biologists who visited the Project site in 2007 and 2011. The report notes that the coastal sage scrub on the northern bluff was previously considered sensitive by the City of Malibu. However, this area lacks connectivity to other nearby native habitat blocks. In particular, the northern edge of the site is bordered by the mowed grass of the Pepperdine Campus, barren ground, roadways, and residential housing. The nearest connection from the northern edge of the property to intact sage scrub habitat is more than 350 feet to a steep hillside north of the intersection of Malibu Canyon Road and Civic Center Way. The lack of cover and suitable habitat over this distance significantly limits the movement of animals from lower trophic levels (most invertebrates, amphibians, reptiles, and small mammals). The BIR identified that the property is not within a currently mapped ESHA in the CCC-approved City of Malibu LCP Land Use Plan, but acknowledged that unmapped coastal sage scrub or the native grassland patches can nonetheless be defined as an ESHA per the City of Malibu LCP. However, the BIR goes on to explain that the Project site does not meet the ESHA definition:

> "… an 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." Malibu LCP LIP, page 10.

Further, the BIR determined that it "is unlikely that any wildlife species requiring a home range of greater than 6 acres would use the site as it is not contiguous with other habitats, and as such, is isolated."

3. Wildlands Study (South Coast Wildlands, 2006)

As noted in the Malibu Parks Public Access Enhancement Plan (MPPAEP) Environmental Impact Report (EIR), to function effectively, a wildlife corridor must link two or more patches of habitat for which connectivity is desired, and it must be suitable for the focal target species to achieve the desired demographic and genetic exchange between populations. The habitat linkage design study prepared by South Coast Wildlands in June 2006 was aimed at identifying critical linkages and corridors in the South Coast ecoregion that are critical to regional wildlife movement, notably the Santa Monica-Sierra Madre Connection, one of the few remaining coastal to inland connections in the South Coast ecoregion.

While the 2006 Wildlands Study's main objective was to identify a regional linkage between the coastal Santa Monica Mountains and the Sierra Madre Ranges (via the Simi Hills and the Santa Susana Mountains), a component of the 2006 Wildlands Study was a patch size and configuration analysis for 20 focal species. The 20 focal species represented a diversity of movement needs and ecological requirements from species that require large tracts of land (i.e. mountain lion, badger, mule deer) to those with very limited spatial requirements (i.e. woodrat and brush rabbit). Model outputs for this analysis extended to the subject site. Although the analysis was intended for a coarse examination of the landscape, the patch

size and core area requirements for each species can be compared with the subject Property. The following summarizes the patch size, core area requirements and study findings related to mammal and bird species with suitable habitat within the Project site.

Wildlands Patch Size and Configuration Summary

The 2006 Wildlands Study conducted a patch size and configuration analysis for 20 species to determine whether suitable habitat occurred in large enough patches to support viable populations and whether these patches were close enough together to allow for inter-patch dispersal. Patch size and configuration analyses are particularly important for species that require multiple generations to traverse a linkage (South Coast Wildlands, 2006).

The 2006 Wildlands Study identified all suitable habitat patches within the Santa Monica Mountains as potential core areas, patches, or less than a patch.

- **Potential core areas** - the amount of contiguous suitable habitat necessary to sustain at least 50 individuals.
- **Patch –** contiguous suitable habitat needed to support at least one male and one female, but less than the potential core area.
- **Less than a patch –** groupings of core areas and patches that were further apart than the adopted dispersal distance from other suitable habitat (assumes a dispersal distance twice the longest known dispersal distance).

Potential core areas are probably capable of supporting the species for several generations, while a patch can support at least one breeding pair of animals. The following summarizes the core and patch area requirements for those wildlife species with suitable habitat located within the Project site. Those species identified within the 2006 Wildlands Study that do not have suitable habitat onsite (i.e. steelhead) were excluded from the following evaluation.

Mountain Lion

- **Core Areas:** 2.4 million acres
- **Patches**: 49,421 acres
- **Barriers to this species:** roads and human development

Preferred travel routes are along stream courses and gentle terrain, but all habitats with cover are used (Beier and Barrett 1993, Dickson et al., 2004). In southern California, grasslands, agricultural areas and human-altered landscapes are avoided (Dickson et al., 2004). Highways, residential roads, and 2-lane paved roads can impede movement (Beier and Barrett 1993, Beier 1995, Dickson et al., 2004). The Project is located at the southern extent of the species' suitable habitat within the Santa Monica Mountains. The Project site was categorized as less than a patch and would not be considered contiguous with suitable habitat. Thus the project would not be considered an important habitat linkage for this species, and the project would not alter the movement patterns of this species.

Mule Deer

- **Core Areas:** 39,537 acres

- **Patches:** 247 acres
- **Dispersal Distance:** 270 miles (twice the maximum distance recorded)
- **Barriers to this species:** "Deer are particularly vulnerable to habitat fragmentation by roads; in fact, nationally vehicles kill several hundred thousand deer each year (Romin and Bissonette, 1996; Conover, 1997; Forman et al., 2003).

Deer are common throughout the Santa Monica Mountains. However, the Project is located along the southern extent of suitable habitat for this species and was categorized by the 2006 Wildlands Study as less than a patch. Thus the project would not be considered an important habitat linkage for this species. However, it is worth noting that deer are commonly seen along PCH, including grazing on the Pepperdine campus. There are likely groups of deer within the area habituated to human activity. Those local individuals would likely continue to access this area and utilize the Pepperdine campus or the eastern open grounds of the proposed Project, should the property be developed as planned. The existing roadway configuration would remain a threat to the travel of this species through the area; however, development of the Project as planned would not result in a significant alteration to the movement patterns of this species through the area.

Brush Rabbit

- **Core Areas:** 94 acres
- **Patches:** 2.47 acres
- **Dispersal Distance:** 2,297 feet (twice the maximum distance recorded)
- **Barriers to this species**: Isolating features - Small, isolated habitat patches aren't likely to support viable populations of brush rabbits (Chapman, 1971).

The existing 27.8 acre site is large enough to support several breeding pairs of brush rabbit; however, these few individuals would be isolated from surrounding populations by more than 350 feet to the north, two roads and a four way intersection. Given traffic through these areas, the existing distance and barriers would effectively isolate these populations from source populations to the north. The four lane Pacific Coast Highway (PCH) to the south of the project presents an approximate 100 foot barrier, across a heavily travelled highway that also presents a sizeable impediment to travel by brush rabbits through the area. Although the 2006 Wildlands Study identified the Project as core area, part of contiguous suitable habitat capable of sustaining at least 50 individuals, the roadways surrounding the Project site would be expected to present a sizeable barrier to long-term gene flow across these roadways. Further, it is noted that brush rabbits will readily forage on and become resident within landscaping provided that cover in the form of native or non-native shrubs is present. Therefore, the northern and eastern bluff edges of the site, even though managed per Fire Department requirements, would likely continue to sustain a population of brush rabbits.

Desert Woodrat

- **Core Areas:** 7.4 acres
- **Patches:** 0.25 acres
- **Dispersal Distance:** 524 feet (twice the maximum distance recorded)

- **Barriers to this species**: Movement barriers include urban developments, roadways (particularly highways with continuous solid barriers that prevent rodent passage).

Given the limited dispersal ability of this species, the existing roadways surrounding the Project site would present an effective barrier to movement, particularly given their need for cover to avoid predation. The 2006 Wildlands Study identified the Project area and Malibu Bluffs as potential core area for this species; however, no woodrat nests were observed during site visits in 2007 or 2011. One individual was noted in the 2006 Wildlands Study in Puerco Canyon, more than 0.6 miles from the site. Movement of this species from Malibu Bluffs to the Santa Monica Mountains would be expected to be associated with Puerco Canyon where an undercrossing is present at PCH. Further, given a known dispersal distance of less than 300 feet, this species would not be expected to overcome the 350 foot barrier across the northern property boundary and four-lane intersection at Civic Center Way and Malibu Canyon Road.

Loggerhead Shrike:

- **Core Areas:** 526 acres
- **Patches:** 22.2 acres
- **Dispersal Distance:** 8.3 miles (twice the maximum distance recorded)
- **Barriers to this species**: Subject to pesticide poisoning due to their position in the food chain

A resident species that requires a mosaic of open habitats with abundant prey to persist, the loggerhead shrike prefers open habitat types, but may also use scrub and wash communities. They are sensitive to habitat loss, fragmentation and degradation (Fraser and Luukkonen, 1986; Pruitt, 2000). Prefers fairly dense shrubs and brush for nesting (Small, 1994) and may be found in edges of denser habitat. The 2006 Wildlands Study identified the Project site as patch size, able to support one male and female. Thus the Project site is identified as isolated and not part of the larger contiguous habitat of the Santa Monica Mountains for this species. It is further noted that loggerhead shrikes have been virtually eliminated as a breeding species along the coast in this area (Shuford and Gardali, 2008, California *Bird Species of Special Concern*). Therefore, the project would have little effect on the movement patterns of this species.

California Thrasher:

- **Core Areas:** 741 acres
- **Patches:** 7.41 acres
- **Dispersal Distance:** not estimated
- **Barriers to this species**: This is one of the first species to disappear from isolated fragments (Soule et al., 1988). Loss of habitat to urban and agricultural development constitutes the most serious threat to populations (Roberstson and Tenney, 1993; Cody, 1998).

Associated with sage scrub habitat, the California thrasher is a mostly sedentary resident species, although there may be some local movement in the nonbreeding season (Zeiner et

al., 1990). The 2006 Wildlands Study identified the Project site as patch size, able to support one breeding male and female. Thus the Project site is identified as isolated and not part of the larger contiguous habitat of the Santa Monica Mountains for this species. Given the limited use of the site by this species, the Project would have little effect on its local movement patterns.

Road Density

The 2006 Wildlands Study also included a landscape permeability analysis which included a measure of road density (kilometers of paved road per square kilometer). A ratio of 1 is preferred and a ratio of 10 represents the highest cost of travel through the landscape. Following this methodology, Rincon centered a one square kilometer grid over the Project site. The length of road within the one square kilometer was measured (9,411 meters total). A measure of 9.4 km/sq.km equated to the highest road density included in the 2006 Wildlands Study, with a ratio approaching 10. Thus the project area can be categorized as an area having the highest cost of travel to wildlife and is an area that is typically avoided by animals for movement. This further reinforces the isolated nature of the Project site as it exists currently.

Conclusion

As noted above, the 2010 MPPAEP EIR does not list the Project site as an important habitat linkage. The 2011 BIR prepared for the Project site specifically addresses the connectivity potential of the site and concludes the site does not have high habitat function nor habitat connectivity. Lastly, results of the 2006 Wildlands Study indicate that the Project site in its current condition is a constriction point for the focal species examined in the 2006 Wildlands Study. Constriction points are areas where habitats have been narrowed by surrounding development and can prevent organisms from moving through. The 2006 Wildlands Study indicates that the Malibu Bluffs and the Project site provide patch size or less than a patch size habitat for numerous species (mountain lion, mule deer, loggerhead shrike, and California thrasher). Thus, for these species the Project site currently functions as an isolated habitat. Although the 2006 Wildlands Study includes the Project site in the core area for the brush rabbit and woodrat, as discussed above these species are easily isolated by roadways, and no evidence of woodrat was seen at the site. Due to the high road density within the Project area, the Project site as it exists is already functionally isolated from the Santa Monica Mountains. Further, PCH also serves to isolate the site from the Malibu Bluffs to the south for most of the lower trophic levels.

Based on the above referenced studies, analysis, and species requirements, the SMMC's suggested 20-30 foot wide corridor along the eastern Project boundary would not create any greater connectivity with the Santa Monica Mountains core habitats to the north as compared to the proposed Project. As connectivity is already inadequate, maintaining a 20-30 foot corridor along the entire eastern Project boundary (and subsequently along Civic Center Way) would provide little effective connectivity for wildlife. A 20-30 foot wide corridor of habitat directly adjacent to the roadway would provide marginal connectivity functions for wildlife given its proximity to noise, vehicles, associated lighting, and debris. On a cumulative basis, the approved campground immediately south of the site limits the

acreage of wildlife habitat available within the eastern bluffs, further reducing the likelihood of movement in this area.

SMMC's Recommended Alternative Fuel Modification Zones

As already stated, the site does not provide habitat connectively; however, the following addresses the SMMC's comment regarding fuel modification alternatives. The SMMC recommended a second approach to maintaining native vegetation within the Project area: to include a fuel modification plan that does not require thinning or irrigation in a 25 foot wide swath along the eastern Project boundary. The following outlines the treatment of native vegetation in the current landscape plans for the Project.

The Project, as proposed, will protect in place native habitat outside of the Los Angeles County Fire Department required 200 foot fuel modification zone, along the northern and southeastern project boundaries. Further, the landscape plans as proposed, provide the following parameters for the fuel modification zone (zone extending 50 feet from the nearest structure up to 200 feet from the nearest structure):

- Thinning and clearance will be determined upon inspection.
- Irrigation is not required for this zone if it consists entirely of native plants.
- Vegetation in this zone may consist of modified existing native plants, adequately spaced ornamental shrubs and trees or both, there may also be replacement landscape planting with ornamental or native species to meet minimum slope coverage requirements of the City or County.
- Plants shall be spaced appropriately. Existing native vegetation shall be modified by thinning and removal of those species constituting a fire risk: chamise, sage, sage brush, and buckwheat.
- Annual grasses and weeds shall be maintained at a height not to exceed 3 inches.
- General spacing for existing native shrubs or groups of shrubs is 15 feet between canopies, native plants may be thinned by reduced amounts as the distance from development increases.
- General spacing for existing native trees or groups of trees is 20 feet between canopies. Native plants may be thinned by reduced amounts as the distance from development increases.

As noted above, these are preliminary plans and subject to final design, review and approval. However, it should be noted that parameters similar to those proposed by SMMC are currently included in the site design considerations.

LIMITATIONS

This document was prepared for use solely and exclusively by Green Acres, LLC, care of Bruce K. McBride, Managing Partner, of Project Delivery Analysts, LLC. Mr. McBride has requested this assessment on behalf of Green Acres, LLC, who may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. This work has been

performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The findings and opinions conveyed in this report are based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the special-status species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. The findings and opinions conveyed in this report are based on this methodology. It is understood that Rincon is to be held harmless for any inverse condemnation or devaluation of said property that may result if Rincon's report or information generated during our performance of services is used for other purposes.

Thank you for the opportunity to assist you with this project. If you have any questions regarding this biological inventory report, please contact us at 805/644-4455.

Sincerely,
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